



Human Rights Law Clinic Papers 2020

Is advancing the right to freedom of religion or belief for all beneficial to ensuring overall security?

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This memorandum is a research paper prepared on a pro bono basis by students undertaking the LLM in International Human Rights Law at Sussex Law School at the University of Sussex. It is a pedagogical exercise to train students in the practice and application of international human rights law. It does not involve the giving of professional legal advice. This memorandum cannot in any way bind, or lead to any form of liability or responsibility for its authors, the convenor of the Human Rights Law Clinic, the Sussex Centre for Human Rights Research or the University of Sussex.

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| | |
|---------------------|---|
| ECHR | European Convention on Human Rights |
| ECtHR | European Court of Human Rights |
| EHRC | Equality and Human Rights Commission |
| FoRB | Freedom of Religion or Belief |
| Helsinki Act | Conference on Security and Co-operation in Europe Final Act |
| HRC | Human Rights Committee |
| IHRL | International human rights law |
| ICCPR | International Covenant on Civil and Political Rights |
| OSJI | Open Society Justice Initiative |
| UDHR | Universal Declaration of Human Rights |
| UK | United Kingdom |
| US | United States |
| USCIRF | United States Commission on International Religious Freedom |

1. Introduction

The occurrence of religiously inspired attacks in Europe, Central Asia and the Americas has brought religion to the centre of security discussions.¹ The past decade has seen an increase in governments restricting FoRB on security grounds. These restrictions have manifested through States' controlling of religion-related activities. The Pew Research Centre report on restrictions of religion by States shows that the global score of restrictions placed on religious activities rose by 44 percent between the years 2007 to 2017.² As a result of the increase in limitations imposed on FoRB in the name of security, the following memorandum will present examples of State practice demonstrating the link between freedom of religion or belief (FoRB) restrictions and insecurity, chiefly focusing on national security and human security. This will enable the formation of arguments linking FoRB with security, as well as a discussion on whether or not advancing FoRB contributes to enhancing security in the long run. The memorandum contends that States that respect the right to religion are more stable and secure in contrast to those that do not.³ FoRB restrictions result in human insecurity, which adversely impacts national security manifested through civil tensions and unrest.

To achieve this, firstly, it is necessary to provide a brief introduction to FoRB within the international human rights law (IHRL) framework relevant to OSCE member States as well as a brief discussion of what security means. Secondly, we will present examples of State practice in OSCE member States that demonstrate how restrictions on the manifestation of FoRB by the State, or as a result of intergroup tensions, have security implications.

The Conference on Security and Co-operation in Europe Final Act of 1975 (Helsinki Act) laid out OSCE's foundational principles. Principle seven includes FoRB.⁴ It also invites member States' compliance with other international accords and statements regarding human rights. Commitment to rights and freedoms is based in the understanding that these are an integral part of the organization's objectives,⁵ including the achievement of security. The Helsinki Act therefore establishes the link between the respect for human rights and security.

¹ Pia-Maria Niemi, Arto Kallioniemi & Ratna Ghosh, 'Religion as a Human Right and a Security Threat—Investigating Young Adults Experiences of Religion in Finland' (2019) 10 Religions 1, 3.

² A Closer Look at How Religious Restrictions Have Risen Around the World (Pew Research Centre, 15 July 2019) <<https://www.pewforum.org/2019/07/15/a-closer-look-at-how-religious-restrictions-have-risen-around-the-world/>> last accessed 23 May 2020

³ Barack Obama, The National Security Strategy (May 2010) 37 <https://obamawhitehouse.archives.gov/sites/default/files/rss_viewer/national_security_strategy.pdf> last accessed 23 March 2020.

⁴ Organization for Security and Co-operation in Europe (OSCE), *Conference on Security and Co-operation in Europe (OSCE): Final Act of Helsinki* [1 August 1975] Principle VII [3].

⁵ *ibid* 5.

This section will set a foundation for the understanding of the right to FoRB as guaranteed by international instruments binding on OSCE member States. This is vital for the analysis of the extent of the interference with the right to FoRB where restrictions are made in the name of security. FoRB includes ‘theistic, non-theistic and atheistic beliefs’, and the right not to hold a belief or religion.⁶ This is an individual right that can be enjoyed in both public and in private, either alone or in ‘community with others’.⁷ Within the United Nations system FoRB has been notably enshrined within the Universal Declaration of Human Rights (UDHR)⁸ and the International Covenant on Civil and Political Rights (ICCPR).⁹ FoRB is recognised to have a *forum internum* (the freedom to hold a religion or belief) and *forum externum* (the freedom to express it).¹⁰ The *forum internum* is the internal dimension of FoRB, which includes the freedom to have or adopt a religion or beliefs of one’s choice and cannot be subject to limitation. Whereas *forum externum* constitutes the external manifestations of FoRB through ‘worship, observance, practice and teaching’, which may be limited by law only when necessary in a democratic society and proportionate.¹¹ The memorandum focuses on the limitation of the external manifestation of FoRB by State parties, whether or not limitations conform with the law, and the security implications thereof.

The ICCPR like the European Convention on Human Rights (ECHR) permits limitations only for ‘public safety, order, health, or morals or the fundamental rights and freedoms of others’¹² and should be narrowly interpreted.¹³ While the ICCPR and ECHR, explicitly allow limitations on the basis of national security under other fundamental freedoms,¹⁴ this is not so for FoRB under Article 18 ICCPR nor Article 9 ECHR. Despite this, national security considerations have been at the forefront of limitations to FoRB, thus, it is critical to explore the relationship between restrictions on FoRB and security.

⁶ UN Human Rights Committee (HRC), *CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)* [30 July 1993] CCPR/C/21/Rev.1/Add.4 para 2.

⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR); Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14 [4 November 1950] ETS 5 art 9 (ECHR); *ibid*.

⁸ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)) (UDHR) Article 18, “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

⁹ ICCPR, art 18.

¹⁰ UN Human Rights Council, *Report of the Special Rapporteur on freedom of religion or belief* [23 December 2015] A/HRC/31/18 6-8; Dominic McGoldrick, ‘Thought, Expression, Association, and Assembly’ in D Moeckli, S Shah & S Sivakumaram (eds), *International Human Rights Law* (3rd edn, Oxford University Press 2018) 214.

¹¹ ICCPR, art 18(3); ECHR, art 9.

¹² ICCPR, art 18(3); ECHR, art 9(2).

¹³ UN Human Rights Council (n 10) 26.

¹⁴ ICCPR, art 19(3), 21, 22; ECHR, art 8(2), 10(2), 11(2); Council of Europe, *Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain Rights and Freedoms other than those already included in the Convention and in the First Protocol thereto* [16 September 1963] ETS 46, art 2(3) (Protocol 4); Guide On Article 9 Of The European Convention On Human Rights (2020) <https://www.echr.coe.int/Documents/Guide_Art_9_ENG.pdf> [accessed 20 February 2020] 16 (Guide on Article 9) .

It is therefore apposite to outline the meaning of security as used in this memorandum. Security is generally understood as the absence of insecurity. It can be defined in reference to vulnerabilities (both external and internal) that could harm the State, its societies and individuals.¹⁵ The concept of security is relative but for the purpose of the memorandum it is understood as encompassing national, human and societal security. Human and national security are said to be mutually reinforcing and dependent on each other.¹⁶ This essentially means that national security cannot be attained without human security and vice versa.¹⁷ This interplay is important where human security is undermined, including through FoRB restrictions. States can also be made insecure as a result of threats to its societies, although usually the State aligns with the majoritarian society.¹⁸ Societal threats are concerned with attacks to a society's identity, with religion forming one such identity. Therefore, unjustifiable FoRB restrictions have the potential to engender insecurity for individuals and societies which can in turn undermine national security. The analysis below will demonstrate how the respect of FoRB strengthens comprehensive security in the long run, with reference to empirical examples.

¹⁵ Alan Collins, *Contemporary Security Studies* (5ed, Oxford University Press 2019) 3.

¹⁶ Human Security Now (Commission on Human Security, New York 2003) 6.

¹⁷ *ibid.*

¹⁸ Collins (n 15) 222.

2. State Practice: Manifestation of restrictions to FoRB

States have sought to restrict enjoyment of the right to FoRB in order to enhance security. This has occurred through the employment of various means such as the surveillance of religious communities, restrictions placed on the registration/places of worship of religious communities, religious symbols, and bans on religious organisations. This section will elaborate the specific restrictions that have been imposed by States on FoRB and their compatibility with the IHRL framework. It will furthermore demonstrate that the adoption of these repressive means to safeguard security is counterproductive as it leads to both the alienation and violent radicalisation of effected individuals and communities. While the inherent implications for human security are apparent from restrictions on FoRB, the memorandum will establish a correlation between human, societal insecurity and State insecurity. This will be done through practical and empirical examples within the OSCE region.

2.1 Surveillance

The surveillance of religious communities is practised by States as a means of ensuring national security and has increased since the terrorist attack on the United States(US) of September 11, 2001.¹⁹ This section will explore how the surveillance of Muslim communities in the United Kingdom (UK) and Uzbekistan undermines FoRB and in turn has the potential to increase rather than reduce terrorism.

The UK introduced the 'Prevent statutory duty' (PREVENT) through the Counter-Terrorism and Security Act 2015. The duty is placed on local authorities, schools, higher education institutions, health bodies and the police to 'safeguard people from being drawn into terrorism'.²⁰ The said purpose of PREVENT is to support vulnerable individuals and safeguard them from being enticed into terrorism, through deradicalization tactics.²¹

While the aims of the PREVENT strategy seem to be legitimate, criticisms have contended that PREVENT has been used in practice to target the UK Muslim population. For instance, it is argued that police officials have used it for information gathering purposes, rather than its

¹⁹ Jijo James Indiparambil, 'Does Surveillance Intersect with Religious Freedom? The Dialectics of Religious Tolerance and (Re) Proselytism in India Today' (2018) 16 Surveillance & Society 433.

²⁰ The United Kingdom's Strategy for Countering Terrorism (June 2018) para 114 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/714404/060618_CCS207_CCS0218929798-1_CONTEST_3.0_PRINT.PDF> last accessed 10 March 2020.

²¹ *ibid* para 99-110.

stated purpose of safeguarding.²² This policy is problematic because it monitors Muslims based on a supposed security threat posed by their religion. The framing of different Muslim communities, as a security concern is apparent from the 2011 CONTEST PREVENT Strategy, which states that ‘we believe that radicalisation – in this country – is being driven by: an ideology that sets Muslim against non-Muslim, highlights the alleged oppression of the global Muslim community and which both obliges and legitimises violence in its defence’.²³

Muslim communities are therefore divided into ‘risky’ and ‘trusted’ categories, with PREVENT’s surveillance targeting those who are labelled as ‘risky’.²⁴ The suspect but trusted community is one that is moderate and adheres to the British values as encapsulated in the PREVENT strategy.²⁵ The targeting of the Muslim community has an impact on the group’s enjoyment of the right to FoRB, which is understood as protecting the autonomy of religious communities with the expectation that the community will be permitted to practise their religion without arbitrary State intervention.²⁶ Under article 9 of the ECHR, FoRB has been interpreted as encompassing a negative obligation on the State not to interfere with the associative life of a religious community. The monitoring of religious communities based on a suspicion as envisaged under PREVENT without an indication of wrongdoing but for their religiosity disrupts their ability to freely exercise the right to religion.²⁷ Muslims are therefore forced to downplay their religious identity or face the possibility of being erroneously reported to PREVENT.

A report by the Open Society Justice Initiative (OSJI) raises concerns about the structural flaws inherent in PREVENT and the risks it poses to serious human rights violations.²⁸ The structural flaws include the targeting of non-violent extremism, of any opposition to the vague concept of ‘British values’ and the government’s monitoring of everyday lawful conduct of the ‘risky’ Muslim category. The idea embedded in PREVENT that non-violent religious radicalisation is a precursor to terrorism has engendered a clear interference with the right to

²² Institute of Race Relations, ‘Evidence to the UK parliamentary select committee inquiry on preventing violent extremism’ (2010) 51:3 Race & Class 73, 76.

²³ Prevent Strategy, Presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty (June, 2011) para 5.25

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/97976/prevent-strategy-review.pdf> last accessed 15 March 2020

²⁴ Joel David Taylor, ‘Suspect Categories,’ *Alienation and Counterterrorism: Critically Assessing PREVENT in the UK* [2018] *Terrorism and Political Violence* 1, 6.

²⁵ Prevent Strategy, Presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty (n 23) para 53.

²⁶ Guide on Article 9 of the European Convention on Human Rights: Freedom of thought, conscience and religion (Council of Europe, 31 December 2019) 69.

<https://www.echr.coe.int/Documents/Guide_Art_9_ENG.pdf> last accessed 11 March 2020.

²⁷ Indiparambil (n 19).

²⁸ Open Society Justice Initiative, *Eroding Trust: The UK’s Prevent Counter-Extremism Strategy in Health and Education* (Open Society Foundations, 2016) 16

<https://www.justiceinitiative.org/uploads/f87bd3ad-50fb-42d0-95a8-54ba85dce818/eroding-trust-20161017_0.pdf> last accessed 19 March 2020.

ForB because it does not fall within the permitted grounds for limiting an entrenched right.²⁹ Muslim communities have been victimised as a result of the PREVENT duty, which operates in a climate characterised by Islamophobia.³⁰ It has been claimed that professionals bearing the duty also have a broad discretion to act in terms of their 'conscious and unconscious biases' in deciding who to report under PREVENT. In a case study done by OSJI, it is said that many Muslims have been erroneously targeted as terrorists for manifesting their religious beliefs- which raises questions on whether they would have been reported if they were non-Muslim.³¹

Additionally, the designation of Muslims as a suspect community has a direct impact on the human security of Muslims particularly those that do not fit under the moderate Muslim identity envisaged under PREVENT. By pitting the British and Muslim identities against each other PREVENT fosters alienation of the groups that are deemed not to conform to the government sanctioned Muslim identity.³² Feelings of alienation may, furthermore, stem from this apparent community targeted counter-terrorism strategy. The UK's Equality and Human Rights Commission (EHRC) acknowledged the problems associated with PREVENT in higher education, it found concerns had been raised that the PREVENT duty was being implemented in a manner that undermined the human rights of staff and students; which led to discrimination and the alienation of select populations.³³ This is counterproductive to PREVENT's aim of deradicalisation, as research has shown that alienation is a precondition to radicalisation. Alienation has been noted to 'influence the rejection of societal norms and engagement in or support of radical political-motivated violent acts'.³⁴ All forms of radicalisation stem from societal value conflicts, which may result in conflicts of identity and feelings of marginalisation and exclusion.³⁵ Respondents who have experienced the PREVENT programme are documented by OSJI as having expressed feelings of exclusion from the society, which also notes the potential of the programme to contribute to grievances and the radicalisation of targeted individuals.³⁶

²⁹ ICCPR, art 18(3).

³⁰ *ibid* 17.

³¹ *ibid* 16.

³² Taylor (n 24) 11.

³³ Equality and Human Rights Commission, *Delivering the Prevent duty in a proportionate and fair way* (Manchester: Equality and Human Rights Commission, 2017) 3
< <https://www.equalityhumanrights.com/sites/default/files/delivering-the-prevent-duty.pdf>>.

³⁴ Deirdre Duffy, 'Alienated radicals and detached deviants: what do the lessons of the 1970 Falls Curfew and the alienation-radicalisation hypothesis mean for current British approaches to counter-terrorism?' (2009) 30:2 *Policy Studies* 127, 135.

³⁵ Peter Neumann, *Countering Violent Extremism and Radicalisation that Lead to Terrorism: Ideas, Recommendations, and Good Practices from the OSCE Region* (International Centre for the Study of Radicalisation (ICSR), King's College London 2017) para 3.3
< <https://www.osce.org/chairmanship/346841?download=true>>.

³⁶ Open Society Justice Initiative (n 28) 15.

Religion and/or belief and consequently the right to FoRB are intimately linked with a person's identity. Where a person's identity is under attack they are bound to react defensively. The marginalisation of Muslim communities based on the threat posed by Islamist terrorism associates Muslim communities with the actions of few, placing all under negative scrutiny. This drives a wedge between Muslim and non-Muslim communities, marginalising Muslims and leaving them susceptible to radical influences. The Report of the International Centre for the Study of Radicalisation confirms this by stating that:

When governments lash out against communities based on their presumed association with a terrorist group, this strengthens the terrorists' narrative, makes people conclude that non-violent opposition is futile, and creates a self-fulfilling prophecy, as previously uninvolved community members become more inclined to shelter, support, or even join the terrorists.³⁷

As a result, it appears that the counter-terrorism policy adopted by the UK may be counterproductive. The UK is considered the stronghold of violent home-grown Islamic radicalisation in Europe with this being attributed to the lack of socio-political integration of the Muslim community and to their experiences of victimisation.³⁸ The country has recently witnessed several terrorist attacks linked to Islamic extremists. In 2017 alone, two terrorist attacks were carried out in London. The first being an attack on the Houses of Parliament in Westminster carried out on the 22nd of March 2017 by a British-born Islam-convert. While the precise motivations for the attack are not certain, reports allege the marginalisation of the attacker as a possible cause for the attack.³⁹ The second attack was committed by three individuals, the ringleader of which was a British violent Islamic extremist.⁴⁰ Targeting the Muslim community not only impacts on their human security but makes them susceptible to violent radicalisation through engendering feelings of alienation and possibly retaliation; consequently weakening UK's national security.⁴¹

³⁷ Peter Neumann (n 35) para 4.1.

³⁸ Alex S. Wilner & Claire-Jehanne Dubouloz (2010) 22:1 Homegrown terrorism and transformative learning: an interdisciplinary approach to understanding radicalization, *Global Change, Peace & Security* 33, 35 & 38.

³⁹ Adam Deen, 'Why are converts to Islam specifically vulnerable to becoming extremists?' (*Independent*, 24 March 2017)

<<https://www.independent.co.uk/voices/westminster-london-terror-attack-terrorist-khalid-masood-convert-muslim-islam-extremism-a7647626.html>> last accessed 16 March 2020.

⁴⁰ Harriet Alexander, 'London Bridge attack - everything we know'

< <https://www.telegraph.co.uk/news/2017/06/03/london-bridge-everything-know-far/>> last accessed 15 March 2020.

⁴¹ Neumann (n 35) para 4.1.

In the same way that religious repression has the unintended effect of generating insecurity for the State as shown above, in some instances it works to inspire transnational terrorism. The 'incubation' process pertains to the breeding of extremism and militancy among one State's citizens that go on to carry out acts of terrorism in other States.⁴² In this process, restrictions on religious freedoms by a State may lead to insecurity for other States through unwitting exportation of terrorism. Uzbekistan's experience is particularly relevant. The United States Commission on International Religious Freedom (USCIRF) listed the country as a Tier 1 'country of particular concern' due to various violations to FoRB.⁴³ State surveillance is also prevalent in Uzbekistan where it is reported that all active believers are under State surveillance.⁴⁴ Various religious communities have alleged the existence of 'hidden microphones in places of worship, [the presence of] National Security Service (NSS) agents during meetings for worship'.⁴⁵ Saiya contends that religious repression in the country is so severe that thousands of people have been imprisoned and tortured because of Islamic beliefs.⁴⁶

Uzbekistan is a State party to the ICCPR under which it has an obligation to respect and protect the right to FoRB. It has been established above that the right also entails a negative obligation to refrain from any arbitrary State intervention in the exercise and enjoyment of FoRB.⁴⁷ Therefore, surveillance on groups of people based on their religious identity interferes with the right to FoRB because it involves an interference with the ability to practice religion freely. Under the ICCPR States have a duty to respect rights entrenched therein, which essentially requires them to do no harm through direct action such as planting surveillance instruments in places of worship.⁴⁸ Interfering with the right to freely practice religion in turn impacts on the human security of the concerned groups since An integral part of human security entails giving 'people the responsibility and opportunity for mastering their lives'.⁴⁹

The link between human security, national and global security is apparent. A threat to human security in one country can become a threat to security in other countries. Many individuals

⁴² Nilay Saiya, *Weapon of Peace: How Religious Liberty Combats Terrorism* (1st edn, Cambridge University 2018) 48.

⁴³ United States Commission on International Religious Freedom (USCIRF), Annual Report 2019 <https://www.uscifr.gov/sites/default/files/Tier1_UZBEKISTAN_2019.pdf> last accessed 15 March 2020.

⁴⁴ Mushfig Bayram, 'Uzbekistan: Surveillance, raids, Bible destruction, jailing, torture' (Forum 18, 19 October 2017) <http://www.forum18.org/archive.php?article_id=2326> last accessed 10 March 2020.

⁴⁵ *ibid.*

⁴⁶ Saiya (n 42) 49.

⁴⁷ Human Rights Civil and Political Rights: The Human Rights Committee Fact Sheet No. 15 (Rev.1) p 7 <<https://www.ohchr.org/Documents/Publications/FactSheet15rev.1en.pdf>> last accessed 25/04/2020.

⁴⁸ David Jason Karp, 'What is the responsibility to respect human rights? Reconsidering the 'respect, protect, and fulfill' framework' (2020) 12 International Theory 83, 84 & 92.

⁴⁹ United Nations Development Programme (UNDP), Human Development Report 1994 (Oxford University Press, 1994) 24.

radicalised in Uzbekistan have gone on to join known terrorist organisations. It is striking to note that in 2017 alone, a number of Uzbek nationals were involved in high profile terrorist attacks around the world, these include the New Year's Eve shooting in Istanbul, the bombing at a St. Petersburg metro and the attack of a vehicle in Stockholm.⁵⁰ Thus, the correlation between human insecurity, the turn to extremism of individuals as a result of repressive laws in one country and global insecurity is apparent in this context.

2.2 Restrictions on observance: Religious symbols

An increasing number of States within the OSCE region have placed restrictions on religious dressing. The Muslim community has suffered extensively in this regard. This section will demonstrate how this interference with FoRB has the potential to increase the insecurity of Muslim communities, in particular, and, in turn, has the potential to undermine national security in these States.

On 11 April 2011, France became the first European country to prohibit the wearing of a full-face veil (niqab and burqa) in public places.⁵¹ The legislative history of the law shows that it was targeted at prohibiting the Islamic veil, with public safety and societal security concerns being among the factors outlined in favour of the prohibition.⁵² Other European States have followed suit with restrictions ranging from nation-wide full-face veil prohibitions in public places to limited restrictions on veiling by civil servants or in government buildings. This memorandum will use the case study of France, Tajikistan and Azerbaijan to demonstrate how such restrictions can adversely impact State security.

Some Central Asian States have also placed restrictions on the manifestation of religious symbols in their countries with a focus on the Muslim community. In Tajikistan, the Ministry of Education prescribed a dress code that bans the wearing of a hijab in schools and government institutions.⁵³ A report by the USCIRF notes that all aspects of religious activity in Tajikistan are considered a security threat by the State and hence heavily regulated.⁵⁴ The keeping of a beard and wearing of a hijab are effectively banned in the country, despite there being no law

⁵⁰ Saiya (n 42) 49.

⁵¹ Human Rights Without Frontiers, Freedom of thought, conscience, religion or belief France: *Laïcité*, "Sects" and Muslim Women's Issues (OSCE Human Dimension Implementation Meeting Warsaw, 30 September 2015)

< <https://www.osce.org/odihr/187476?download=true> > last accessed 20/02/2020.

⁵² *ibid* para 15-7 & 25.

⁵³ Tajikistan 2019 Human Rights Report, Country Reports on Human Rights Practices for 2019 (United States Department of State) 14

< <https://www.state.gov/wp-content/uploads/2020/03/TAJIKISTAN-2019-HUMAN-RIGHTS-REPORT.pdf> >

⁵⁴ United States Commission on International Religious Freedom (USCIRF), Annual Report 2019 p 5

< https://www.uscifr.gov/sites/default/files/Tier1_TAJIKISTAN_2019.pdf > last accessed 21/03/2020

expressly prohibiting the two religious symbols associated with the Islamic community.⁵⁵ The police have played an active role in enforcing these bans, with roadblocks reported to have been set up for such purposes.⁵⁶

Veiling is a religious symbol which speaks to the manifestation of religious beliefs and practices. The manifestation of religious beliefs and practices are protected by both the ICCPR and the ECHR. France and Tajikistan are both State parties to the ICCPR. Article 18 of the ICCPR provides that the freedom to manifest one's religious beliefs may be exercised 'either individually or in community with others and in public or private.'⁵⁷ This freedom encompasses the performance of a variety of acts, which includes the display of symbols, participation in certain rituals associated with particular phases of life and the performance of ceremonial acts.⁵⁸ The European Court of Human Rights (ECtHR) held that where a person has made religion a central part of their life, that person is entitled to communicate their beliefs to the world by symbols that express such beliefs.⁵⁹ FoRB can be limited in certain circumstances as prescribed by law and only as is necessary in a democratic society. The restrictions on religious symbols in Tajikistan were not imposed by a law and hence are unlawful to that extent.⁶⁰ As regard the blanket ban on full face veiling imposed by France, both the ECtHR and Human Rights Committee (HRC) accept that the ban constitutes an interference with FoRB but only the HRC has found a violations of the right.⁶¹ This is because the ECtHR permits States a margin of appreciation in deciding whether the limitation was necessary in a democratic State.

However, this section argues that these restrictions are counterproductive because they have a negative effect of alienating Muslim women and girls who, of their own choice, intend on manifesting their religious beliefs by covering their faces in public spaces. As a result of the

⁵⁵ *ibid.*

⁵⁶ Mushfig Bayram, 'TAJIKISTAN: Hijab-wearing and beards ban continues' (Forum 18, 5 October 2018): on the 28th of September 2018 the Tajikistan police: 'put up a roadblock... to stop cars carrying men with beards and women with hijabs. A video of the roadblock seen by Forum 18 shows police officers forcing men with beards into a barber's shop to have their beards shaved off, and women being forced to take off hijab and wear a shawl showing their necks.'

<http://www.forum18.org/archive.php?article_id=2421> last accessed 21 March 2020.

⁵⁷ UN Human Rights Committee (HRC), General Comment No. 22 (n 6) para 4.

⁵⁸ *ibid.*

⁵⁹ *Eweida and Others v The United Kingdom* App nos. 48420/10, 59842/10, 51671/10 and 36516/10 (ECtHR, 27 May 2013) para 94.

⁶⁰ UN Human Rights Committee (HRC), General Comment No. 22 (n 6) para 8.

⁶¹ *SAS v France* App no. 43835/11 (ECtHR, 1 July 2014) para 110 & 157-8; UN Human Rights Committee, *Yaker v France* (17 July 2018) UN Doc. CCPR/C/123/D/2747/2016 para 8.17 & 9: It found that: '...the Committee considers that the criminal ban introduced by article 1 of Act No. 2010-1192 disproportionately affects the author as a Muslim woman who chooses to wear the full-face veil, and introduces a distinction between her and other persons who may legally cover their face in public that is not necessary and proportionate to a legitimate interest, and is therefore unreasonable... The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the State party has violated the author's rights under articles 18 and 26 of the Covenant.'

prohibitions and the criminal sanction attached to them, Muslim women may end up being confined to their homes without access to essential services like hospitals or educational institutions.⁶²

It has been noted that women who chose to veil after the enactment of the prohibitions have been physically assaulted by members of the public. In June 2013, it is reported that a pregnant Muslim woman was attacked in Paris for allegedly wearing a veil and suffered a miscarriage as a result.⁶³ The attack occurred three weeks after another Muslim woman was attacked in a similar manner.⁶⁴ This victimisation and alienation of Muslim women has led to some of them becoming terrorists. Saiya and Manchanda note that as a result of the restrictions, the 'first all-female ISIS terrorist cells emerged in France in 2014, and 40% of young French foreign fighters in Syria were women'.⁶⁵ Those fighting in Syria are said to have been motivated by the law, which they perceived was a message that Islam was not permitted in France.⁶⁶ As a result, France has produced many foreign fighters when compared to other Western European States.⁶⁷

The Ban has also resulted in incidents of civil unrest occurring in France. In July 2014 a man violently opposed an attempted identity check of his wife who wearing a niqab in Trappes (France) leading to his arrest. The incident provoked several nights of violence.⁶⁸ About 250 protesters were reported to have gathered outside a police station in the city, angry about the man's arrest, and threw objects leading to property damage before clashing with police.⁶⁹ The following night was characterised by twenty cars being torched in suburbs west of Paris, with the violence being attributed to built-up tensions associated with France's face veil ban.⁷⁰

⁶² Human rights in Europe: no grounds for complacency. Viewpoints by Thomas Hammarberg, Council of Europe Commissioner for Human Rights (Council for Europe Publishing, 2011) 40; *Yaker v France* (n 61) para 8.15.

⁶³ Ben McPartland, 'Muslim woman loses baby after veil attack' (The Local, 18 June 2013) <<https://www.thelocal.fr/20130618/muslim-woman-miscarries-after-veil-attack>> last accessed 22 March 2020.

⁶⁴ *ibid.*

⁶⁵ Nilay Saiya & Stuti Manchanda, 'Do burqa bans make us safer? Veil prohibitions and terrorism in Europe' [2019] *Journal of European Public Policy* 1, 13.

⁶⁶ Ben McPartland, 'OPINION: When France banned the burqa it created a monster' (The Local, 12 October 2015) <<https://www.thelocal.fr/20151012/france-burqa-ban-five-years-on-we-create-a-monster>> last accessed 26 May 2020.

⁶⁷ Efraim Benmelech & Esteban F. Klor, 'What Explains the Flow of Foreign Fighters to ISIS?' [2018] *Terrorism and Political Violence* 1,5

<<https://doi.org/10.1080/09546553.2018.1482214>> last accessed 23 May 2020.

⁶⁸ Human Rights Without Frontiers, Freedom of thought, conscience, religion or belief France: *Laïcité*, "Sects" and Muslim Women's Issues (OSCE Human Dimension Implementation Meeting Warsaw, 30 September 2015)

<<https://www.osce.org/odihr/187476?download=true>> last accessed 22 March 2020

⁶⁹ France: Violence Erupts in Paris Suburb Over Muslim Veil Arrest (Asia News Monitor, 23 July 2013) <https://search.proquest.com/docview/1406226177?rfr_id=info%3Axri%2Fsid%3Aprimo> last accessed 22 March 2020

⁷⁰ Violence continues in France over Islamic veil ban (CBS News, 21 July 2013) <[cbsnews.com/news/violence-continues-in-france-over-islamic-veil-ban/](https://www.cbsnews.com/news/violence-continues-in-france-over-islamic-veil-ban/)> last accessed 22 March 2020.

Therefore, restrictions placed on the right to manifest Muslim religious beliefs in France have resulted in radicalisation of Muslim women and civil unrest, with authorities facing resistance from an aggrieved Muslim community.

The case of Tajikistan highlights how repressive religious policies can contribute to the increase of terrorist attacks on the State. For instance in 2010 it is claimed that a terrorist organisation known as the Islamic Movement of Uzbekistan killed twenty-five Tajik soldiers in response to the country's policy of restricting the practice of Islam.⁷¹ Tajikistan has pursued policies that forbid women to wear the niqab and forcing men to shave their beards.⁷² These restrictions not only interfere with the enjoyment of FoRB, but also contribute to the violent radicalisation of individuals. In 2015, Tajikistan's Special Forces Chief decided to join ISIS in Syria.⁷³ He left in part because Tajikistan's policies did not permit Muslims to 'to pray and wear Islamic hijabs'.⁷⁴ His departure was additionally problematic due to his role in the Tajik military and the sensitive nature of such a role, and due to the message this sends to the public when military personnel as symbolic protectors of the State become alienated to this extent.

The impact religious repression has on national security can further be elaborated with reference to Azerbaijan, where the crackdown on religion has had a visible impact on Islamic radicalisation in the country.⁷⁵ In addition to various other restrictions that have been placed on the public manifestation of Islam, the Ministry of Education imposed a ban on the wearing of the a hijab in schools and universities.⁷⁶ There is no specific legal provision imposing the ban, and to support it the government has sought to rely on the Law on Education which stipulates that public school children must wear uniforms.⁷⁷ It is questionable whether this satisfies the requirement that the FoRB restriction must be provided for by law; as the said law does not expressly prohibit the wearing of hijabs. One of the leaders of the Islamic Party of Azerbaijan publicly criticised the Azerbaijan government with regard to the violations and vowed to take up arms to vindicate their religious beliefs. He is reported to have said, "[w]e

⁷¹ Knox Thames, *Defending Religion from Itself* (Foreign Policy, 30 July 2015).

< <https://foreignpolicy.com/2015/07/30/defending-religion-from-itself/> > last accessed 25 March 2020.

⁷² Saiya (n 42) 43.

⁷³ Milo Comerford, *Terror in Tajikistan?* (Tony Blair Institute for Global Change, 9 September 2015)

< <https://institute.global/policy/terror-tajikistan> > last accessed 23 March 2020.

⁷⁴ *ibid.*

⁷⁵ Vahram Ter-Matevosyan & Nelli Minasyan 'Praying Under Restrictions: Islam, Identity and Social Change in Azerbaijan' (2017) 69 *Europe-Asia Studies* 1, 11

< <https://www.tandfonline.com/doi/full/10.1080/09668136.2017.1333086> > last accessed 25/03/2020.

⁷⁶ *ibid* 829.

⁷⁷ Aytan Farhadova, 'Azerbaijani Hijab Ban Controversy' (Institute for War and Peace Reporting, 17 December 2010 <<https://iwpr.net/global-voices/azerbaijani-hijab-ban-controversy>> last accessed 27 April 2020; Shahin Abbasov, 'Azerbaijan: Hijab Ban in Schools Fuels Debate in Baku on Role of Islam' (Eurasianet, 2011)

<<https://eurasianet.org/azerbaijan-hijab-ban-in-schools-fuels-debate-in-baku-on-role-of-islam>> last accessed 27 April 2020.

are against those who are against our religion. We have to destroy such a cruel regime and its head.”⁷⁸ The significance of this call to arms is that it places religion at the centre of the conflict, depicting how guaranteeing the right to FoRB will enhance security in the long run.

The correlation between repressive religious restrictions and insecurity for the State is apparent from the above developments.

2.3 Restrictions on registration and places of worship

2.3.1 *State restrictions*

States have attempted to control religion by placing restrictions on the legal recognition of religious organisations and places of worship. This has had an impact on the human security of certain religious communities, legitimising their victimisation by broader society, and in some instances creating fertile ground for extremism. The case of Turkey is relevant in this regard.

Although registration is not compulsory for religious groups to operate in Turkey, it is required to obtain legal recognition of places of worship.⁷⁹ Conducting religious ceremonies at a place not recognised by the law as a place of worship is unlawful, and may attract sanctions such as fines and/or closure of the place of worship.⁸⁰ Registration of religious groups, however, does not guarantee that its designated places of worship will be recognised as such by the authorities. Jehovah’s Witnesses in Turkey have had to contend with this reality as a result of the refusal by municipal authorities and courts to recognise their places of worship. It has been reported that:

Jehovah’s Witnesses have filed more than 100 requests with more than 30 municipalities to obtain a ‘religious facility location’ on municipal zoning maps, but all these requests have been denied. Not one Kingdom Hall in Turkey has been zoned as a place of worship.⁸¹

⁷⁸ *ibid* 12.

⁷⁹ Turkey International Religious Freedom Report for 2018 (United States Department of State) 4
< <https://www.state.gov/wp-content/uploads/2019/05/TURKEY-2018-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>> last accessed 24 March 2020

⁸⁰ *ibid*.

⁸¹ Turkey Religious Freedom Issues Statement by the European Association of Jehovah’s Witnesses (OSCE Human Dimension Implementation Meeting, 16 –27 September 2019) 7
< <https://www.osce.org/odihr/431051?download=true>> last accessed 24 March 2020.

Hence, while the Jehovah's Witnesses are registered as a religious group in Turkey, they cannot exercise their right to FoRB in community with others due to the lack of recognition of their places of worship.

Turkey is a State party to the ICCPR, which guarantees the right to FoRB. Furthermore, Turkey has FoRB obligations under the ECHR which entrenches this right. With regard to Turkey, where the Jehovah's Witnesses are registered but cannot have any of their churches recognised legally as places of worship- it should be noted that this amounts to a violation of the right as enshrined under article 9 of the ECHR. The right of groups to operate or perform religious activities is devoid of substance where the right to establish places of worship is only reserved for registered entities.⁸² The right is thus rendered illusory rather than practical and effective.⁸³ It is, therefore, an interference with the right to FoRB where a religious organisation can register but is precluded from holding religious activities due to a lack of recognition for its designated places of worship. Specifically, the ECtHR has held that:

[a] refusal by the domestic authorities to grant the status of a legal entity to an association of believers amounts to an interference with the right to freedom of religion under Article 9 of the Convention... The believers' right to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary State intervention.⁸⁴

Turkey, by refusing registration and/or recognition to religious minorities legitimises the targeting of religious minorities. This has a direct impact on the ability of these groups to be free from fear and on their integration into society. States that limit the religious freedom of certain religious communities send a message into the wider society that attacks against such groups is tolerated by the laws of the State.⁸⁵ In Turkey, it is reported that on the 19th December 2016 two Jehovah's Witnesses were attacked by a man after offering him a pamphlet.⁸⁶ By placing restrictions on the Jehovah's witnesses' ability to establish places of worship, the State has not legitimised the Jehovah's witnesses right to exist in community within their wider society, thus marginalising their existence and alienating them from it, which is fertile ground for animosity and grievances, as argued above.

⁸² *Kimlya & Others v Russia* App nos 76836/01 and 32782/03 (ECtHR, 1 March 2010) paras 86-7.

⁸³ *ibid.*

⁸⁴ *Parafiya v Ukraine* App no 77703/01 (ECtHR, 14 September 2007) para 121.

⁸⁵ Nilay Saiya, 'Blasphemy and Terrorism in the Muslim World' *Terrorism and Political Violence* (2017) 29:6 1087, 1090.

⁸⁶ Turkey Religious Freedom Concerns Statement by the European Association of Jehovah's Witnesses (OSCE Human Dimension Implementation Meeting, 11-22 September 2017)
< <https://www.osce.org/odihr/341001?download=true> > last accessed 24 March 2020.

The State's own security might be compromised following from manifestations of violent intolerance such as these.

It has been shown above that the restriction on registration and places of worship in the name of security, have the potential to create adverse conditions generating antagonism, resentment, and violent radicalisation.

2.3.2 *Intergroup restrictions*

FoRB restrictions regarding places of worship can also be perpetrated by non-state actors. This subsection interrogates such restrictions and analyses them within the international human rights framework to determine whether there is an interference with FoRB. Where a violation is established, the security implications for the State will be discussed. It is argued that intergroup restrictions on places of worships lead to societal insecurity, which is another way State security may be threatened.⁸⁷

Manifestations of intergroup interference with places of worship, which breeds societal insecurity for the targeted groups, and consequently threatens State security are evident from the attacks on the Jewish community in the US. In December 2019, there was an attack at a Rabbi's home in New York targeted at people gathered to observe the seventh night of Hanukkah.⁸⁸ The incident at the Rabbi's house took place when people were gathered in a religious celebration, similarly to the shooting which took place at a synagogue in California on the last day of Passover in the same year.⁸⁹ These attacks constitute an interference with the right to FoRB; and are particularly problematic due the use of violence to effectively deny members of the Jewish community the ability to practice religion in community with each other. The freedom to manifest religion in worship encompasses the performance of ceremonial acts such as the Jewish Passover and Hanukkah.⁹⁰ This is a fundamental element of the right to FoRB under the ICCPR.

Where acts that infringe FoRB are committed by private individuals and are not directly attributable to the State; the question of the positive obligations of the State to secure rights

⁸⁷ Collins (n 15) 222.

⁸⁸ Rebecca Liebson, 'Intruder Screamed 'I'll Get You' in Attack on Jews at Rabbi's Home' (The New York Times, 2019)

<<https://www.nytimes.com/2019/12/29/nyregion/monsey-new-york-stabbing.html>> last accessed 1 May 2020.

⁸⁹ Andrew Johnson and R. Stickney, '1 Dead, 3 Injured in Synagogue Shooting in Poway, Deputies Detain Suspect' (NBS, 27 April 2019)

<<https://www.nbcsandiego.com/news/local/poway-synagogue-shooting-chabad-way-san-diego-sherrifs-department/160987/>> last accessed 1 May 2020.

⁹⁰ UN Human Rights Committee (HRC), General Comment No. 22 (n 6) para 4.

under the Convention comes to the fore.⁹¹ State's responsibility may be triggered were intergroup violence precludes other communities from exercising their freedom to manifest or practice their religious beliefs.⁹² The US has a positive obligation under the ICCPR to protect the Jewish community from the violation of their right to FoRB.⁹³ As part of its duty to protect the enjoying of FoRB it must exercise due diligence to prevent such attacks, especially when they are prevalent.⁹⁴ However, in the absence of evidence supporting the conclusion that this duty was not discharged, this section nevertheless argues that such attacks have an impact on national security. These attacks threaten the societal security of the Jewish community, which is an element of State's overall security.

As mentioned above, States can be made insecure through threats directed at its societies.⁹⁵ Societal security entails the maintenance of distinct ethno-national and religious identities.⁹⁶ That is, the preservation of the community's identity and the individuals identifying themselves as members of that community.⁹⁷ However, multiple communities can coexist intertwined with others and people can be members of more than one community. This means that an attack on a religious community may not only be construed as solely an attack on them but as a manifestation of violence affecting others too. Neighbourhoods, other religious groups, people empathising with the victims of an attack, and even people concerned with how these manifestations of religious intolerance reflect on their own entrenched values and beliefs, are a few examples of groups who have shown to be affected by such attacks.⁹⁸ Hence, attacks on a religious group can be construed as an attack on the wider society too, generating insecurity for the State. Additionally, the attack at the Rabbi's house was pronounced an 'act of domestic terrorism' by New York's Governor.⁹⁹ The concept of what a threat to national

⁹¹ *Begheluri and Others v Georgia* App no 28490/02 (ECtHR, 7 October 2014) para 160.

⁹² *ibid.*

⁹³ UN Human Rights Committee, General Comment No 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant (Art 2), 29 March 2004 (CCPR/C/21/Rev.1/Add. 1326 para 8.

⁹⁴ *Velasquez-Rodriguez v Honduras* Inter-American Court of Human Rights Series C No 4 (29 July 1988) para 172.

⁹⁵ Collins (n 15).

⁹⁶ Collins (n 15) 225.

⁹⁷ Hawre Hasan Hama, 'State Security, Societal Security, and Human Security' (2017) 21 *Jadavpur Journal of International Relations* 1, 5.

⁹⁸ Christina Goldbaum and Matthew Sedacca, 'Solidarity March Against Anti-Semitism: Thousands Rally After Attacks' (The New York Times, 2020) <<https://www.nytimes.com/2020/01/05/nyregion/anti-semitism-solidarity-march-nyc.html>> last accessed 2 June 2020; Danielle Ziri, 'After anti-Semitic Attacks, Hundreds Rally in Brooklyn in Solidarity With Jewish Community' (Haaretz, 2020) <<https://www.haaretz.com/us-news/.premium-hundreds-rally-in-brooklyn-in-solidarity-with-jewish-community-1.8344821>> last accessed 2 June 2020; Matthew Haag, 'Muslim Groups Raise Thousands for Pittsburgh Synagogue Shooting Victims' (The New York Times, 2018) <<https://www.nytimes.com/2018/10/29/us/muslims-raise-money-pittsburgh-synagogue.html?action=click&module=RelatedCoverage&pgtype=Article®ion=Footer>> last accessed 2 June 2020; Linda Girardi 'Muslim community members gather outside Naperville synagogue to show support after California shooting' (Naperville Sun, 2019) <<https://www.chicagotribune.com/suburbs/naperville-sun/ct-nvs-naperville-muslims-attend-jewish-shabbat-st-0505-story.html>> last accessed 2 June 2020

⁹⁹ Rebecca Liebson, '5 Wounded in Stabbing at Rabbi's Home in N.Y. Suburb' (The New York Times, 2019) <<https://www.nytimes.com/2019/12/28/nyregion/monsey-synagogue-stabbing-anti-semitic.html>> last accessed 1 May 2020.

security is notably relies on its framing as such by State authorities. Such framing of the matter as a domestic security issue, together with the gravity of the attacks as well as their association with other notable acts of violence against Jewish people; raises broader security questions about the scale of violence-generated insecurity experienced by Jewish communities in general.¹⁰⁰

Therefore, an attack on a religious group integral to the State not only violates the right to FoRB of the targeted groups but also constitutes a security issue for the State. This is due to societal security being integral to national and/or State security.

3. Arguments in opposition

The last decade has witnessed the intensification of religiously motivated attacks, which range from Islamic terrorists waging the 'global jihad', to conflicts involving Christians and Muslims as highlighted in the previous sections.¹⁰¹ In 2018, the Pew Research Centre reported that a number of countries around the world had experienced a high incidence of social hostilities and terrorism with a religious connotation.¹⁰² It is from this background that this section critiques the proposition that advancing FoRB strengthens security in the long run. In this spirit, the section will explore arguments which may or have been raised by State parties to justify placing restrictions on FoRB in the name of enhancing security. While this part of the memorandum does not intend to adopt a simplistic view to the effect that it is only religion that contributes to these hostilities, it nevertheless contends that religion can pose a threat to national and global security.

State parties may argue that the restrictions to FoRB are in accordance with their duty to protect under the ICCPR. States have a positive duty to protect individuals from violations committed by private persons, this duty entails the exercise of due diligence by the State to prevent such acts.¹⁰³ State parties have an international obligation under the ICCPR to adopt

¹⁰⁰ Goldbaum and Sedacca (n 98); Ziri (n 98); Haag (n 98); Girardi (n 98).

¹⁰¹ Robert Muggah & Ali Vleshi, Religious violence is on the rise. What can faith-based communities do about it? (World Economic Forum, 25 February 2019) <<https://www.weforum.org/agenda/2019/02/how-should-faith-communities-halt-the-rise-in-religious-violence/>> last accessed 18 April 2020.

¹⁰² Katayoun Kishi, 'Key findings on the global rise in religious restrictions' (Pew Research Centre, 21 June 2018) <<https://www.pewresearch.org/fact-tank/2018/06/21/key-findings-on-the-global-rise-in-religious-restrictions/>> last accessed 18 April 2020.

¹⁰³ UN Human Rights Committee (n 93) para 8.

necessary measures to protect and ensure the enjoyment of rights under the Convention.¹⁰⁴ Under the ECHR, state parties also have a duty ‘to do all that can be expected to prevent human rights abuses by private actors.’¹⁰⁵ The International Commission on Intervention and State Sovereignty note that the responsibility to protect encompasses a prevent element, which includes the duty to address the root and direct causes of threats putting populations at risk.¹⁰⁶

It should be noted that these restrictions must still be legal, necessary and proportionate for them to be justified under the IHRL framework.¹⁰⁷ The duty to protect may still be advanced by States in relation to FoRB restrictions due to an alleged security threat posed by religion. It has been noted that conflict and violence frequently have a religious connection, because of the vital role religion plays in shaping identities and informing actions.¹⁰⁸ This function serves as a double-edged sword, in that it can threaten or promote security. One way in which religion threatens security is through its inherent distinction between groups and the promotion of religious othering, which can lead to structural violence between communities on the domestic and global plane.¹⁰⁹ Religion can also be used to conceal non-religious motives and to justify violence, thereby hardening conflict as a result, by providing moral ammunition for it.¹¹⁰

Hence, when religion is used as a mobilisation tool in this sense, it can have a destabilising effect when it comes to security. Therefore, States may argue that it is important to regulate it and prevent its abuse. This is not to say that religion is bad but that it can be perverted to promote violent behaviour that impacts upon security. Prominent scholars have contended that ‘bad theology’ leads to bad action.¹¹¹ This is essentially the notion that underlies the PREVENT strategy as discussed above and its distinction between good and bad Islam.

¹⁰⁴ ICCPR, art 2; Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (adopted 9 December 1998).

¹⁰⁵ Sarah Joseph and Sam Dipnall, ‘Scope of Application’ in D Moeckli, S Shah & S Sivakumaram (eds), *International Human Rights Law* (3rd edn, Oxford University Press 2018) 115; *Osman v United Kingdom* (2000) 29 EHRR 245 para 116.

¹⁰⁶ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (International Development Research Centre, December 2001)

< <http://responsibilitytoprotect.org/ICISS%20Report.pdf> > last accessed 19 April 2020.

¹⁰⁷ UN Human Rights Committee, *F.A v France* (16 July 2018) UN Doc. CCPR/C/123/D/2662/2015 para 8.6.

¹⁰⁸ *The Role of Religion in Conflict and Peacebuilding* (The British Academy, September 2015) 14
<https://www.thebritishacademy.ac.uk/sites/default/files/Role-of-religion-in-conflict-peacebuilding_0_0.pdf> last accessed 18 April 2020.

¹⁰⁹ *ibid* 16.

¹¹⁰ John Wolffe & Gavin Moorhead, *Religion, Security and Global Uncertainties* (Partnership for Conflict, Crime & Security Research; The Open University) 34

<<https://www.paccsresearch.org.uk/wp-content/uploads/2014/12/Religion-Security-Global-Uncertainties.pdf>> last accessed 19 April 2020.

¹¹¹ *ibid*.

The threat posed by Islamic terrorism has been highly documented with overwhelming statistics showing that it is behind most religiously motivated attacks. Piazza notes that '[o]ver the period 1968 to 2005, Islamist groups were responsible for 93.6 percent of all terrorist attacks by religiously-oriented groups and were responsible for 86.9 percent of all casualties inflicted by religiously-oriented terrorist groups'.¹¹² The threat posed by these attacks to national and human security cannot be disputed. These attacks have negatively impacted the enjoyment of human rights, which can justify the measures that have been adopted by States to protect people from them.

States may, therefore, seek to justify prevention strategies by monitoring communities deemed to be at risk of violent radicalisation by reference to their duty to protect. It has, however, been shown above that in practice strategies such as PREVENT are more harmful than beneficial as they contribute to radicalisation through alienation. The prevent element is the most important dimension of the duty to protect under international law.¹¹³ The United Nations Office on Genocide Prevention and the Responsibility to Protect remarked that '[m]onitoring, preventing and countering incitement to violence, particularly in societies divided along identity lines and in situations where tensions are high, can contribute to prevention efforts'.¹¹⁴ While this quote relates to atrocity crimes, it is equally pertinent in the prevention of attacks that are religiously motivated and directed against the religious 'other'.

In the context of the right to FoRB, monitoring and preventing entails restrictions on the right to engage in religious activities free from arbitrary State intervention. Thus, the State bears the obligation to prove that the interference with FoRB is necessary and proportionate. In regard to the restrictions on religious symbols and observance, it should be noted that the law permits States to limit religious manifestations in the interest of public safety.¹¹⁵ States have sought to justify bans on full face veiling on the basis that it is necessary to protect public safety or order, since covering of the face may preclude the identification of criminals and may also be perceived as a destabilising threat.¹¹⁶ It is important to note that these justifications

¹¹² James Piazza, 'Is Islamist Terrorism More Dangerous?: An Empirical Study of Group Ideology, Organization, and Goal Structure' (2009) 21 *Terrorism and Political Violence* 62, 64.

¹¹³ Emma McClean, 'The Responsibility to Protect: The Role of International Human Rights Law' (2008) 13 *Journal of Conflict & Security Law* 123, 129.

¹¹⁴ Plan of Action for Religious Leaders and actors to Prevent Incitement To Violence That Could Lead To Atrocity Crimes (United Nations Office on Genocide Prevention and the Responsibility to Protect, July 2017) 1
< <https://www.un.org/en/genocideprevention/documents/Plan%20of%20Action%20Advanced%20Copy.pdf>> last accessed 19 April 2020.

¹¹⁵ ICCRP, art 18(3); ECHR, art 9(2).

¹¹⁶ Legal Comment Bans on the Full Face Veil and Human Rights A Freedom of Expression Perspective (Article 19, December 2010) 11

<<https://www.article19.org/data/files/pdfs/publications/bans-on-the-full-face-veil-and-human-rights.pdf>> last accessed on 19 April 2020.

have been rejected by both the ECtHR and the HRC. In the *Yaker v France* case, France argued that in order to ensure public safety it must be able to identify all individuals when necessary to avert threats to security, a requirement even more fitting in the context of the global threat posed by terrorism.¹¹⁷ The HRC rejected this argument on the basis of the proportionality requirement given the blanket nature of the ban and held that France had failed to show that this was the least restrictive measure necessary to ensure the protection of FoRB.¹¹⁸

This section has explored potential arguments that could be pursued by State parties in favour of placing restrictions on the right to FoRB. It has also illuminated on the shortcomings inherent in the arguments, mainly their failure to satisfy the necessity and proportionality requirement of the IHRL framework.

¹¹⁷ *Yaker v France* (n 61) para 7.8.

¹¹⁸ *ibid* para 8.8.

4. Conclusion

This memorandum has shown that religion can be used as a destabilising force depending on its interaction with the political environment. Where religion is unjustifiably restricted, feelings of alienation and resentment are engendered among the targeted individuals or group; which contributes to their violent radicalisation. Therefore, restrictions of FoRB in the name of security are fundamentally counterproductive as they lead to the weakening of security. It has also been established that intergroup violence has the potential to compromise the security of States; which depends upon societies being secure.

The memorandum has also explored potential arguments that could be raised in favour of placing restrictions in the name of public safety, many of which have been shown to be incompatible with the IHRL framework. Thus, it is shown that respecting FoRB for all strengthens comprehensive security in the long run.

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