

Secularism 2019: Dr Ahmed Shaheed, Introduction to religious freedom

Video available at: <https://youtu.be/mIAePK2xtb4>

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Good morning to you all. I am delighted to be here amongst such a big gathering

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of fellow human rights defenders, and thank you very much for inviting me to

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speak at this important conference. I've been asked to give an introduction,

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an overview, of the right to freedom of religion or belief or religious freedom

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as, I said. But before I do that, let me just take a moment to tell you about the

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work I do as the UN Rapporteur. As a UN Rapporteur my task is to monitor the

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implementation by states of what is called the 1981 UN declaration on the

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elimination of all forms of intolerance and of discrimination based on religion

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or belief. And this declaration is the most detailed account internationally, in

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the UN system, of what is and what isn't entailed by the right to freedom of the

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general belief in terms of what rights States ought to respect, protect, and

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promote. And the way I do my monitoring is to produce two thematic studies a

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year, looking at different aspects of this right, to undertake two country

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missions of a fortnight duration each, to two countries who would let me in each

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year, to write as many advocacy letters as I have time to do so, on behalf of

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victims who have their rights violated, or are about to have their rights

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violated, and to engage in as many activities, as this one, where my

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time will allow me to do so, to promote understanding about the right and to

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network people working in this area. So that is what I do as UN Rapporteur.

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Now, having said that, let me start my remarks today by talking a little bit

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about the international legal base for

this right, I call it the right to thought,

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to make my life easier, freedom of the general belief, because I do not think

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the term 'religious freedom' adequately conveys the meaning of the right of

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freedom of thought, conscience, religion or belief, and also and also of course

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there are groups, I think especially in the U.S, across

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the pond, who use the term 'religious freedom' to be synonymous with claims to

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religious privilege, to play an exceptions from laws protecting against

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discrimination. So I just want to insist that I use this phrase and that people

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be mindful that we talk about a very broad right. It's also

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important because if you look at the way the right is enshrined in international law,

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the Universal Declaration Of Human Rights Article 18, and the Article 18 of

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the International Covenant on Civil and Political Rights, the failure to include

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the terms 'thought' and 'belief' has

important implications for those who

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want to have the right protected, and also for those who claim the right to be

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synonymous with religious freedom, claiming that this right protects,

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primarily, religious people, rather than all human beings. So I think it's

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extremely important, both in its descriptive and prescriptive capacity, to use the

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wider term 'freedom of religion or belief', also, the belief aspect of this

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right is extremely important for those who don't profess a religion, for humanists,

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free thinkers, rationalists, atheists or agnostics. But I'll get to this broader

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element in a moment. So the legal framework, and to quote Ambassador

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Charles Malik of Lebanon, who was one of the pen holders of the

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Universal Declaration, "the human person's most sacred and inviolable possessions

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are his mind and his conscience, enabling him to perceive the truth,

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to choose freely and to exist".
According to ambassador Charles Malik if

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the protection of human dignity was not
to remain a dead letter, that this was

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one of the core principles that had to
lead the work of the

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committee, entrusted to draft the
Declaration.
What Malik was referring to

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is today known as the forum internum
of freedom of religion and

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belief, who's inviolability is well
established in international law, and

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represents the absolute component of the
right to religion and belief, as in

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Article 18 of the Covenant. In other

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words, there can be no interference, under
any circumstance, by the state, or anybody

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else, in our forum internum, in what we
hold in our minds to be our ultimate

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beliefs and thoughts. The right, therefore,
includes the right to have or adopt a

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religion or belief of one's choice, as
observed by the UN Human Rights

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Committee in general comment 22. This
entails both the freedom to choose any

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religion or belief as the one to replace
one's current convictions. Just as

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freedom of thought, conscience, and
religion or belief, protects the right of

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the individual to follow a religion, it
also protects the right to reject a

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religion of belief, to identify as
humanist or non-religious, and to

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manifest non-religious convictions
through expression, teaching and practice.

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Whilst this fundamental right includes
the right not to reveal your beliefs, or

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this identification, and right not to
take part in any ceremonies it also

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includes the freedom to argue for those
beliefs in public, and to seek, persuade,

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others to the merits of a beliefs, or
the flaws of theirs through debate,

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discussion and criticism. Interestingly
the freedom to convert revealed to be

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the most controversial aspect of the
right, there are negotiations of the

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Covenant, and some states still today have in place apostasy laws and

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criminalized conversion from the country's official religion to any other

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belief system. Apostasy laws, therefore, constitute a clear violation of the

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forum internum, which enjoys unqualified protection even in times of public

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emergency. Freedom from coerced conversion is an element

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of the protection entitled the freedom of holding a belief freely chosen. For

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acts of the state under this provision include penal sanctions,

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threats of physical force, policies that aim at compelling or facilitating an

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individual to adhere to a specific system of belief or recant their own.

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States also bear the responsibility to protect individuals under

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the jurisdiction from similar interference by third parties, be they

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family members or members of society. Let me now turn a bit about limitations of

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this right and the accommodation that may be called for in regard to this right.

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Whereas the freedom to hold a belief of

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one's choice is an absolute right, the freedom to manifest that belief,

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either individually or in community with others, is a qualified one. Limitations

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can be adopted when they are prescribed by law and are necessary to protect public

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safety, public order, public health, public morals, or the rights and freedoms of others.

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Now, the limitations are a very tricky

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business, it's an important area and I know the NSS are very keenly committed

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to working in this area. It's a very important area. Last year I wrote a whole

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report on the links between religion and state, and part of that looked at times

0:07:40.870,0:07:45.130
when the right to equality and non-discrimination comes against claims

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to religious freedom. In other words how do we negotiate a space between the

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rights of everybody and the rights that some religious orders claim. In short

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these limitations have a high threshold
and must be very narrowly constructed.

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They must be very clear in terms of
when a person may actually trigger that

0:08:08.740,0:08:13.810
border. The forms of manifestation
protected are those linked to worship,

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observance, teaching, and practice, and a
more detailed list, of course, of these

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rights are found in the 1981 declaration,
as I mentioned. These are the declaration,

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entail, for instance, observance of religious
holidays, of dietary rules, the wearing of

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the symbols, and acts integral to the to
the conduct of religious groups, such as the

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freedom to elect religious leaders,
priests and teachers, to establish place

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of worship, and others. So a detailed
listing of these rights are found in

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article 6 of this declaration. I think
it's useful to look at what are

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the permissible limitations and
exceptions to these rights.

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I would argue that institutions that
open their doors to the public to provide

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services whether for lodging, catering or
health care, should not be able to claim

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a religious exemption to rules
furthering public

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health. Any contrary rule would permit
the institution to impose its faith, or

0:09:16.550,0:09:21.230
the leaders of the institution's, their
faith, upon others with resulting harm

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to health. equality and dignity. And I
shall insist on this principle every

0:09:26.509,0:09:30.290
time I speak about the accommodation
that has to be offered on account of

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religion. Institutions that provide goods
or services to the public,

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of course, differ from churches,
synagogues, mosques, temples and other
houses

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of worship, in those institutions the
rules of the faith are typically being

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imposed only on those who have chosen to
accept, or at least explore, the faith

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voluntarily. By contrast, government officials
such as clerks,

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charged with issuing marriage licenses,

should not be afforded an exemption from

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laws advancing equality. And this is true even if the objector can be accommodated,

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in such that the person or couple can be served without being aware of the

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objection. Any accommodation of a government official, even behind the

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counter, puts the imprimatur of the government on the discrimination, and

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it should be disallowed. Of course, outside the government

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context individuals should be accommodated, where doing so does not

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result in harm. Consistent with this, principle expressions of faith

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manifested in appearance should be accommodated, absent a showing of harm to

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others, and a showing we think very hard to really sustain.

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I know education is an area in which the NSS are quite active, and again I would

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argue that article 18, while it provides for the rights of parents, or legal

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guardians, to raise their children or ward

in education of their choice, there are

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strict limitations or how far this right will extend.

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This right has to be balanced with the child's own right to freedom of thought, in a

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manner consistent with the child's evolving capacities. This principle is

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crucial, since it acknowledges that at a certain age, the child shall be free to

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make their personal choices in matters of thought, religion or belief. There's a

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debate going on, there's some activity going on in the UK, about how far parents

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can influence the education of a child. I want to note that the child

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must also be directed to certain principles, among which, in international law,

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there is the preparation of the child for a responsible life in a free society

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in the spirit of understanding, peace, tolerance, equality of sexes, and

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friendship amongst all people's, ethnic, national and religious groups, and

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persons of indigenous origin.

That's article 29 D of the Childhood

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Convention, also found, similarly, in the 81 declaration as a limit on how far

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parents can claim their right to raise children or educate children in their

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beliefs. We will also talk about common misunderstandings and some features of

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the core features. In my work I find that misconceptions, either willful

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or not so willful, are plenty, and let me just highlight some of the key ones I

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come across. The first, of course, is to assert that this right protects

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individuals, not ideas, beliefs or religions. And I can't say it enough,

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because, very often, it is about people trying to protect an idea. This right

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includes an extremely broad set of beliefs, including traditional and

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non-traditional religious beliefs, non religious beliefs, and new beliefs. So it

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is anything, essentially, the right to hold that in our minds. It includes a

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very strict interpretation of

limitations. They must always be the

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exception, and must be narrowly construed, and should never destroy any part of

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that itself it certainly does not give a license to discriminate, that's not what

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the right is about, there is an inbuilt claim to equality in the right.

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It also includes the freedom not to manifest, a belief and certainly freedom

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from religion. Now, last March, the UN Human Rights Council, in the

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interactive dialogue I had with with member states and other observers'

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organizations, a delegation, it was an open meeting, so it was a Vatican delegate,

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disputed that Freedom From Religion is covered by international law and here is

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what he said: "Of the utmost concern, the use of the term freedom from religion,

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which is not contemplated in the international instruments, reveals a

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patronising idea of religion, going beyond the mandate of the Special Rapporteur."

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I, of course, had to respond to

this by saying in fact there

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can be no meaningful right of freedom of religion unless there was a

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right to freedom from religion as well. And, another subject of importance to the

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NSS, the name is the clue "Desecularization". In the Western political debate we see

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an increased number of questions concerning the space that you

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occupy in society. According to some scholars, this is a consequence of

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migration movements, or rather to the arrival in Western societies of people

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whose religious beliefs have not gone through a historical process of secularization

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in the countries of origin . Yet, if you look at many countries, UK for instance,

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some have observed that the majority of legal cases requesting exemptions from laws of

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general applicability are being advanced not by minority or migrant groups, but by

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established religious traditions. Protecting freedom offers in a belief in

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context, in which the principles of state

neutrality, and separate religion and

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state, under threat, is remarkably challenging. Indeed, even though

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international law does not prescribe a specific form of relationship between

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state and religion, the analysis of worldwide restrictions of freedom of

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religion or belief has shown that states that identify with the religion or

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states that have a negative view of religion, are more propensed to violate that

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fight. If you look at my communications database, the bulk, the majority of the

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communications are given to states which have an official religion

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or attachment to religion, and the least amount of communications go to states

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where there is respect for human rights while observing

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secular traditions. Of course, secularism itself comes in many forms, some of which

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are more likely to respect formal freedoms and accord little concern, while

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others are not. I'm dealing with, on one

hand China, where there is a serious concern, but I also look at secular societies, where there is respect for human rights, where there is a lot more space for equal concern an equal respect. Therefore, I argue that the model of relationship that is best in line with right to freedom, of the no belief, is the one that is in harmony with the concept of respectful distancing, and which acts on deep grounding of secularity based on human rights. International law does not say a state should be secular, but it's obvious that, unless there's a distance between state and religion, there is no space to respect human rights. But, having that space also means that state should not view religion or his people with hostility, as some states do. So, to conclude, overall, in reclaiming this freedom, keep mindful of what the UDHR says in its preamble, that the foundation of peace, freedom and justice in the world, is a recognition of

the inherent dignity and the equal and inalienable rights of all members of the human family. And to recall the very first article of UDHR, drafted by Dr. Charles Malik, I'm putting it in modern language here, all humans are born free and equal in dignity and rights, they are endowed with reason and conscience, and must act towards each other in spirit of fraternity. So the task ahead of us is as difficult or as simple, as the assertion the constant affirmation of being free and equal. Thank you.
[Appaluse]