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Article

Conceptualization Shapes Practice: Apostasy-Based Refugee Claims and International Human Rights Law

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Abstract

Freedom of religion or belief is guaranteed in international human rights law. Incorporating the right to apostasy as a fundamental aspect of religious freedom encounters challenges in different state practices. To study this phenomenon, this article explores the interaction of the conceptualization of the right to apostasy in international human rights law and in the context of apostasy-based refugee claims. The main argument of this article is that ambiguity in international human rights law exists on the concept of 'apostasy'. This results in human rights protection gaps when states are unwilling to grant their inhabitants the right to apostasy. These gaps in protection are sometimes filled in by refugee law. However, in the specific context of apostasy-based refugee claims, this article identifies an issue with the identification and application of the concept of apostasy—and this conceptual ambiguity may lead to a lack of protection. Indeed, conceptualization shapes practice.

Keywords: apostasy; apostasy-based refugee claims; EU Qualifications Directive; freedom of religion or belief; International Covenant on Civil and Political Rights; Refugee Convention; Universal Declaration

1. Introduction

Freedom of religion or belief is guaranteed by Article 18 of the Universal Declaration of Human Rights, Article 18 of the International Covenant on Civil and Political Rights and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. Research indicates that incorporating the right to apostasy as a fundamental aspect of religious freedom encounters challenges in different state practices (Van Schaik 2023). For example, Algeria has ratified the International Covenant on Civil and Political Rights (ICCPR) and is thus legally bound by its provisions; however, the right to apostasy is not granted in domestic law. Not being able to apostatize can lead to persecution in the sense of the Refugee Convention by the Algerian authorities, for instance by penalizing the act of proselytising and indirectly apostasy (Journal Officiel de la République Algérienne. 2006: Article 11). In turn, persecution—resulting from apostasy—grants a right to protection in another state based on an apostasy-based refugee claim. To study this phenomenon, we will explore the interaction of the conceptualization of the right to apostasy in international human rights law and in the context of apostasy-based refugee claims.

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This article's contribution to the body of scholarly knowledge is twofold. First, the article aims to start a much-needed discussion in international human rights law on the right to apostasy by studying this right in the specific context of international, EU and national refugee law. Second, it contributes to the discussion in the field of refugee law, in which religion-based refugee claims are often the topic of discussion, to which this article adds a conceptual approach to apostasy-based refugee claims (see Good 2009: 27–48 for an example of research on the application of religion-based refugee claims in the United States and the United Kingdom).

The article consists of two main parts (sections 2 and 3 below). First, it examines how the freedom to change religion or belief, or rather the right to apostasy, is internationally recognized. We use a doctrinal and legal historical approach to study the UN legal documents and demonstrate that the phrasing of the provisions has been gradually altered and interpreted by various actors since the legal establishment of the freedom to change religion or belief in 1948. We argue that within international human rights law this has led to conceptual ambiguity.

The second part of the article concerns apostasy-based refugee claims. It examines the application of the concept of apostasy in a specific, hands-on legal context. The second part, therefore, provides an overview of how international, EU and national Dutch law approach apostasy in the context of religion-based refugee claims. We have chosen to zoom in on the national approach in the Netherlands because of the developments in national jurisprudence and policy on inter alia apostasy-based refugee claims. In this section, it will also be demonstrated that a lack of conceptualization of apostasy exists. We will argue that, whereas for some refugee claims this causes no issues in practice, issues may occur for apostasy-based refugee claims, and that these issues result from conceptual ambiguity.

2. The international right to apostasy

2.1 Apostasy and the UN

The controversial issue of the right to change religion or belief, and whether this should be recognized in international standards, was a topic that was extensively discussed during the drafting of the Universal Declaration (UN General Assembly 1948a), the ICCPR (UN General Assembly 1966), and the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (UN General Assembly 1981). What the right to change belief or religion adds to the general right of freedom of religion or belief is: (1) the right to adopt a religion or belief other than the one which one has acquired from parents or guardians; (2) the right to adopt a religion or belief other than the one which was chosen initially by the believer him- or herself; (3) the right to relinquish all religion. These options imply the notion of *apostasy* (Van Schaik 2023).

No clear definition of apostasy exists, and within religions, various definitions are used (see for the usage of these various definitions, Bromley 1998). However, in general terms, apostasy includes the (total) desertion of, or departure from, one's religion, principles, community and cause (*Encyclopædia Britannica*). The Oxford dictionary adds 'the act of rejecting your former religious or political belief'. It is the act of refusing to continue to follow, obey, or recognize any religious faith or belief whatsoever (*Merriam-Webster*). For this reason, it is highly controversial.

The international legal framework regarding the freedom to change religion or belief, established under UN auspices, comprises Article 18 Universal Declaration, Article 18 ICCPR, and Article 1 of the 1981 Declaration. Over the years, textual changes have been implemented, and Article 18 ICCPR differs from the two other Articles in several respects. In Article 18 Universal Declaration, the phrase 'this right includes freedom to change his religion or belief' was included, whereas, in Article 18 ICCPR, the words 'the freedom to have or to adopt a religion or belief of his choice' were adopted and in Article 1 of the

1981 Declaration, the clause 'freedom to have a religion or whatever belief of his choice' was used.

These various *textual alterations* demonstrate that there is a change in phrasing from 'to change religion or belief' to 'have or to adopt a religion or belief of choice' to 'religion or whatever belief of choice'. The textual changes indicate that the 1948 formula was not repeated in 1966 and 1981.

If these phrases were grammatically interpreted, the interpretation would be based exclusively on the literal meaning of the words themselves. The usage of a different formulation would then suggest a change in meaning (Kwak 2009; Scalia and Garner 2012). The question that emerges now is whether the variance in wording signifies a distinction in rights. In other words: is there a change in the *de jure* situation prevailing in the international legal order?

According to some UN experts, this is not the case. In 1987 Elizabeth Odio Benito, the former Special Rapporteur on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, concluded that although the three main provisions 'varied slightly in wording, all meant precisely the same thing, that everyone has the right to leave one religion or belief and to adopt another, or to remain without any at all' (Odio Benito 1987: 4). According to Odio Benito, 'it is implicit in the concept of the right to freedom of thought, conscience, religion and belief, regardless of how that concept is presented'. This was in line with her predecessor, Arcot Krishnaswami, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, who was responsible for *The Study of Discrimination in the Matter of Religious Rights and Practices* in 1960 (Krishnaswami 1960: 16).

In 1993, the Human Rights Committee addressed the issue of freedom of religion or belief and elaborated on Article 18 ICCPR in General Comment 22 in eleven paragraphs (Human Rights Committee 1993). With regard to this subject, the Committee states that Article 18 ICCPR protects theistic, non-theistic and atheistic beliefs, as well as the freedom not to profess any religion or belief (Human Rights Committee 1993: 2). It furthermore explicates that '[i]t does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice' (Human Rights Committee 1993: 3). Paragraph 5 engages this topic explicitly and explains that

> the freedom to 'have or to adopt' a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief (Human Rights Committee 1993: 5).

Additionally, it elucidates that Article 18, paragraph 2

> bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert (Human Rights Committee 1993: 5).

It is clear that the right to apostasy is protected since it includes the right to replace one's current religion or belief with another or adopt atheistic views. Although the Human Rights Committee is tasked with interpreting the ICCPR and their focus should be on the text of Article 18 ICCPR, it is noteworthy that in the overall text, the concept of 'change' was not used.

The views of the rapporteurs and the Human Rights Committee are considered as soft law. However, they still hold significance in shaping international norms and encouraging

states to adopt certain practices or policies in line with international human rights law. Therefore, they are authoritative sources for the interpretation of the right to apostasy (Shany 2017: 808; Thürer 2009: 6, 29–30).

Based on the textual analysis of Article 18 UDHR, Article 18 ICCPR, and Article 1 of the 1981 Declaration, it is clear that there was a textual change, that is a grammatical difference in defining the right to change religion or belief, apparent from the alteration of the words in 'to have and adopt' and the use of the concept of 'choice'.

Considering the adjustment to these terms, it may be said that there is a decline from an *explicit* recognition of the right to a sort of *implicit* recognition. However, according to the rapporteurs, the Universal Declaration, the ICCPR and the 1981 Declaration all attribute the freedom to change religion or belief, even though the language of the Universal Declaration is not repeated. Does this mean that the legal concepts do not have to be repeated to be legally valid? Does interpretation suffice? Here we arrive at a general reflection on 'what should be considered as the law'. Is it the text as the lawgiver has formulated it? Or is it the lawgiver's text and the legal experts' interpretation?

Within UN circles, the prevailing view is that Article 18 ICCPR includes the right to apostasy, but we believe that the evidence for this stance needs to be more convincing. Due to the changes in the wording of the provisions, it can be argued that there has been a shift from an explicit recognition of the right to apostasy to a more implicit one. It is vital to understand the drafter's considerations for changing terminology. In other words, these linguistic changes need context. The alteration in the language used by the drafters was motivated by normative considerations, thus entailing not only a linguistic change, but also a conceptual one. For these reasons, we will study the legislative history and the shifting views in academia in the following sections.

2.2. Compromising apostasy?

During the drafting of the ICCPR, there has been extensive debate about the content of Article 18 ICCPR, especially about the right 'to change or maintain' one's religion or belief and the scope of legitimate limitations of 'freedom to manifest one's religion or belief' (UN General Assembly 1955: paras 136–43). The Commission had decided that

> freedom of thought, conscience and religion was frequently characterised as 'absolute', 'sacred' and 'inviolable'. The first clause of the article accordingly declared in clear and simple terms, and without qualifications, that 'everyone shall have the right to freedom of thought, conscience and religion'. No restrictions of a legal character, it was generally agreed, could be imposed upon man's inner thought or moral consciousness, or his attitude towards the universe or its creator; only external manifestations of religion or belief might be subject to legitimate limitations (UN General Assembly 1955: para. 106).

In the Third Committee, the Saudi Arabian delegation addressed the subject of the freedom to change and maintain religion and strongly contested the Commission on Human Rights' suggestions. The Saudi Arabian delegate proposed to delete the words 'to maintain or to change his religion or belief' from paragraphs 1 and 2 in the provision (UN General Assembly Third Committee 1960c: 15; 1955; 1960a). With this alteration, the explicit right of the individual to maintain or change religion or belief was to be deleted in both paragraphs of the provision (UN General Assembly 1960: 48).

Jamil M. Baroody, the Saudi Arabian representative, introduced and substantiated the amendment. Baroody underlined that there was no such thing as a right to proselytise and warned the Third Committee not to 'lend itself to such practices' (United Nations: Jamil the Irrepressible 1971: 32–34; Saxon 1979). Baroody held the 'firm conviction' that a reference to the freedom to maintain or change religion was 'superfluous' (UN General Assembly Third Committee 1960d: 11). Interestingly, Baroody was the same delegate who had

dominated the discussions regarding this topic during the drafting process of the Universal Declaration more than a decade earlier. The adoption of the words 'to change religion' was one of the reasons for the Saudi Arabian delegation to abstain from the final vote regarding the adoption of the Universal Declaration (UN General Assembly 1948b: 933–34).

It is important to note that this discussion has to be set against the background of the age of Christian colonialism. There was a worldwide resentment of Christian proselytising practises, and the mere act of proselytising was seen as a threat. Interestingly, Muslims were at that time not as well organized in this respect by far as Christians. In the last decades, various developments have changed this balance, and presently multiple organizations strive to be the 'collective voice of the Muslim world' (Van Schaik 2022).

After various discussions, it became clear that it was unlikely that with the current formulation in place, draft Article 18 ICCPR would be endorsed by a vast majority of the members of the Third Committee. Since the provision dealt with 'a very delicate and sensitive subject', it was the aim to suggest a text which would be adopted unanimously. The delegations from the Philippines and Brazil came up with a suggestion. According to them, an important principle at the centre of this discussion is 'the right of an individual to have freedom of choice' (UN General Assembly Third Committee 1960e: 8). With an additional amendment introduced by the UK's representative, the text would be amended to read:

> This right shall include freedom to *have or to adopt* [emphasis added] a religion of his choice and freedom, either individually or in community with others, to manifest his religion or belief in worship, observance, practice and teaching (UN General Assembly Third Committee 1960f: 1; 1960b; 1960g: 2).

Although various delegates welcomed the revised text (UN General Assembly Third Committee 1960g: 11, 14–15), some representatives still favoured that initially drafted by the Commission of Human rights, for it explicitly addressed the freedom to maintain and change religion. However, 'in a spirit of compromise', they would vote in favour of the newly suggested text (UN General Assembly Third Committee 1960g: 25, 32). When it came to the voting procedure, it became clear that the combination of amendments introduced by Brazil, the Philippines and the UK was persuasive enough to delete the phrase 'freedom to change or maintain religion or belief' since Article 18 ICCPR was adopted unanimously (UN General Assembly Third Committee 1960g: 36; UN General Assembly 1960: 57).

What is Analysis of the drafting history makes it evident that there was significant opposition to the wording of the text concerning the freedom to change religion and belief. Various delegates had expressed that they were striving for a text that could be adopted unanimously and were, therefore, willing to alter the wording of the article continuously. Evidently, this is what a legislator does: make compromises to reach a consensus. However, this introduces some interesting questions, such as: did this conciliatory spirit strengthen or weaken the text of Article 18 ICCPR? Or rather, did the spirit of compromise and the aim for consensus limit the realization of the normative aspirations set out in Article 18 of the Universal Declaration in 1948? Did the newly adopted text introduce ambiguous concepts? It is interesting to inquire how these textual alterations were received and interpreted within academic circles.

2.3 Shifting views: inclusive versus exclusive stance

In academia, a wide range of views on this subject can be generally divided into two perspectives. On the one hand, there is the view that the freedom to change religion is clearly enshrined in Article 18 ICCPR, which we coin as the *inclusive stance* (2022; 2023). According to the inclusive view, endorsed by scholars such as Derek H. Davis, Paul Taylor, Van Boven, Richard B. Lillich, and Karl Josef Partsch, it seems that the textual changes in

the legal provisions from 'the right to change religion' to the 'the right to have or adopt a religion of choice', were merely a matter of semantic adjustment or a shift in verbiage, which did not affect the substance of the legal provision. To them, the right to change one's religion seems firmly established in the United Nations' legal framework. This means that the adopted formulations in 1948, 1966, and 1981 seem to imply the same right: the freedom to *change* religion or belief (David 2002: 225–26; Taylor 2005: 31–42; Van Boven 1967: 160; Lillich 1984: 159; Humphrey 1984: 179).

On a semantic level, this inclusive stance can be adopted. However, taking into account the attitude towards the freedom to change religion of countries with a firm state religion (especially Islam), the omission of these words seems more significant and substantial than assumed by these scholars, as exemplified in the introduction. It fails to recognize the precarious position of apostasy and apostates in Islamic countries. In a broader sense, it can be argued that the freedom of religious choice is a sensitive issue for all religions.[1] But, as various scholars have discussed and research has demonstrated, the conversion to another faith or to renounce Islam may have far-reaching legal consequences in various Islamic states, from the dissolution of marriage to blasphemy, imprisonment and the death penalty (Mayer 2012; Schirrmacher 2010; Sookhdeo 2009; Marshall and Shea. 2011; Global Legal Research Center 2014; Pew Research Center 2016).

What is relevant in this regard is that it must be questioned whether the concept of 'choice' implies the same consequences, or rather rights, as the concept of 'change'. Or does 'choice' mean choosing a religion and conforming to it, and does choice then mean choosing once and for all, the choice necessarily being a definitive one? More pertinently: what if the choice is already made by simply being born into a particular religious family? By being born into an Islamic family, the choice to be Muslim is already made by the parents. In Islam, it is generally presumed that every child is born a Muslim, especially if it is born from an Islamic mother. This view stems from the views on creation within Islam, called 'Fitra'. However, from a non-Islamic, or an outsider's perspective, the parents *choose* to raise their child in an Islamic way. Is this then automatically the sole choice that is 'allowed', and is it definitive? In this view, the freedom of choice does not specify that additional choices to the original one may be made. The same line of argument may be applied to children being born to a Jewish mother.

By changing to the concept of 'choice', it can be argued that ambiguity was introduced in the text. It seems that the states played into the hands of the delegations who opposed the right to apostasy, for the reason that with the freedom of choice, there seems to be more room to interpret the provision according to national law, in which, for instance, the right to apostasy is not guaranteed. It provides the possibility for states to interpret the freedom of religious choice as the freedom for the individual to choose what religion to adhere to, which is a permanent decision. It does not (explicitly) clarify that the individual has the right to change their mind in religious matters at any time the individual likes. The provision thus lacks *conceptual clarity*.

The question of how there can be 'free choice' without the right to change is vital. The interpretation that the right to free choice implies difficulties for the right to apostasy seems at first glance unsubstantiated; it seems like an interpretation that renders the right meaningless because it is logically inconsistent. One might even say that this is neither a matter of interpretation nor a matter of semantic adjustment but a matter of logic. However, this argument does not take into account that the concept of 'choice' may be interpreted differently and, thus, various conceptions are possible.

Considering these remarks, the freedom of religious choice does not necessarily imply the right to apostasy as it does not unequivocally grant freedom to change religion, from which

1 The reaction to apostasy may differ within the various religious communities, varying from disappointment and ex-communication to stoning.

is certain that it means multiple 'changes'. For this reason, not using the concept of change seems to be more than mere window dressing, as was suggested by the UN experts and the scholars who adopt the inclusive stance. A disadvantage to this stance is that it insufficiently engages with the political motivations of certain states and the negotiations preceding the 1966 alterations, as discussed in the previous section.

To this inclusive stance, another critical side note must be made. We are not arguing that enacting the right to adopt the religion of one's choice is worse than having no provision on the freedom of religion (adopted unanimously) at all. In addition, with this observation, we do not mean to say that granting the right to adopt a religion of one's choice as such is counterproductive in countries with a state religion, such as Islam. Instead, we argue that it *can* be counterproductive. We emphasize that the current wording of the text is rather ambiguous and was (perhaps) unwittingly enabled by other states, who were seeking consensus for political reasons. On the surface, the text may appear to be the same, but the implementation may vary differently due to this conceptual ambiguity.

The assumption that the right to religion does not necessarily entail a right to apostasy is endorsed by scholars who adopt what we call an *exclusive stance* (Van Schaik 2022; 2023). They do not uncritically adopt the view that Article 18 ICCPR encompasses the freedom to apostasy. The exclusive stance is, inter alia, supported by legal scholar Malcolm D. Evans, who points out that it might be possible to interpret the covenant in such a way that the right remains absent from it (Evans 1997: 201–02). Bahiyyih G. Tahzib continues this line of reasoning. She writes that a difference is notable between Article 18 Universal Declaration and Article 18 ICCPR, and points out that

> [u]nlike Article 18 of the UDHR, Article 18, paragraph 1, of the ICCPR no longer explicitly enumerates freedom to change one's religion or belief as an indispensable component of the right to freedom of thought, conscience and religion. It is hence left to the discretion of individual States Parties to determine whether the freedom to change one's religion or belief falls within the scope of the right to freedom of thought (Tahzib 1996: 87).

In this regard, the stance of Willy Laes, a Belgian human rights activist, is relevant. Laes argues that the eight abstentions from the final vote of the Universal Declaration were covered with the 'cloak of love' by the consenting states. Laes devotes a full chapter in his book to what he calls the 'vanishing act of Articles 18 and 16 of the Universal Declaration' (Laes 2011: 122). We will discuss this in section 3 in which we showcase the difficulty in implementation of the conceptually ambiguous concept of apostasy in the specific context of apostasy-based refugee claims.

2.4. Preliminary observations: conceptual ambiguity

Regarding the textual changes of Article 18 ICCPR, and the possible consequences, the opinion of Evans, Tahzib and Laes is that the freedom to change religion does not naturally stem from the currently chosen wording. Furthermore, based on their views, it can be deduced that the difference in phrasing is not solely a semantic adjustment. Of particular significance is Tahzib's argument, which makes the crucial point that the actual granting of the right to change religion may now be subject to the discretion of individual states.

In line with this idea, it may be argued that the consequences may be even more severe: the text is now open to various interpretations, which could result in legal inequality between the individual states. This undermines the direct legal obligations of states, which were supposed to be imposed with the adoption of the Covenant. By altering the concepts and offering room for various interpretations, this ambiguity allows states to use a *restrictive interpretation* of the freedom of religion and belief, resulting in a narrow conception of the right. This is to be differentiated from states simply not being *willing* to grant a certain human right (where there is no ambivalence regarding its definition), because in the case of

the right to apostasy states can hide behind its conceptual ambiguity. The argument would then be that there is no such thing as a right to apostasy, and therefore individuals are not able to rely on it.

The conceptual ambiguity is objectionable since the availability of the right to apostasy could be the mere result of interpretation. Since states can claim that there is no automatic right to apostasy, the protection of apostates could become a pure matter of the *willingness* of the state to grant the right. Obviously, with the implementation of legal provisions interpretation is a continual issue; here interpretation is merely the act of understanding or of giving a particular meaning to a legal concept. In this case, however, where fundamental rights are concerned, it should be made explicit in the formulation. For an individual to have the right to apostasy as a mere result of interpretation is in contrast with not only the principle of *equality* before the law but also with the principle of *legal certainty*. As is often advocated in the human rights discourse, in order to protect fundamental rights from misinterpretation, misuse, or arbitrary application, the state must formulate the freedoms in such a way, preferably explicitly, that the individual knows exactly what his rights are in the legal order. If this is not the case, the state and its judiciary will be able to *disregard* the right to apostasy and argue that the right in question is not a protected dimension of the freedom of religion or belief. Individuals trying to leave religion may be left empty-handed (legally).

The 1966 ICCPR was intended to reinforce the right to change religion or belief as established in 1948. However, the 1966 formulation could be perceived as deviating from the original intent of the world community's delegates, which aimed to (explicitly) safeguard the right to apostasy.

Evidently, the enshrinement of the freedom of religion or belief in an international treaty was a significant advance towards the realization of an international legal order, and this must be recognized; however, it has come at the expense of conceptual clarity, putting the right to apostasy at stake in international human rights law.

This assumption contributes to our working hypothesis; the conceptual ambiguity regarding the right to apostasy in international human rights law is often filled in by refugee law—which seems to struggle with identifying apostasy. To substantiate this claim, we must first explain how apostasy is defined and applied in refugee law.

3. Apostasy-based refugee claims

In this part of this article, we delve into the application of the concept of apostasy in the specific context of refugee law. First, we give a brief introduction into the background of refugee protection. Second, we discuss the general umbrella of religion as a ground for refugee protection. Next, we will zoom in on apostasy-based refugee claims, with special attention on the concept of apostasy in refugee law, attributed apostasy, and the (lack of) differentiation between apostasy and other apostasy-related concepts. Lastly, this will lead to preliminary conclusions, showing that the conceptual ambiguity of the right of apostasy may lead to tangible consequences in legal practice and for the protection of individuals. These conclusions will serve as a starting point for the conclusions on the identification of apostasy in apostasy-based refugee claims in relation to the conceptualization of apostasy in international refugee law.

3.1 The refugee convention

'From the beginning, the modern idea of a refugee has been tangled up with power and politics', observed journalist Matthieu Aikins (Aikins 2022: 45). The political meaning of the refugee definition can be explained by the context in which the Refugee Convention first saw the light of day. As opposed to the *travaux préparatoires* of and negotiations on the right to apostasy (discussed in the first part of this article), Western states/states in the Global North generally fulfilled a more active role in the negotiations on international

refugee law instruments. The post-World War II international negotiations were led by these countries that arguably wished to grant protection to dissidents from communist states (Loescher and Scanlan 1986: xvii, 48–50). Even today, nearly 40 of the UN member states that have not signed or ratified the Refugee Convention are found in the Middle East, South and Southeast Asia (Jones 2017: 212–13). This is despite the fact that many of these countries, especially in the Middle East, are both 'sending' and 'receiving' countries of refugees (Fujibayashi 2021: 221–22). As a result, most of the negotiations on international refugee law instruments and part of the responsibility for the outcome—the granting of refugee protection—lie with Western states/states in the Global North. These are also the states that took a somewhat lenient attitude in not explicitly recognizing the right to apostasy during the drafting process, as was explained in Part 1 of this article.

Article 1A(2) of the 1951 Refugee Convention defines a refugee as a person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.

The Refugee Convention thus protects refugees by granting rights to those with a well-founded fear of being persecuted on these grounds, requiring a causal nexus between the fear of persecution and the grounds for persecution. One of the grounds for persecution is religion. In other words, a person is to be considered a refugee if their fear for persecution in their country of origin is caused by persecution on the ground of inter alia religion.

While the term 'persecution' is not defined in the Refugee Convention, it is widely understood as at least encompassing a threat to life and freedom, or other serious violations of human rights (UNHCR 2019: 21). The required nexus between the fear of persecution and the grounds for persecution implies that a refugee must only be considered a refugee if the fear for persecution is caused by one or more grounds for persecution (UNHCR 2019: 23). For example, if a person is being tortured in their country of origin by government officials *because* they adhere a certain faith, this would fulfil the requirements of the definition in Article 1A(2) of the Refugee Convention.

3.2 Religion-based refugee claims: the legal framework

Even though some discussion on the definition of 'religion' as a ground for refugee protection still exists (Wallace 2007: 198–200; Lehmann 2014: 70–75), religion seems to have been construed quite broadly in international refugee law. It includes theistic, non-theistic and atheistic beliefs, as well as the right not to hold a certain or any belief (Hathaway and Foster 2014: 399–405). Based on the *travaux préparatoires* of the Refugee Convention, the UN Refugee Agency (UNHCR) asserts that religion-based refugee claims may involve 'a) religion as a belief (including non-belief); b) religion as identity; c) religion as a way of life' (UNHCR 2004: 3–4).

Leading scholars such as Hathaway and Foster have argued that human rights are to be used as the benchmark for the persecution requirement in religion-based refugee claims. When viewed that way, the human right of freedom of religion serves as a 'critical counterweight to culturally relativist objections to providing protection' in refugee law. They have further categorized the religion ground for persecution in refugee law as linked to those human rights 'that promote autonomy and self-realization … Human rights law guarantees the right of an individual to hold and to live in accordance with her [religious] beliefs'. As a result, even if no physical violence takes place, a violation of the right to religion may constitute a ground for persecution and, thus, protection under the Refugee Convention (Hathaway and Foster 2014: 193–208 and 260–68).

Referring to the Universal Declaration of Human Rights and the Human Rights Covenant, the UNHCR Refugee Status Determination Handbook follows this approach and understands religion as encompassing 'the freedom of a person to change his religion

and his freedom to manifest it in public or private, in teaching, practice, worship and observance' (UNHCR 2019: 23).

Similarly, in the EU Common European Asylum System (CEAS), the refugee definition was approached with a human rights benchmark in mind. Based on, and in addition to, the Refugee Convention, the EU Qualifications Directive has defined the religion ground for persecution as protecting

> the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief.

Based on that provision, the Court of Justice of the EU (CJEU) issued a landmark judgment on religion-based refugee claims in the 2012 *Y and Z* case (CJEU 2012). It concluded that not every infringement of religious freedom would constitute persecution. Instead, the Court requires a severe violation of the freedom of thought, conscience and religion (as protected by Article 10 of the Charter of Fundamental Rights of the EU (Charter)) in order to qualify for refugee protection (CJEU 2012: para. 58–59). According to Lehmann, the Court 'carefully endorses a very narrow … human rights approach to the notion of persecution' in the *Y and Z* judgment (Lehmann 2014: 81). However, the CJEU rejects the even narrower German qualification system, which distinguished between the *forum internum* and *externum* (which protects only the core areas of religion and excludes inter alia religious activities in public).[2] The decision-making authorities of the EU member states must instead assess the measures and sanctions (likely to be) adopted against the person concerned, based on objective and subjective factors (CJEU 2012: para. 66–71).

In the Netherlands, the main provisions relevant to religion-based refugee claims, for the sake of this article, are to be found in the Aliens Act, which refers to the Refugee Convention for the definition of a refugee, and the Aliens Regulation, which uses the verbatim definition of 'religion' of the Qualification Directive.

In addition to this legal framework, the Dutch decision-making authorities (the *Immigratie-en Naturalisatiedienst*) use work instructions. In the case of religion-based refugee claims, Work instruction 2022/3 on Converts and Apostates is applicable. Therein, Dutch practice for assessing religion-based refugee claims is laid down. Work instruction 2022/3 is an alteration of Work instruction 2019/18, which had a stronger focus on conversions, defined as 'transferring to another belief' (WI 2022/3: 2). In line with Article 10(1)(b) of the Qualifications Directive, conversion to any theistic, non-theistic or atheistic belief is protected in Dutch practice. In addition, agnostic beliefs are also protected according to the Work instruction (WI 2022/3: 2; WI 2019/18: 2). In practice, the main issue decision-makers and judges encounter concerns the credibility assessment of the religion-based refugee claim (De Lange 2016: 80; Schans and van Lierop 2019).

Having set out the legal framework, the next section will delve into the concept of apostasy in refugee law, arguing that, in this context, apostasy is an integral aspect of the understanding of the freedom of religion or belief.

3.3 Apostasy-based refugee claims

Even though the Refugee Convention does not explicitly mention apostasy as a ground for persecution, apostasy is still protected by international refugee law because of the broad construction of the religion ground in Article 1A(2) of the Refugee Convention. The same

2 CJEU 2012: para. 62. Note that the European Court on Human Rights (ECtHR) maintains a distinction between the *forum internum* and *externum* in its general case law on the freedom of religion (Council of Europe/European Court of Human Rights 2013: 8).

holds true for the previously quoted Article 10(1)(b) of the Qualifications Directive, and thus apostasy also constitutes a reason for refugee protection under EU law, as will be analysed and exemplified below. This results from what we have described in Part 1 as the inclusive stance, which seems widely accepted among refugee scholars and practitioners. Indeed, the fact that *religion*-based refugee claims grant refugee protection is assumed to include protection also for *apostasy*-based refugee claims, does not seem to be much of an issue in the literature (for example Murdoch 2018: 151–75). This entails the assumption that the right to apostasy is an integral aspect of the freedom of religion or belief.

The previously discussed religion-based refugee claims include refugee claims that are based on religion as a ground for persecution. The same is true for apostasy-based refugee claims, which will be discussed in this section. Apostasy-based refugee claims are a subset of religion-based refugee claims with their own specific characteristics, as we will discuss below. For example, a 'straightforward' religion-based refugee claim would include persecution as a direct result of the adherence of a faith: for example the membership of a certain religion is prohibited by law. A common subset of religion-based refugee claims are cases which rely on conversion: for example a death penalty is administered as a result of converting from one religion to another. The subset of religion-based refugee claims that this section and this article is mostly concerned with, relies on apostasy as a ground for persecution: for example if the relinquishing of all religion leads to discrimination by the authorities of the country of origin.

One example of a judgment in which the CJEU decided on a religion-based refugee claim with a link to apostasy was the 2018 *Fathi* judgment (CJEU 2018; see also Rafi 2019: 118–19). The case concerned an Iranian refugee who had converted to Christianity and filed a refugee claim in Bulgaria based on his conversion. Because apostasy (in and of itself) may be punishable by death in Iran, this amounts to a 'severe violation' of the freedom of religion (CJEU 2018: para. 94–96).

The 'severe violation' was previously set out as the benchmark required for refugee protection by the CJEU (CJEU 2012: para. 58–59). Objective factors may thus include laws of the country of origin prohibiting the observance of a certain faith, as was the case in the *Y and Z* case (CJEU 2012: para. 60 *iuncto* 31), or indeed the prohibition of *not* adhering to a certain or any faith (CJEU 2018: para. 94–96). Subjective factors may include the conviction of a person that they are obliged by their faith to observe a certain religious practice in public (CJEU 2012: para. 70).

In the Netherlands, the previously mentioned Work instruction 2022/3—but also its predecessor 2019/18—explicitly recognizes apostasy as a ground for protection.

3.4 Apostasy and conversion

Based on the foregoing, one could perhaps assume that apostasy-based refugee claims have been assessed somewhat separately or differently from other religion-based refugee claims in Dutch practice. However, before 2022, no separate or additional guidelines were formulated for assessing apostasy-based refugee claims. Therefore, it was assumed that apostasy-based refugee claims in the Netherlands were assessed based on the same guidelines as conversion cases—with the exception of refugee claims based on *attributed* apostasy, which will be discussed below.

At first sight, such an equalization of conversion and apostasy does not cause any major issues. Indeed, it seems that in practice, apostasy-based elements of a refugee claim often rely on the same facts as the conversion-based element of the same claim. However, a more problematic result of this lack of distinction is lingering beneath the surface. We may find that a religion-based refugee claim relying *separately* on apostasy *and* on conversion is unsuccessful—for example, because the assessment of the motives for conversion leads to the conclusion that the conversion was disingenuous and incredible—but that the 'pure' apostasy-based claim is not assessed separately (similar facts were applicable in District

Court of Amsterdam 2018: para. 2.2). The same could hold true for religion-based refugee claims relying separately on apostasy and atheism/agnosticism. In such cases, the question of apostasy in and by itself sufficing for granting refugee protection, remains unanswered (this initially happened in District Court of Middelburg 2017: para. 1–5). Thus, we have argued elsewhere that it is important to distinguish apostasy from conversion as a ground for granting refugee protection, not only conceptually but also practically (Hillary and van Schaik 2021).

Such a case, in which the conceptual differentiation between apostasy and other religion-based refugee claims had practical consequences, was finally brought before the Dutch Council of State on 19 January 2022. Therein, the Council of State differentiated between conversion-based refugee claims and 'pure' apostasy-based refugee claims, thus requiring a separate framework to assess apostasy-based refugee claims (Dutch Council of State 2022: para. 12.2).

3.5 Apostasy and atheism as beliefs

In addition to the distinction between apostasy and conversion in religion-based refugee claims, the Dutch Council of State ruled in this 2022 case that a distinction must be made between apostasy and atheism. As a result, the Dutch decision-making authorities are now required not only to inquire on the claimed atheism as a ground for refugee protection but also on the claimed apostasy and the reasons for the denouncing of faith (Dutch Council of State 2022: para. 11.1–11.3). This led the Netherlands to review Work instruction 2019/18 on Converts and alter it to the current Work instruction 2022/3 on Converts and Apostates (Hooijmans 2023: 38).

The 2022 cases not only led to an alteration in the distinction between apostasy-related concepts in the context of religion-based refugee claims. It also furthered the conceptualization of apostasy itself. In the previous Work instruction 2019/18, apostasy was distinguished from a belief. The Dutch Council of State has explicitly renounced this understanding. This is a reiteration of the Council's previous case law (Dutch Council of State 2020). Instead, the Dutch Council of State conceptualizes apostasy as meaning 'that a foreigner has relinquished the belief that the grew up with, that he adhered before, or that he in the eyes of his social environment or the government should adhere to' (Dutch Council of State 2022: para. 11). The 2022/3 Work instruction follows this definition of apostasy (WI 2022/3: 3).

From our point of view, this is interesting because it clearly showcases the inclusive stance in the context of refugee law: regardless of apostasy not being an explicit ground for refugee protection, it should be viewed as an integral aspect of the 'religion' ground and, therefore, leads to refugee protection.

3.6 Attributed apostasy-based refugee claims

In addition to apostasy as a ground for refugee protection, *attributed* apostasy was also mentioned in the Dutch Work instruction 2019/18 as concerning those asylum seekers who *in the eyes of others* have denounced their religion, 'for example because they do not sufficiently or in a wrong fashion express their religion'. Work instruction 2022/3 seems to combine attributed apostasy and apostasy and it adds a separate framework for assessing attributed apostasy-based refugee claims. The Dutch decision-making authorities thus leave open the possibility that persecutors in the country of origin regard a refugee as an apostate but that the refugee considers themselves as still adhering to a certain belief. In that case, Work instruction 2022/3 instructs decision-makers to inquire as to the motives for changing the way the refugee expresses their religion and the process that triggered it, as did Work instruction 2019/18 (WI 2022/3; WI 2019/18).

It is important to stress here that refugee law does not include an explicit requirement on a certain internal conviction for refugees in order for them to obtain protection. The pertinent question to ask in the context of refugee law is not whether a person's apostasy is

genuine, but rather: does their (attributed or genuine) apostasy cause a fear for persecution? (UNHCR. 2004: p. 12) In the words of the UNHCR: 'The test remains … whether he or she would have a well-founded fear of persecution on a Convention ground if returned' (UNHCR 2004: 3–4).

Because of the sometimes misunderstood distinction between apostasy and attributed apostasy in refugee law, decision-making authorities may blur the line between the assessment of the apostasy of an asylum seeker (including the nexus with the fear for persecution) and the assessment of the *genuineness* of their apostasy (for example the reasoning of the Dutch decision-making authorities in District Court of Haarlem 2019: para. 5.1). As discussed previously, the Refugee Convention aims to grant protection to those with a well-founded fear for persecution. Therefore, we argue here that it would be more in line with the *ratio legis* behind refugee law if decision-makers were to question the asylum seeker on what they believe is the perception of the persecutor of their (attributed) apostasy. The 2022 developments may very well lead in that direction, although the Dutch Council of State still seems to require an internal conviction for the apostasy even if the well-founded fear of persecution results from the *attribution* of apostasy.

3.7 Preliminary observations: blurring of concepts related to apostasy in religion-based refugee claims

This section gave an overview of the ways international, EU and national Dutch law approach apostasy in the context of religion-based refugee claims, arguing that, in the context of refugee law, apostasy is an integral aspect of the understanding of the freedom of religion or belief. This is an example of the inclusive stance. Studying apostasy-based refugee claims within the Dutch context shows that apostasy also lacks conceptualization in the context of refugee law. For some refugee claims, this causes no issues in practice—as religion-based refugee claims may rely on the same facts for both the apostasy and the conversion or atheism element of the same claim. However, we have argued that issues may occur in the context of 'pure' apostasy-based refugee claims. In the section on apostasy in refugee law, we also touched upon attributed apostasy, exposing a risk the conceptual blurring of these concepts may bring to the assessment of religion-based refugee claims.

Overall, we observe that a difficulty in the assessment of the case law on religion-based refugee claims is caused by viewing apostasy as a steppingstone to conversion to another faith or belief. This issue is caused by the same conceptual ambiguity as in international human rights law, as discussed in Part I of this article. Such an understanding of apostasy is sometimes reflected in national practice in which apostasy-based refugee claims are not assessed separately from other religion-based refugee claims, such as claims relying on conversion to another faith or belief, including atheism. However, in the Netherlands, recent judicial developments require policy makers and decision-making authorities to conceptualize apostasy and to distinguish apostasy-based refugee claims from other religion-based refugee claims. We expect that this will lead to a further differentiation in legal practice between apostasy, attributed apostasy, atheism and conversion.

4. Conclusion

International human rights law and refugee law have their reason for existence in common: the granting of rights to people who are in need of protection because they belong to a (religious) minority. However, we observe that the geo-political actors defining and redefining apostasy in international human rights law and in refugee law are vastly different. In human rights law, the discussion of the definition and scope of apostasy is often dominated by states with a state religion, whereas in refugee law, Western states/states of the Global North often play an important role. As we have argued in this article, the lack of conceptualization of apostasy in international human rights law leads to a gap often filled by refugee

law—which then struggles with the same issue of identifying apostasy, although from a slightly different angle.

It is vital to note that in refugee law, protection against persecution is offered based on inter alia religion, and that apostasy is covered by the 'religion' ground of persecution. From an international human rights perspective, this raises the following question: is apostasy defined as a protected belief in refugee law, even if the right to apostasy is not explicitly recognized? The answer seems to be confirmative, and this would entail what we have coined as the inclusive stance, that is, the understanding that the right to religion or belief implies the freedom to *change* religion or belief.

However, that does not mean that the application of the right to apostasy in the context of refugee law does not struggle with the concept of apostasy. We have shown that this is mainly the case when the concepts of apostasy, attributed apostasy, conversion and atheism are blurred. This may lead to a lack of refugee protection in practice. We have argued that this is an example of the tangible results of the conceptual ambiguity of the right to apostasy.

The main argument of this article is, therefore, that ambiguity in international human rights law exists on the concept of apostasy. This results in human rights protection gaps when states are unwilling to grant their inhabitants the right to apostasy. These gaps in protection are sometimes filled by refugee law. However, we also see an issue with the identification and the application of the concept of apostasy in the specific context of apostasy-based refugee claims—and we have observed that this conceptual ambiguity may lead to a lack of protection. Indeed, conceptualization shapes practice.

We believe that the examples of the assessment of apostasy-based refugee claims in the Netherlands demonstrate the same conceptual ambiguity as we identified in international human rights law. At the same time, the conclusions of the refugee context also have broader relevance, since similar issues on the application of the concept of apostasy may arise in other applied domains of human rights law, such as family and labour law.

A clear-cut solution to these issues would be to introduce clarity to the concept of the right to apostasy in international human rights law by protecting the right to apostasy separately. This would entail that an exclusive stance would be adopted. However, we recognize that this is not feasible from a political point of view. An alternative would be to accept that such a conceptual lack of clarity exists in international human rights law and that the right to apostasy must be substantiated at the state level. Thereby, we also have to accept that certain national authorities are not willing to grant the right to apostasy and approach the concepts of religion and apostasy through what we term an inclusive stance. As is currently the case, this leaves protection in practice of the right to apostasy to 'willing' states, that is the states granting refugee protection. Lastly, we point out that it remains important to pursue conceptual clarity and consistency in the context of refugee protection.

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References

Aikins, M. 2022. *The Naked Don't Fear the Water. An Underground Journey with Afghan Refugees*. New York: Harper.

Bromley, D. G. 1998. *The Politics of Religious Apostasy: The Role of Apostates in the Transformation of Religious Movements*. Westport, CT: Praeger.

CJEU (Court of Justice of the European Union). 2012. C-71/11 and C-99/11. *Y and Z*.
CJEU 2018. C-56/17. *Bahtiyar Fathi*.
Council of Europe/European Court of Human Rights. 2013. *Overview of the Court's Case-Law on Freedom of Religion*.
Davis, D. H. 2002. The Evolution of Religious Freedom as a Universal Human Right: Examining the Role of the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. *Brigham Young University Law Review* 2002(2): 217–36.
De Lange, J. 2016. Symposiumverslag: Geloofwaardigheid van bekeringen getoetst. *Asiel & Migrantenrecht* 2016(2): 80–83.
Encyclopædia Britannica, 'Apostasy'. britannica.com. (referenced 22 Februari 2022)
District Court of Amsterdam Case. 2018. ECLI:NL:RBDHA:2018:16204. 17.6432.
District Court of Haarlem. 2019. Not published. 19.8344.
District Court of Middelburg. 2017. ECLI:NL:RBDHA:2017:13251. 17.8844.
Dutch Council of State. 2020. ECLI:NL:RVS:2020:196. 201807143/1/V2.
Dutch Council of State. 2022. ECLI:NL:RVS:2022:93 and ECLI:NL:RVS:2022:94. 202005668/1/V2 and 202102293/1/V2.
Evans, M. D. 1997. *Religious Liberty and International Law in Europe*. Cambridge University Press.
Fujibayashi, H. 2021. When an Arab State Entered into International Refugee Instruments: Behind the Scenes of Egypt's Accession to the 1951 Refugee Convention. *Journal of Refugee Studies* 35(1): 220–41.
Global Legal Research Center. 2014. *Laws Criminalizing Apostasy in Selected Jurisdictions*. Washington D.C.: The Law Library of Congress.
Good, A. 2009. Persecutions for Reasons of Religion under the 1951 Refugee Convention. In T. G. Kirsch and B. Turner (eds), *Permutations of Order: Religion and Law as Contested Sovereignties*. Farnham: Ashgate.
Hathaway, J. C., and M. Foster. 2014. *The Law of Refugee Status*. Cambridge University Press.
Hillary, L., and M. van Schaik. 2021. *Apostasy-Based Refugee Claims and Interpreting International Human Rights Law*. 5th ILLA General Conference: Language and Law in the Age of Migration.
Hooijmans, L. 2023. Is een cliënt die in Iran al niet altijd naar de moskee ging en in Europa van zijn geloof afviel, een afvallige of een atheïst? *Asiel & Migrantenrecht* 2023(1): 37–9.
Human Rights Committee. 1993. General Comment 22 (48). Article 18. ICCPR/C/21/Rev.1/Add.4.
Humphrey, J. P. 1984. Political and Related Rights. In T. Meron (ed.), *Human Rights in International Law. Legal and Policy Issues*. Oxford: Clarendon.
Jones, M. 2017. Expanding the Frontiers of Refugee Law: Developing a Broader Law of Asylum in the Middle East and Europe. *Journal of Human Rights Practice* 9(2): 212–5.
Journal Officiel de la République Algérienne. 2006. Aouel Safar 1427, 1 March.
Krishnaswami, A. 1960. The Study of Discrimination in the Matter of Religious Rights and Practices. E/CN.4/Sub.2/200/Rev.1.
Laes, W. 2011. *Mensenrechten in de Verenigde Naties, een verhaal over manipulatie, censuur en hypocrisie*. Antwerp: Garant.
Lehmann, J. M. 2014. Persecution, Concealment and the Limits of a Human Rights Approach in (European) Asylum Law—The Case of Germany v. Y and Z in the Court of Justice of the European Union. *International Journal of Refugee Law* 26(1): 65–81.
Lillich, R. B. 1984. Civil Rights. In T. Meron (ed.), *Human Rights in International Law. Legal and Policy Issues*. Oxford: Clarendon.
Loescher, G., and J. A. Scanlan. 1986. *Calculated Kindness. Refugees and America's Half-Open Door. 1945 to the Present*. New York: Free Press.
Marshall, P., and N. Shea. 2011. *Silenced: How Apostasy and Blasphemy Codes are Choking Freedom Worldwide*. Oxford University Press.
Mayer, A. E. 2012. *Islam and Human Rights: Tradition and Politics*. New York: Routledge.
Merriam-Webster, 'Apostasy'. https://www.merriam-webster.com/dictionary/apostasy#:~:text=%3A%20abandonment%20of%20a%20previous%20loyalty%20%3A%20defection
Murdoch, J. 2018. Belief and Conscience. Can Europe do Without a Specific Guarantee for Religion? In C. Grütters and D. Dzananovic (eds), *Migration and Religious Freedom. Essays on the Interaction between Religious Duty and Migration Law*. Nijmegen: Wolf Legal Publishers.
Odio Benito, E. 1987. Study on the Current Dimensions of the Problems of Intolerance and Discrimination on Grounds of Religion or Belief. E/CN.4/Sub.2/1987/26.

Pew Research Center. 2016, *Trends in Global Restrictions on Religion*. https://www.pewresearch.org/religion/2016/06/23/trends-in-global-restrictions-on-religion/. (referenced 22 March 2022)
Rafi, S. 2019. Kroniek toelatingsgronden asiel. *Asiel & Migrantenrecht* 2019(3): 117–25.
Saxon, W. 1979. Jamil M Baroody, Saudi Arabia's UN Delegate, Dies. *New York Times, 5 March*.
Scalia, A., and B. A. Garner. 2012. *Reading Law: The Interpretation of Legal Texts*. St. Paul, MN: Thomson/West.
Schans, J. M. D., and L. E. H. P. van Lierop. 2019. *De geloofwaardigheidsbeoordeling van asielaanvragen met een LHBTI- of bekeringsmotief. Een inventarisatie van (on)mogelijkheden tot verbetering*. WODC Wetenschappelijk Onderzoek- en Documentatiecentrum.
Schirrmacher, C. 2010. Defection from Islam: A Disturbing Human Rights Dilemma. *International Journal for Religious Freedom* 3(2): 13–38.
Shany, Y. 2017. The Functions of the Sources of International Law, s XIX Sources and the Enforcement of International Law, Ch.37 Sources and the Enforcement of International Law: What Norms Do International Law-Enforcement Bodies Actually Invoke? In J. d'Aspremont and S. Besson (eds), *Oxford Handbook of the Sources of International Law*. Oxford University Press.
Kwak, A. J. (ed.), 2009. *Holy Writ: Interpretation in Law and Religion*. Surrey: Ashgate.
Sookhdeo, P. 2009. *Freedom to Believe: Challenging Islam's Apostasy Law*. Lancaster, PA: Isaac Publishing.
Tahzib, B. G. 1996. *Freedom of Religion or Belief. Ensuring Effective International Legal Protection*. The Hague: Martinus Nijhoff Publishers.
Taylor, P. M. 2005. *Freedom of Religion. UN and European Human Rights Law and Practices*. Cambridge University Press.
Thürer, D. 2009. 'Soft Law'. In A. Peters and R. Wolfrum (eds), *Max Planck Encyclopedias of International Law*. Oxford University Press.
UN General Assembly. 1948a. A/RES/217(III)[A].
UN General Assembly. 1948b. A/PV.183.
UN General Assembly. 1955. A/2929.
UN General Assembly. 1960. A/4625.
UN General Assembly. 1966. A/RES/21/2200A.
UN General Assembly. 1981. A/36/684.
UN General Assembly Third Committee. 1955. A/C.3/L.460.
UN General Assembly Third Committee. 1960a. A/C.3/L.876.
UN General Assembly Third Committee. 1960b. A/C.3/L.877.
UN General Assembly Third Committee. 1960c. A/C.3/SR.1021.
UN General Assembly Third Committee. 1960d. A/C.3/SR.1023.
UN General Assembly Third Committee. 1960e. A/C.3/SR.1024.
UN General Assembly Third Committee. 1960f. A/C.3/SR.1025.
UN General Assembly Third Committee. 1960g. A/C.3/SR.1027.
UNHCR. 2004. The UN Refugee Agency (UNHCR) Guidelines on International Protection: Religion-based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol Relating to the Status of Refugees. HCR/GIP/04/06.
UNHCR. 2019. Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees. HCR/1P/4/ENG/REV. 4.
United Nations: Jamil the Irrepressible. 1971. *Time Magazine* 13 December.
Van Boven, T. C. 1967. *De volkenrechtelijke bescherming van de godsdienstvrijheid*. Assen: Van Gorcum.
Van Schaik, B. M. 2022. *Defaming the Freedom of Religion or Belief: A Historical and Conceptual Analysis of the United Nations*. Leiden University.
Van Schaik, B. M. 2023. The Right to Apostasy Recognized? Reaffirming the Right to Religious Freedom. *Politics, Religion and Ideology* 24(2): 267–87.
Wallace, R. M. M. 2007. Religion within the Refugee Context: Squaring the Circle? In J. Rehman, and S. Breau (eds), *Religion, Human Rights and International Law. A Critical Examination of Islamic State Practices*. Boston, MA: Brill.
WI 2019/18. Werkinstructie SUA. 2019. Bekeerlingen.
WI 2022/3. Werkinstructie SUA. 2022. Bekeerlingen en afvalligen. Official version available in Dutch at https://puc.overheid.nl/ind/doc/PUC_1284774_1/1/. (referenced 22 March 2022)