



The Santo Daime Church

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The Protection of Freedom of Religion
Under International Law

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I. INTRODUCTION

1. METHODOLOGY AND SYNOPSIS

This Report was requested by two members of the Santo Daime Church in the Netherlands. The Church has had trouble with authorities in a number of different States because the substance they use for their ritual, Ayahuasca, is criminalized in many places. The basic legal question the Santo Daime Church in the Netherlands wanted this report to answer is whether the use of Ayahuasca is covered by the freedom of religion. More specifically, the Amsterdam International Law Clinic was asked to examine whether the Santo Daime can be recognized as a “religion or belief,” under international law, with a particular focus on the European Convention on Human Rights and Fundamental Freedoms¹ (European Convention or ECHR), the International Convention on Civil and Political Rights² (ICCPR), and the American Convention on Human Rights (ACHR).³ Further, the question was asked whether the Santo Daime’s use of Ayahuasca would be protected by those international agreements as a legitimate manifestation of that religion or belief; and whether, if their manifestation is interfered with, that interference and the limitations placed on the Santo Daime’s use of Ayahuasca would be legitimate under these international agreements. The Clinic was also asked to consider whether, under international law, Santo Daime members have a right to access of Ayahuasca.

The Report will begin by discussing the history of the Santo Daime and Ayahuasca. It will also briefly address the treatment of Santo Daime in various States (Part I). Part II will then review the provisions concerning the freedom of religion. Special emphasis will be laid on the ECHR (since problems encountered by the Santo Daime Church concern mainly European States) and the ICCPR (since this legal instrument is of global applicability), and their respective

¹ European Convention on Human Rights and Fundamental Freedoms, Nov. 4, 1950, ETS 5, 213 U.N.T.S. 17, *available at* <http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/EnglishAnglais.pdf> (last visited Feb. 26, 2007). For a list of Contracting States to the European Convention on Human Rights and Fundamental Freedoms and its territorial scope *see* http://en.wikipedia.org/wiki/Territorial_scope_of_European_Convention_on_Human_Rights (last visited Feb. 26, 2007).

² International Covenant on Civil and Political Rights, opened for signature December 19, 1966, 999 U.N.T.S. 171 (entered into force March 23, 1976), *available at* http://www.unhcr.ch/html/menu3/b/a_ccpr.htm (last visited Feb. 26, 2007). For a list of Contracting States *see* <http://www.unhcr.ch/pdf/report.pdf> (last visited Feb. 26, 2007).

³ American Convention on Human Rights, “Pact of San Jose, Costa Rica,” American Convention on Human Rights, opened for signature Nov. 22, 1969, 1144 U.N.T.S. 143 (entered into force July 18, 1978), *available at* <http://www.oas.org/juridico/english/Treaties/b-32.htm> (last visited Feb. 26, 2007).



monitoring and enforcement bodies, the European Court of Human Rights (ECtHR) and the United Nations (UN) Human Rights Committee (HRC). The Inter-American Human Rights System will be referred to only briefly. The Report will then define “religion or belief” under the European Convention, the ICCPR, and the ACHR, and the jurisprudence of monitoring bodies, and apply these definitions to the Santo Daime (Part III). Part IV will then analyze the manifestation of religion or belief under the European Convention, ICCPR, and the ACHR, and apply this analysis to the Santo Daime. Next, the Report will discuss how to determine whether there has been State interference with the freedom of religion (Part V). In Part VI, the Report will review the legitimate grounds for limiting the rights of religious groups and apply these limitations to the Santo Daime. Part VII will briefly discuss access to Ayahuasca for the Santo Daime; and finally, Part VIII will contain the Report’s general conclusions.

2. BACKGROUND TO SANTO DAIME AND AYAHUASCA

2.1. History of Santo Daime

Santo Daime is a spiritual practice, founded in the Brazilian Amazonian State of Acre in the 1930s. It incorporates elements of several religious and spiritual traditions including Catholicism, Kardecist Spiritism, and, to a lesser degree, South American Shamanism. The Santo Daime religion has little basis in liturgical texts. Instead, its teachings are learned experientially through the singing of hymns in which the Catholic God, the Virgin Mary and Jesus Christ are often present, and respect and love for one’s “brothers” are frequently preached. While the exact number of practitioners is unclear, the Santo Daime now have followers in Brazil, Europe, North America and Japan.⁴ Santo Daime’s main ritual involves drinking a tea made from Ayahuasca. South American natives have used Ayahuasca (sometimes referring to it by different names such as *hoasca* or *yage*) for centuries to increase spiritual perception.⁵

Santo Daime was founded by Raimundo Irineu Serra, who was instructed to start a new religion making use of Ayahuasca as a sacrament in visions he had after taking the substance in Brazil.⁶ After these visions, Irineu made hymns containing teachings that formed the doctrine of

⁴ Wikipedia, *Santo Daime*, available at http://en.wikipedia.org/wiki/Santo_Daime (last visited Feb. 26, 2007).

⁵ Wikipedia, *Santo Daime*, available at http://en.wikipedia.org/wiki/Santo_Daime (last visited Feb. 26, 2007).

⁶ The Council on Spiritual Practices, *Santo Daime in Europe* (1996), available at <http://www.csp.org/nicholas/face.html> (last visited Feb. 26, 2007).



the new religion.⁷ The religion became known as Santo Daime because the word “Daime” (Portuguese for “give me, give me love, give me light, give me strength”) occurs in almost all the hymns. Members also use the word Daime as a name for their sacramental form of Ayahuasca.⁸ The community is also another important element of the Daime spirituality and is the reference point for the spiritual work of all members.⁹ Celebrating their sacrament in a community setting provides the group members with stability while experiencing the effects of the Daime.

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2.2. Ayahuasca

Santo Daime’s sacrament, Ayahuasca, has been used for millennia in South American indigenous cultures and is one of the traditional tools of the South American shaman. The vine Ayahuasca, or *Banisteriopsis Caapi*, grows in jungle areas of South America and can be found in the Brazilian, Peruvian, and Colombian Amazon. Ayahuasca can be literally translated as “the vine of the dead” or the “vine of souls.” The name is based on the belief of the Tukano Indians and others that those who take Ayahuasca can use the vine to climb the “Milky Way” (also referred to as “the white road” or “road of the dead”) to join their ancestors.¹¹ Pharmacologists have found that the two primary active ingredients in Ayahuasca are harmine and harmaline. Traditionally, the tea is made by boiling the vine and adding other ingredients. The tea used by the Santo Daime has had many names, depending on the group using it, including *hoasca*, *caapi*, *yage* and Santo Daime itself, but all names refer to the same basic Ayahuasca tea, a traditional hallucinogenic mixture.¹²

Ayahuasca contains N-N-dimethyltryptamine (DMT), which is considered a narcotic substance under numerous national criminal statutes and international agreements. For example,

⁷ The Council on Spiritual Practices, *Santo Daime in Europe* (1996), available at <http://www.csp.org/nicholas/face.html> (last visited Feb. 26, 2007).

⁸ The Council on Spiritual Practices, *Santo Daime in Europe* (1996), available at <http://www.csp.org/nicholas/face.html> (last visited Feb. 26, 2007).

⁹ Steven Mizrach, *Santo Daime*, available at <http://www.fiu.edu/~mizrachs/daime.htm> (last visited Feb. 26, 2007).

¹⁰ Wikipedia, *Santo Daime*, available at http://en.wikipedia.org/wiki/Santo_Daime (last visited Feb. 26, 2007).

¹¹ GERARDO REICHEL-DOLMATOFF, *BEYOND THE MILKY WAY: HALLUCINOGENIC IMAGERY OF THE TUKANO INDIANS* (UCLA Latin American Center Publications, 1978).

¹² Jennifer Emick, *Alternative Religions profiles: Santo Daime*, available at http://altreligion.about.com/library/faqs/bl_daime.htm (last visited Feb. 26, 2007).



DMT is a schedule I substance under the United Nations Convention on Psychotropic Substances 1971.¹³ DMT is normally not orally active; however, when used in conjunction with Monoamine Oxidase (MAO) inhibitors (Harmala alkaloids are also Monoamine Oxidase inhibitors), as indigenous Amazonian South Americans typically do through their traditional binary preparation, DMT becomes orally active. These MAO inhibitors also inhibit ordinary processes of digestion, which can cause great nausea and discomfort.¹⁴

In Santo Daime rituals, worshippers often begin vomiting after taking the tea. This is seen as normal (a stage of the ritual called the *purgatorio*) and demonstrative of the body's process of expelling pollutants and toxins in order to become more spiritual. However, if a person has ingested certain foods (meats, cheeses, and others) while MAO inhibitors are active, some elements of those foods that would normally be digested can become potentially lethal. This explains why the Santo Daime insists on fasting for 12 hours or more prior to a ceremony.¹⁵ Churchgoers claim that this physical *purgatorio* is often accompanied by a deep sense of inner anxiety as one visually contemplates the ways in which they have not lived up to their full "spiritual" potential or treated others properly. Churchgoers also state that *purgatorio* is often followed by a sense of flying or floating through dark infinite space and being drawn to a distant, brilliant light.¹⁶ Members of the Santo Daime Church believe Ayahuasca forces those who take it to confront their inner flaws, promotes healing and social integration, increases ecological awareness, and awakens the spiritual or veridical dimension of one's life.¹⁷

¹³ United Nations Convention on Psychotropic Substances, opened for signature February 21, 1971, 32 U.S.T. 543, 1019 U.N.T.S. 175, available at http://www.unodc.org/pdf/convention_1971_en.pdf (last visited Feb. 26, 2007). As of November 30, 2006, the Convention has 30 Signatories and 180 Parties. For a list of Signatory and Contracting States, see http://www.unodc.org/pdf/treaty_adherence_convention_1971.pdf (last visited Feb. 26, 2007).

¹⁴ Steven Mizrach, *Santo Daime*, available at <http://www.fiu.edu/~mizrachs/daime.htm> (last visited Feb. 26, 2007).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*



2.3. The Treatment of Santo Daime in Various States

The Santo Daime and Ayahuasca, and related groups and substances, have faced differing treatment in various States. This Section will briefly discuss a selection of State practice to introduce some of the legal challenges that have already been fought.¹⁸

2.3.1. Brazil: The Right to Use Ayahuasca is Recognized

In Brazil, CONFEN (the Federal Drug Council) has consistently upheld the right of the Daime Church to practice its religion and healing practices using the Daime tea.¹⁹ A study was made of the Daime by CONFEN in 1987. During their research, CONFEN visited various Churches and observed the making of the tea. It also included the study of another group of Ayahuasca users, who call the drink *Vegetal (Uniao do Vegetal)*. The Working Group that conducted the study included representatives not only from CONFEN but also from several other government agencies. The study concluded that the use of Santo Daime tea encouraged social harmony and personal integration, and in general had a very positive influence in the community. More specifically, CONFEN concluded that “the religious rituals conducted with the sacramental drink Santo Daime/Ayahuasca didn’t bring injuries to the social life, though contributed to its better integration, being remarkable the benefits testified by the usuary religious groups members.”²⁰

Further results of pharmacological and psycho-social research run in the usuary’s communities show there is no risk of addiction and dependency while using these substances in a ritual context.²¹ Dr. Domingos Bernardo, a jurist who during many years was the main spokesperson of the CONFEN, said in relation to the ritual use of Ayahuasca:

¹⁸ Cf. Santo Daime website, available at <http://www.santodaime.org/> (last visited Feb. 26, 2007); Adele van der Plas, *International Legal Aspects of the Use of Ayahuasca* (Paper presented at the 3rd Conference on Psychoactivity, Amsterdam, November 22-24, 2002), available at <http://www.drugtext.org/library/articles/ayahuasca01.htm> (last visited March 7, 2007).

¹⁹ Wikipedia, Santo Daime, available at http://en.wikipedia.org/wiki/Santo_Daime (last visited Feb. 26, 2007).

²⁰ Santo Daime, *Legalization in Brazil*, available at <http://www.santodaime.org/institutional/legal.htm> (last visited Feb. 26, 2007).

²¹ *Id.*



For more than 10 years the use of Ayahuasca has been considered legitimate, since the 1985 interdiction, suspended in 1996, and we had no notice of a single case, scientifically confirmed, of mental problems effectively caused by or generated by the quoted use. Neither there is reference of abuse or any other social-order disturbing behaviour. There are, evidently, cases of people that had already been porting problems, and used the tea, or that, without apparent pathologies, has shown some self-injuring or anti-social conducts (behaviour). In first place, such cases are very few, as we can count them on fingers. Furthermore, it's an absurd to take the part as the hole, or to confuse the institutions with the individual behaviour of its members. What matters is the intransigent and constant search of the institutions, in the sense of its integrity and improving (...).²²

The study noted that, rather than simply considering the pharmacological analysis of the plants, it was essential to consider the whole context of the use of the tea, including its religious, social, and cultural effects.²³ As this brief analysis has shown, Brazil recognizes the right of Santo Daime members to the use Ayahuasca.

2.3.2. The Netherlands: A Successful Court Ruling

In the Netherlands, the Santo Daime won a court case in 2001, allowing its members to continue their ceremonial usage of Ayahuasca.²⁴ Geraldine Fijneman, the head of the Amsterdam branch of the Santo Daime Church, was acquitted on appeal by the District Court of Amsterdam. The Judges in that case decided that, although it was proven that Mrs. Fijneman had owned, transported and distributed a DMT-containing substance, she was protected by her constitutional and human right to freedom of religion. In its analysis the Court described the Santo Daime Church as a serious and bona fide religion, and noted that although Ayahuasca contains the scheduled substance DMT, Mrs. Fijneman considers it the holy sacrament and cannot profess her religion without it. The Dutch Court went on to point out that the Santo Daime Church is officially recognized as a spiritual doctrine in Brazil and that their use of Ayahuasca is conducted in a religious context. The Court therefore held that the Santo Daime's

²² Santo Daime, *Moving the Prejudice Away*, available at <http://www.santodaime.org/institutional/prejudice.htm> (last visited Feb. 26, 2007).

²³ *Id.*

²⁴ Geerdina Johanna Cornelia Fijneman, The District Court of Amsterdam, Case number 13/067455-99, 21 May 2001, available at <http://www.rechtspraak.nl> (last visited Feb. 26, 2007) (in Dutch); <http://www.drugtext.org/library/legal/ayahuascaverdict.htm> (last visited Feb. 26, 2007) (in English).



use of Ayahuasca is protected by Article 9 of the European Convention on Human Rights. Moreover, the Court ruled that Ayahuasca does not represent any danger for the public health in the way it is used at Santo Daime's Churches.²⁵ Accordingly, in the Netherlands, members of the Santo Daime have the right to use Ayhuasca without government interference.

2.3.3. *France: A Continuing Struggle*

In France, Santo Daime won a court case allowing them to use the Ayahuasca tea in early 2005.²⁶ However, the ability of its members to use the Daime was not based on an exception for religious purposes, but instead because they did not perform chemical extractions resulting in pure DMT and harmala, and because the plants used were not scheduled narcotics.²⁷ Four months after the court victory, the common ingredients of Ayahuasca and harmala were declared *stupéfiants*, or narcotic schedule I substances, making the tea and its ingredients illegal to use or possess.²⁸ Accordingly, the status of the Santo Daime's ability to use Ayhuasca is currently unresolved.

2.3.4. *The United States: the Centro Espirita Beneficente Uniao do Vegetal*

The United States Supreme Court recently decided the case Gonzales v. O Centro Espírita Beneficente União do Vegetal, which involved a group related to the Santo Daime.²⁹ On February 21, 2006, the Supreme Court issued a unanimous decision affirming Centro Espirita Beneficente União do Vegetal's (UDV) right to religious freedom. Centro Espirita Beneficente União do Vegetal describes itself as a form of Christianity that blends Indigenous and Amazonian spiritual traditions within Christian theology – closely linked to the Santo Daime Church.³⁰

²⁵ *Id.*

²⁶ Wikipedia, Santo Daime, available at http://en.wikipedia.org/wiki/Santo_Daime (last visited Feb. 26, 2007).

²⁷ Wikipedia, Santo Daime, available at http://en.wikipedia.org/wiki/Santo_Daime (last visited Feb. 26, 2007).

²⁸ Wikipedia, Santo Daime, available at http://en.wikipedia.org/wiki/Santo_Daime (last visited Feb. 26, 2007).

²⁹ *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418, 126 S. Ct. 1211 (2006), available at <http://www.american-buddha.com/Gonzales%20vs%20O%20Centro%20Espirita.pdf> (last visited Feb. 26, 2007).

³⁰ Centro Espírita Beneficente União do Vegetal, available at <http://www.udv.org.br/english/index.html> (last visited Feb. 26, 2007).



União do Vegetal literally means “the union of the plants.” Central to UDV’s religious tradition and practice is the sacramental use of *hoasca*, a tea made from plants indigenous to the Brazilian Amazon. Religious UDV practitioners ritually prepare the tea and consider it sacred, just like the Santo Daime. In the UDV, church members claim to only use the *hoasca* tea in the context of religious ceremony and say the sacrament fills UDV members with a heightened spiritual awareness that permits them to experience communion with God.³¹

On May 21, 1999, the United States Drug Enforcement Agency agents intercepted a shipment of some 30 gallons of *hoasca* destined for the administrative UDV-USA Santa Fe office. The Supreme Court heard oral arguments November 1, 2005, and issued its opinion February 21, 2006, finding that the Government had failed to meet its burden under the U.S. Religious Freedom Restoration Act that barring the substance served a compelling government interest.³² The Court also disagreed with the Government’s central argument that the uniform application of the U.S. Controlled Substances Act does not allow for exceptions for the substance in this case, as Native Americans are given exceptions to use *peyote*, another Schedule I substance.³³

In writing for the Court, Chief Justice John Roberts held

For the past 35 years, there has been a regulatory exemption for use of peyote a Schedule I substance by the Native American Church ... In 1994, Congress extended that exemption to all members of every recognized Indian Tribe... Everything the Government says about the DMT in hoasca that, as a Schedule I substance, Congress has determined that it ‘has a high potential for abuse, has no currently accepted medical use, and has a lack of accepted safety for use ... under medical supervision,’ ... applies in equal measure to the mescaline in peyote, yet both the Executive and Congress itself have decreed an exception from the Controlled Substances Act for Native American religious use of peyote. If such use is permitted in the face of the congressional findings in 812(b)(1) for hundreds of thousands of Native Americans practicing their faith, it is difficult to see how

³¹ *Id.*

³² *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418, 126 S. Ct. 1211 (2006), available at <http://www.american-buddha.com/Gonzales%20vs%20O%20Centro%20Espirita.pdf> (last visited Feb. 26, 2007). The text of the U.S. Religious Freedom Restoration Act is available at http://www.law.cornell.edu/uscode/42/usc_sup_01_42_10_21B.html (last visited March 7, 2007).

³³ *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418, 126 S. Ct. 1211 (2006), available at <http://www.american-buddha.com/Gonzales%20vs%20O%20Centro%20Espirita.pdf> (last visited Feb. 26, 2007). The text of the U.S. Controlled Substances Act is available at <http://www.usdoj.gov/dea/pubs/abuse/1-csa.htm> (last visited March 7, 2007).



those same findings alone can preclude any consideration of a similar exception for the 130 or so American members of the UDV who want to practice theirs...³⁴

Based on this ruling, the Centro Espirita Beneficente União do Vegetal, a group closely related to the Santo Daime, have the right to use Ayahuasca for religious purposes. Based on the reason of the U.S. Supreme Court, it is reasonable to conclude that also members of the Santo Daime Church have the right to use Ayahuasca.

³⁴ *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418, 126 S. Ct. 1211 (2006), *available at* <http://www.american-buddha.com/Gonzales%20vs%20O%20Centro%20Espirita.pdf> (last visited Feb. 26, 2007).



II. FREEDOM OF RELIGION – LEGAL INSTRUMENTS AND THEIR STATUS

Although this Report will focus on the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, and the American Convention on Human Rights, it should be noted that it is possible to argue that freedom of religion is a rule of customary international law, as it can be found in the Universal Declaration of Human Rights and other international agreements, and is frequently followed by State practice. A rule of international law is one that has been accepted by the international community of States “(a) in the form of customary international law; (b) by international agreement; or (c) by derivation from general principles common to the major legal systems of the world.”³⁵ Customary international law is the result of the general and consistent practice of States based on their sense of legal obligation (*opinio juris*).³⁶ Further, at least for the Universal Declaration of Human Rights, “virtually uncontested and frequently repeated acceptance of the Declaration has led some to argue that these provisions have the force of customary law.”³⁷ Most of the rights in the Universal Declaration have crystallized into customary law, because they have been codified in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as in the regional human rights instruments, which have been almost universally ratified.³⁸

However, there is a difference between the Universal Declaration and the ICCPR. In Article 18 of the Universal Declaration, freedom of religion is composed of three elements: 1) freedom to have/adopt a religion; 2) freedom to manifest a religion; and 3) freedom to change a religion. The first two can be found in both documents but the freedom to change religion was left out the ICCPR, mainly because some Muslim States do not recognize this right.³⁹ Whereas the freedom to change religion *is* included in the ACHR,⁴⁰ it is missing from the American

³⁵ LORI F. DAMROSCH, *ET AL*, INTERNATIONAL LAW CASES AND MATERIALS 56 (West Group 2001). *Cf.* Statute of the International Court of Justice, art. 38(1), *available at* <http://www.icjci.org/icjwww/basicdocuments/basictext/basicstatute.htm> (last visited Feb. 26, 2007).

³⁶ LORI F. DAMROSCH, *ET AL*, INTERNATIONAL LAW CASES AND MATERIALS 56 (West Group 2001).

³⁷ *Id.*, at 594 (West Group 2001).

³⁸ CHRISTIAN TOMUSCHAT, HUMAN RIGHTS BETWEEN IDEALISM AND REALISM 35 (Oxford University Press 2003) (2003)

³⁹ Brice Dickson, *The United Nations and Freedom of Religion*, 44(2) ICLQ 327, 342 (1995).

⁴⁰ American Convention on Human Rights, art. 12(1) (“Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one’s religion or beliefs [...].”).



Declaration of the Rights and Duties of Man.⁴¹ Therefore, the freedom to have a religion and the freedom to manifest one's religion may be considered customary law, while the freedom to change one's religion could be said not to have attained this status.⁴²

The report continues to focus on the ECHR and the ECtHR, the ICCPR and the HRC, and briefly on the Inter-American human rights system, because of the available enforcement mechanisms under those agreements, and because this was specifically requested by the Santo Daime Church in the Netherlands.

1. THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The Convention for the Protection of Human Rights and Fundamental Freedoms was drawn up by the Council of Europe in 1950, and it entered into force in 1953.⁴³ The Convention, as a binding legal document, represented an initial step toward European collective enforcement of some of the rights contained in the Universal Declaration of Human Rights.⁴⁴

Articles 2 to 14 of the Convention set out the rights to be protected. Over the years the Council of Europe has supplemented the Convention with a number of Protocols. Some of the Protocols add further rights and liberties to those guaranteed by the Convention, while others concern the organisation of and procedure before the Convention institutions.⁴⁵ The Convention

⁴¹ American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992), *also available at* <http://www.oas.org/juridico/English/ga-Res98/Eres1591.htm> (last visited Feb. 26, 2007) (“Article III. Every person has the right freely to profess a religious faith, and to manifest and practice it both in public and private. [...] Article XXII. Every person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature.”).

⁴² A conclusion that freedom of religion constitutes customary international law may have implications also at the national level, as several – but not all – States consider customary international law part and parcel of their law, so that it may be directly invoked before their national courts. For the United States, *see, e.g.*, *The Paquete Habana*, 175 U.S. 677, 700 (1900). For New Zealand, *see, e.g.*, T. Dunworth, *Public International Law*, NZ LAW REVIEW 217, 222-226 (2000) (it has long been accepted that customary international law (as opposed to international treaty law) is automatically part of New Zealand law). For Austria, Germany, and Italy, *see, e.g.*, E. Benvenuti, *Judicial Misgivings Regarding the Application of International Law: An Analysis of Attitudes of National Courts*, 4-2 EUR. J. INT’L L. 159 (1993). *See also* Constitution of South Africa, Chapter 14, Title 1, sec. 232 (“[c]ustomary international law is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.”).

⁴³ States Parties to the European Convention on Human Rights are listed in Annex 2 to this Report.

⁴⁴ The European Court of Human Rights, *Historical Background*, *available at* <http://www.echr.coe.int/ECHR/EN/Header/The+Court/The+Court/History+of+the+Court/> (last visited Feb. 26, 2007).

⁴⁵ *Id.*



consists of three parts; the main rights and freedoms are contained in Section I (Articles 2 to 18). Section II (Articles 19 to 51) sets up the European Court of Human Rights (ECtHR) and its rules of operation. Section III contains various concluding provisions.

In its articles, the Convention appears primarily concerned with guaranteeing civil and political rights such as: the right to life, liberty and security; freedom from inhuman and or degrading treatment, slavery, servitude, and forced labour; the right to a fair trial; freedom of conscience, of speech, and of assembly. Limited exceptions in this respect are Article 1 and 2 of the First Protocol, which protect property rights and the right to education respectively.

1.1. Monitoring and Enforcement of the European Convention on Human Rights

The general scope of the ECHR is based on the principles of solidarity and subsidiarity. Solidarity refers to the obligation of the Contracting Parties to secure the rights protected under the Convention in their national legal orders, whereas subsidiarity refers to the role of the Court of Human Rights being subsidiary to the institutions of national legal system in adjudicating on claims that rights have been violated.⁴⁶

As can be concluded from Article 1 ECHR, the domestic law must give full effect to the rights guaranteed in the ECHR, but the State Parties are given a choice of the implementation method according to their own constitutional practices. Whatever method of implementation they choose, the States are obliged to ensure that their legislation is compatible with the Convention and, if need be, to make any necessary adjustment to this end. Furthermore, the States are liable for the violation of the Convention resulting not only from inconsistent national legislation but also from acts of all public authorities, at every level, including the executive and the courts.⁴⁷ Any complaint about the decisions of institutions within national legal order can be made against the State to the European Court only after all domestic remedies have to be exhausted.⁴⁸

⁴⁶JACOB & WHITE, *THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 18 (Oxford University Press 2006) (2002).

⁴⁷*Id.*, at 20.

⁴⁸ European Convention on Human Rights and Fundamental Freedoms, art. 35, para. 1, 1950, *available at* <http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/EnglishAnglais.pdf> (last visited Feb. 26, 2007).



However, an application is inadmissible if a matter has already been submitted to another procedure of international investigation or settlement.⁴⁹

The European Convention on Human Rights set up three institutions to enforce the obligations entered into by Contracting States: the European Commission of Human Rights (1954), the European Court of Human Rights (1959) and the Committee of Ministers of the Council of Europe⁵⁰. Under the “old system” of protection, complaints were first subjected to a preliminary examination by the Commission, which determined their admissibility. If the application was declared admissible, the Commission went on to investigate the merits of the complaint in order to determine whether there had been a violation of the Convention. The Commission expressed its opinion in reports. Final decisions on cases on which the Commission had reported were made by the Committee of Ministers, or the Court of Human Rights.⁵¹ However, Protocol 11 amended the Convention and replaced the existing, part-time Court and Commission with a single, full-time Court.⁵² Today, the European Court of Human Rights is the international court that interprets and applies the ECHR. It is based in Strasbourg, France and consists of a number of judges equal to that of the High Contracting Parties to the Convention.⁵³ The judges are elected by the Parliamentary Assembly from a list of three candidates nominated by each of the States Parties.⁵⁴

An individual claiming to be a victim of a violation of the Convention by a Contracting State (individual application) may lodge a complaint directly with the Court in Strasbourg.⁵⁵ States Parties can also take cases against other States Parties to the Court (State application), although this possibility is rarely used.⁵⁶

Article 46(1) ECHR ensures that the Contracting States respect the Court’s judgments in any case to which they are parties. The control of the execution is placed under the responsibility of the Committee of Ministers by virtue of Article 46(2) of the Convention. Once the final

⁴⁹ *Id.*, art. 35, para. 2 (b).

⁵⁰ This organ is composed of the Ministers of Foreign Affairs of the member States or their representatives.

⁵¹ JACOB & WHITE, *THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 9 (Oxford University Press 2006) (2002).

⁵² The European Court of Human Rights, *Historical Background*, available at <http://www.echr.coe.int/ECHR/EN/Header/The+Court/The+Court/History+of+the+Court/> (last visited Feb. 26, 2007).

⁵³ European Convention on Human Rights and Fundamental Freedoms, art. 20, 1950, available at <http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/EnglishAnglais.pdf> (last visited Feb. 26, 2007).

⁵⁴ *Id.*, art. 22.

⁵⁵ *Id.*, arts. 33 & 34.

⁵⁶ JACOB & WHITE, *THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 10 (Oxford University Press 2006) (2002).



judgment has been transmitted to the Committee of Ministers, it invites the respondent State to inform it of the steps taken to abide by the judgment. This may include paying the amounts awarded by the Court in respect of just satisfaction and, where appropriate, of the individual and general measures taken to abide by the judgment. Once it has received this information, the Committee examines it, and if it is satisfied that the State concerned has taken all the necessary measures to abide by the judgment, it adopts a resolution stating that its functions under Article 46(2) of the Convention have been exercised.⁵⁷

Until the State in question has adopted satisfactory measures, the Committee of Ministers does not adopt a final resolution striking the judgment off its list of cases, but continues to require the State to provide explanation or take necessary action. During the examination of the case, the Committee may take measures to facilitate execution of the judgment such as: (1) adopting interim resolutions, which usually contain information concerning the interim measures already taken, and set a provisional calendar for the reforms to be undertaken; (2) encouraging the respondent State to pursue certain reforms or; (3) insisting that it take the measures needed to comply with the judgment. The Committee of Ministers may exercise its influence to persuade the State concerned to comply with the Court's judgments, but in practice it very seldom needs to exert political and diplomatic pressure.⁵⁸

1.2. Article 9 of the European Convention on Human Rights

Article 9 of the European Convention on Human Rights provides a right to freedom of thought, conscience and religion:

1. 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 worship, teaching, practice and observance.

⁵⁷ Council of Europe, *Execution of Judgments of the European Court of Human Rights*, available at http://www.coe.int/t/e/human_rights/execution/01_Introduction/01_Introduction.asp#TopOfPage (last visited Feb. 26, 2007).

⁵⁸ *Id.*



2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.⁵⁹

We note the distinction made in Article 9 between the general right to freedom of religion or belief and the right to manifest that religion or belief. At its most basic level, freedom of religion or belief consists of the right to hold opinions silently, on religious or other issues, without interference by the State.⁶⁰ At this level, the right to freedom of religion or belief is absolute; it is a matter of individual conscience and therefore for a State almost impossible to breach. The right to manifest one's religion or belief, however, does not enjoy absolute protection and may be subject to limitations under the circumstances described in Article 9(2) of the Convention.

In its first case dealing with Article 9, the European Court of Human Rights underlined the importance of the freedom of thought, conscience and religion:

As enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been clearly won over the centuries, depends on it.⁶¹

The general principles emphasized by the Court in its first Article 9 decision stress the Court's view of the importance of religious freedom to the development of both individual self-definition and the promotion of democratic pluralism within society.⁶²

⁵⁹ European Convention on Human Rights and Fundamental Freedoms, art. 9, 1950, *available at* <http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/EnglishAnglais.pdf> (last visited Feb. 26, 2007).

⁶⁰ CAROLYN EVANS, *FREEDOM OF RELIGION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 68 (Oxford University Press 2001) (2001).

⁶¹ *Kokkinas v. Greece*, 14307/88 Eur. Ct. HR 20, para. 31 (1993).

⁶² CAROLYN EVANS, *FREEDOM OF RELIGION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 68 (Oxford University Press 2001) (2001).



2. THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The International Covenant on Civil and Political Rights⁶³ is a UN Treaty based on the Universal Declaration of Human Rights. It was adopted by the UN General Assembly in 1966 and entered into force on 23 March 1976.⁶⁴ The ICCPR is the most comprehensive and well-established UN treaty on civil and political rights and, through the UN Human Rights Committee, it has yielded most of the UN jurisprudence in this field.

The substantive guarantees of the ICCPR are contained in Part III. The ICCPR ensures religious freedom for the citizens of its State Parties through Article 18, which covers Freedom of Thought, Conscience, and Religion. Unlike any other provision of the Covenant, no States to this point have filed reservations regarding their observance of this right.⁶⁵

2.1. Monitoring and Enforcement of the International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights imposes duties on State Parties, but the implementation of the rights ensured by the Covenant is primarily a domestic responsibility.⁶⁶ The general obligations provision, contained in Article 2 ICCPR, requires State Parties to protect the ICCPR rights at the municipal level. International enforcement, such as the supervisory role of the HRC, is designed to be a secondary source of protection of the ICCPR's guarantees.⁶⁷ For example, individuals are to exhaust domestic remedies before they use the ICCPR individual complaints mechanism.⁶⁸ Therefore, State Parties have an international duty to ensure the guarantees contained in the ICCPR through individual domestic rights. The actual domestic rights will depend on the legal and political system of each State Party.

⁶³ The International Covenant on Civil and Political Rights, *available at* http://www.unhchr.ch/html/menu3/b/a_ccpr.htm (last visited Feb. 26, 2007).

⁶⁴ States Parties to the International Covenant on Civil and Political Rights are listed in Annex 2 to this Report.

⁶⁵ SCOTT N. CARLSON AND GREGORY GISVOLD, PRACTICAL GUIDE TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 113 (Transnational Publishers 2003).

⁶⁶ SARAH JOSEPH, ET AL, THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS CASES, MATERIALS, AND COMMENTARY 13 (Oxford University Press, 2nd ed. 2004).

⁶⁷ *Id.*

⁶⁸ If an applicant wishes to use both legal avenues (ICCPR and ECHR) s/he should always first approach the ECHR. See footnote 46.



The implementation of the ICCPR is monitored by the United Nations Human Rights Committee, a group of 18 independent experts established under Article 28 ICCPR. The HRC meets three times a year to consider periodic reports submitted by State Parties on their compliance with the Covenant. The HRC performs four essential monitoring functions for the ICCPR: “(1) it conducts dialogues and draws conclusions from States’ reports; (2) it issues General Comments which explain the meaning of ICCPR provisions; (3) it hears inter-State complaints under Article 41 and; (4) it makes decisions under the First Optional Protocol.”⁶⁹

Members of the Human Rights Committee are elected by States Parties to the ICCPR, but they do not sit as government representatives; HRC members act in their personal capacity.⁷⁰ All parties to the ICCPR are obligated to submit regular reports to the Committee on how the rights ensured by the Covenant are being implemented. States must report one year after acceding to the Covenant and then generally every four years based on Committee requests. The Committee examines the reports and makes recommendations or expresses concerns through “concluding observations.”⁷¹ The HRC asks State parties to provide information on the measures taken to address any concerns contained in the concluding observations, and if States fail to provide this follow up information within a year, the Special Rapporteur will pursue the issue.⁷² The HRC Rules of Procedure provide for majority decisions, but the Committee strives to make their recommendations by consensus, in part because these carry more authority.⁷³

In addition to the reporting procedure, the Human Rights Committee may consider complaints. Article 41 of the Covenant allows the Committee to consider inter-State complaints, complaints made by one State party alleging violations of the treaty by another State party. The International Covenant on Civil and Political Rights’ First Optional Protocol creates an individual complaint mechanism whereby individuals in Member States can submit a complaint, known as a communication, to be reviewed by the HRC.⁷⁴ Any individual who claims his or her

⁶⁹ SARAH JOSEPH, ET AL, THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS CASES, MATERIALS, AND COMMENTARY 17-18 (Oxford University Press, 2nd ed. 2004).

⁷⁰ *Id.*, at 13.

⁷¹ Office of the United Nations High Commissioner for Human Rights, Human Rights Committee, *available at* <http://www.ohchr.org/english/bodies/hrc/> (last visited Feb. 26, 2007).

⁷² The Human Rights Committee, Fact Sheet no. 15 (rev. 1), *available at* <http://www.ohchr.org/english/about/publications/docs/fs15.pdf> (last visited Feb. 26, 2007).

⁷³ SARAH JOSEPH, ET AL, THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS CASES, MATERIALS, AND COMMENTARY 17 (Oxford University Press, 2nd ed. 2004).

⁷⁴ Office of the United Nations High Commissioner for Human Rights, Human Rights Committee, *available at* <http://www.ohchr.org/english/bodies/hrc/> (last visited Feb. 26, 2007).



rights under the ICCPR have been violated may bring a communication to the Committee. Complaints may also be brought by third parties on behalf of individuals provided they have given their written consent or are incapable of giving such consent.⁷⁵

If the HRC finds a violation in a particular case, they will request that the State Party remedy the violation, pursuant to the ICCPR's Article 2, paragraph 3 obligation to provide an effective remedy for Covenant violations.⁷⁶ The recommended remedy may include specific action such as payment of compensation, the repeal or amendment of legislation, or the release of a detained person.⁷⁷ After the recommended remedy is communicated to the State Party involved, the case is taken up by the HRC's Special Rapporteur on Follow-up Views, who works with the parties to achieve a satisfactory resolution.⁷⁸ It should be noted that *legally speaking*, views adopted by the HRC under Article (5)4 Optional Protocol are not binding on State Parties. In view of the general principle *pacta sunt servanda* ("pacts must be respected"), the argument has nevertheless been made that the ratification of the Protocol by State Parties entails an obligation by those States to follow the HRC views.⁷⁹

In many cases, significant remedies have been achieved through the Optional Protocol process for victims of human rights violations. In addition, laws and policies have been changed in order to ensure that in future other individuals do not suffer the same violations. Each year, the results of these activities undertaken following a finding of a violation and the remedies provided by States parties are described in the annual report of the Committee.⁸⁰

The Committee's rulings under the First Optional Protocol have created the most complex jurisprudence in the UN international human rights law system. This complexity is in part due to the fact that, at least in the freedom of religion or belief communications, the HRC has not issued much consensus jurisprudence on Article 18 rights, instead deciding most of the Article 18 Optional Protocol cases by majority.⁸¹ It is also important to note that, unlike under the ECHR, a complaint is admissible under the ICCPR even if the matter has already been

⁷⁵ *Id.*

⁷⁶ The Human Rights Committee, Fact Sheet no. 15 (rev. 1), *available at* <http://www.ohchr.org/english/about/publications/docs/fs15.pdf> (last visited Feb. 26, 2007).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ C. TOMUSCHAT, HUMAN RIGHTS – BETWEEN IDEALISM AND REALISM 182-183 (Oxford University Press 2003).

⁸⁰ The Human Rights Committee, Fact Sheet no. 15 (rev. 1), *available at* <http://www.ohchr.org/english/about/publications/docs/fs15.pdf> (last visited Feb. 26, 2007).

⁸¹ SARAH JOSEPH, ET AL, THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS CASES, MATERIALS, AND COMMENTARY (Oxford University Press, 2nd ed. 2004).



submitted to another procedure of international investigation or settlement.⁸² Therefore, if an applicant wishes to use both the ICCPR/HRC and the ECHR/ECtHR, he/she should always first approach the ECtHR.

2.2. Article 18 of the International Covenant on Civil and Political Rights

Article 18 of the ICCPR states:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

The Committee's most comprehensive statement on the freedom of religion in Article 18 ICCPR is contained not in its communication decisions but in General Comment 22.⁸³ From time to time the HRC issues general comments on various articles of the ICCPR. General Comment 22 is the Committee's analysis and interpretation of Article 18 ICCPR. The Committee has stated that the general comments are intended to "assist States parties in fulfilling their reporting

⁸² The International Covenant on Civil and Political Rights, *available at* http://www.unhchr.ch/html/menu3/b/a_ccpr.htm (last visited Feb. 26, 2007).

⁸³ General Comment No. 22 (48), reproduced in UN doc. HRI/GEN/1/Rev.5 (1994), *available at* <http://www1.umn.edu/humanrts/gencomm/hrcom22.htm> (last visited Feb. 26, 2007).



obligations.”⁸⁴ The Committee further explained the purpose of their general comments as follows:

The purpose of these general comments is to make this experience [the HRC’s examination of State parties submitted reports] available for the benefit of all States parties in order to promote their further implementation of the Covenant; to draw their attention to insufficiencies disclosed by a large number of reports; to suggest improvements in the reporting procedure and to stimulate the activities of these States and international organizations in the promotion and protection of human rights. These comments should also be of interest to other States, especially those preparing to become parties to the Covenant and thus to strengthen the cooperation of all States in the universal promotion and protection of human rights.⁸⁵

Some of the HRC Optional Protocol cases on freedom of religion have not demonstrated as high a level of protection as General Comment 22 implies. This adds to the complexity of the HRC’s jurisprudence; but in spite of this discrepancy, General Comment 22 offers useful insight into the HRC’s interpretation of Article 18 ICCPR.

3. THE AMERICAN CONVENTION ON HUMAN RIGHTS

The Inter-American human rights system was born with the adoption of the American Declaration of the Rights and Duties of Man in April of 1948, a few months before the Universal Declaration of Human Rights.⁸⁶ A binding legal instrument for the protection of human rights, the American Convention on Human Rights (ACHR) was drafted in 1969 and entered into force in 1978.⁸⁷ This regional treaty is remarkably similar to the ECHR and ICCPR, although from the very outset it contained a general clause on economic, social and cultural rights (Article 26).⁸⁸ The rights defined in the Convention are primarily civil and political rights and are contained in

⁸⁴ The introduction to document CCPR/C/21/Rev.1 (General comments adopted by the Human Rights Committee under art. 40, para. 4, of the International Covenant on Civil and Political Rights; date: 19 May 1989), *available at* <http://www1.umn.edu/humanrts/gencomm/intro-hr.htm> (last visited Feb. 26, 2007).

⁸⁵ *Id.*

⁸⁶ CHRISTIAN TOMUSCHAT, HUMAN RIGHTS: BETWEEN IDEALISM AND REALISM 33 (Oxford University Press 2003).

⁸⁷ States Parties to the American Convention on Human Rights are listed in Annex 2 to this Report.

⁸⁸ CHRISTIAN TOMUSCHAT, HUMAN RIGHTS: BETWEEN IDEALISM AND REALISM 69 (Oxford University Press 2003).



Chapter II (Articles 3 – 25). The Convention also creates the Inter-American Court of Human Rights and defines the functions and procedures of both the Inter-American Commission on Human Rights (being an organ of the Organization of American States) and the Court. Over the years, two Additional Protocols were adopted: the Protocol of San Salvador on economic, social and cultural rights, and the Protocol to abolish the death penalty.

3.1. Monitoring and Enforcement of the American Convention on Human Rights

There are two bodies within the Inter-American system that can be used to defend the rights guaranteed in the American Convention on Human Rights: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

The Commission (IACionHR) provides recourse to individuals who have suffered violations of their rights, and it works with States to help strengthen the laws and institutions that provide human rights protections. The Inter-American Court (IACtHR) is an autonomous organ of the Organization of American States (OAS). Its mandate is found in the OAS Charter and the American Convention on Human Rights. The IACionHR represents all of the Member States of the OAS. The members of the IACionHR are elected by the General Assembly of the OAS. The IACionHR is a permanent body, which meets in ordinary and special sessions several times a year. The Commission has its headquarters in Washington, D.C.⁸⁹

The Inter-American Court of Human Rights, which is located in San José, Costa Rica, is an autonomous judicial institution whose purpose is the application and interpretation of the American Convention on Human Rights. It was established in 1979, and its objective is the application and interpretation of the American Convention on Human Rights and other treaties concerning this same matter. It is formed by jurists of the highest moral standing and widely recognized competence in the area of human rights, who are elected in an individual capacity.⁹⁰

⁸⁹ Inter-American Commission on Human Rights, *What is the IACHR?*, available at <http://www.cidh.oas.org/what.htm> (last visited Feb. 26, 2007).

⁹⁰ Inter-American Court of Human Rights, available at <http://www.corteidh.or.cr/index.cfm> (last visited Feb. 26, 2007).



Article 44 ACHR gives ground for individual complaints.⁹¹ Any person, group of persons or non-governmental organization may present a petition to the Commission alleging violations of the rights protected in the American Convention and/or the American Declaration. The petition may be presented in any of the four official languages of the OAS and may be presented on behalf of the person filing the petition or on behalf of a third person.⁹² Inter-State complaints can be lodged on the basis of Article 45 ACHR.

According to Article 46 ACHR, the petitions presented to the Commission must show that: (1) the victim has exhausted all available means of remedying the situation domestically; (2) the petition is lodged within a period of six months from the final judgment; (3) the subject of the petition is not pending before another international procedure for settlement; and (4) in case of individual complaints pursuant to Article 44 ACHR, the petition contains all data of the petitioner.⁹³

If the petition meets all these requirements, the Commission processes it on its merits. If a violation of the Convention is established, the Commission prepares a report that includes its conclusions and provides general recommendations for the State concerned. This report is not public. The Commission gives the State a period of time to resolve the situation and to comply with the recommendations. Upon the expiration of this period of time granted to the State, the Commission has two options. It may prepare a second report giving the State again a period of time to resolve the situation and to comply with the recommendations. At the end of this second period granted to the State, the Commission will usually publish its report, although the Convention allows the Commission to decide otherwise. Rather than preparing a second report for publication, the Commission may decide to take the case to the Inter-American Court. If it wishes to take the case to the Court, it must do so within three months from the date in which it transmits its initial report to the State concerned. The initial report of the Commission will be attached to the application to the Court. The Commission will appear in all proceedings before the Court.⁹⁴ Only the State Parties and the IACionHR may submit a case to the Court after the

⁹¹ American Convention on Human Rights, art. 44, *available at* <http://www.cidh.oas.org/Basicos/basic3.htm> (last visited Feb. 26, 2007).

⁹² Inter-American Commission on Human Rights, *What is the IACHR?*, *available at* <http://www.cidh.oas.org/what.htm> (last visited Feb. 26, 2007).

⁹³ American Convention on Human Rights, art. 46, *available at* <http://www.cidh.oas.org/Basicos/basic3.htm> (last visited Feb. 26, 2007).

⁹⁴ Inter-American Commission on Human Rights, *What is the IACHR?*, *available at* <http://www.cidh.oas.org/what.htm> (last visited Feb. 26, 2007).



procedures before the IACionHR have been completed. If the Court rules a right has been violated, it will order the situation to be rectified. It may award compensation to the victim for actual damage, emotional harm, and/or litigation costs.⁹⁵

There is only one provision of the American Convention, Article 65, which refers directly to the question of non-compliance by a State Party with a judgment of the Court. This states that, when making its annual report to the regular session of the OAS General Assembly, the Court shall specify the cases in which a State has not complied with a ruling. While there is no provision in the OAS dealing with the ultimate sanction of expulsion of a State from the Organization as is the case in the Statute of the Council of Europe, the Organization's practice suggests that there is a *de facto* power to exclude a government that fails to comply with its obligations under the Charter, although this is by no means firmly established by law.⁹⁶

3.2. Article 12 of the American Convention on Human Rights

Article 12 of the American Convention on Human Rights is entitled "Freedom on Conscience and Religion" and states as follows:

1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.
2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.
3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.

⁹⁵ Inter-American Court of Human Rights, Information: Rules of Procedure, *available at* <http://www.corteidh.or.cr/reglamento.cfm> (last visited Feb. 26, 2007).

⁹⁶ SCOTT DAVIDSON, *THE INTER-AMERICAN HUMAN RIGHTS SYSTEM* 225-226 (Dartmouth Publishing Company Limited 1997) (1997).



4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.⁹⁷

Article 12 is primarily concerned with the rights associated with the holding and exercise of a person's religious beliefs. Article 12(1) provides that everyone has the right to freedom of conscience and of religion, and Articles 12(2) and (3) are concerned with the balance between freedom of religion and the protection of individuals or society from practices which may be deemed harmful.

In one case before the IACHR the Commission concluded that:

(...) Recognition of freedom of conscience is based on recognition of the human being as a rational and autonomous being. The protection of the right to this freedom is the basis of the pluralism necessary for harmonious coexistence in a democratic society, which, as any kind of society, is made up of individuals of different convictions and beliefs.⁹⁸

In the judgment to the same case, the Inter-American Court of Human Rights specified that the right to freedom of conscience and religion is one of the foundations of a democratic society and that “[i]n its religious dimension, it constitutes a far-reaching element in the protection of the convictions of those who profess a religion and in their way of life.”⁹⁹

⁹⁷ American Convention on Human Rights, art. 12, *available at* <http://www1.umn.edu/humanrts/oasinstr/zoas3con.htm> (last visited Feb. 26, 2007)

⁹⁸ "The Last Temptation of Christ" Case, Judgment of February 5, 2001, para. 74(b), Inter-Am Ct. H.R. (Ser. C) No. 73 (2001).

⁹⁹ *Id.*, at para. 79.



III. DEFINING RELIGION OR BELIEF

1. THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The European Convention on Human Rights does not provide a definition of religion or belief. However, nor does any other human rights treaty, since the issues have proved controversial and it has been difficult to achieve consensus as to the meaning of the terms.¹⁰⁰ Because there are no formal definitions provided by the European Court of Human Rights, one must rely on the general approach of the Court in interpreting the Convention, the text of Article 9 ECHR, and case law on this Article.

As a preliminary matter, the Court has held that the customary laws of interpretation apply to the European Convention on Human Rights. This customary law is reflected in Articles 31-33 of the Vienna Convention on the Law of Treaties.¹⁰¹ Based on these rules, the Court will interpret the words of the European Convention in good faith and in light of the Convention's objects and purposes, and be prepared to use the initial drafts of the Convention as a guide.¹⁰²

The text of Article 9 ECHR helps demonstrate what constitutes a "religion or belief." The structure of the Article suggests that the terms "religion or belief" are subsets of the broader category "thought and conscience." The first paragraph of Article 9(1) protects "the right to freedom of thought, conscience and religion" without mentioning belief, but next includes also the right to change "religion or belief." The second paragraph secures the right of a person to "manifest his religion or belief, in worship, teaching, practice and observance" without referring to thought and conscience. This formulation suggests that "thought and conscience" should be distinct in some way from "religion or belief," as there is an obligation, which may not be derogated from, to protect the right to freedom of thought and conscience, but there is no right to manifest them.¹⁰³ Although a distinction between these two ideas seems to be legally important, the text tells no more than that such a distinction exists. However, because it can be assumed that beliefs are a subset of the broader category of thought and conscience, the Court would have to

¹⁰⁰ CAROLYN EVANS, FREEDOM OF RELIGION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS 51 (Oxford University Press 2001) (2001).

¹⁰¹ See Vienna Convention on the Law of Treaties, arts. 31-33, available at http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (last visited Feb. 26, 2007).

¹⁰² CAROLYN EVANS, FREEDOM OF RELIGION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS 51-52 (Oxford University Press 2001) (2001).

¹⁰³ *Id.*, at 52. Manifestation of thought and conscience may still be protected through ECHR, art. 10, concerning freedom of expression.



consider the scope of both ideas when dealing with cases under Article 9. It should not, for example, define the terms religion or belief so widely that they also incorporate all that would be more appropriately described as thought or conscience.¹⁰⁴

When commenting on Article 9, Malcolm Evans presented this issue in following way:

Everyone has the right to freedom of thought, conscience and religion under Article 9. Article 9 also protects manifestation of religion or belief. Expressions of thought and conscience are protected by Article 10, as would be any form of expression of religion or belief which was not a “manifestation” for the purpose of Article 9. In the interest of clarity, it is best to reserve the term “manifestation” to describe a particular form of expression which is only relevant to “religion or belief”. This means that whereas a religion or belief can be both expressed and manifested, a pattern of “thought” or “conscience” can only be “expressed”. Therefore, there can be no question of manifesting or “actualizing” thought or conscience under Article 9. Expressions of thought or conscience are the exclusive preserve of Article 10.¹⁰⁵

As was stated above, neither the Commission nor the Court has defined a “religion or belief.” However, in a few cases under Article 9 ECHR, the Court did help set the Article’s boundaries by determining that some alleged religions or beliefs were not within the scope of 9(1). In X v. Germany, which concerned a man who did not want to be buried in a Christian cemetery and who wished instead to be cremated and have his ashes spread over his land, the Commission admitted that the desired action had a “strong personal motivation,” but nevertheless was not protected under Article 9 because his wish did not express some “coherent view on fundamental problems.”¹⁰⁶ This indicates that “some basic level of intellectual or moral coherence is required before something can be considered a religion or belief: vague notions are not enough.”¹⁰⁷

This line of reasoning was reiterated by Court in Campbell and Cossans v. the United Kingdom.¹⁰⁸ In that case the Court analyzed the term “conviction:”

¹⁰⁴ *Id.*, at 52-53.

¹⁰⁵ MALCOLM D. EVANS, RELIGIOUS LIBERTY AND INTERNATIONAL LAW IN EUROPE 285 (Cambridge University Press 1997) (1997).

¹⁰⁶ X v. Germany, 8741/79, 24 Eur. Comm’n H.R. Dec. & Rep. 137 (1981)

¹⁰⁷ CAROLYN EVANS, FREEDOM OF RELIGION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS 54 (Oxford University Press 2001) (2001).

¹⁰⁸ Campbell and Cosans v. United Kingdom, 7511/76; 7743/76 Eur. Ct. H.R. 1 (1982).



In its ordinary meaning the word “convictions”, taken on its own, is not synonymous with the words “opinions” and “ideas”, such as are utilized in Article 10 of the Convention, which guarantees freedom of expression; it is more akin to the term “beliefs” (in the French text: “convictions”) appearing in Article 9 – which guarantees freedom of thought, conscience and religion – and denotes views that attain a certain level of cogency, seriousness, cohesion and importance.¹⁰⁹

Mere ideas or opinions will not constitute a belief; however, the distinction can frequently be difficult to draw since the term belief is inherently subjective.¹¹⁰ In Pretty v. United Kingdom¹¹¹ the European Court of Human Rights stated that not all opinions or convictions constitute beliefs protected by Article 9(1) ECHR; they also must involve a form of manifestation of a religion or belief, through worship, teaching, practice or observance as described in Article 9(2).¹¹²

In spite of the limitations that do exist, the Commission and the ECtHR have adopted a broad approach to the recognition of religions and to what constitutes a “religion or belief.” They have recognized mainstream religions like various Christian denominations, Judaism,¹¹³ Islam,¹¹⁴ Hinduism, Sikhism,¹¹⁵ and Buddhism,¹¹⁶ as well as less mainstream belief systems as religions, including atheism,¹¹⁷ Druidism, the Divine Light Zentrum, and the Church of Scientology.¹¹⁸ According to the European Convention case law, the term “religion or belief” includes also pacifism, Communism, pro-life anti-abortion beliefs, and even beliefs of agnostics, skeptics and the unconcerned.¹¹⁹ The addition of the term “belief” to religion in Article 9 ECHR

¹⁰⁹ Campbell and Cosans v. United Kingdom, 7511/76; 7743/76 Eur. Ct. H.R. 1, para. 36 (1982).

¹¹⁰ JACOBS AND WHITE, THE EUROPEAN CONVENTION ON HUMAN RIGHTS 302 (Oxford University Press 2006) (2002).

¹¹¹ Pretty v. United Kingdom, 2346/02 Eur. Ct. H.R. 427, para. 82 (2002).

¹¹² Pretty v. United Kingdom, 2346/02 Eur. Ct. H.R. 427, para. 82 (2002).

¹¹³ *See, e.g.*, Cha'are Shalom ve Tsedek v. France, 27417/95 Eur. Ct. H.R. 351 (2000).

¹¹⁴ *See, e.g.*, Leyla Sahin v. Turkey, 44774/98 Eur. Ct. H.R. 299 (2005).

¹¹⁵ *See, e.g.*, Chahal v. The United Kingdom, 70/1995/576/662 Eur. Ct. H.R. (1996).

¹¹⁶ *See, e.g.*, Moscow Branch of the Salvation Army v. Russia, 72881/01 Eur. Ct. H.R. (2006).

¹¹⁷ *See, e.g.*, I.A. v. Turkey, 42571/98 Eur. Ct. H.R. (2005).

¹¹⁸ JACOBS AND WHITE, THE EUROPEAN CONVENTION ON HUMAN RIGHTS 303 (Oxford University Press 2006) (2002).

¹¹⁹ PAUL M. TAYLOR, FREEDOM OF RELIGION: UN AND EUROPEAN HUMAN RIGHTS LAW AND PRACTICE 207-08 (Cambridge University Press 2005).



suggests that marginal cases, such as so-called “New Religions,” will likely be included within the scope of “religion or belief.”¹²⁰

When one views the general approach of the ECHR in interpreting the European Convention, the text of Article 9, and the case law on this Article together, some fundamental principles emerge. We know that “religion or belief” is not as broad as “thought or conscience.” Further, mere ideas or opinions will not constitute a “religion or belief” without some “cogency, seriousness, cohesion and importance.”¹²¹ Finally, in spite of the limits that do exist, “religion or belief” as used in the European Convention and interpreted by the ECtHR are broad terms and “religion” includes more established religions as well as new ones.

2. THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The Human Rights Committee, like the ECHR, has to this point decided not to explicitly define “religion or belief.” Because the HRC has not defined these terms, it has also not had to struggle with many of the factors that would be relevant to those definitions, such as number of adherents, truth or falsity of the relevant belief, and historical foundation of the relevant movement.¹²² As noted above, the Committee’s most comprehensive statement on Article 18 ICCPR and the freedom of religion is contained in General Comment 22. The HRC’s view of a religion or belief under the ICCPR is discussed in paragraphs one, two and three of General Comment 22. They state:

1. The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18(1) is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others... The fundamental character of these freedoms is also reflected in the fact that this provision cannot be

¹²⁰ CAROLYN EVANS, FREEDOM OF RELIGION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS 64 (Oxford University Press 2001).

¹²¹ Campbell and Cosans v. United Kingdom, 7511/76; 7743/76 Eur. Ct. H.R. 1, para. 36 (1982).

¹²² SARAH JOSEPH, ET AL, THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS CASES, MATERIALS, AND COMMENTARY 502 (Oxford University Press, 2nd ed. 2004). *See also, generally*, W. Sdurski, *On Legal Definitions of Religion*, 63 AUSTRALIAN L. J. 834 (1989). “Regarding the ‘historical basis’ for religions, the HRC has recognized that ‘newly established’ movements can constitute religions (General Comment No. 22 (48) para. 2, reproduced in UN doc. HRI/GEN/1/Rev.5 (1994), available at <http://www1.umn.edu/humanrts/gencomm/hrcom22.htm> (last visited Feb. 26, 2007).



derogated from, even in time of public emergency, as stated in article 4(2) of the Covenant.

2. Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms ‘belief’ and ‘religion’ are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religions or belief or any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.

3. Article 18 distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It 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. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19(1). In accordance with articles 18(2) and 17, no one can be compelled to reveal his thought or adherence to a religion or belief.¹²³

Although the Committee interprets “religion or belief” broadly, like the ECHR, its definitions are not without limits. This was illustrated in M.A.B., W.A.T. and J-A.Y.T. v. Canada, a 1993 communication.¹²⁴ The authors in this communication were leading members of the “Assembly of the Church of the Universe,” whose beliefs and practices involved the “care, cultivation, possession, distribution, maintenance, integrity and worship of the Sacrament of the Church,” which the authors referred to as the “God’s tree of life,” but is commonly known as *cannabis sativa* or marijuana.¹²⁵ Because the Church’ use of marijuana violated the Canadian Narcotic Control Act, several of its members came into conflict with Canadian authorities.

On 17 October 1990, a constable of the Royal Canadian Mounted Police entered the Church’s premises in Hamilton, Ontario, under the pretext of wishing to join the Church and to

¹²³ General Comment No. 22 (48), reproduced in UN doc. HRI/GEN/1/Rev.5 (1994), available at <http://www1.umn.edu/humanrts/gencomm/hrcom22.htm> (last visited Feb. 26, 2007).

¹²⁴ M.A.B., W.A.T. and J.-A.Y.T. v. Canada (Communication No. 570/1993), Views adopted 8 April 1994, Report of the Human Rights Committee, Vol. II, GAOR, Forty-ninth Session, Suppl. No. 40 (A/49/40), pp. 368-70.

¹²⁵ SARAH JOSEPH, ET AL, THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS CASES, MATERIALS, AND COMMENTARY 503 (Oxford University Press, 2nd ed. 2004).



purchase the “Sacrament.” She was offered a few grams of marijuana, which led to the arrest and detention of M.A.B, W.A.T and J.-A.Y.T. They brought a complaint before the HRC alleging, *inter alia*, that their right to freedom of religion had been violated.¹²⁶

The Committee declared the communication inadmissible and dismissed the complaint, finding that the facts submitted did not raise *prima facie* issues under any provision of the Covenant and stating that “a belief consisting primarily or exclusively in the worship and distribution of a narcotic drug cannot conceivably be brought within the scope of article 18 of the Covenant.”¹²⁷

While it may be difficult to extract general principles from this decision, the Committee makes it clear that the scope of religion or belief is not without limits. It imposed an element of objectivity by showing that, in the eyes of the HRC, a situation does not automatically fall within a “religion or belief” through simple assertion, as when the words “church” or “sacrament” are used by a group.¹²⁸ When we compare this decision with relevant sections of General Comment 22, it is clear that while “the right to freedom of thought, conscience and religion in article 18(1) is far-reaching and profound;”¹²⁹ and “the terms ‘belief’ and ‘religion’ are to be broadly construed,”¹³⁰ the protections afforded by Article 18 ICCPR are not without boundaries and will still not encompass “a belief consisting primarily or exclusively in the worship and distribution of a narcotic drug.”¹³¹

3. THE AMERICAN CONVENTION ON HUMAN RIGHTS

The Inter-American Commission and the Inter-American Court of Human Rights have not heard many cases involving a violation of Article 12 ACHR. The initial research conducted did not prove any essential case law providing a definition of a religion or belief under the

¹²⁶ *Id.*

¹²⁷ The HRC continued, “nor can arrest for possession and distribution of a narcotic drug conceivably come within the scope of article 9, paragraph 1, of the Covenant (freedom from arbitrary arrest and detention).” M.A.B., W.A.T. and J.-A.Y.T. v. Canada (Communication No. 570/1993), Views adopted 8 April 1994, Report of the Human Rights Committee, Vol. II, GAOR, Forty-ninth Session, Suppl. No. 40 (A/49/40), pp. 368-70.

¹²⁸ Human Rights and Equal Opportunity Commission (HREOC), *Freedom of Religion and Belief*, available at http://www.hreoc.gov.au/pdf/human_rights/religion/article_18_religious_freedom.pdf (last visited Feb. 26, 2007).

¹²⁹ General Comment No. 22 (48), reproduced in UN doc. HRI/GEN/1/Rev.5 (1994), available at <http://www1.umn.edu/humanrts/gencomm/hrcom22.htm> (last visited Feb. 26, 2007).

¹³⁰ *Id.*

¹³¹ M.A.B., W.A.T. and J.-A.Y.T. v. Canada (Communication No. 570/1993), Views adopted 8 April 1994, Report of the Human Rights Committee, Vol. II, GAOR, Forty-ninth Session, Suppl. No. 40 (A/49/40), pp. 368-70.



Convention. More research on this issue would be recommended. However, it is worthy to notice that the Inter-American Court often refers in its judgments to the jurisprudence of other international or regional human rights bodies. It is therefore possibly that in a case concerning defining of a religion or belief the Inter-American Court would wish to rely on the conclusions of the ECtHR or the HRC.

4. DOES THE SANTO DAIME QUALIFY AS A RELIGION?

As noted above, neither the European Convention nor the ICCPR or ACHR define “religion,” and the relevant judicial bodies enforcing those documents have not chosen to define the term. In spite of the lack of a formal definition or test, there are a number of principles that can be taken from the ECHR, the ICCPR, the ACHR and relevant decisions by their monitoring bodies, as there is much similarity between the systems. Both the Human Rights Committee and the European Court of Human Rights have adopted a broad approach to the topic by recognizing both mainstream religions and more unconventional religions,¹³² without the institutional characteristics or practices analogous to those of traditional religions,¹³³ and by protecting theistic, non-theistic and atheistic beliefs.¹³⁴ The Inter-American Court of Human Rights, as noted above, has stated the right to freedom of religion was “one of the foundations of democratic society,”¹³⁵ and as a “far-reaching element in the protection of the convictions of those who profess a religion and in their way of life.”¹³⁶

However this approach is not without limits. Although the determination will be made on a case-by-case basis in light of the particular facts at issue, to be considered a “religion or belief” some basic level of “intellectual or moral coherence”¹³⁷ or a “certain level of cogency, seriousness, cohesion and importance”¹³⁸ is required. Some form of manifestation helps

¹³² PAUL M. TAYLOR, FREEDOM OF RELIGION. UN AND EUROPEAN HUMAN RIGHTS LAW AND PRACTICE 207-08 (Cambridge University Press 2005) (2005).

¹³³ General Comment No. 22 (48), reproduced in UN doc. HRI/GEN/1/Rev.5 (1994), *available at* <http://www1.umn.edu/humanrts/gencomm/hrcom22.htm> (last visited Feb. 26, 2007) .

¹³⁴ *Id.*

¹³⁵ “The Last Temptation of Christ” Case, Judgment of February 5, 2001, Inter-Am Ct. H.R. (Ser. C) No. 73 (2001).

¹³⁶ *Id.*

¹³⁷ CAROLYN EVANS, FREEDOM OF RELIGION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS 54 (Oxford University Press 2001) (2001).

¹³⁸ *Campbell and Cosans v. United Kingdom*, 7511/76; 7743/76 Eur. Ct. H.R. 1, para. 36 (1982).



demonstrate this and may also be required.¹³⁹ A situation does not automatically fall within a “religion or belief” through simple assertion, as when the words “church” or “sacrament” are used by a group¹⁴⁰ and “a belief consisting primarily or exclusively in the worship and distribution of a narcotic drug”¹⁴¹ will not be protected.

In light of these principles, the Santo Daime should be considered a “religion” under the ECHR and the ICCPR as well as the ACHR. Although it is not a mainstream religion, the ECtHR and the HRC have shown themselves willing to recognize “new” religions. In his expert report¹⁴² referred to in the Dutch ruling on the Santo Daime Church (2001), Professor Dr. Charles Kaplan describes the Santo Daime as a “new” religion.¹⁴³ Furthermore, the Santo Daime has qualities that indicate its compliance with the requirements the ECtHR and the HRC look for when classifying a group as a religion. Both the ECtHR and the HRC require more than simple assertion. They require “a certain level of cogency, seriousness, cohesion and importance.”¹⁴⁴ The Brazilian anthropologist Edward J. Baptista das Neves MacRae, who made an extensive analysis and description of the Santo Daime rituals, said it was very clear the Santo Daime church is a bona fide and serious religious movement:

The Church doctrine can be roughly described as Catholicism modified by indigenous and African influences. The hymns of the Church are conceived of as having been received by Mestre Irineu from God and are remarkably similar to the hymns sung in a Catholic Church. They reflect a belief in Jesus Christ as the Savior and speak to all of the traditional Catholic values and social standards. [...] The Church rituals, which are invariably accompanied by the singing of hymns containing a strong Catholic imagery, frequently involve communal dancing.¹⁴⁵

¹³⁹ *Pretty v. United Kingdom*, 2346/02 Eur. Ct. H.R. 427, para. 82 (2002).

¹⁴⁰ Human Rights and Equal Opportunity Commission (HREOC), *Freedom of Religion and Belief*, available at http://www.hreoc.gov.au/pdf/human_rights/religion/article_18_religious_freedom.pdf (last visited Feb. 26, 2007).

¹⁴¹ *M.A.B., W.A.T. and J.-A.Y.T. v. Canada* (Communication No. 570/1993), Views adopted 8 April 1994, Report of the Human Rights Committee, Vol. II, GAOR, Forty-ninth Session, Suppl. No. 40 (A/49/40), pp. 368-70.

¹⁴² Reports 1, 3 and 4 have been prepared on the request of Adele van der Plas, lawyer and legal counsel of the Santo Daime Churches in the Netherlands. Reports 2 and 5 have been prepared on the request of the Dutch “Rechter Commissarjs in Strafzaken van de Arrondissementsrechtbank Amsterdam” in the case *Mrs. Fijnman and Mr. Bogers*.

¹⁴³ Prof. Dr. Charles D. Kaplan, Expert Report Nr. 1, Annex of this report.

¹⁴⁴ *Campbell and Cosans v. United Kingdom*, 7511/76; 7743/76 Eur. Ct. H.R. 1, para. 36 (1982).

¹⁴⁵ Expert report Dr. E.J. MacRae, Expert Report Nr. 3, Annex of this report.



He went on to point out that “[i]n a country like Brazil it is very significant that several important Catholic leaders recognize the Santo Daime church and it has spoken eloquently about its service to environmental and humanitarian issues and is and is considered a full partner in inter-religious organizations and conferences in Brazil.”¹⁴⁶

Both theologian Dr. Kranenborg of the Free University in Amsterdam and Dr. Labuschagne, a lawyer and philosopher of law at the University of Leiden, analyzed the history of the Santo Daime from 1910 to the year 2001 and both concluded that the group was a serious religious movement. Labuschagne, whose PhD thesis was titled ‘Freedom of religion and non-established religions,’ described the Santo Daime as “a serious and bona fide religion.”¹⁴⁷

Importantly, in the Dutch District Court Judgment from 21 May 2001, the Court concluded that “on the basis of (...) expert’s reports and the Articles of Association, the Court is of the opinion that the Amsterdam Church CEFLU Cristi-Céu da Santa Maria must in fact be regarded as a church community.”¹⁴⁸ The Court also stated that the “doctrine professed must be regarded as a religious creed...”¹⁴⁹ Based on these expert opinions, court rulings and the general characteristics of the group, as well as the fact that the use of Ayahuasca is a religious ritual for the group and not the sole purpose of the Santo Daime Church, the Santo Daime Church should be recognized as a “religion or belief” under Article 9 of the ECHR, Article 18 of the ICCPR, and Article 12 of the ACHR.

¹⁴⁶ Expert report Dr. E.J. MacRae, Expert Report Nr. 3, Annex of this report.

¹⁴⁷ Expert report Dr. Kranenborg, Expert Report Nr. 6, Annex of this report.

¹⁴⁸ Geerdina Johanna Cornelia Fijneman, The District Court of Amsterdam, Case number 13/067455-99, 21 May 2001, *available at* <http://www.drugtext.org/library/legal/ayahuascaverdict.htm>.

¹⁴⁹ *Id.*



IV. MANIFESTATION OF RELIGION OR BELIEF

1. THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Freedom of religion includes freedom to manifest one's religion or belief. In the Kokkinakis case,¹⁵⁰ the European Court of Human Rights held: "While religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to manifest one's religion. Bearing witness in words and deeds is bound up with the existence of religious convictions." Further, according to Article 9 ECHR, freedom to manifest one's religion is not only exercisable in community with others, "in public" and within the circle of those whose faith one shares; it can also be asserted "alone" and "in private".

Four types of manifestation are listed in Article 9(2) ECHR, namely: worship, teaching, practice and observance. The Commission and the Court have adopted relatively narrow definitions of each of the terms, which makes it difficult for applicants in most cases to demonstrate that their right to manifest their religion has been restricted.¹⁵¹

Whether a religion or belief is practiced "alone or in community with others" and in "public or private" is left for the believer to decide. In the case X v. the United Kingdom, the Commission stated that the right to manifest one's religion in community with others

has always been regarded as an essential part of freedom of religion and finds that the two alternatives 'either alone or in community of others' in Article 9(1) cannot be considered as mutually exclusive, or as leaving a choice to the authorities, but only as recognizing that religion may be practiced in either form¹⁵²

However, when it comes to justifying limitations on free practice of religion or belief, this distinction may prove relevant. For example, it would be far more difficult for the State to show that it was necessary to prevent someone's private, solitary worship than to explain the need to put restrictions on the right of a large group to worship in public.¹⁵³

¹⁵⁰ Kokkinas v. Greece, 14307/88 Eur. Ct. H.R. 20, para. 31 (1993).

¹⁵¹ CAROLYN EVANS, FREEDOM OF RELIGION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS 103 (Oxford University Press 2001) (2001).

¹⁵² X v. the United Kingdom, 8160/78, 22 Eur. Comm'n H.R. Dec. & Rep. 27, 33 (1981)

¹⁵³ CAROLYN EVANS, FREEDOM OF RELIGION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS 104 (Oxford University Press 2001) (2001).



Another question that may arise under the wording of Article 9(1) ECHR [Hege: Article 9(2)?] is whether the list of the manifestation is inclusive or exclusive. The Court tends to interpret the list as exclusive, and so far has been reluctant to extend Article 9 to allow for the creation of “new rights” that are not explicitly mentioned in the Convention.¹⁵⁴

Among the four forms of manifestation of religion or belief, the term “practice” has proved to be the most difficult to define. The leading case in this respect is Arrowsmith v. the United Kingdom, which originated in the Applicant’s imprisonment for distributing pacifist pamphlets among British soldiers departing for Northern Ireland.¹⁵⁵ In this case the Commission developed a test to distinguish a “practice” which was a manifestation of a religion or belief from the wide range of actions which were merely inspired or motivated by religion or belief.¹⁵⁶ The Commission held that a very direct link is needed between the belief and the action if the action is to be regarded a “practice” under Article 9 ECHR. Although pacifism as a philosophy of life is a belief within the meaning of Article 9, an act motivated by this belief is not automatically protected by this provision: distributing leaflets among soldiers and asking them to desert is not, as opposed to general statements advocating non-violence and pacifism, a normal and recognized manifestation of a belief.¹⁵⁷ The actions of individuals must actually express the belief concerned to be protected under this Article. The attitude in question in this case was only influenced by pacifism, but because it was directed towards a particular group of people and with a particular aim it did not fall within the scope of Article 9.¹⁵⁸

This approach came to be interpreted later as a sort of “necessity” test and was then applied in later judgments on the other types of manifestation of religion or belief. It requires that applicants show they were required to act in a certain way because of their religion or belief. The Court determines the issue “objectively,” and it does not seem to be prepared to take the applicants’ claims about their religion or belief as particularly relevant to this determination.¹⁵⁹ In this situation, one objective form of evidence would be expert evidence from leaders or reference to the rules or dogma of religious or belief-based groups. As one commentator notes,

¹⁵⁴ *Id.*, at 106.

¹⁵⁵ Arrowsmith v. the United Kingdom, 7050/75, 19 Eur. Comm’n H.R. Dec. & Rep. 5 (1978).

¹⁵⁶ *Id.*

¹⁵⁷ JEAN-FRANÇOIS RENUCCI, HUMAN RIGHTS FILES NO. 20. ARTICLE 9 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS 28 (Council of Europe Publishing 2005) (2005).

¹⁵⁸ *Id.*, at 28-29.

¹⁵⁹ CAROLYN EVANS, FREEDOM OF RELIGION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS 115 (Oxford University Press 2001) (2001).



the Court seems to be willing to refer to such material occasionally; however, it has not yet established any principle as to the use of expert evidence on religious matters.¹⁶⁰ Besides, in case of non-hierarchical religions it may be difficult to establish who is qualified to give an expert opinion.¹⁶¹

The Convention case law provides further clarification of what actions constitute the manifestations of religion or belief and therefore enjoy protection of Article 9 ECHR. For example, rituals in connection with the religious belief are protected by Article 9. In the case Cha'are Shalom Ve Tsedek v. France, the specific slaughter of animals was considered a rite and a form of manifestation of a religion. The Court held that:

It is not contested that ritual slaughter [...] constitutes a rite [...] whose purpose is to provide Jews with meat from animals slaughtered in accordance with religious prescriptions, which is an essential aspect of practice of the Jewish religion. [...] It follows that the applicant association can rely on Article 9 of the Convention with regard to the French' authorities refusal to approve it, since ritual slaughter must be considered to be covered by a right guaranteed by the Convention, namely the right to manifest one's religion in observance, within the meaning of Article 9.¹⁶²

2. THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

“Manifestation” of one’s religion can be termed the “active” component of one’s religion, as opposed to the “passive” component, which consists of mere adherence to certain beliefs. “Manifestation” of religion includes worship, teaching of particular beliefs, and observance of specified canons, conduct or religious rituals. The freedom to manifest religion or belief is not absolute and may be limited when it interferes with the rights of others or poses a danger to society.¹⁶³ General Comment 22 helps explain the HRC’s view of the manifestation of religion or belief. It states:

¹⁶⁰ *Id.*, at 121-22.

¹⁶¹ *Id.*, at 122.

¹⁶² Cha'are Shalom Ve Tsedek v. France, 27417/95 Eur. Ct. H.R. 351, paras. 27-28 (2000).

¹⁶³ SARAH JOSEPH, ET AL, THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS CASES, MATERIALS, AND COMMENTARY 506 (Oxford University Press, 2nd ed. 2004).



4. The freedom to manifest religion or belief may be exercised ‘either individually or in community with others and in public or private.’ The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group.¹⁶⁴

The HRC’s view of the manifestation of religion or belief has been further explained by HRC communications. In Boodoo v. Trinidad and Tobago (721/1996) a violation of Article 18(1) ICCPR was found regarding the limitations of the author’s ability to manifest his Islamic faith in prison.¹⁶⁵ The author in this case had been forbidden from wearing a beard and from worshipping at religious services, and prison officials had taken his prayer books from him. The Committee held that there had been a violation of Article 18 ICCPR, and reaffirmed that “the freedom to manifest religion of belief in worship, observance, practice and teaching encompasses a broad range of acts and that the concept of worship extends to ritual and ceremonial acts giving expression to belief, as well as various practices integrals to such acts.”¹⁶⁶

Based on this case and General Comment 22, we can conclude that the freedom to manifest religion or belief encompasses a broad range of acts.¹⁶⁷ However, there are limitations placed on the manifestation of a religion or belief. Those limitations will be discussed below.

¹⁶⁴ General Comment No. 22 (48), reproduced in UN doc. HRI/GEN/1/Rev.5 (1994), available at <http://www1.umn.edu/humanrts/gencomm/hrcom22.htm> (last visited Feb. 26, 2007).

¹⁶⁵ Mr. Clement Boodoo v. Trinidad and Tobago, Communication No. 721/1996, U.N. Doc. CCPR/C/74/D/721/1996 (2002), available at <http://www1.umn.edu/humanrts/undocs/721-1996.html> (last visited March 7, 2007).

¹⁶⁶ *Id.*, at para. 6.6. Cf. General Comment No. 22 (48), reproduced in UN doc. HRI/GEN/1/Rev.5 (1994), available at <http://www1.umn.edu/humanrts/gencomm/hrcom22.htm> (last visited Feb. 26, 2007).

¹⁶⁷ *Id.*; General Comment No. 22 (48), reproduced in UN doc. HRI/GEN/1/Rev.5 (1994), available at <http://www1.umn.edu/humanrts/gencomm/hrcom22.htm> (last visited Feb. 26, 2007).



3. THE AMERICAN CONVENTION ON HUMAN RIGHTS

Article 12 of the American Convention does not list any types of a manifestation of a religion or belief as the ECHR and the ICCPR do. However, in a number of cases reviewed by the Commission references to the forms of religious manifestation can be found. Most of the cases concern the Jehovah's Witnesses who had been subject to restrictions and many of their members had been subjected to criminal penalties, because some of their beliefs and the practice and manifestation of those beliefs were incompatible with the laws of a number of Latin American States. "In particular, the Jehovah's Witnesses' unwillingness to swear oaths of allegiance, to recognize the state and its symbols or to participate in military service on the basis of their religious beliefs led to their prosecution and imprisonment."¹⁶⁸ More research is recommended with respect to the approach to this issue of the Inter-American system of human rights.

4. IS THE USE OF AYAHUASCA A MANIFESTATION OF A RELIGION?

As already stated, religious freedom implies the freedom to manifest one's religion in word and deeds. Article 9(2) ECHR names four types of manifestation: worship, teaching, practice and observance, and the European Court of Human Rights seems to be treating this list as exclusive. The use of psychoactive substances like Ayahuasca is not listed in the Article. For that reason, the question arises whether drinking the Ayahuasca tea may be said to fall within the scope of the term "practice." The European Court of Human Rights and the European Commission on Human Rights and have defined the term "practice" rather narrowly.¹⁶⁹

The Court often applies the so-called *Arrowsmith* test.¹⁷⁰ According to this test, as described in section 1 of this Part of the Report, an action can be recognized as a religious practice only if there is a very direct link between the action and the religion or belief so that the action actually expresses the belief concerned.¹⁷¹ That enables one to distinguish manifestations

¹⁶⁸ SCOTT DAVIDSON, *THE INTER-AMERICAN HUMAN RIGHTS SYSTEM* 309 (Dartmouth Publishing Company Limited 1997) (1997).

¹⁶⁹ CAROLYN EVANS, *FREEDOM OF RELIGION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 103 (Oxford University Press 2001) (2001).

¹⁷⁰ JEAN-FRANÇOIS RENUCCI, *HUMAN RIGHTS FILES NO. 20. ARTICLE 9 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 28 (Council of Europe Publishing 2005) (2005).

¹⁷¹ *Id.*, at 28-29.



of the religion from actions merely inspired by or motivated by a religion or belief. In the case of Sante Daime, it would be important to prove that the use of the tea is an integral element of the religious practice and that it is actually required by the religion. The drinking of Ayahuasca expresses the belief of Santo Daime. It is always exercised in the community with the others and strengthens the social ties among the believers. The European Court is expected to determine this issue objectively so it may appeal to the expert opinions on the rules and dogma of the religion at stake.

Such expert evidence was presented before the Dutch Court during proceedings in 2001.¹⁷² Theologian Dr. Kranenborg explained how important the use of psychoactive substances was in different religions less well known than Judaism, Christianity and Islam. He concluded that the use of Ayahuasca as holy sacrament is absolutely essential for the Santo Daime religion.¹⁷³ Based on this evidence, the Dutch Court held that “the use of the tea Ayahuasca, being the most important sacrament in the worship of the Santo Daime Church, must be regarded as an essential part of the religious life of the community.”¹⁷⁴

In proceedings before the European Court, the Santo Daime Church would be expected to provide convincing evidence that the use of Ayahuasca is a sacrament and one of the basic tenets of the religion, and that it should therefore be regarded as a form of religious manifestation protected by Article 9(2) of the Convention.

The list of the forms of manifestation of a religion or belief in Article 18(1) of the ICCPR is identical to the one in Article 9 of the ECHR; however the Human Rights Committee’s approach seems to be more encompassing than the one presented by the European Court. According to General Comment 22 on Article 18 ICCPR, the concept of manifestation of a religion or belief includes ritual and ceremonial acts giving direct expression to belief, as well as various practices and customs integral to such acts. In the Santo Daime case, the Santo Daime would be expected to prove that the use of the tea is an integral element of the religion and that the drinking of Ayahuasca is a ritual and ceremonial act directly expressing the belief. As the direct expression of their belief, it would therefore fall within the ambit of Article 18 of ICCPR and should be recognized as a form of manifestation of a religion or belief.

¹⁷² Geerdina Johanna Cornelia Fijneman, The District Court of Amsterdam, Case number 13/067455-99, 21 May 2001, *available at* <http://www.drugtext.org/library/legal/ayahuascaverdict.htm> (last visited Feb. 26, 2007).

¹⁷³ Dr. Kranenborg, Expert Report Nr. 6, Annex to this paper.

¹⁷⁴ Geerdina Johanna Cornelia Fijneman, The District Court of Amsterdam, Case number 13/067455-99, 21 May 2001, *available at* <http://www.drugtext.org/library/legal/ayahuascaverdict.htm> (last visited Feb. 26, 2007).



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As to a recognition of the use of Ayahuasca as a form of manifestation of a religion protected under Article 12 of the American Convention, the initial research showed no similar cases upon which to rely. An additional research is therefore recommended.



V. DETERMINATION OF WHETHER THERE HAS BEEN AN INTERFERENCE

The determination whether there has been an interference with the right to manifest one's religion or belief constitutes the first step in the questioning of the human rights judicial bodies. The right to manifest one's religion or belief is a conditional right, which means that State interference is possible.

The interference in question must be the act of a State. The European Court treats as interference any *inter partes* intervention by a court, if this intervention challenges a *de facto* situation safeguarded by the Convention or if it gives effect to a law that conflicts with the Convention.¹⁷⁵ The interference may be either in form an affirmative act or in form of non-compliance with a positive obligation. An impediment to exercising a right undoubtedly constitutes an interference; however, this not the case when the legislation in question give individuals other genuine opportunities to exercise their rights.¹⁷⁶

The case of Metropolitan Church of Bessarabia and others v. Moldova concerns interference with the right to manifest one's religion or belief.¹⁷⁷ The case originated with the refusal by the Moldovan authorities to recognize the Applicant Church, which according to the Applicants infringed on their freedom of religion, since the lack of authorization made it impossible to practice their religion. The Government accepted that the right to freedom of religion encompassed the freedom to manifest one's religion through worship and observance, but at the same time claimed that the refusal to recognize the Church did not interfere with the freedom of religion because it did not prevent the Applicants from holding beliefs or manifesting them within the other Orthodox Christian denomination recognized by the State. The Court did not share this view; observing that, since the Applicant Church was not recognized, it could not operate. In particular, the priest could not conduct divine service, and its members could not meet to practice their religion. According to the Court, since religious communities traditionally exist in the form of organized structures, Article 9 ECHR should be read in conjunction with Article 11 ECHR, which protect the associative life against unjustified State interference.¹⁷⁸

¹⁷⁵ JEAN- FRANÇOIS RENUCCI, HUMAN RIGHTS FILES NO. 20. ARTICLE 9 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS 42 (Council of Europe Publishing 2005) (2005).

¹⁷⁶ *Id.*

¹⁷⁷ Metropolitan Church of Bessarabia and others v. Moldova, 45701/99 Eur. Ct. H.R. 860 (2001).

¹⁷⁸ *Id.*, at para.105, 118.



Therefore, the Court concluded that there had been an interference with Applicants' right to freedom of religion as guaranteed by Article 9 ECHR.¹⁷⁹ With this statement, the ECtHR reaffirmed an essential principle: the right of manifestation (in the given case - through worship in community with other members of the particular Church) relates solely to one's own choice of religion or belief, and it cannot be satisfied by another available form of manifestation (i.e. worship and practice within the other Orthodox Christian denomination in community with the members of this other church).

The issue of interference with the freedom to manifest one's religion was also at issue in Cha'are Shalom Ve Tsedek.¹⁸⁰ This case originated in an application against the French Republic lodged with the European Commission on Human Rights by the Jewish liturgical association Cha'are Shalom Ve Tsedek. The Applicant association alleged a violation of Article 9 ECHR due to the French authorities' refusal to grant it the approval necessary for access to slaughterhouses to perform ritual slaughter in accordance with the ultra-orthodox religious prescriptions of its members.

In France the ritual slaughter required by Jews and Muslims for religious reasons is being regulated by law.¹⁸¹ According to the Applicant association, the only body that had been authorized by the French Ministry of Agriculture had stopped making a detailed examination about purity of meat necessary for religious restrictions, and was selling impure meat unfit for consumption. The Applicant association submitted that it was therefore obliged, in order to be able to make kosher meat available to its adherents, to slaughter illegally and to obtain supplies from Belgium. It claimed that by refusing to authorize its ritual slaughterers, the French authorities had infringed in a discriminatory way its right to manifest its religion through observance of Jewish rites. It relied on Article 9 of the Convention.

The ECtHR ruled against the Applicants. It considered that the fact that the exceptional rules designed to regulate the practice of ritual slaughter permit only ritual slaughterers authorized by approved religious bodies to engage in it, does not in itself lead to the conclusion that there was an interference with the freedom to manifest one's religion. In the Court's opinion, there would have been interference with the freedom to manifest one's religion only if the illegality of performing ritual slaughter had made it impossible for ultra-orthodox Jews to eat

¹⁷⁹ *Id.*, at para. 105.

¹⁸⁰ *Cha'are Shalom Ve Tsedek v. France*, 27417/95 Eur. Ct. H.R. 351 (2000).

¹⁸¹ *Id.*, at para. 20.



meat from animals slaughtered in accordance with the religious prescriptions they considered applicable.¹⁸²

The conclusion that can be drawn from the Court's ruling is that a State can claim the absence of interference only if appropriate and similar means exist for the applicants to practice their religion.¹⁸³ If there is no alternative to the form of manifestation restricted or an alternative available does not truly express the belief concerned, a State cannot deny interference with the right to manifest one's religion or belief.

In the case of Santo Daime Church, a refusal by government authorities of the use by Santo Daime members of Ayahuasca tea for their ritual purposes would appear to constitute an interference with the freedom to manifest a religion. The State cannot claim lack of interference because there are no close alternative available forms of manifestation of the Santo Daime religion. Whether this interference can be justified under certain legitimate conditions is an issue of the next Part.

¹⁸² *Id.*, at para. 83 (2000).

¹⁸³ PAUL M. TAYLOR, FREEDOM OF RELIGION. UN AND EUROPEAN HUMAN RIGHTS LAW AND PRACTICE 223-24 (Cambridge University Press 2005) (2005).



VI. LEGITIMATE LIMITATIONS OF THE FREEDOM OF RELIGION

1. THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Once it has been determined that an applicant's right to manifest a religion or belief under Article 9(1) ECHR has been restricted, it is necessary to examine whether this interference can be justified under Article 9(2) ECHR. This Article allows for interference by governmental authorities with the protected right under certain prescribed conditions. The ECtHR has reiterated that the list of exceptions to freedom of religion is exhaustive.¹⁸⁴ It adopts a three-part questioning where a State seeks to rely on these limitations. First, it determines whether the interference is in accordance with, or prescribed by law. Next, it looks to see if the aim of the limitation is legitimate by conforming to one of the explicit heads in the particular Article. Finally, it asks whether the limitation is in all circumstances necessary in a democratic society.¹⁸⁵

The justifications for limitations can be divided into those that protect public interests (national security, territorial integrity, the economic well-being of the nation, health and morals, and the fight against disorder or crime) and those that protect private interests (maintaining the authority and impartiality of the judiciary, protecting the rights and freedoms of others, and preventing the disclosure of information received in confidence).¹⁸⁶

1.1. Limitations Must be Prescribed by Law

First, it must be shown that the limitation was prescribed by law. The European Court of Human Rights has established a three-fold test for determining whether this is the case. First, it must be established that the interference with the Convention right has some basis in national law. Second, the law must be accessible; and third, the law must be formulated in such a way that a person can foresee, to a degree that is reasonable in the circumstances, the consequences that a given action will entail.¹⁸⁷ In the case Metropolitan Church of Bessarabia and others v.

¹⁸⁴ *The Moscow Branch of the Salvation Army v. Russia*, 72881/01 Eur. Ct. H.R. para. 76 (2006).

¹⁸⁵ JACOBS & WHITE, *THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 222 (Oxford University Press 2006) (2002).

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*, at 223.



Moldova, the ECtHR interpreted the term in relation to the same terms “prescribed by law” and “in accordance with the law” in Articles 8 to 11 of the Convention, and stated that these terms

not only require that the impugned measures have some basis in domestic law, but also refer to the quality of the law in question, which must be sufficiently accessible and foreseeable as to its effects, that is formulated with sufficient precision to enable the individual – if need be with appropriate advice – to regulate his conduct.¹⁸⁸

1.2. Limitations Must have a Legitimate Aim

States are not free to restrict a person’s right to manifest a religion or belief for the pursuit of any State interest. Rather, the restriction must have a legitimate aim in accordance with Article 9(2) ECHR. More specifically, any restriction must be “necessary in a democratic society in the interest of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”¹⁸⁹ At least theoretically, limitations such as national security that are included in other Articles but not in Article 9 should not be considered as legitimate aims for justifying the restriction of religious freedom.¹⁹⁰

However, in the case Metropolitan Church of Bessarabia and Others v. Moldova, concerning the Respondent’s refusal to recognize the Applicant Church as a religion, the Court referred to other arguments put forward by the Government as justifications of the interference with the right to freedom of religion and the proportionality of that interference in relation to the aims pursued, although they were not included in Article 9(2). The Court dwelled briefly upon the threat to territorial integrity and national security that the recognition of the Applicant Church might constitute, but in the light of the facts, considered it a mere hypothesis.¹⁹¹

¹⁸⁸ Metropolitan Church of Bessarabia and others v. Moldova, 45701/99 Eur. Ct. H.R. 860 para. 109 (2001). (In support, the ECtHR referred to earlier jurisprudence: The Sunday Times v. the United Kingdom (*no. 1*), judgment of 26 April 1979, Series A no. 30, p. 31, § 49; Larissis and Others v. Greece, judgment of 24 February 1998, *Reports* 1998-I, p. 378, § 40; Hashman and Harrup v. the United Kingdom [GC], no. 25594/94, § 31, ECHR 1999-VIII; and Rotaru v. Romania [GC], no. 28341/95, § 52, ECHR 2000-V).

¹⁸⁹ European Convention on Human Rights and Fundamental Freedoms, art. 9(2), 1950, *available at* <http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/EnglishAnglais.pdf> (last visited Feb. 26, 2007).

¹⁹⁰ CAROLYN EVANS, FREEDOM OF RELIGION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS 147 (Oxford University Press 2001) (2001).

¹⁹¹ Metropolitan Church of Bessarabia and others v. Moldova, 45701/99 Eur. Ct. H.R. 860, para. 124-25 (2001).



1.1.1. Public Safety or the Protection of Public Order

The European Court of Human Rights recognizes that States are entitled to verify whether a movement or association carries on, ostensibly in pursuit of religious aims, activities that are harmful to the population or to public safety.¹⁹² However, few cases have raised the question of limitations based solely on public order or safety, and the Court does not appear to have relied exclusively on this condition. Still, there is clearly a need to allow restrictions to protect public order and safety, as some religious groups may be involved in inciting or organizing acts of violence. Such measures may also be necessary in societies where religious practices may become the focus for inter-religious hatred and public disorder.¹⁹³

1.1.2. Public Health

Some religious traditions and practices may have the potential to cause physical or mental harm to participants or to outsiders. When the protection of the health of non-members of a religion comes into question, the matter is relatively simple and the need for the State to be able to intervene to protect third parties is clear. A law that seeks to protect adult religious believers from risks that they have chosen themselves raises far more complex issues. While it might be appropriate to protect individuals from carelessness and recklessness, the need to protect people relying on deeply held religious grounds is less clear.¹⁹⁴ The question that arises here is whether willingness and consent to be involved in certain activities make them fall outside the scope of the limitation regarding protection of public health. In a case concerning consensual sado-masochistic encounters, the Court stated that the State was entitled to regulate, through the operation of criminal law, any activities which involved infliction of physical harm. In doing so the State should balance the public health concerns and the personal autonomy of the

¹⁹² *Manoussakis and Others v. Greece*, 18748/91 Eur. Ct. H.R. 41, para. 40 (1996); *Metropolitan Church of Bessarabia and others v. Moldova*, 45701/99 Eur. Ct. H.R. 860, para. 113 (2001); *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 84, ECHR 2001-IX).

¹⁹³ CAROLYN EVANS, *FREEDOM OF RELIGION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 150 (Oxford University Press 2001) (2001).

¹⁹⁴ *Id.*, at 155-56.



individual.¹⁹⁵ It can be concluded that the Court in general does not consider consensual behaviour to be outside the scope of the limitation regarding protection of public health.

A State may try to organize and control the exercise of worship of certain religions if such worship involves risk for public health. This issue was raised in the case Cha'are Shalom Ve Tsedek v. France. As noted above, that case concerned the ritual slaughter of animals in order to obtain *glatt* meat. The French authorities only exceptionally granted the authorization to perform ritual slaughter. In the Court's opinion, the exceptional rules regulating this ritual did not amount to the interference with the freedom to manifest one's religion. The Court stated that it is in the general interest to avoid unregulated slaughter, carried out in conditions of doubtful hygiene, and that it is therefore preferable, if there is to be ritual slaughter, for it to be performed in slaughterhouses supervised by the public authorities. However, even supposing that this restriction could have been considered an interference with the right to freedom to manifest one's religion, the Court observed that the measure complained of was prescribed by law and pursued a legitimate aim, namely protection of public health and public order. The restrictions were not imposed for discriminatory purposes, nor in discriminatory manner, but rather for the sake of public health, which should not be put at risk in the name of the freedom of religion. Furthermore, with regard to the margin of appreciation left to the State, the applied limitations could not be considered excessive or disproportionate. In this case, according to the Court, the limitations were compatible with Article 9 (2) of the Convention.¹⁹⁶

1.1.3. *Morals*

As religion is a significant factor in the development of individual and social morality, it is important to remember that not all religions share a common morality or entail the same social attitudes and behavior. This raises the question whether a general law based on moral conceptions that are part of the morality of the dominant religion, but not of some minority religions, is a justifiable infringement on freedom of religion or belief.¹⁹⁷ Most obvious conflicts between various religions and beliefs in the social sphere concern issues such as marriage,

¹⁹⁵ *Jaskey, Jaggard and Brown v. the United Kingdom*, 21627/93;21826/93;21974/93, Eur. Ct. H.R. 4, para. 43-44 (1997).

¹⁹⁶ *Cha'are Shalom Ve Tsedek v. France*, 27417/95 Eur. Ct. H.R. 351 para. 77 (2000).

¹⁹⁷ CAROLYN EVANS, *FREEDOM OF RELIGION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 159 (Oxford University Press 2001) (2001).



divorce, abortion or homosexuality. The Commission and the Court have been careful not to become involved in judicial legislation in this controversial area. As commentators point out, it would be advisable for the European Court to have in mind the instruction of Human Rights Committee that “limitations on the right to manifest a religion or belief for the purpose of protecting morals must be based on principle not deriving exclusively from a single tradition.”¹⁹⁸

1.1.4. The Rights and Freedoms of Others

The rights and freedoms of others is a frequently raised limitation, which covers a wide range of matters. The potential conflicts with rights and freedoms of others overlap with other limitations outlined in Article 9(2). The question that usually is invoked while interpreting this limitation is whether “the rights and freedoms of others” are limited only to those that are set out in the Convention. So far, the Commission and the Court have generally limited the meaning of the phrase in this way.¹⁹⁹

In the case Leyla Sahin v. Turkey, concerning a ban on wearing the Islamic headscarf at Turkish universities, the Court stated that the rights of the people from minorities should be respected:

Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of people from minorities and avoids any abuse of a dominant position.²⁰⁰

Pluralism and democracy must be based on dialogue and compromises necessarily entailing various concessions on the part of individuals or groups of individuals.

Where these “rights and freedoms” are themselves among those guaranteed by the Convention or its Protocols, it must be accepted that the need to protect them may lead States to restrict other rights or freedoms likewise set forth in the Convention. It is

¹⁹⁸ *Id.*, at 160.

¹⁹⁹ *Id.*, at 161.

²⁰⁰ *Leyla Sahin v. Turkey*, 44774/98 Eur. Ct. H.R. 299, para. 108 (2005).



precisely this constant search for a balance between the fundamental rights of each individual which constitutes the foundation of a “democratic society”.²⁰¹

The Court considered that:

(...) when examining the question of the Islamic headscarf in the Turkish context, there must be borne in mind the impact which wearing such a symbol, which is presented or perceived as a compulsory religious duty, may have on those who choose not to wear it. (...) [T]he issues at stake include the protection of the “rights and freedoms of others” and the “maintenance of public order” in a country in which the majority of the population, while professing a strong attachment to the rights of women and a secular way of life, adhere to the Islamic faith. Imposing limitations on freedom in this sphere may, therefore, be regarded as meeting a pressing social need by seeking to achieve those two legitimate aims (...).²⁰²

1.3. Limitations Must be Necessary in a Democratic Society

In addition to being lawful, the limitation must be “necessary in a democratic society”. As stated by Jacobs and White: “Establishing that the measure is necessary in a democratic society involves showing that the action taken is in response to a pressing social need, and that the interference with the rights protected is no greater than is necessary to address that pressing social need.”²⁰³ The so-called test of proportionality requires the ECtHR to balance the severity of the restriction placed on the individual against the importance of the public interest. This must be determined on a case-to-case basis.²⁰⁴

The Court has also developed the notion that States Parties have a “margin of appreciation” in determining whether a restriction on a right is required and justified in the given circumstances. The Court explains that:

²⁰¹ *Id.*

²⁰² *Id.*, at para. 115.

²⁰³ JACOBS AND WHITE, *THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 232 (Oxford University Press 2006) (2002).

²⁰⁴ CAROLYN EVANS, *FREEDOM OF RELIGION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 145 (Oxford University Press 2001) (2001).



By reason of their direct and continuous contact with the vital forces of their countries, State authorities are in principle in a better position than the international judge to give an opinion on the exact content of these requirements as well as on the ‘necessity’ of a ‘restriction’ or ‘penalty’ intended to meet them. The Court notes at this juncture that, whilst the adjective ‘necessary’...is not synonymous with ‘indispensable’, neither has it the flexibility of such expressions as ‘admissible’, ‘ordinary’, ‘useful’, ‘reasonable’ or ‘desirable’. Nevertheless, it is for the national authorities to make the initial assessment of the reality of the pressing social need implied by the notion of ‘necessity’ in this context.²⁰⁵

Hence, while the State enjoys some discretion in making judgments about the claims of necessity, it does not have an infinite discretion, as the domestic margin of appreciation must respect European supervision.²⁰⁶ Determining the width of this margin of appreciation in Article 9 ECHR cases is difficult. In the case Otto-Preminger-Institute v. Austria, the ECtHR stated that “it is not possible to discern throughout Europe a uniform conception of the significance of religion in society... even within a single country such conceptions may vary.”²⁰⁷ The Court repeated this view in Leyla Sahin v. Turkey, adding that:

Rules in this sphere will consequently vary from one country to another according to national traditions and the requirements imposed by the need to protect the rights and freedoms of others and to maintain public order (see, *mutatis mutandis*, Wingrove, judgment cited above, p. 1957, § 57). Accordingly, the choice of the extent and form such regulations should take must inevitably be left up to a point to the State concerned, as it will depend on the domestic context concerned (see, *mutatis mutandis*, Gorzelik, judgment cited above, § 67; and Murphy v. Ireland, no. 44179/98, § 73, ECHR 2003-IX (extracts)).²⁰⁸

Although the margin of appreciation should go hand in hand with a European supervision embracing both the law and the decisions applying it,²⁰⁹ the conclusion that follows from the cases referred above is that, when religion is at issue the States are usually given a wide margin of appreciation.

²⁰⁵ Handyside v. the United Kingdom, 24 Eur. Ct. H.R. (ser. A) at 22 (1976).

²⁰⁶ CAROLYN EVANS, FREEDOM OF RELIGION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS 143 (Oxford University Press 2001) (2001).

²⁰⁷ Otto-Preminger-Institute v. Austria, 295 Eur. Ct. H.R. (ser. A) (1994).

²⁰⁸ Leyla Sahin v. Turkey, 44774/98 Eur. Ct. H.R. 299, para. 109 (2005).

²⁰⁹ *Id.*, at para. 110 (2005).



In another case, the Court held that “[...] in a democratic society, in which several religions coexist within one and the same population, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone’s beliefs are respected.”²¹⁰ However, while exercising its regulatory power in this sphere and in its relations with the various religions, denominations and beliefs, the State’s duty is to remain neutral and impartial.²¹¹ As the Court reiterates:

What is at stake here is the preservation of pluralism and the proper functioning of democracy, one of the principle characteristics of which is the possibility it offers of resolving a country’s problems through dialogue, without recourse to violence, even when they are irksome (see *United Communist Party of Turkey and Others v. Turkey*, judgment of 30 January 1998, *Reports* 1998-I, p. 27, § 57). Accordingly, the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other (see *Serif v. Greece*, no. 38178/97, § 53, ECHR 1999-IX).²¹²

In this respect, the right to freedom of religion for the purpose of the Convention excludes, for example, the assessment by the State of the legitimacy of religious beliefs or the ways in which those beliefs are expressed.²¹³

2. THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Under the International Covenant on Civil and Political Rights, the freedom to manifest one’s religion may be legitimately limited according to Article 18(3) ICCPR. As noted above, Article 18(1) ICCPR protects the freedom to think and believe and is to be broadly construed. However, once a person’s beliefs are taken into the public sphere, where the manifestation of their beliefs can affect others, actions based on belief can be limited.²¹⁴ Therefore, it is the manifestation of religious belief or conviction, and more specifically the actions taken or

²¹⁰ *Kokkinas v. Greece*, 14307/88 Eur. Ct. H.R. 20, para. 33 (1993).

²¹¹ *Metropolitan Church of Bessarabia and others v. Moldova*, 45701/99 Eur. Ct. H.R. 860, para. 116 (2001).

²¹² *Id.*

²¹³ *The Moscow Branch of the Salvation Army v. Russia* 72881/01 Eur. Ct. H.R. para. 92 (2006).

²¹⁴ SCOTT N. CARLSON AND GREGORY GISVOLD, *PRACTICAL GUIDE TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS* 115 (Transnational Publishers 2003).



defended in the name of religion that may impact society, that invoke consideration by the Human Rights Committee.²¹⁵

Article 18(3) ICCPR indicates that restrictions on the public manifestation of a religion or belief are permissible only if such limitations (a) are set forth in law; (b) are necessary; and (c) further the protection of either the public safety, order, health, or morals, or the fundamental rights and freedoms of others.²¹⁶ These will be further discussed below. The HRC explained their interpretation of Article 18(3) ICCPR in General Comment 22 paragraph 8:

Article 18(3) permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others... In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination... Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were proscribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in discriminatory manner.²¹⁷

According to Article 18(3) ICCPR, the limitations imposed by States on the freedom to manifest one's religion must be "prescribed by law." The term "prescribed by law" has not been extensively discussed by the HRC with respect to Article 18 ICCPR, however HRC jurisprudence concerning other sections of the ICCPR indicates that the Committee would interpret the term to mean that the measures must be set out in accessible legal instruments or decisions with regards to Article 18.²¹⁸ Secondly, the limitations must be designed to achieve one of the purposes enumerated in the provision: namely, "public safety, order, health or morals

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ General Comment No. 22 (48), reproduced in UN doc. HRI/GEN/1/Rev.5 (1994), available at <http://www1.umn.edu/humanrts/gencomm/hrcom22.htm> (last visited Feb. 26, 2007).

²¹⁸ SCOTT N. CARLSON AND GREGORY GISVOLD, PRACTICAL GUIDE TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 115 (Transnational Publishers 2003).



or the fundamental rights and freedoms of others.” HRC jurisprudence in this area has discussed only some of these limitations. Finally, the limiting measures must be “necessary” to achieve the relevant purpose. This means the law should be “proportionate to the specific need upon which it is predicated.”²¹⁹ Commentators have pointed out that these limitations should be strictly construed, to prevent them from swallowing the freedom itself.²²⁰

As with much of Article 18 HRC jurisprudence, the Committee has issued few consensus comments on the limits to the freedom to manifest religion or belief. It has, however, issued some important majority decisions that help make the limitations more clear.

2.1. Limitations in the Interest of Public Safety and Health

One of the legitimate restrictions placed on the right to manifest one’s religion is based on public safety and health. This means State Party legislation directed non-discriminatorily toward a public safety or health goal, such as the prevention of injury, may outweigh religious freedom.²²¹ This limitation was tested in the Singh Bhinder v. Canada communication.²²² In that case, the author filing the application, a Sikh, argued that the Canadian legislation requiring him, as a federal worker, to wear a hardhat at work to protect him from injury and electric shock violated his Article 18 rights. This was because enforcement of the legislation meant he would not be able to wear his turban, which he claimed was obligatory for his religion. The case began after Bhinder was dismissed from his post as maintenance electrician of the government-owned Canadian National Railway Company after having insisted on wearing a turban instead of safety headgear at work.

The HRC found against Bhinder on the merits, stating that the hardhat requirement was a limitation that is justified by Article 18(3) ICCPR and “reasonable and directed towards objective purposes that are compatible with the Covenant.”²²³ The HRC, however, did not spell out exactly how the limitation conformed to Article 18(3), or which objective purposes of the ICCPR were served by the limitation. It could be argued, as it was by the author in this case, that

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*, at 116.

²²² *Singh Bhinder v. Canada* communication (208/1986), U.N. Doc. CCPR/C/37/D/208/1986 (1989), available at <http://www1.umn.edu/humanrts/undocs/session37/208-1986.html> (last visited Feb. 26, 2007).

²²³ *Id.*



the hardhat requirement only protected the author's personal safety and health, not the safety and health of the public at large. The Committee did not make clear how his non-compliance threatened, either actually or potentially, public safety and health. A commentator has speculated that "perhaps the measure was understood as a public order measure, designed to minimize workers' compensation claims."²²⁴ Nevertheless, as noted by one commentator, the HRC's Article 18 reasoning was unconvincing, and it is arguable that the laws were not in fact proportionate to an enumerated end.²²⁵

2.2. Limitations in the Interest of Public Order

Public order is also, under certain conditions, considered a legitimate ground for restriction of one's rights pursuant to Article 18 ICCPR. Some scholars have argued that the term "public order" in Article 18(3) is used differently than it is in other sections of the Covenant, in that it is more narrowly interpreted, allowing restrictions only "to avoid disturbances to the order in a narrow sense."²²⁶ Again, the Human Rights Committee has limited jurisprudence on this issue, but the case Coeriel and Aurik v. The Netherlands is instructive.²²⁷

In that case, the authors, who had adopted the Hindu religion and were studying to become Hindu priests in India, requested the Dutch Minister of Justice to allow them to change their name in order to become Hindu priests. The Minister refused because they did not meet the requirements of Dutch law regulating the change of surnames. The authors brought a communication to the HRC under Article 18 ICCPR.

The HRC rejected the authors' claim under Article 18, although a majority of the HRC was in favor of the authors with respect to their additional argument pursuant to Article 17 on the right to privacy. As to the freedom of religion issue the Committee "considered that the regulations of surnames and the change thereof was eminently a matter of public order and restrictions were therefore permissible under paragraph 3 of article 18."²²⁸ The HRC further held

²²⁴ SARAH JOSEPH, ET AL, *THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS CASES, MATERIALS, AND COMMENTARY* 509 (Oxford University Press, 2nd ed. 2004).

²²⁵ *Id.*

²²⁶ SCOTT N. CARLSON AND GREGORY GISVOLD, *PRACTICAL GUIDE TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS* 116 (Transnational Publishers 2003).

²²⁷ Coeriel and Aurik v. The Netherlands, No. 453/1991, U.N. Doc. CCPR/C/52/D/453/1991 (1994), available at <http://www1.umn.edu/humanrts/undocs/html/vws453.htm> (last visited Feb. 26, 2007).

²²⁸ *Id.*



that the State party could not be held accountable for restrictions placed upon the exercise of religious offices by religious leaders in another country. This aspect of the communication was therefore declared inadmissible.²²⁹

Some commentators have express approval with this decision on the basis that the ability of citizens to frequently change their surname could cause administrative confusion. However, some find fault with the ruling because the HRC's decision, in their opinion, appeared to be based more on the fact that the religious rules were imposed by leaders outside the country than disruptions to public order like administrative confusion.²³⁰ This principle, that religious rules imposed by leaders outside the country may appropriately be limited by domestic legislation, would seriously limit the effectiveness of Article 18 because religious requirements are often decreed by leaders outside of the State.²³¹ Commentators have expressed hope that this aspect of the *Coeriel* case will not be followed in the future.²³²

2.3. Limitations to Protect Public Morals

Public morals are another possibly legitimate restriction placed on the freedom to manifest a religion or belief guaranteed by Article 18 ICCPR. The Committee has restricted the application of this limitation by taking a narrow view on what is meant to be limited by the term “morals” in Article 18(3). As it explained in General Comment 22:

8.... The Committee observes that the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition...²³³

²²⁹ *Id.*

²³⁰ SARAH JOSEPH, ET AL, *THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS CASES, MATERIALS, AND COMMENTARY* 509-10 (Oxford University Press, 2nd ed. 2004).

²³¹ *Id.*, at 510.

²³² *Id.*

²³³ General Comment No. 22 (48), reproduced in UN doc. HRI/GEN/1/Rev.5 (1994), available at <http://www1.umn.edu/humanrts/gencomm/hrcom22.htm> (last visited Feb. 26, 2007).



According to the Committee, “public morals” measures should reflect a pluralistic view of society, rather than a single religious culture.²³⁴

2.4. Limitations to Protect The Fundamental Rights and Freedoms of Others

The final criterion noted in Article 18(3) ICCPR, the fundamental rights and freedoms of others, is potentially quite broad. This research has not identified any case by the Committee on this basis. Some commentators have argued for basic limitations, noting that the term “fundamental rights” should be interpreted to imply international minimum human rights standards, such as those established by the ICCPR and the International Covenant of Economic, Social and Cultural Rights.²³⁵

3. THE AMERICAN CONVENTION ON HUMAN RIGHTS

While Article 12(2) of the American Convention states that persons shall not be subject to restrictions that might impair their freedom to maintain or to change their religion or beliefs, freedom to manifest these may be subject to certain limitations prescribed by law which are necessary to protect public safety, order, health or morals or the rights and freedoms of others.²³⁶ States Parties enjoy a margin of discretion in whether they consider a particular religion or pseudo-religion to be an appropriate matter for regulation, but the margin of discretion is subject to oversight and control by the Commission.²³⁷ Notable in this connection is the fact that the right to freedom of conscience and religion is included among the non-derogable rights listed in Article 27(2) of the American Convention, and therefore may not be suspended at any time, including times of war or other emergency

²³⁴ SARAH JOSEPH, ET AL, *THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS CASES, MATERIALS, AND COMMENTARY* 510 (Oxford University Press, 2nd ed. 2004).

²³⁵ SCOTT N. CARLSON AND GREGORY GISVOLD, *PRACTICAL GUIDE TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS* 116 (Transnational Publishers 2003).

²³⁶ American Convention on Human Rights, art. 12(3), *available at* <http://www1.umn.edu/humanrts/oasinstr/zoas3con.htm> (last visited Feb. 26, 2007).

²³⁷ SCOTT DAVIDSON, *THE INTER-AMERICAN HUMAN RIGHTS SYSTEM* 309 (Dartmouth Publishing Company Limited 1997) (1997).



4. MAY STATES LEGITIMATELY RESTRICT THE USE BY SANTO DAIME MEMBERS OF AYAHUASCA?

It is necessary to analyze whether any possible restriction towards the Santo Daime Church and their use of Ayahuasca would be legitimate. As has been demonstrated above, in order for a limitation to be legitimate it must be necessary in a democratic society, in the interest of public safety and order, for the protection of public health and morals, or for the protection of the rights and freedoms of others.

Concerning public safety and order, one problem could be maintaining control over the Ayahuasca manufacture, distribution and export. If an illicit drug gets distributed to the illegal market, a risk for public safety and order occurs which could lead to public disorder or underground drug trafficking.

In this respect, reference to expert testimony is instructive.²³⁸ Edward John Baptista das Neves MacRae, Ph.D., lecturer in anthropology at the Faculty of Philosophy and Human Sciences at the Federal University of Bahia and associate researcher at the Centre for the Study and Therapy of Drug Abuse has stated that the Daime tea is generally produced near Rio Branco.²³⁹ From these places it is sent to the leaders of Santo Daime Churches all over the world. There are detailed records of every batch of tea that is brewed. In turn, he explains, each local Church

“is required to keep detailed records regarding the number of people who attend a service and the amount of Daime distributed at that service. (...) Similarly when the tea is exported, all of the typical export documents are filed out in Brazil, including those listing the contents of the product. When a batch is received in another country, the Church leaders there are required to keep similar records and present copies to Brazil periodically.”²⁴⁰

This system of checks and balances ensures that “the tea is controlled in a way that renders the likelihood of it being distributed to the illicit market virtually impossible.”²⁴¹

Further, almost all experts asserted in their reports that there is a high level of social control during the Church rituals.²⁴² A hierarchical social control in which a Church leader with

²³⁸ The full expert reports can be found in the Annex to this report.

²³⁹ Dr. E.J. MacRae, Expert Report Nr. 3, Annex to this report.

²⁴⁰ *Id.*

²⁴¹ *Id.*



significant health experience conducts the service, as well as a ritual spatial organization, ensures the needed control of every ritual and minimizes the risks for public safety and order.

The second point, namely the protection of public health seems to be the more plausible limitation ground for the Santo Daime Church. This was also the main argument in the Dutch case, where the Public Prosecution Service justified the limitation on the defendant's right to practice her religion freely for reasons of public health.²⁴³

In order to prove a risk for the public health, a State has to prove the severity and danger of a the situation at hand. Is the ritual use of the DMT tea such a threat to the public health of a State that a justified limitation leads to the “non-violation” of one of the rights of its citizens? The obvious problem of many Santo Daime Churches is that, as explained in the introduction, during the production of the Ayahuasca tea the substance DMT evolves. In the Netherlands, for example, DMT is a controlled substance because it is mentioned in the Convention on Psychotropic Substances.²⁴⁴

Many Dutch experts reached the conclusion in their reports that DMT is not a threat to public health.²⁴⁵ Prof. Dr. F.A. de Wolff concluded that the use of Ayahuasca can cause risks in individual cases, but the Santo Daime Church informs its members adequately and correctly about these risks.²⁴⁶ He pointed to the religious context, which ensures that the production of Ayahuasca and its use during religious meetings is strictly regulated.²⁴⁷ Moreover, he stated, consumption is linked to rituals and always takes place in the presence of others who are familiar with the effects.²⁴⁸ In his view, this is a protection against misuse.²⁴⁹ These points, combined with the limited use of Ayahuasca in the Santo Daime Church, lead Prof. Dr. F.A. de Wolff to

²⁴² See, e.g., Prof. Dr. Kaplan, Expert Report Nr. 1, Dr. MacRae, Expert Report Nr. 3 or Prof. Dr. de Wolff, Expert Report Nr. 5, all in the Annex to this report.

²⁴³ Johanna Cornelia Fijneman, The District Court of Amsterdam, Case number 13/067455-99, 21 May 2001, available at <http://www.drugtext.org/library/legal/ayahuascaverdict.htm>.

²⁴⁴ Convention on Psychotropic Substances, signed at Vienna, Austria on February 21, 1971, 1019 U.N.T.S. 175 (1976)(DMT listed as Schedule I substance), available at http://www.unodc.org/pdf/convention_1971_en.pdf (last visited Feb. 26, 2007).

²⁴⁵ Prof. Dr. Kaplan, Expert Report Nr. 1; Dr. Fromberg, Expert Report Nr. 2; Dr. MacRae, Expert Report Nr. 3; Dr. Snelders, Expert Report Nr. 4; Prof. Dr. de Wolff, Expert Report Nr. 5, all in the Annex to this report.

²⁴⁶ Prof. Dr. F.A. de Wolff, Expert Report Nr. 5, Annex to this report.

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*



the conclusion that there is no reason for modern science to believe that the use of Ayahuasca – as it is used in the Santo Daime Church – causes any problems or risks for the public health.²⁵⁰

Some experts are even convinced of the medicinal value of Ayahuasca. Professor Kaplan concluded for example, “...the use of ‘Daime’ in a ritual context motivated by a search for spiritual and (mental) health, provides an acceptable and minimal risk to public health and, in fact, is likely to provide an unseen benefit for our health system.”²⁵¹ Further on he stated that

the most important principle in the social control of drugs is the degree to which the drugs are socially integrated. This principle has been argued by many professional experts as of crucial importance for the public health. The prohibition of socially integrated “rituals of regulation” can only have adverse effects on public health substituting criminalized rituals for wholesome community-building rituals.²⁵²

Dr. Erik Fromberg asserted that the ritual context in which Ayahuasca is used in the Santo Daime Church forms a minimal risk for the users – if it does not annul the risk altogether.²⁵³ The same amounts to the risk for persons with individual disabilities because new members are well-investigated before they are allowed to use the Daime.²⁵⁴ Edward MacRea, Ph.D. explicitly pointed out that those people who lack a serious intent are rather pushed away by several aspects of the ceremony instead of being attracted and invited to drug abuse.²⁵⁵ These aspects include the length and rigidity of the ceremonies, the strong intrapersonal bindings, the traditional values, the bitter and foul taste of the tea, and the physical reactions that accompany the taking of the brew (purging and vomiting).²⁵⁶ According to MacRea, this provides an additional safeguard against it being used for the wrong reasons.²⁵⁷

In light of this testimony, it is reasonable to conclude that although its active ingredient is hallucinogenic and banned, Ayahuasca cannot be classified as a dangerous drug because it is practiced in the Santo Daime Church for spiritual and/or therapeutic purposes within a strict ritual framework. According to Dr. Jacques Mabit, the founder of the Takiwasi Detoxification

²⁵⁰ *Id.*

²⁵¹ Prof. Dr. Charles D. Kaplan, Expert Report Nr. 1, Annex to this report.

²⁵² *Id.*

²⁵³ Dr. Erik Fromberg, Expert Report Nr. 2, Annex to this report.

²⁵⁴ *Id.*

²⁵⁵ Dr. E.J. MacRae, Expert Report Nr. 3, Annex to this report.

²⁵⁶ *Id.*

²⁵⁷ *Id.*



Centre for Basuco Addicts in the Peruvian Amazon, which is subsidized by the French Government's Inter-ministerial Mission for the Fight against Drugs and Drug Addiction (MILDT), Ayahuasca

is ingested by men, women and even children. It generates no addiction whatsoever. It is a purgative that can provoke spectacular but foreseeable and therefore harmless bouts of diarrhoea and vomiting. At the same time, it induces amplified states of consciousness and for this reason it has psycho-therapeutic and traditional magic and religious applications.²⁵⁸

Dr. Stephan Snelder raised another interesting point concerning the long history of the use of psychoactive substances.²⁵⁹ While pointing out that psychoactive substances have been used in many pre-industrial cultures and that there are still huge parts outside of Europe where hallucinogens are used within the Christian belief, he asserted that the Santo Daime Church fits exactly into this history.²⁶⁰

The last two points, namely, restrictions because of a risk for the public order or because of the protection of the rights and freedoms of others, are frequently raised limitations which overlap with other limitations from Article 9 ECHR, 18 ICCPR or 12 ACHR. Therefore they are not that relevant in the current context, and as stated before there have not been cases that have solely been decided on these bases.

Nevertheless one should point out that General Comment No. 22²⁶¹ states that public moral measures should reflect a pluralistic view of society, rather than a single religious culture. Probably this is what Dr. Stephan Snelders also wanted to point out by saying that the labeling between a medical and a recreational use is not sufficient, it is rather a question of the various social and religious contexts that influence the Santo Daime religion.²⁶²

To conclude, one can assume that none of the listed limitations under Article 9 ECHR, Article 12 ACHR, or Article 18 ICCPR seem to be legitimate and therefore able to approve a State's interference into the sacramental Ayahuasca use of the Daimist Churches.

²⁵⁸ Aymeric Longi, *Ayahuasca: From the Amazon to the Urban Jungles*, quoting Dr. Jacques Mabit, available at <http://www.pharmakeia.com/urbanjungle.htm> (last visited Feb. 26, 2007).

²⁵⁹ Dr. S.A.M. Snelders, Expert Report Nr. 4, Annex to this report.

²⁶⁰ *Id.*

²⁶¹ General Comment No. 22 (48), reproduced in UN doc. HRI/GEN/1/Rev.5 (1994), available at <http://www1.umn.edu/humanrts/gencomm/hrcom22.htm> (last visited Feb. 26, 2007).

²⁶² Dr. S.A.M. Snelders, Expert Report Nr. 4, Annex to this report.



VII. ACCESS TO THE SACRAMENT – A PART OF THE FREEDOM OF RELIGION?

A separate but related issue concerns the right of Santo Daime members to have access to Ayahuasca itself. It is possible to claim that the right to use should mean the right to access their sacrament, but the ECtHR and HRC have not provide much case-law on this point for a group like the Santo Daime to rely upon. In the case Cha'are Shalom Ve Tsedek v. France concerning an access to kosher meat by Jewish Orthodox association (the case referred to in the previous sections of the Report), the European Court ruled that although the association was not authorized to produce such meat itself, there was no interference with the right to the freedom to manifest a religion since it could easily obtain supplies from other sources.²⁶³ It can be assumed that such an interference with the right protected would exist only if the association had no access at all to kosher meat, and therefore was unable to observe the rites of Jewish religion. This may serve as an argument for the Santo Daime Church to defend its case by stating that the right to manifest its religion entails the right to access to Ayahuasca.

The ECtHR and the HRC have also addressed the issue more generally. The Human Rights Committee states in paragraph 4 of its General Comment 22:

The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group.²⁶⁴

In regards to the ECtHR's view of this issue, Paul Taylor, an expert on the freedom of religion in United Nations and European human rights law and practice has said:

²⁶³ Cha'are Shalom Ve Tsedek v. France, 27417/95 Eur. Ct. H.R. 351 (2000).

²⁶⁴ General Comment No. 22 (48), reproduced in UN doc. HRI/GEN/1/Rev.5 (1994), *available at* <http://www1.umn.edu/humanrts/gencomm/hrcom22.htm> (last visited Feb. 26, 2007).



Presumably even the narrow summary of Article 9 given in *C. v. United Kingdom*²⁶⁵ concerning acts of worship and devotion would span the right to ‘make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief.’ This is confirmed to some extent by the European Court’s ruling in *Holy Monasteries v. Greece*,²⁶⁶ which reaffirmed the protection given under Article 9 to ‘objects intended for the celebration of divine worship.’²⁶⁷

In spite of these rulings and comments, not all ceremonial items have been protected for all groups. The Human Rights Committee in *M.A.B., W.A.T. and J-A.Y.T. v. Canada*, a HRC communication discussed above, dismissed a claim based on the use of marijuana as the “Sacrament” or “God’s tree of life.”²⁶⁸ However, this group did not qualify as a “religion or belief” under the ICCPR; and if they had, the final decision on the group and its right to access its “Sacrament” most likely would have been different.

According to Taylor, additional interpretation and direction on this issue can be found by examining the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981 Declaration).²⁶⁹ Article 6(c) of the 1981 Declaration discusses access related issues. It states “the right to freedom of thought, conscience, religion or belief shall include, *inter alia*, the following freedoms: ... (c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief.”²⁷⁰ Although the 1981 Declaration does not define its Article 6(c) “necessary articles and materials,” the United Nations Arcot Krishnaswami study,²⁷¹ considered by Taylor as authoritative in this field, has discussed the items likely to fall within Article 6(c).²⁷² That study has suggested that “as a general rule the members of a religion or belief should not be prevented

²⁶⁵ *C. v. United Kingdom*, 10358/83 Eur. Ct. H.R. (1983) 37 D&R 142.

²⁶⁶ *Holy Monasteries v. Greece*, (Ser. A) No. 301 (1995) ECtHR.

²⁶⁷ *Id.*, at para. 87.

²⁶⁸ PAUL M. TAYLOR, *FREEDOM OF RELIGION. UN AND EUROPEAN HUMAN RIGHTS LAW AND PRACTICE* 251-52 (Cambridge University Press 2005) (2005).

²⁶⁹ United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, available at http://www.unhchr.ch/html/menu3/b/d_intole.htm (last visited Feb. 26, 2007).

²⁷⁰ United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Article 6 para. c, available at http://www.unhchr.ch/html/menu3/b/d_intole.htm (last visited Feb. 26, 2007).

²⁷¹ Arcot Krishnaswami, *Study of Discrimination in the Matter of Religious Rights and Practices*, U.N. Doc. E/CN.4/Sub.2/200/Rev.1, U.N. Sales No. 60. XIV.2, available at <http://www.religlaw.org/interdocs/docs/akstudy1960.htm> (last visited Feb. 26, 2007).

²⁷² PAUL M. TAYLOR, *FREEDOM OF RELIGION. UN AND EUROPEAN HUMAN RIGHTS LAW AND PRACTICE* 250 (Cambridge University Press 2005) (2005).



from acquiring or producing articles necessary for the performance of the rituals prescribed by their faith, such as prayer-books, candles, ritual wine and the like.”²⁷³

However, the extent that access will be considered to derive from the freedom of religion is still unclear. Mr. Taylor has described this right as less well-recognized; stating that the “right to make, acquire and use the necessary articles and materials related to the rites and customs of a religion or belief is seemingly not well acknowledged, principally because its scope is not well defined.”²⁷⁴ More research on this issue is therefore suggested.

²⁷³ Arcot Krishnaswami, *Study of Discrimination in the Matter of Religious Rights and Practices*, U.N. Doc. E/CN.4/Sub.2/200/Rev.1, U.N. Sales No. 60. XIV.2, available at <http://www.religlaw.org/interdocs/docs/akstudy1960.htm> (last visited Feb. 26, 2007).

²⁷⁴ PAUL M. TAYLOR, *FREEDOM OF RELIGION. UN AND EUROPEAN HUMAN RIGHTS LAW AND PRACTICE* 337 (Cambridge University Press 2005) (2005).



VIII. GENERAL CONCLUSIONS

1. The Convention on Human Rights and Fundamental Freedoms, , the International Covenant on Civil and Political Rights, and the American Convention on Human Rights contain articles protecting the freedom of religion but do not contain a definition of “religion,” and the judicial bodies monitoring the implementation of these instruments have not adopted a definition to this point. However, trends can be found in the decisions of judicial bodies monitoring the implementation of these instruments and general principles can be extracted, including the fact that even non-mainstream religions can be recognized if they show a certain level of cogency, seriousness, cohesion and importance. According to these principles as well as expert opinions considered by courts on the national level, the Santo Daime should be considered a religion under Article 9 of the Convention on Human Rights and Fundamental Freedoms and Article 18 of the International Covenant on Civil and Political Rights, and consequently deserves protection. More research is suggested in order to decisively conclude on the recognition of the Santo Daime as a religion under Article 12 of the American Convention on Human Rights.
2. The European Convention on Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights name four forms of manifestation of one’s religion namely: worship, teaching, practice and observance. The European Court of Human Rights tends to interpret all these terms narrowly, whereas the United Nations Human Rights Committee adopts a more encompassing approach. What is, however, required by both judicial bodies to qualify an act as a religious manifestation is a very direct link between the action and the religion or belief so that the action actually expresses the belief concerned. The use of Ayahuasca could be considered to fall within the scope of the term practice. In international proceedings, the Santo Daime would be expected to prove that the use of Ayahuasca is an integral element of the religious practice and that it actually expresses the belief. If this is proven, the drinking of tea should be recognized as a form of manifestation of a religion or belief and would therefore fall within the ambit of Article 9 of the Convention on Human Rights and Fundamental Freedoms and Article 18 of the International Covenant on Civil and



Political Rights. Whether the use of Ayahuasca as a form of a manifestation of a religion should be protected also under Article 12 of the American Convention on Human Rights has not been established by this report and additional study is required.

3. The determination whether there has been an interference with the right to manifest one's religion or belief constitutes the first step of analysis. According to the European Court of Human Rights case law, State Parties cannot claim the absence of interference merely by asserting that a close alternative is available to the form of manifestation restricted, as the choice of the form of manifestation always belongs to the believers. In the case of Santo Daime Church, refusing to allow the use of Ayahuasca tea for religious ritual purposes would constitute an interference with the freedom to manifest a religion.
4. This Report has also examined whether this interference, if it were to take place, could be justified. It has been shown that in order for a limitation to be legitimate under the ECHR, the ICCPR, or the ACHR it must be necessary, in the interest of public safety and order, for the protection of public health and morals, or for the protection of the rights and freedoms of others. After analyzing the Santo Daime under these possible legitimate limitations, this Report has concluded that any limitation of the Santo Daime's manifestation of its religion through Ayahuasca tea drinking, as it is described in this Report, would likely not be justified neither under the ECHR or the ACHR, nor under the ICCPR.
5. It is possible to claim that the Santo Daime's right to use Ayahuasca should ensure their right to access it, but the European Court of Human Rights and the Human Rights Committee have not directly ruled on this issue. The Human Rights Committee has stated that the concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts. The European Court of Human Rights case law supports this general proposition, but not all ceremonial items are protected for all groups. Guidance may be found by examining the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. This report suggests more research on this issue.



Amsterdam International Law Clinic

The Santo Daime Church

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The Protection of Freedom of Religion under International Law

ANNEX 1

1. Expert report Nr. 1 Prof. Dr. Charles D. Kaplan
2. Expert report Nr. 2 Dr. Erik Fromberg
3. Expert report Nr. 3 Dr. E.J. MacRae
4. Expert report Nr. 4 Dr. S.A.M. Snelders
5. Expert report Nr. 5 Prof. Dr. F.A. de Wolff
6. Expert report Nr. 6 Dr. R. Kraneborg



1. EXPERT OPINION PROFESSOR DOCTOR CHARLES D. KAPLAN

Dear Adele Van Der Plas. Esq.,

I am writing after our discussion to provide expert testimony in the court proceedings involving the Santo Daime Church, Mr. Hans Bogers and Geraldine Fijneman. My credentials include over thirty years of scientific research in the field of drug abuse and public mental health mainly in the United States and Europe. but also in Asia and Africa. Currently. I am an officially recognized expert consultant for drug abuse for the Public Health Research Programme of the Directorate General XII of the Commission of the European Union and for the United Nations Drug International Control Programme. I currently teach and research in the Department of Psychiatry at Maastricht University. The Center of Drug and Social Policy Research at the University of Texas and the Institute of Socialization and Social Psychology of the Goethe University, Frankfurt am Main. My primary residence has been the Netherlands since 1984 where I was invited as the Tinbergen Professor at the Erasmus University Rotterdam and continued on in Rotterdam as the Professor for Addictive Diseases in the Medical Faculty and Founding Director of the Institute for Addiction Research (IVO). My current work is focused on the theme of the development and implementation of a public mental health approach to drug abuse.

While at Rotterdam, together with my assistants, we developed an original social science and public health theory of drug abuse that focused on what we called "rituals of regulation". Our thesis was that the harm caused by drug abuse involved breakdowns in rituals of regulation created by drug users in interaction with their communities. This theory was built out of a strong tradition and a continuing commitment unique to the Netherlands: that drug abuse and its related problems are primarily (not exclusively) issues of social processes. The risks associated with drug use are largely matters of disturbances in social control and the health behavior of individuals and social (risk) groups. All drugs have their beneficial and their adverse consequences and the particular outcome cannot be reduced to the pharmacological actions of any specific drug, but rather the interaction of these actions with set (psychological) and setting factors (social rituals and sanctions). This theory became a pillar of the current harm reduction approach that has become the official policy of the Netherlands and is considered one of the two dominant perspectives in international drug policy.

The current court case of the Santo Daime Church is of international importance since it provides a test case whether the use of a psychoactive and natural preparation in the ritual setting of a "new" religion is a risk or a benefit for the public mental health. My opinion is clear. I strongly feel that the work with ayahuasca as a sacrament of the Santo Daime Church has little risk for public health. The natural preparation has been used for centuries in the Amazon for religious and medical reasons without any acknowledged risks to public health. The use in Europe in the rituals of the Santo Daime Church has involved thousands of persons voluntarily seeking religious, spiritual truth and mental wellness without any serious reported problems. A student of mine in Frankfurt wrote his thesis on the Santo Daime Church in Brazil and Europe (Huttner, Jakob, 1999. "Santo Daime - eine neue Heilsbewegung."). The professor of historical anthropology at Institute of Historical Ethnology, Johann Wolfgang Goethe University, Frankfurt am Main. Prof. Dr. Klaus E. Mueller. a recognized expert on the new European religions, supervised the thesis and I functioned as the methodological consultant. The thesis provided ample evidence that the Santo Daime Church was a bona fide new European religion that is especially adapted to the religious crisis, rationalism and secularization that characterizes culture in our contemporary Europe. The religion fills a necessary moral gap left with the abandonment of traditional European religions by large segments of the rational and secularized population. The non-recognition of this new (and functional) religion by the State is tantamount to religious persecution. something that represents a serious infraction of basic human rights. Such an action in the Netherlands would be especially out of touch with the national heritage of religious toleration of "new" religions.



I would also be prepared to defend the argument the toleration of the practice of regulated, ritual use of "Daime" is in the interest of public (mental) health. In a recently published report by Jaap van der Stel commissioned by the "Raad voor Volksgezondheid en Zorg" and the "Raad voor Maatschappelijke Ontwikkeling" argues the most important principle in the social control of drugs is the degree to which the drugs are socially integrated. This principle has been argued by many professional experts as of crucial importance for the public health. The prohibition of socially integrated "rituals of regulation" can only have adverse effects on public health substituting criminalized rituals (with all of the accompanying mental stress and paranoia to the believer) for wholesome community-building rituals.

I have myself attended and participated in several Santo Daime rituals and have found them to be authentic religious experiences with high levels of social control. The leaders of the church currently on trial all have had enough significant health experience both as professionals and patients to recognize a public health danger if they saw one and to plan the rituals with public health in mind. Adverse reactions that I have seen are few and were probably the result of untreated mental disorders which come to the surface during the intense experience of the ritual. I found that the organizers were well aware of the problem and provided information and screening before the ritual to those who were motivated to explore this new religion. A fairly diverse group reflective of the normal Dutch society attended the rituals. A relatively high proportion of professionals and middle-aged persons who appeared to be well socially integrated participated.

This point is significant for my argument that there may be specific benefits for public mental health for certain risk groups in society. Non-repressive religious experience seems to be a protective factor to the public mental health. Surveys of the Dutch general population have indicated high levels of untreated mental health problems. The existing mental health services are well aware that they must outreach to this population who is in need of help. However, often, the consumer-patient does not find what they need in the existing system. Further more he or she is often faced with intolerable waiting lists. This accounts for a growing demand for alternative and natural medicine and an increased public awareness of the need for healing (as opposed to treatment). One of the essential characteristics of the new religions is their concern for the provision of healing. This seems to be general in history. For example, early Calvinism with its strong emphasis on the healing of (original) sin through entrepreneurial, "this worldly asceticism" followed this pattern 400 years ago as a new European religion. I firmly believe the Santo Daime is providing a contemporary form of healing of the traumas and alienation that account for the high prevalence of mental health problems in the population of a secularized society that has abandoned the belief in original sin..

In closing, I would conclude that the use of "Daime" in a ritual context motivated by a search for spiritual and (mental) health provides an acceptable and minimal risk to public health and, in fact, is likely to provide an unseen benefit for our health system.

If there are any further questions or if I can be of any further assistance in helping the justice process, please feel free to contact me. With best wishes,

Prof. Dr. Charles D. Kaplan



2. EXPERT OPINION DOCTOR ERIK FROMBERG

AYAHUASCA EN SANTO DAME.

Aanvullend commentaar op het deskundigenrapport van prof. dr. F.A. de Wolff, Amsterdam (dd. 24 april 2000) ten behoeve van de Rechter-commissaris in Strafzaken van de Arrondissementsrechtbank Amsterdam inzake OM/Fijneman en OM/Bogers re. Nummers 99/4416 en 00/4418, parketnummers 13/067455-99 en 13/067456-99 door drs. E.Fromberg, opgemaakt op verzoek van mw. mr. A. G. van der Plas. Raar vraag was de consequenties te bespreken van het ayahuasca-gebruik binnen een rituele setting.

PREAMBULE

De onderstaande beschouwing is enerzijds gebaseerd op mijn ervaringen opgedaan bij mijn werkzaamheden met gebruikers van psychedelische drugs als medewerker van het drugteam der Stichting Drug Informatie en als hoofd van het Gemeentelijk Vondelparkproject in 1972 in Amsterdam, alsmede mijn persoonlijke ervaring met LSD, mescaline en ayahuasca en anderzijds op de wetenschappelijke literatuur. Ter adstructie zij verwezen naar mijn bijgesloten CV. Voor een betere interpretatie van het volgende zij tevens gezegd dat ik mijzelf beschouw als agnost, zo niet atheïst.

INLEIDING. De effecten van drugs zijn de resultante van factoren welke doorgaans²⁷⁵ worden onderverdeeld in drie groepen:

- de drug, waaronder te verstaan de farmacologische effecten ervan;
- de set, i.e. de persoon van de gebruiker;
- de setting, i.e. de omstandigheden waaronder het gebruik plaatsvindt.

Dit moge nader verduidelijkt worden aan de hand van het bekende fenomeen "kwade dronk". Sommige individuen plegen na het gebruik van alcohol altijd agressief te worden. Dit is niet een direct gevolg van de farmacologische effecten van alcohol, immers lang niet iedereen wordt agressief van alcohol, maar van de interactie van het ontremmende effect van alcohol (de drug) en de agressieve persoonlijkheid van de drinker (de set), die in nuchtere toestand wellicht zijn agressiviteit nog kan beheersen. Tevens zien we het fenomeen kwade dronk incidenteel optreden bij personen die daar doorgaans geen last van hebben als ze alcohol tot zich nemen. In die gevallen blijkt onveranderlijk dat er dan iets specifiek gebeurd is dat de agressie van deze, doorgaans niet agressieve persoon heeft opgewekt. Hier is dus vooral sprake van interactie tussen drug en setting, de omstandigheden waaronder het gebruik plaatsvindt. Het moge duidelijk zijn dat het onderscheid tussen set- en settingfactoren, vaak enigszins arbitrair is. Dit des te meer, waar verwachtingspatronen over drugeffecten een grote rol spelen. Dit wordt zeer duidelijk gedemonstreerd in een artikel van Horton²⁷⁶ waarin hij beschrijft dat er bij sommige indianenstammen een cultureel verwachtingspatroon inzake effecten van alcohol bestaat dat zegt dat men van alcohol contemplatief en rustig wordt, terwijl bij andere stammen verwacht wordt dat men er "macho" van wordt. Hij observeert dat macho-gedrag als effect van alcoholgebruik bij de eerstgenoemde stammen vrijwel niet voorkomt, terwijl contemplatief gedrag juist bij de andere tot de zeldzaamheden behoort. In het volgende zal ik de effecten en het risico van ayahuasca-gebruik in dit licht pogen te analyseren. Hierbij wordt regelmatig verwezen naar studies betreffende de gevolgen van LSD-gebruik waarvan ik de conclusies ook toepas op ayahuasca. Dit acht ik in het algemeen toelaatbaar, gezien de sterke overeenkomst in de effecten van de hallucinogenen en met name de enorme en vergelijkbare invloed van set- en settingfactoren op deze effecten. Ik mag echter niet verhehlen dat de tegenwerping gemaakt zou kunnen worden dat aangezien er geen kruistolerantie optreedt tussen LSD en

²⁷⁵ 1 ZINBERG, N.E.: Drug, set and setting: the basis for controlled intoxicant use. New Haven, Yale University Press, 1984.

²⁷⁶ 2 HORTON, D.: The function of alcohol in primitive societies. Quarterly Journal of Studies in Alcohol. 1943;4:199-320



DMT, hetgeen op verschillende werkingsmechanismen duidt, niet met zekerheid gesteld kan worden, dat wat opgaat voor LSD ook geldt voor DMT, i. e. ayahuasca.

HET RISICO SAMENHANGEND MET DE DRUG.

Hier kan worden volstaan met de vaststelling dat ayahuasca een aftreksel is van de dimethyltryptamine (DMT) bevattende plant *Psychotria viridis* en de harmaline en harmine bevattende *Banisteriopsis caapi*. Daarnaast bestaan analogen, d.w.z. aftreksels van andere planten, die eveneens DMT en harmaline bevatten, b.v. *Phalaris aquatica* (DMT) en *Peganum harmala* (harmaline en harmine), die dezelfde effecten veroorzaken. Ayahuasca wordt geclassificeerd als hallucinogeen. Hoewel vele stoffen bij een voldoende hoge dosering tot hallucinaties kunnen leiden, gaat dit bij vele daarvan gepaard met heftige, soms levensbedreigende somatische effecten. We spreken derhalve slechts van hallucinogenen wanneer het stoffen betreft, waarvan de effecten vrijwel uitsluitend van psychologische aard zijn. Een andere term daarvoor, waaraan ik de voorkeur geef; is "psychedelica" (afgeleid van het Griekse..., droombeeld), omdat deze term ook effecten omvat die niet als hallucinatie in strikte zin zijn te benoemen, met name het effect dat niet zozeer de waarneming zelf wordt veranderd (hoewel dat zeker mogelijk is), maar veeleer de emotionele context van die waarneming. Gegeven de uiterst geringe somatische effecten is het duidelijk dat de toxiciteit van deze stoffen uiterst gering is en het daaraan verbonden risico derhalve te verwaarlozen valt. Dit is zeker het geval voor ayahuasca. Voor een nadere onderbouwing hiervan kan ik hier volstaan met te verwijzen naar het rapport van Prof. Dr.F.A.de Wolff hieromtrent.

HET RISICO SAMENHANGEND MET DE SET EN SETTING.

Het risico verbonden aan gebruik van psychedelica wordt, gezien hun uiterst geringe somatische effecten, derhalve vrijwel uitsluitend bepaald door set- en settingfactoren. Dat wil zeggen dat negatieve effecten worden veroorzaakt door de ongunstige preëxistente psychische structuur van de gebruiker en door omgevingsfactoren. Als negatieve effecten worden genoemd²⁷⁷:

- **bad trips**, waaronder wordt verstaan een voorbijgaande episode van paniek, die doorgaans effectief bestreden kan worden met "talking down", geruststelling in een ondersteunende en vertrouwde omgeving. Het optreden van bad trips is niet noodzakelijkerwijze gerelateerd aan de gebruikte dosis, maar afhankelijk van ervaring, rijpheid en de persoonlijkheid van de gebruiker, zowel als de externe omgeving waarin de trip plaatsvindt²⁷⁸. Wat betreft het risico met betrekking tot deren: bij dit soort negatieve effecten treedt angst op de voorgrond, die zich keert tegen de persoon zelf. Agressief gedrag naar anderen is extreem zeldzaam: slechts enkele gevallen van moord/doodslag zijn gerapporteerd²⁷⁹ en daarbij wordt steeds de vraag gesteld of het LSD-gebruik door de daders niet als excuus wordt gebruikt²⁸⁰ zoals b.v. in de Kessler case²⁸¹.
- **flash back's**: waaronder wordt verstaan een kortstondige terugkeer van de drugeffecten, weken tot jaren na het gebruik van de drug. Dit is een zo slecht begrepen fenomeen, dat er twijfel bestaat of het wel bestaat als gevolg van druggebruik; het zou evenzeer verklaard kunnen worden als een spontane, voorbijgaande, licht psychotische episode die door degenen die ervaring hebben met hallucinogenen, wordt beschreven in drugtermen en derhalve ook ten onrechte aan het druggebruik wordt toegeschreven. Wat dan ook de oorzaak moge zijn, ze worden beschreven als voorkomend bij 15% der gebruikers.
- **Ernstige depressies, paranoïde gedrag en chronische psychosen**, aansluitend op gebruik van hallucinogenen. Deze gelijken sterk op "natuurlijk" optredende schizofreniforme psychosen en hebben een vergelijkbare prognose. Het is dan ook niet duidelijk of deze niet ook zouden zijn opgetreden zonder druggebruik. Cohen²⁸² stelt dat tolerantie voor LSD zo snel optreedt, dat dit

²⁷⁷ GOODMAN & GILMAN: The pharmacological basis of therapeutics. 8th edition, McGrawhill int Editions, New York, 1992, blz. 556-557

²⁷⁸ SMITH & SEYMOUR: Journal of Psychedelic Drugs, 1985; 17(4): 298 1985.

²⁷⁹ COHEN,S: Drug Abuse and Alcoholism, 1979; Vffl(2).

²⁸⁰ COHENS•LSD• The varieties of psychotic experience, Journal of Psychedelic Drugs, 1985; 17(4): 291-296

²⁸¹ STEVENS,J.: Storming heaven: LSD and the American dream. New York, Atlantic Monthly Press, 1987, pp 277 8

²⁸² COHENS: LSD: The varieties of psychotic experience Journal of Psychedelic Drugs, 1985; 17(4): 291-296



geen causale factor kan zijn voor schizofrenie. Het meest waarschijnlijk is dat de psychedelische ervaring een luxerend effect heeft op prepsychotische personen. De frequentie waarin dit voorkomt is uiterst gering: een studie van 5000 personen die tenminste 25 maal LSD genomen hadden, rapporteert 8 psychotische episodes per 10.000 innamen bij gezonde normale personen, 18 psychotische episodes per 10.000 innamen bij psychiatrische patiënten en 12 pogingen tot en 4 geslaagde suicides per 10.000 innamen²⁸³. Mijn eigen waarnemingen in het Vondelpark in 1972 bevestigen dit beeld. Op basis van door de Stichting Wetenschappelijk Onderzoek Alcohol en Druggebruik (SWOAD) verrichtte enquêtes schatten wij dat daar in de zomer van 1972 ruim 4000 personen regelmatig tripten. Dit leidde tot 112 hulpvragen: 8x informatie voor de trip, 92x gekalmeerd zonder medicatie (talk down), 4x gekalmeerd met gebruikmaking van tranquillizers, 2x agressief gedrag volgens politie maar niets aan de hand, 2x agressief, maar moeiteloos gekalmeerd en 4x langer durende psychosen, alle met zeer zwaar belaste psychiatrische anamnese, waarbij het actuele gebruik van hallucinogenen niet eens vaststond²⁸⁴.

Het is wellicht niet zonder betekenis dat in het bovenstaande lijstje negatieve effecten, dat door Goodman en Oilman wordt gegeven, verslaving niet wordt genoemd. Hoewel de WHO in de zestiger jaren "LSD-type dependence" heeft "uitgevonden", in het kader waarvan ook niet continu, maar periodiek gebruik van een drug tot verslaving werd gebombardeerd, heeft dit begrip in de medische praktijk geen ingang gekregen. Het voert te ver hier het begrip verslaving nader te analyseren. Volstaan kan worden met te stellen dat verslaving aan hallucinogenen, i.e. ayahuasca en/of DM1, mij noch uit de praktijk, noch uit de literatuur bekend is.

In het volgende zal ik nagaan, in hoeverre de bovenbeschreven gevaren ook bestaan bij ayahuasca gebruik in het kader van de religieuze rituelen van de Santo Daime kerk. Hiertoe zal ik een kleine uitweiding maken met betrekking tot de interpretatie van de psychedelische ervaring, in het bijzonder in een religieus en ritueel kader. Voor de theoretische grondslag daarvan mag ik volstaan met te verwijzen naar de attributietheorie, en in het bijzonder de toepassing ervan op druggebruik en drugeffecten zoals beschreven door Davies²⁸⁵.

INTERPRETATIE.

Een belangrijke factor die van grote invloed is op het risico van het gebruik van psychedelica is de interpretatie van, of liever betekenisgeving aan de psychedelische ervaring. Het moge duidelijk zijn dat zelfs een ervaring, die door waarnemers als een bad trip zal worden beschouwd, voor de betreffende persoon een geheel andere betekenis kan hebben, afhankelijk van zijn interpretatie van die ervaring. Als voorbeeld moge dienen een eigen waarneming bij een Santo Daime ritueel, waarin een noviet stuiptrekkend op de grond lag onder invloed van ayahuasca. De persoon in kwestie duidde deze ervaring echter als een fysieke expressie van zijn psychische wedergeboorte, die hij als belangrijke positieve ervaring beschreef. Het is dus het interpretatiekader dat bepalend is voor het psychologische risico van gebruik van psychedelica. De misselijkheidgevoelens, soms leidend tot braken, die veelvuldig optreden bij de aanvang van de werking van vele psychedelica, worden ook heel anders ervaren als men deze interpreteert als een uiting van zelfreiniging, dan als een farmacologisch effect van de drug dan wel een natuurlijke reactie op de (m.i. inderdaad afschuwelijke) smaak van ayahuasca. Zoals hierboven reeds aangegeven behoort het (culturele) verwachtingspatroon t.a.v. drugeffecten, waaronder ook het interpretatiekader valt, dus tot een der zeer belangrijke settingfactoren. Men hoeft slechts te denken aan ons carnaval om zich dat te realiseren. De specifieke setting carnaval maakt dat we bepaalde gedragingen o.i.v. alcohol heel anders interpreteren dan we zouden doen met datzelfde gedrag onder andere omstandigheden. Het is dus noodzakelijk dieper in te gaan op het religieuze interpretatiekader.

²⁸³ COHEN,S. & DITMAN,K.S.: Prolonged adverse reactions to LSD. Archives of General Psychiatry. 1963, vol.8.

²⁸⁴ Dit was opvallend omdat in alle vier gevallen de eerste reactie van de ouders waarmede wij contact opnamen t.b.v. repatriering, was: "Alweer..." op basis van eerdere psychosen. Geen der ouders legde ook maar enig verband met druggebruik. Alle vier hadden een prepuberale psychose in de anamnese.

²⁸⁵ DAVIES,J.B.: The myth of addiction: an application of the psychological theory of attribution to illicit drugs. Harwood Academic Publishers, Paris, 1992.



DE RELIGIEUZE BETEKENIS VAN PSYCHEDELICA

Hoewel er een omvangrijke vooral etnologische literatuur bestaat over het gebruik van drugs, i.h.b. psychedelica in een medico-religieus kader bij niet-westerse culturen, is er maar weinig onderzoek verricht naar de invloed van gebruik van psychedelica op de persoonlijke religieuze ervaring en met name in de westerse cultuur. De weinige die er zijn, zijn vooral door de feitelijke politieke blokkade op onderzoek naar effecten van psychedelica, reeds van jaren terug, maar blijven in dit verband relevant, met name het onderzoek van Downing en Wygant²⁸⁶. Zij stelden vast dat het gebruik van psychedelica (in dit geval LSD) bij 60 % van hun proefpersonen leidde tot verandering van hun religieuze attitudes. Nadere analyse leerde dat hierbij geen nieuwe religieuze concepten werden ontwikkeld, maar er sprake was van verdieping van bestaande gevoelens. De verandering leidde er toe dat men beter in staat was de waarheid van abstracte concepten als God te accepteren. Deze auteurs stellen (terecht) de vraag of de beschreven veranderingen echt religieus waren of slechts zelfbedrog, maar beantwoorden deze vraag met te zeggen dat "the elaborations presented by the subjects in answer to our questions appear possibly, but not certainly, to be of a religious nature. It is impossible to make dogmatic statements as to what the experience described by the subjects under LSD "really" is because of its subjectivity."²⁸⁷

Het is in dit verband wellicht relevant om een uitspraak aan te halen van een Bwiti priesteres hieromtrent. Bwiti is een in principe met Santo Daime te vergelijken syncretistisch geloof uit Gabon en Kameroen, dat oorspronkelijke sjamanistische gebruiken, zoals de consumptie van de wortel van Tabernanthe iboga, die het psychedelicum ibogaïne bevat, combineert met een op het christendom gebaseerd geloof. Deze priesteres verbaasde zich erover dat christenen moesten geloven. Voor Bwiti hoeft je niets te geloven, je ervaart het. De psychedelische ervaring maakt geloof tot realiteit, een realiteit die blijft bestaan ook nadat de drug is uitgewerkt.

Een andere religie waarin hallucinogenen een centrale rol spelen is die der Native American Church, waarin sacramenteel gebruik wordt gemaakt van de mescaline bevattende cactus *Lophophora williamsii*, beter bekend als peyotl. In verband met de onderhavige kwestie mag worden opgemerkt dat het religieuze gebruik van deze cactus, die onder schedule I van de Controlled Substances Act valt, zelfs in de Verenigde Staten legaal is, hetgeen nog recent werd bevestigd door de ondertekening door President Clinton in 1993 van de Religious Freedom Restoration Act. In het kader van deze kerk wordt door honderdduizenden Amerikanen peyotl gebruikt, zonder dat dit ooit tot significante problemen heeft geleid.

De psychedelische ervaring in een religieus kader, krijgt dus een mystieke betekenis. Hierbij moet wel worden opgemerkt dat dit alleen het geval lijkt te zijn bij degenen die voor een zodanig kader gevoelig zijn, c.q. voor wie het religieuze interpretatiekader reeds aanwezig is. Deze betekenis is vrijwel onveranderlijk een positieve en leidt op een aantoonbare wijze tot een verbeterde relatie tussen het individu en zichzelf en het individu en zijn omgeving²⁸⁸. Het voert te ver in te gaan op de mogelijke psychologische mechanismen waarop dit berust. Er zij slechts opgemerkt dat deze mechanismen vermoedelijk niet sterk afwijken van de invloed van "altered states of consciousness", die op andere dan chemische wijze worden bereikt, zoals b.v. d.m.v. meditatie, etc. Het voornaamste verschil is echter dat vele andere wijzen om tot een zodanig andere staat van bewustzijn te geraken op zich aanzienlijk meer tijd en moeite kosten dan het innemen van een psychedelische drug. Ik kan mij dan ook niet aan de indruk onttrekken dat de sterke weerstand tegen druggebruik, ook met religieuze i.p.v. hedonistische oogmerken, van de kerken voornamelijk berust op hun angst macht te verliezen, wanneer de directe ervaring met het transcendente buiten hun organisatie zo eenvoudig kan plaatsvinden. Tot zover heeft dit deel van mijn beschouwing uitsluitend betrekking gehad op de effecten van psychedelica in een religieus interpretatiekader, zonder in te gaan op de materiële omgeving waarin een ander plaatsvindt. Het bovenstaande geldt evenzeer voor iemand die alleen, bij wijze van spreken "op zijn zolderkamertje" een psychedelicum gebruikt met een religieus oogmerk of zelfs zonder dat vooropgezette oogmerk zijn psychedelische ervaring in een religieus kader interpreteert. In het geval van ayahuascagebruik in het kader van de Santo Daime kerk is er niet alleen sprake van gebruik met religieus oogmerk, maar tevens van gebruik: het gebruik in een vaststaand kader volgens, een patroon: in een ritueel.

²⁸⁶ "DOWNING, J.J. & WYGANT, W.: Psychedelic experience and religious belief. In: BLUM, R. & Associates: Utopiate & the use and users of LSD25. Atherton Press, New York, 1964

²⁸⁷ ibidem: blz. 190

²⁸⁸ ibidem: blz. 192-197



DE BETEKENIS VAN HET RITUELE GEBRUIK.

Er bestaan diverse opvattingen over rituelen, die elkaar ovengens geenszins uitsluiten. De twee belangrijkste benaderingen worden samengevat door Partridge²⁸⁹. De eerste interpreteert ritueel als systeem transformatie: "Ritual is a transformative process within a wider system of relationships: as an element in the system changes, this forces a transformation of the whole system. Rituals occurs when such changes make adjustments of the system necessary." De tweede benadert ritueel als een structurele redundancy: "rituals are the condensed storehouse of a cultural tradition which through repetition and redundancy accomplish the task of blocking noisy interference and permitting communication of knowledge to occur." Ik meen dat met name in het onderhavige kader van het ayahuasca ritueel beide benaderingen relevant zijn. De eerste benadrukt de persoonlijke transformatie door het ondergaan van het ritueel, de tweede het belang ervan voor het versterken van de onderlinge communicatie tussen de deelnemers aan het ritueel. Het rituele kader stelt de deelnemers eraan in staat de effecten van het gebruik in te kaderen, "behapbaar" te maken in modern welzijnsjargon, waarmede een uiterst effectieve bescherming tegen negatieve effecten wordt verkregen. Er wordt een steunende, veilige omgeving gecreëerd die deelnemers in staat stelt hun ervaringen positief te verwerken. Wellicht ten overvloede zij opgemerkt, dat dit natuurlijk impliceert dat er bij de deelnemers ook ten principale een bereidheid moet bestaan in dat kader "op te gaan". Hier zij volstaan met de constatering dat de formele organisatie als kerkgenootschap een belangrijke waarborg is voor het voldoen aan deze conditie.

Hiermede raken wij weer op het terrein van de persoonlijkheidsfactoren die van invloed zijn op het risico van ayahuasagebruik.

HET RISICO SAMENHANGEND MET DE SET.

Wij hebben in het bovenstaande gezien dat het religieuze interpretatiekader en de rituele setting een optimale setting vormen voor het gebruik van psychedelica, i.e. ayahuasca, maar dat laat onverlet dat individuele factoren van psychische aard een rol blijven spelen. Hoewel wel duidelijk is dat psychedelica in een psychotherapeutisch kader een nuttig hulpmiddel kunnen zijn bij de behandeling van psychische problematiek^{290 291}, al moet worden toegegeven dat de gevestigde medische orde, naar ik meen onder druk van de vigerende drugpolitiek, dit nauwelijks erkent, moet onmiddellijk gezegd worden dat dit uitsluitend meer neurotische stoornissen betreft. In deze zin is ook de religieus/rituele setting er een waarin dit soort positieve effecten door betrokkenen worden gemeld, zij het in een niet-medisch interpretatiekader. Het is echter evenzeer duidelijk dat de invloed van psychedelica op stoornissen van psychotische aard een uiterst negatieve kan zijn. Anders gezegd, gebruik van psychedelica bij dit soort aandoeningen moet ten sterkste worden ontraden, zelfs al blijkt uit bovengeciteerde studie dat het risico kwantitatief gezien wellicht niet zo groot is, kwalitatief blijft het in deze van belang.

Het feit dat nieuwe deelnemers aan het Santo Daime ritueel middels een uitgebreide vragenlijst worden gescreend op medicijngebruik psychiatrische en andere aandoeningen, en indien deze aanleiding geeft tot twijfel het gebruik van ayahuasca ten sterkste afraden (c.q. het niet verstrekken), vormt een zo adequaat mogelijke wijze om het risico als gevolg van persoonlijke predisposities maximaal te elimineren²⁹².

CONCLUSIE.

Resumerend stel ik vast dat het religieuze interpretatiekader alsmede de daarmee samenhangende setting in het algemeen, en in het geval van de Santo Daimekerk in het bijzonder, een setting vormen die het toch al geringe risico verbonden aan het gebruik van een psychedelicum, in dit geval ayahuasca, sterk reduceert, zo niet opheft. Hetzelfde geldt voor het risico t.g.v. persoonlijke predisposities, dat door screening van nieuwe deelnemers zoveel mogelijk wordt geëlimineerd.

Er lijkt mij geen enkele grond om het gebruik van ayahuasca in dit kader te verbieden.

²⁸⁹ PARTRIDGE, W.L. Transformation and redundancy in ritual, a case from Columbia, In: Du Toit, B.M.: Drugs rituals and altered states of consciousness, Balkema, Rotterdam 1977

²⁹⁰ Caldwell, W.V. LSD Psychotherapy, and exploration of psychedelic and psycholytic therapy, Grove Press New York 1968

²⁹¹ Stolaroff, M.J.: The secret chief, MAPS, Charlotte (USA) 1997

²⁹² Gezondheids informatie Introductie bijeenkomst Santo Daime, uitgave Santo Daime kerk 1998?



Gouderak 25-1-2001

Drs. Erik Fromberg

NA WOORD.

In de bovenstaande conclusie heb ik mij beperkt tot de vraag of gebruik van ayahuasca in het kader van het Santo Daime ritueel een bijzonder risico impliceert, waarop ik negatief antwoord. Dit zegt evenwel noch dat er niet vele andere kaders bestaan waarin psychedelica zonder bijzonder risico kunnen worden gebruikt, noch dat er geen kaders zijn waarin dit gebruik wel degelijk risico met zich meebrengt. Ik kan slechts zeggen dat ik het betreurt dat de (internationale) overheden op een uitermate kortzichtige, zo niet stupide wijze hebben gereageerd met een totale prohibitie op een klasse van stoffen waardoor het potentieel daarvan nauwelijks kan worden geëxploreerd.

CURRICULUM VITAE Drs.E.Fromberg

Born 27-6-1943 in The Hague

1961 Gymnasium 1 at Haags Montessori Lyceum

1966-1971 Medical scientist at the Laboratorium voor Neurofysiologie, Gemeente Universiteit of Amsterdam; 1969 doctoral exam medicine, University of-Amsterdam -

1971-1974 Stichting Drug Informatie. Research in streetdrug composition; Prevention and information.

1974-1982: Managing director of the Stichting Kontakt Sentra, a Community care daycentre for heroin addicts. Founded in this function a the first large scale, low threshold methadon program, and introduced the provision of clean syringes, opened a therapeutic day centre, administering medical **and social** help for addicts.

1975- present: teaching at the Rechterschool at Zutphen, the Central School of Criminal Investigation. 1984-1987: Coordinator drugteam Consultation Bureau for Alcohol and Drugs at Utrecht. Directed the Utrecht methadone program.

1987-2000: Nederlands Instituut voor Alcohol & Dmgs/Trimbos-instituut.

In the service of this Institute since 1988 projectmanager Deskundigheidsbevordering Drughulpverleningsinstellingen: education and training for drug- and alcoholworkers. Coordinator and teacher in the period 1988-1992 at the Hogeschool van Amsterdam: VO-verslavingszorg.

1991- 1997 founder and projectmanager of the Drug Information and Monitoring System, that researches the trends in drug use by following the market, by chemical analysis of streetdrugs.

1995-1997 Head of the Training and Methodology Department of NIAD.

1997-2000: senior advisor at the Trimbos-instituut, the Netherlands Institute on Mental Health and Addiction, in the Information & Communication Department.

Additional functions.

In juni-sept 1992 consultant to the WHO at Geneva in the Project on Substance Abuse.

In 1991-1992 co-organiser of an international conference on Drughelplines in Lissabon, sponsored by the European Community. In 1992/3 manager of a research program into users perceptions of syringe exchange programs and single use syringes in the U.K., Germany and the Netherlands for the European Community. Member of the governmental advisory group on XTC-use.

Honorary functions:

1993-1997: Founder and Secretary of the European Council of Drughelplines, 1997 - 1998: Board member.

1997-2000: treasurer, of the International Parenthood-Drug Abuse Network (IPDAN)

Secretary of the International Foundation for Drug Policy and Human rights.

Member of Advisory Board of "AIDS Prevention Action Network (APAN), California, U.S.A.

Member of the Scientific Advisory Board of the International Harm Reduction Conference.

Member of the Wissenschaftliche Beirat of Akzept Ev, in Germany

Board member of the Global Conference on Hepatitis C, San Francisco, U.S.A.

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3. EXPERT OPINION DOCTOR E.J. MACRAE

This report has been prepared on the request of Adele van der Plas, lawyer and legal counsel of the Santo Daime churches in the Netherlands. Its contents may be used as an expert's report in the legal procedure before the Amsterdam Court which is currently involving the Santo Daime churches in the Netherlands.

The questions that have been put to me are:

- What are the possible health and safety issues involved?
- What is the danger that the ritual religious use of ayahuasca in Santo Daime rituals may present to the public?
- What are the similarities between the religious use of ayahuasca in Santo Daime rituals in Europe and in Brazil?
- What are the possibilities of illicit diversions of the brew? -What is its relation to the drug problem?
- What is your appreciation of Prof. De Wolff's report?

I am Edward John Baptista das Neves MacRae, Ph.D., lecturer in anthropology at the Faculty of Philosophy and Human Sciences -Federal University of Bahia- FFCH/UFBa and associate researcher at the Centre for the Study and Therapy of Drug Abuse- Federal University of Bahia-CETAD/UFBa.

Also, I was recently appointed to the expert panel set up by General Alberto Cardoso, head of SENAD, the Brazilian National Anti-drug Office, to help draw up a proposal for a national drug policy. This appointment, which is independent of my research regarding the Santo Daime, was made owing to my longstanding work on the social and cultural aspects of drug use and on the prevention of abuse.

I, Edward John Baptista das Neves MacRae, solemnly affirm the truth of the matters set forth below.

In order to answer questions regarding the ritual use of the ayahuasca brew by the Santo Daime Church in Brazil and the possible implications of its use in the Netherlands I have reviewed the existing anthropological literature on the subject, including my own works and field notes. I am mainly interested in the subject from the point of view of drug policy and have written books and scientific articles from this perspective. Therefore, the questions that have been put to me with regard to the possible health and safety issues, the danger to the public, the similarities in the religious use of ayahuasca in Santo Daime rituals in Europe and in Brazil, the possibility of illicit diversions of the brew, its relation to the drug problem, and an appreciation of Prof. De Wolff's toxicological report are matters that I have been giving much thought to over the last decade, since I began my studies on Daime and other entheogens (psychoactive plants used for religious and sacred purposes).

Since 1987 I have been involved in Brazilian official drug prevention programs both at State and Federal levels. In this regard my main activities have been concerned with drug prevention among young adults, including issues such as distribution of illicit drugs and curbing HIV infection among injecting drug users. For some years now my academic research interest has also included the religious use of psychoactive substances and I have studied in special detail and *in loco*, the use of ayahuasca in the Santo Daime services both in Brazil and in Europe (in Spain, Holland, Germany, France and Italy). The issue of the religious use of psychoactive plants had never been a very important question from the point of view of national drug policy. This is because on no occasion had this ever presented any major problem to public health or to the maintenance of law and order, until approximately 15 years ago when certain religions whose major centres were in the Amazon expanded and began to emerge in the cities.

A number of public inquiries have been held into this matter due to the apparently odd status of the legal use of this substance in a country that follows quite closely the Vienna Convention protocols on the control of illicit drug use and trafficking.

As an anthropologist, I have been particularly struck by the arguments presented by important theoretical thinkers on the drug question, such as Norman Zinberg, in the USA, Claude Olievenstein, in France and Antonio Nery Filho, in Brazil. They maintain that in order to approach this question successfully one



must take into account not only its pharmacological but also its psychological and socio-cultural aspects. In spite of the fact that he was a psychiatrist, it was Norman Zinberg who most clearly pointed the way to an anthropological study of drug control, as can be perceived in the following quotation:

"I contended, first, that in order to understand what impels someone to use an illicit drug and how that drug affects the user, three determinants must be considered: drug (the pharmacological action of the substance itself), set (the attitude of the person at the time of use, including his personality structure) and setting (the influence of the physical and social setting within which the use occurs). Of these three determinants, setting had received the least attention and recognition; therefore, it was made the focus of the investigation. Thus the second hypothesis, a derivative of the first, was that it is the social setting, through the development of sanctions and rituals, that brings the use of illicit drugs under control

The use of any drug involves both values and rules of conduct (which I have called social sanctions) and patterns of behavior (which I have called social rituals); these two together are known as informal social controls. Social sanctions define whether and how a particular drug should be used... Social rituals are the stylized, prescribed behavior patterns surrounding the use of a drug"

(Norman E. Zinberg, M.D., Yale University Press, 1984).

Thus, in my research among drug users, I have usually tried to detect the existence of these social sanctions and social rituals and examine their operation. In my studies of the Daime, this led me initially to study the founder of the movement, the Black rubber tapper Raimundo Irineu Serra, who lived in the Territory of Acre, in the Brazilian Amazon region. It was he who, in the second decade of the twentieth century, after being introduced to the ayahuasca brew by an Indian shaman, began a long process of making its use compatible with Christian values and beliefs.

Ayahuasca is a tea that is brewed from a mixture of *Psychotria viridis* leaf which contains the indole alkaloid N,N-dimethyltryptamine (DMT—a psychoactive chemical) and the *Banisteriopsis caapi* vine, which contains certain alkaloids known as beta-carbolines. DMT, the specific alkaloid often thought to be most responsible for the psychoactive effects of ayahuasca, is not active when taken orally, because it is digested by the enzyme monoamine oxidase (MAO) commonly found in the stomach. The combination of DMT and the MAO inhibiting beta-carbolines to be found in the brew renders the DMT active and produces the characteristic psychoactive effects.

Substituting the ambiguous traditional shamanic power ethic, "Mestre Irineu", as he was commonly known, introduced the Christian values of unconditional love for one's neighbors and the veneration of Catholic saints. As for the ayahuasca brew which he renamed Daime or Santo Daime (Holy Daime), he likened it to the Christian sacrament, considering it to be "The Blood of Christ".

Acre was very sparsely inhabited at that time and was yet to undergo the process of colonization that has now made it into an integral part of the Brazilian nation. Some anthropologists argue that the doctrine spread by "Mestre Irineu", played a key role in the transition from life in the isolation of the forest to urban conviviality, undergone by the local population after the end of the rubber boom. As such the Santo Daime doctrine is an integral element in Acrean culture, even though today most of its inhabitants may nominally profess to be Catholic.

Mestre Irineu's contribution to a more Westernized use of ayahuasca included the development of a series of new rituals he received in visions, involving the sacramental use of Daime, displaying again a marked Christian influence, although certain Indian and African characteristics are also to be detected. They vary according to the occasion and may be celebratory "hymns", meditational "concentrations", exorcisms, "healing works" funeral "masses" and the "makings", during which the sacrament is ritually prepared. The Church doctrine can be roughly described as Catholicism modified by indigenous and African influences. The hymns of the Church are conceived of as having been received by Mestre Irineu from God and are remarkably similar to the hymns sung in a Catholic Church. They reflect a belief in Jesus Christ as the Savior and speak to all of the traditional Catholic values and social standards. My



report includes as an exhibit the Hinário of Padrinho Sebastião Mota de Melo, the successor of Mestre Jrineu. By way of comparison to a traditional Catholic ceremony, the Santo Daime "works" all begin with the Lord's Prayer and the "Hail Mary." And every ceremony ends with the following prayer:

In the name of God, the Father,
Of the Sovereign Virgin Mother
Of Our Lord Jesus Christ,
Of the Patriarch Saint Joseph
And all the Divine Beings
Of the Celestial Court
Under the orders of
Our Imperial Master Juramidain
Our work is closed.
My brothers and my sisters
Praised be God in the heights
So that She be always praised,
Our Mother Most Holy Mary,
Over the whole of Humanity

The Church rituals, which are invariably accompanied by the singing of hymns containing a strong Catholic imagery, frequently involve communal dancing. They are very structured affairs, with fixed steps and during which everyone keeps to predetermined places, with a rigid separation according to sex and age group. The emphasis on self-control, found throughout the Daime ceremonies, has led anthropologists to consider them to be "rituals of order", promoting group and hierarchical cohesion and a search for spiritual harmony both within and without. This order is maintained through the observance of what Zinberg would call a series of "social rituals."

Although, from a pharmacological point of view, Daime contains potent psychoactive agents, such as DMT and other alkaloids, the historical use made of it by these religious organizations establishes that there is no evidence that it leads to ill results, as attested by recent medical studies of long time users. This is probably due, at least in some measure, to the strict ritual control built around this practice and to the fact that the brew is not taken extraritually.

Every Daime ritual or "work" is thought to be an opportunity for learning and healing and for the indoctrination of the spirits present either in the "material" or in the "astral" planes. As mentioned, there are different rituals for different occasions or different needs but they all involve taking the brew and entering into an altered state of consciousness in a Christian religious social and physical setting designed to contain and guide the experience.

Many factors contribute to this, such as:

- a) dietary and behavioral prescriptions involving, for example, abstinence from alcoholic beverages, that must be observed during the three days that precede and follow the taking of the drink, setting the stage for an unusual event that escapes the daily routine.
- b) hierarchical social organization in which a "padrinho"(church elder or leader) conducts the service with the help of assistants whose duties are not dissimilar to those performed by ushers meeting the needs of the congregates
- c) control of the dosage of the drink taken by participants.
- d) ritual spatial organization and ritual structure control. There is a central table\altar where the double armed Cross of Caravacca and other religious symbols mark the sacred nature of the event. All those taking part are given a specific place in the room, usually in a rectangle formation drawn on the ground, where they must remain, grouped by sex, age, and, in certain more traditional areas, sexual status (virgins and non-virgins).

Generally, sober white and green or white and blue uniforms of a modest cut stress the unity of the group and help maintain a mood of religious ritual seriousness. The service is highly prescribed, involving a



combination of simple dance steps. The singing of hymns and the movements of those taking part are also rigidly prescribed and one of the main duties of the assistants is to ensure the maintenance of the ritual order and the recommended postures such as the raised heads and relaxed and immobile arms and legs that considered most appropriate for the seated "works". One of the most important ritual elements is the music sung and played during most of the ceremonies. This helps harmonize the group, through marked rhythms and voices in unison. The ritual use of music harks back to ancient shamanic customs from which the ceremonial taking of ayahuasca originates. Singing and the use of percussion instruments with a strong, repetitive beat, are powerful aids and are thought to act as a way of invoking spirits. The words of the "hymns" which invoke common Catholic themes such as reverence of Christ, and the teachings of peace and love direct the focus of the ritual experience in the desired direction of invoking spiritual and personal insights and communion with God. They also assist in mitigating any discomfort associated with the ingestion of the tea.

The hymns also help the participants to interpret the experiences they have during the services. They help to create connections between the lived experiences and the spiritual or mythical symbols with which they become invested, which is of great importance promoting the cohesiveness of the ceremony for all who attend. The Catalan anthropologist Josep Fericgla, working on the Indian use of ayahuasca, like his British counterpart Victor Turner, considers that this is a psychic or spiritual function of symbols which was lost by Western societies when they abandoned their traditional ways of organizing unconscious drives and of using these "sources of renovation" for individual and collective benefit. (Fericgla 1989:13).

Norman Zinberg's model of controlled drug use for dealing with issues of drug and alcohol abuse, emphasized the important role played by social sanctions and social rituals that reinforce given sets of values, rules of conduct and standardized ways of producing, consuming and dealing with effects (Zinberg 1984:5). Zinberg's model can be viewed not simply as a model, but rather as standard for defining or redefining the underlying assumptions regarding "drug use." Thus, to the extent that certain substances are considered "drugs" when used under a given set of circumstances, and as "non drugs" in other circumstances, the drinking of the Daime tea as the sacrament of this religion would be the classic example of the "non drug" use. {As noted in the CONFEN Report cited below}. The purpose for which Daime is taken, the ritualistic and highly structured ceremonies which are focused on Christian doctrine with indigenous nuances, together ensure that the social taboos that accompany the typical drug user, do not, in this case, pertain in any manner.

More recently, the Dutch anthropologist Jean-Paul Grund, carrying out research among heroin and cocaine users in the Netherlands, further developed Zinberg's theory by proposing what he calls a "feedback model of drug use self-regulation" that may help us establish the demarcation between what is common called a "drug" and a sacramental use of plants that contain psychoactive properties. His model takes into account two further elements: the availability of the substance and life structure (Grund 1993:247). The Daime and other ayahuasca using religious organizations seem good examples of these models. Not only do they also adopt ritual procedures for the taking of the brew that fulfill all the prerequisites laid out by Zinberg, but they also regulate their followers access to the substance and provide them with doctrinal guidance on the structuring of their lives, the controlling elements Grund added to his model.

Recent Investigations of the Daime

During Mestre Irineu's lifetime and after his death, in 1971, some of his early followers embarked on new paths. Amazonian rubber tapper, Sebastião Mota de Melo, better known as Padrinho Sebastião, who after Mestre Irineu's demise chose to become autonomous introduced some new elements of his own revelations to the doctrine. Unlike the other Daime leaders, he was very welcoming towards young newcomers from outside the Amazon area. As a result, a number of centers were then set up in the southern metropolis and the size of the congregations increased. More recently, especially in the 90's, Santo Daime churches following Padrinho Sebastião's spiritual line began to be set up abroad and are now to be found in many South American and European countries, in the United States and Japan.



When they were originally set up these Santo Daime churches played an important role in helping migrants from the forest adapt and integrate into their new urban environment. Nowadays, however, a great part of the new followers come from a different socio-cultural background. They are, generally speaking, young adults with secondary or university level education and with lower middle-class incomes. Although they may face different problems from those of the rubber tappers newly arrived in the city, who made up the bulk of the original members; they have their own adaptation and existential problems. In Brazil today the young of all classes are dealing with the consequences of the modern social and economic world where a greatly diminished emphasis is placed on traditional religion and its cohesive value.

Young people have to cope with the very quick cultural changes occurring around them with regard to the sexual and work ethics as well as the breakdown of traditional family organization and values. In the face of this somewhat hostile milieu, belonging to such a religious group provides them with a sense of social, psychological and spiritual identity, which for many are very familiar and similar to their very early indoctrination to traditional Christian doctrine.

The disciplined use of Daime also provides congregates with a safe, well mapped route to the kind of transcendental spiritual experience that many people seem to be searching for in the compulsive use of alcohol and drugs. Thus, taking part in these religious groups tends to be a particularly effective way of dealing with alcoholism and drug addiction. In this regard, rather than trying to forbid any kind of induced alteration of consciousness, the Daime allows certain experiences of the kind. But at the same time it provides a powerful structuring religious framework within which the congregate may work through personal and difficult life issues in a safer setting. One could, quite appropriately say that the Santo Daime religious doctrine and practice is intrinsically a very desirable and effective harm reduction methodology which has shown itself to be of great social and psychological value to the congregates.

As long as the use of Daime was confined to the distant Amazonian region it was ignored by the metropolis-oriented Brazilian authorities and opinion makers. However, the spread of the Santo Daime church and another church [the União do Vegetal that also holds Ayahuasca as its sacrament] among the urban middle class youth soon called official attention. In 1986, pending further studies, the government decided to ban the use of ayahuasca. However the study group officially appointed, by the Federal Narcotics Council --CONFEN, to look into the matter, after six months research produced a paper calling for the repeal of the ban on a nationwide level. Among other arguments, they pointed out that no damage to health had been proven to be caused by the use of the brew and that the members of the different religious groups had been found to be orderly and to lead their lives according to the accepted social values.

In 1992 CONFEN set up another study group to update the previous conclusions, new visits were made to the ayahuasca using religious communities and further interviews were carried out with their leaders and members. Leading medical researchers, as well as social scientists, were also consulted. The final report produced by the group confirmed the recommendations made in the previous one that the religious use of the brew ought to remain legal, although a new inquiry might be set up, should new evidence point to the illegitimate use of ayahuasca. There was also a call for the various ayahuasca-using bodies to set up joint commissions to draw up a common set of guidelines that might govern the different ritual uses of the brew.

Returning to the question with regard to the possible health and safety issues, the danger to the public, the possibility of illicit diversions of the brew and its relation to the drug problem, the following is a summary of my views:

As for the health safety issues involved in the use of Daime or ayahuasca, several studies have already been conducted both by Brazilian and foreign scientists pointing out the relative harmlessness of the brew to the organism (Andrade et al. 1995, Aranha et al. 1991, Callaway et al. 1994, Costa et al. 1995, C}rob et al. 1996, Mackenna et al. 1998).

Similarly, the inquiries held by CONFEN as well as other anthropological research have shown that those persons who take the tea in the limited context of the religious rituals described herein, are



particularly abiding to the basic values of traditional Brazilian society. The case of the Daime community Ceu do Mapia, in the heart of the Amazonian rain forest, is a sinking example of this. The whole area is renowned for the poverty of its inhabitants and for its lawlessness; yet this community, in spite of its own poverty, is an oasis of tranquility and order, where the problems of drunkenness, violence and prostitution, endemic in the region, are virtually unknown. Ceu do Mapia, in fact, acts as a refuge for many trying to escape the surrounding misery and its leaders are widely respected for their kindness and wisdom.

Since the early 90's, Santo Daime services have been held regularly in Europe, under the organization of European citizens but counting with the ritual supervision of Amazonian Santo Daime leaders. These services follow as closely as possible the Brazilian models, the only significant difference relating to the use of the local language, instead of Portuguese. Thus it is safe to affirm that the same safeguards that apply to the religious use of ayahuasca in Santo Daime services in Brazil apply in the European context as well.

The possibilities of diversion of the brew from its ritual purposes are quite small. As already mentioned, Daime is likened to the Holy Sacraments of the Roman Catholic Church, and considered to be an object of veneration in itself. The access to it is a jealously preserved prerogative of a small body of veterans and subject to great communal vigilance. In addition, from the moment of the initial gathering of the vines and leaves that make up the tea, to its preparation and actual brewing, the handling and stocking of the ingredients and of the final product are surrounded by several taboos. Even the shipment of Daime to the different extra-Amazonian churches is a matter of great spiritual concern and care and serious efforts are made to ensure that it is never left unguarded. In this environment it is very difficult for anyone to try to adulterate it, for instance, since the Santo Daime followers believe that even a drop of water, added outside the ritual, is enough to rob it of its sacredness.

I am familiar with the process for maintaining control over the Daime manufacture, distribution, exporting and accounting to ensure that it is not diverted to an illicit use in Brazil or abroad. The brew masters keep detailed records of every batch of tea that is brewed. The tea is labeled and kept in a guarded locked building in Mapia. Whenever there is a shipment to another church, the brew masters record the exact amount that is being transported. It must be remembered that "Daime" is generally produced in "Colônia 5.000" on the outskirts of Rio Branco or in the "Céu do Mapiá" community, in the heart of the rain forest. From these places it is sent to the leaders of the other churches, who have been entrusted by the head of the religious movement with the responsibility of distributing the sacred brew. The Daime is usually stored ceremoniously in the house of the local leader. There it may only be handled by a few more trusted members of the local church.

Each local Church, in turn, is required to keep detailed records regarding the number of people who attend a service and the amount of Daime distributed at that service. This is done for every service. There is a requirement that local records be maintained and presented to the brew masters upon request.

Similarly, when the tea is exported, all of the typical export documents are filed out in Brazil, including those listing the contents of the product. When a batch is received in another country, the Church leaders there are required to keep similar records and present copies to Brazil periodically.

I am satisfied that the tea is controlled in a way that renders the likelihood of it being distributed to the illicit market virtually impossible. Because each of the Church leaders, or someone under his/her direct supervision, is responsible for administering the tea at services, the controls are very effective. Indeed, it would constitute a sacrilege for anyone to have the tea outside of the ritual services. These controls have been more than adequate to meet the country's drug policy expectations of ensuring that the Daime does not make its way into the illicit markets in Brazil after more than a decade of its legalization for Church use.

The myths that have developed regarding the use of all psychoactive plants have generally failed to recognize that the setting determines in large measure the label that should be applied. The traditional



views that all "drugs" are excuses to avoid real life issues and to obtain a "pleasurable high" are descriptions which have no relationship at all to the religious drinking of the Daime tea.

Those who lack a serious intent tend to be pushed away by several aspects of the ceremony such as the length and rigidity of the ceremonies; the traditional values conveyed by the doctrine and by the hymns that are ritually sung throughout; the bitter and foul taste of the tea and the purging or vomiting physical reactions that accompany the taking of the brew. Yet, many who initially may have been moved by idle curiosity find themselves touched by the ritual experience and go on to become converted to the doctrine, opening themselves to profound changes in their values and life styles. The traditional Indian use of ayahuasca has always been closely associated with spiritual healing and it is quite remarkable how many of the old Amazonian Santo Daime veterans claim to have become rid of alcoholism thanks to their sacrament. Even among younger more urban church members there are many who claim to have given up alcohol and cocaine abuse thanks to the doctrine. So it seems that rather than being an object of concern, the spread of this religion may contribute to the diminishing of drug abuse. This would be due to the values promoted by the doctrine which include an emphasis on the seriousness and sacredness of the Daime experience and the teaching that the taking of Daime ought never to be engaged in lightly. The quest for self-knowledge and self-control must always be its paramount motivation.

It is my opinion that from a drug policy perspective, there are no government policy objectives that are violated by the sacramental use of Daime. It has clearly contributed to the spiritual and psychological well being of thousands of Brazilians who have chosen to become members of the Church.

In a country like Brazil it is very significant that several important Catholic leaders recognize the Santo Daime church and it has spoken eloquently about its service to environmental and humanitarian issues and is and is considered a full partner in inter-religious organizations and conferences in Brazil.

As for the findings presented in Prof. De Wolff's toxicological report, the official English translation of which has been submitted to my examination, as an anthropologist I have nothing to add to it and consider it to be very fair. I was specially impressed by his emphasis, on page 3, that the present case involves the consumption of a compound rather than DMT alone, which leads him to, contrary to the Terms of Reference, use the term ayahuasca in the rest of his report.

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Salvador, september 18th, 2000
Edward MacRae



4. EXPERT OPINION DOCTOR STEPHAN SNELDERS

DE SANTO DAIME EN DE GESCHIEDENIS VAN HET GEBRUIK VAN PSYCHOACTIEVE PLANTEN

Inleiding

Dit rapport is geschreven op verzoek van mr. Adèle van der Plas door Dr. Stephen Snelders. Dr. Snelders is historicus, gespecialiseerd in de sociale geschiedenis van drugsgebruik, en in 1999 gepromoveerd aan de Vrije Universiteit in Amsterdam op het onderwerp 'LSD en de psychiatrie in Nederland.' Momenteel bereidt hij aan de Vrije Universiteit een vervolgonderzoek op zijn proefschrift voor. Een deel van het materiaal waarop het rapport is gebaseerd is verzameld bij het ontwerpen van een pilot-studie naar het ritueel gebruik van ayahuasca ter genezing van drugsverslaving in 1999-2000, waarin Dr. Snelders samenwerkte met Prof. J. Keppel Hesselink en met onderzoekers van het Centrum voor Verslavingsonderzoek in Utrecht. De vraagstelling van dit rapport is of de praktijken van de Santo Daime-religie te plaatsen zijn binnen de bredere geschiedenis van het gebruik van psychoactieve stoffen, voor verschillende doeleinden in verschillende tijdperken en culturen. Het rapport is gebaseerd op de huidige stand van onderzoek binnen de verschillende disciplines van de historische wetenschappen, de archeologie, de antropologie, en de etnobotaniek. Het rapport zal zich beperken tot de klasse van 'hallucinogene' middelen, waartoe ayahuasca behoort.

1. Medisch en recreatief gebruik van psychoactieve stoffen

In huidig historisch onderzoek is een beschrijvend onderscheid gemaakt tussen een 'medisch' en een 'recreatief' gebruik van psychoactieve stoffen (met name door M. de Kort in zijn proefschrift over de geschiedenis van het Nederlandse drugsbeleid uit 1995). Veel stoffen die momenteel onder de Opiumwet vallen zijn hun 'carrière' begonnen binnen de geneeskunde. Dit geldt voor opiaten (opium kende een uitgebreid geneeskundig gebruik in Europa tenminste sinds de 16e eeuw, de derivaten morfine en heroïne werden in de 19e eeuw als geneesmiddelen ontwikkeld) en voor cocaïne, maar het geldt ook voor hallucinogene stoffen als LSD, mescaline en psilocybine. Deze stoffen werden vóór het midden van de jaren zestig in de Verenigde Staten en West-Europa vooral als hulpmiddelen in de psychiatrie gebruikt: bij vormen van psychotherapie, in experimentele psychopathologie, en in bioneurochemisch onderzoek. Hoewel dit soort medisch gebruik hedentendage aan strenge controle van de medische inspectie onderhevig is, was dat (bij hallucinogenen) veel minder het geval vóór het midden van de jaren zestig. Pas met de opkomst van een 'recreatief' gebruik buiten een medische omgeving veranderde dit: zo betekende de opname van LSD en andere hallucinogene stoffen in de drugswetten van verschillende landen dat gebruik door medici ingeperkt werd en aan striktere controle onderhevig werd. Het onderscheid tussen een medisch en recreatief gebruik, dat aan de basis ligt van ons huidig drugsbeleid, wordt gemaakt op strikt formele gronden: het eerste betreft medicatie door een erkend arts, het tweede niet. Het onderscheid is zeker niet bruikbaar ter bestudering van gebruiksvormen van psychoactieve stoffen in andere culturen of in de pre-industriële tijd. Bestudering van deze laatste gebruiksvormen leggen een aantal categorieën bloot, die niet eenvoudigweg als 'recreatief' of als 'medisch' (in de formele zin van het woord) te kenmerken zijn.

2. Gebruik van psychoactieve planten in verschillende culturen

Voor historici, archeologen en antropologen is drugsgebruik, of meer in het bijzonder gebruik van psychoactieve planten, geen categorie op zich, maar een onderdeel van bepaalde sociale activiteiten. Hun rol binnen die activiteiten is het belangrijkste punt van wetenschappelijk onderzoek. (Overigens bekijken, parallel hieraan, sociologen die de epidemiologie van drugsgebruik in onze eigen samenleving bestuderen dit gebruik eveneens als onderdeel van sociale activiteiten - een benaderingswijze die sinds een jaar of twintig gemeengoed is geworden binnen de sociale wetenschappen.) Voor we aangeven welke sociale activiteiten in het bijzonder relevant zijn als we een verband willen leggen tussen het gebruik van psychoactieve planten door de geschiedenis heen en de Santo Daime, moeten we een kort overzicht geven van de verschillende culturen en historische tijdperken om welke het gaat. Een uitputtende opsomming is hier ondoenlijk en waarschijnlijk ook onnodig. Een aantal overzichtswerken staan ter beschikking van de geïnteresseerde. Ik refereer slechts aan: - de ontdekking van rotstekeningen uit het Stenen Tijdperk, tussen 7000 en 5000 voor Christus, in de Sahara, wijzend op een vermoedelijk gebruik van psychoactieve paddestoelen; - het bestaan in het Bronzen Tijdperk, in



het tweede millennium voor Christus, van een wijdverbreide cultuur die zich uitstrekte van India via het Nabije Oosten tot in Griekenland, waarin het gebruik van cannabis, papaver, en in sommige gebieden misschien *Peganum harmala*, een belangrijke rol vervulde; - het gebruik van peyote en andere psychoactieve planten onder Indianen van Midden-Amerika vóór de komst van Columbus (Azteken, Maya's), een gebruik dat na de Spaanse verovering bleef bestaan bij stammen in Noord-Mexico als de Huichol en de Yaqui; - de ontdekking, in de jaren 1950, van een gebruik van psychoactieve paddestoelen door Indiaanse curanderos en curanderas (genezers en genezeressen) in Mexico; -in Afrika, het gebruik van iboga in Gabon; - en het gebruik van DMT-bevattende middelen door de Indiaanse bewoners van het Amazonegebied, hetzij in de vorm van snuifmiddelen (zoals cohoba), hetzij in dranken (zoals ayahuasca en yagé). Dit gebruik is nog steeds (bijvoorbeeld onder de Yanomami) een integraal onderdeel van het sociale leven in de oorspronkelijke dorpsgemeenschappen in de Amazone-jungle.

Sinds de 19e eeuw heeft zich in bepaalde gebieden, als reactie op de blanke kolonisatie, een speciale vorm van gebruik van psychoactieve middelen ontwikkeld, namelijk in de vorm van een syncretisme, waarin christelijke geloofsbeelden samenvloeiden met het traditionele gebruik van de middelen. Een eerste vorm daarvan treffen we na 1870 aan in het zuiden van de Verenigde Staten, waar een christelijke peyoterelgie ontstond onder meer dan vijftig Indiaanse stammen, die de strijd met de blanken hadden verloren en waren opgesloten in reservaten. In 1918 werd de peyoterelgie geformaliseerd in de Native American Church. Hoewel peyote en zijn derivaat, mescaline, in de Verenigde Staten onder de drugswetgeving vallen, garandeerde in 1960 een rechterlijke uitspraak het gebruik van peyote door 'native Americans' (Indianen) uit het oogpunt van godsdienstvrijheid. Eenzelfde vrijheid wordt in Gabon toegekend aan het ibogagebruik door syncretistische kerkgenootschappen. De Santo Daime (in de jaren twintig opgezet door blanke rubberappers, die het gebruik van ayahuasca van Indianen leerden en dit combineerden met christelijke geloofsbeelden), en soortgelijke genootschappen in Brazilië, zoals de União do Vegetal, genieten eveneens vrijheid tot gebruik van een psychoactief middel.

3. Verschillende vormen van gebruik

Keren we terug naar de vraag welke rol psychoactieve planten hebben gespeeld en spelen in sociale activiteiten in andere culturen en tijdperken. Dit blijkt een bijzonder uitgebreid terrein te beslaan, van godsdienstige activiteiten en rituelen voor sociale binding tot toverij (voor goede en kwade doeleinden), van slaapkamer (als afrodisiaca) tot het slagveld (de krijgswede van de berserkers). In verband met de Santo Daime moeten we wijzen op het werk van de Italiaanse historicus Carlo Ginzburg. In een studie uit 1989, waarin hij cross-cultureel en transhistorisch 'sjamanistische' praktijken onderzocht, kwam Ginzburg op een algemene 'extatische communicatie met de doden' als algemeen kenmerk van pre-industriële culturen. Het woord 'doden' moeten we niet al te letterlijk nemen, het gaat om wezens die we in 'gewone' bewustzijnstoestanden niet waar kunnen nemen. Ginzburg refereert aan het gebruik van psychoactieve middelen om in contact te komen met die wezens. Een oudere school van onderzoek naar sjamanisme (Mircea Eliade) zag dit gebruik als een degeneratie van de oorspronkelijke praktijken. Moderne onderzoekers zijn daar minder zeker in en sommigen neigen het gebruik van psychoactieve planten juist als de oorspronkelijke praktijk te zien. Hoe dit ook zij, de 'extatische communicatie' heeft bepaalde rollen in sociale activiteiten, die duidelijk te herkennen zijn in de rituelen van de Santo Daime: a. religieus, het contact bewerkstelligen tussen de gelovigen, of de leden van de stam, en de goden, of geesten, of voorouders; b. medisch: binnen traditionele culturen wordt uitgegaan van bepaalde geneeskundige concepten, die de oorzaken van gezondheid en ziekte in een soort 'geestenrijk' lokaliseert. Met behulp van de psychoactieve middelen kan dit 'rijk' betreden worden. Hier moet worden opgemerkt dat in de huidige psychiatrische verslavingszorg veel belangstelling bestaat voor deze concepten, omdat men meent dat ze aan patiënten uit niet-westerse etnische culturen een handvat voor behandeling kunnen bieden; c. sociale binding: binnen de rituelen wordt een band geschapen tussen de afzonderlijke deelnemers, als basis waarop bepaalde normen- en waardenpatronen worden overgedragen.

4. Concluderende opmerkingen

Het gebruik van psychoactieve middelen, met name hallucinogenen, is een integraal onderdeel geweest van tal van pre-industriële culturen en leeft nog steeds voort onder bepaalde bevolkingsgroepen buiten Europa, en onder syncretistische religies die sinds de 19e eeuw ontstaan zijn en traditioneel gebruik hebben gecombineerd met christelijke geloofsbeelden. De Santo Daime valt zonder moeite te plaatsen binnen deze geschiedenis van het gebruik van psychoactieve middelen. De categorisering tussen 'medisch' en 'recreatief' gebruik, die ten



grondslag ligt aan onze huidige drugswetgeving, is onvoldoende om dit gebruik te analyseren. De huidige stand van wetenschappelijk onderzoek wijst op de functies van dit gebruik binnen sociale activiteiten, met name voor religieuze, medische en socialisatiedoelinden.

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Amsterdam, 27 november 2000

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5. EXPERT OPINION PROFESSOR DOCTOR F.A. DE WOLFF

Pro Justitia

deskundigenrapport ten behoeve van de Rechter-Commissaris
in Strafzaken van de Arrondissementsrechtbank Amsterdam
inzake

OM / Fijneman en OM / Bogers.
r.c.nummers 99/4415 en 00/4418,
parketnummers 13 7 067455-99 en 13 / 067456-99,

Amsterdam, 24 april 2000
Prof. Dr F.A. de Wolff

Inleiding

Dit deskundigenrapport is opgemaakt door Prof. Dr F.A. de Wolff, klinisch chemicus en toxicoloog te Amsterdam, verbonden aan het Leids Universitair Medisch Centrum als hoogleraar Klinische en Forensische Toxicologie en aan het Academisch Medisch Centrum van de Universiteit van Amsterdam als hoogleraar Humane Toxicologie, en tevens gevestigd als consultant op het gebied van de toxicologie. Het onderzoek ten behoeve van deze rapportage is uitgevoerd na daartoe als deskundige te zijn beëdigd en benoemd op 14 januari 2000 door de Rechter-Commissaris belast met de behandeling van strafzaken in de Arrondissementsrechtbank te Amsterdam, Mr M.C.P. de Ridder. Gezien de stukken in de zaken tegen Mw G.J.C. Fijneman (r.c.nummer 99/4416, parketnummer 13/067455-99) en tegen J.C. Bogers (r.c.nummer 99/4418, parketnummer 13/067456-99) werd als vraagstelling ten behoeve van het deskundigenrapport gegeven:

'(...) een onderzoek in te stellen naar de gezondheidseffecten, waaronder (mede) begrepen verslaving en afhankelijkheid, die samenhangen met het gebruik van DMT, eventueel in combinatie met andere stoffen; daarbij te betrekken de wijze en de inhoud van de eventueel gegeven voorlichting omtrent gebruik en werking van de stof en de "religieuze setting" waarbinnen het gebruik plaatsvindt (...).'

Bij het opstellen van deze rapportage is gebruik gemaakt van de volgende bronnen:

1. Een faxbericht van de rechter-commissaris d.d. 14 december 1999 met analyse rapport 1831N99 van de deskundige van de Politie Amsterdam-Amstelland Drs R. Jellema van 15 oktober 1999;
2. een dossier, toegezonden door de rechter-commissaris d.d. 4 februari 2000;
3. een dossier, via het bureau van de rechter-commissaris toegezonden door de raadsvrouw van verdachten;
4. publicaties over de betreffende substanties uit de openbare wetenschappelijke literatuur alsmede het rapport Smartshops: overzicht van producten, geclaimde werking en hun medisch-toxicologische relevantie (RTVM-rapport 348802 017, maart 1999). Omwille van de leesbaarheid is afgezien van het vermelden van literatuurverwijzingen in de tekst; een overzicht van de geraadpleegde bronnen kan desgevraagd worden overlegd.

Definities en verklaring van enkele termen gebruikt in deze rapportage:

Een dosis is de hoeveelheid van een stof (doorgaans in milligrammen -mg- uitgedrukt) die men inneemt of anderszins gebruikt om een bepaald effect te verkrijgen; concentratie is een hoeveelheid stof per volume- of gewichtseenheid (bijvoorbeeld in milligrammen per liter mg/L -of milligrammen per kilogram- mg/kg). *Toxiciteit* is een eigenschap van een stof om een effect te veroorzaken dat schadelijk is voor de gebruiker. Behalve van de aard van de stof is toxiciteit vooral ook afhankelijk van de dosis: voor iedere stof - hoe veilig ook - is het mogelijk een dosis te vinden waarboven toxiciteit kan optreden. Een neurotransmitter is een van nature in het zenuwstelsel aanwezige stof die verantwoordelijk is voor de chemische prikkeloverdracht van de ene zenuwcel naar de andere.



Tolerantie of gewenning is het verschijnsel dat het lichaam steeds meer van een bepaalde stof nodig heeft om hetzelfde effect te bereiken als tevoren bij een lagere dosis. Onder afhankelijkheid van een stof wordt verstaan het verschijnsel dat het lichaam niet meer optimaal kan functioneren zonder inname van de betreffende (lichaamsvreemde) stof. Verslaving wordt gedefinieerd als psychische afhankelijkheid, in casu van een chemische stof. Onder gezondheidseffect wordt begrepen een effect op de gezondheid van één persoon of van een in omvang beperkte groep personen; onder een effect op de volksgezondheid wordt verstaan dat blootstelling aan een externe factor (in casu een lichaamsvreemde stof) een risico voor (een significant deel van) de gehele populatie vormt; het verschil in grootte tussen bedoelde groepen is vrij arbitrair.

N.B.: Bovenstaande begrippen zijn omschreven ten behoeve van deze rapportage; zij kunnen enigszins afwijken van vermelding in andere bronnen.

DMT en ayahuasca

DMT is een afkorting van N,N -dimethyltryptamine, de belangrijkste vertegenwoordiger van een groep verbindingen die op grond van hun farmacologische werkingsduur nader wordt aangeduid met 'kortwerkende tryptamines'. Deze stoffen komen van nature voor in een groot aantal, veelal Zuid-Amerikaanse, plantensoorten. De chemische structuur van DMT is verwant met die van de neurotransmitter 5-hydroxytryptamine of serotonine; de werking van DMT op het centrale zenuwstelsel (met name het hallucinogene effect) is aan die verwantschap toe te schrijven. Zenuwcellen die serotonine als neurotransmitter gebruiken worden in verband gebracht met een aantal vitale functies zoals slaap, temperatuurregulatie, eetlust, geheugen en stemming. De werking van veel stemming-beïnvloedende geneesmiddelen zoals antidepressiva is dan ook gebaseerd op een ingrijpen in bepaalde functies van het serotonine. DMT wordt snel na opname via de mond afgebroken door het enzym mono-amine oxydase (MAO), waardoor het niet als zodanig in het centrale zenuwstelsel terechtkomt. Een orale dosis DMT is daarom niet zonder meer actief. In dit licht bezien is het niet geheel duidelijk waarom DMT sinds de jaren zeventig als zodanig voorkomt op lijst 1 sub C behorende bij de Opiumwet. Er zijn ethnofarmacologische bronnen die aangeven dat DMT-achtige stoffen ook wel door roken of snuiven worden toegediend om de afbraak door MAO te omzeilen; omdat

een dergelijke toediening in de onderhavige zaken niet aan de orde is wordt hier in deze rapportage verder niet op ingegaan. Teneinde oraal gebruik van DMT toch effectief te doen zijn wordt de stof wel gecombineerd met een andere stof die de werking van MAO blokkeert; DMT kan dan toch het centrale zenuwstelsel bereiken. MAO-blokkade door zogenaamde MAO-remmers wordt in de reguliere geneeskunde al vele jaren toegepast bij de behandeling van depressies. Ten behoeve van de rituelen van de Santo Daime-kerk wordt gebruik gemaakt van een plantenextract, bereid volgens een nauwkeurig gereguleerde procedure (feitio) gebaseerd op een sjamaanse traditie in Peru en Brazilië. De belangrijkste actieve stoffen zijn het hallucinogeen DMT en de MAO-remmende harmala-alkaloïden (die op zichzelf ook in afwezigheid van DMT psychoactief kunnen zijn). Als bron voor DMT worden bladen van de plant Rainha (*Psychotria viridis*) gebruikt als symbool voor de vrouw en de maan; als de bron voor harmala-alkaloïden de liaan Jagube (*Banisteriopsis caapi*), symbool voor de man en de zon. Het product van deze bereidingsprocedure, een thee, wordt ayahuasca genoemd, dat in het Quechua 'wingerd van de doden/zielen' zou betekenen. Volksgenezers in de oerwouden van Peru, Colombia en Brazilië worden wel aangeduid met Ayahuasqueros. Omdat in deze zaken sprake is van gebruik van ayahuasca, en niet van DMT alleen, zal in deze rapportage - in afwijking van de vraagstelling - verder de term 'ayahuasca' worden gebruikt.

Effecten van ayahuasca

Beoogde effecten

Ayahuasca wordt toegepast om in een geestelijke toestand te geraken waarin men receptiever wordt voor mystieke, religieuze gevoelens; verdieping van inzichten en contacten met buitenaardse wezens worden genoemd. Ook visuele hallucinaties (het zien van kleurige, bewegende beelden) komen voor. De internationale psychiatrische literatuur maakt melding van 'healing sessions' zoals toegepast door de Ayahuasqueros. Daarbij krijgt de patiënt 's avonds laat onder gecontroleerde omstandigheden een op zijn persoon toegesneden hoeveelheid ayahuasca te drinken. Na 20 minuten treden de effecten op: veranderde visuele perceptie, gevoeligheid voor geluid, gevoelens van depersonalisatie, het gevoel uit het eigen lichaam te treden. Gedurende de ca 4 uur durende sessie worden de aanwezige personen door de Ayahuasqueros van persoonlijke adviezen voorzien en worden pijnlijke lichaamsdelen behandeld. Een publicatie uit 1996 beschrijft een onderzoek naar de psychische effecten van ayahuasca bij leden van het kerkgenootschap Uniao do Vegetal in het Braziliaanse Manaus, dat -evenals de Santo Daime kerk- de thee als



sacrament toepast. Er werd een remissie van psychopathologie gevonden zonder verslechtering van persoonlijkheid en cognitieve functies. De beschrijvingen van een hinario, een ayahuasca-sessie, doen in sterke mate denken aan de velada, de nachtelijke genezingsessie van de curanderas der Mexicaanse Mazateken onder invloed van psilocybine-bevattende paddestoelen. Dit is in overeenstemming met de opvatting dat toepassing van psychedelische middelen met een therapeutisch doel al vele eeuwen wijdverbreid voorkomt in Midden- en Zuid-Amerika. Gezien de religieuze context en de beschrijving dat gebruikers diep-religieuze gevoelens krijgen na gebruik van deze middelen, worden de stoffen ook wel 'entheogen' genoemd.

Ongewenste effecten

Na inname van ayahuasca worden maag-darmreacties gemeld, zoals misselijkheid en braken. Dit wordt door de gebruikers niet uitsluitend negatief ervaren, maar als deel uitmakend van het louteringsproces. De hallucinaties of visioenen kunnen behalve plezierig ook angstwekkend zijn; zo wordt beschreven dat men onder invloed van ayahuasca grote slangen of verscheurende dieren ziet. **Deze visioenen zijn veelal gevoelig voor 'talking down', dat wil zeggen dat deze verdwijnen of minder angstwekkend worden doordat een andere aanwezige op betrokkene 'inpraat'.** Volgens beschrijvingen van gebruikers lijkt gebruik van ayahuasca geen kater of andere late nadelige effecten te hebben: gemeld wordt dat gebruikers na een nachtelijke sessie weer gewoon aan het werk gaan. Naast deze vrij milde ongewenste effecten moet rekening worden gehouden met de mogelijkheid dat ernstiger symptomen van (acute) toxiciteit optreden: stijging van bloeddruk en lichaamstemperatuur, versnelde hartslag en ademhaling, gevoelsstoornissen in de ledematen en een onzekere gang. Het gedrag onder invloed van een hallucinogeen kan onvoorspelbaar zijn.

Een ander risico is de interactie tussen stoffen in ayahuasca en genees- en voedingsmiddelen. **Al vele jaren is bekend dat antidepressieve geneesmiddelen die werkzaam zijn door hun remming van het enzym monoamine-oxydase (de zogenaamde MAO-remmers) niet mogen worden gecombineerd met andere op het serotonine-systeem werkende geneesmiddelen en met bepaalde voedingsmiddelen. Onder de laatste categorie worden vermeld: rode wijn en bepaalde kaassoorten, zure zuivelproducten en overrijpe bananen en avocado's. Deze bevatten de stof tyramine, dat in aanwezigheid van een MAO-remmer kan leiden tot een sterk verhoogde bloeddruk met alle risico's van dien.**

Dosering in relatie tot effecten

Evenals de beoogde effecten van ayahuasca zijn ook de toxische effecten afhankelijk van de gebruikte dosis. Bij preparaten van natuurlijke herkomst -zoals ayahuasca- is de dosis altijd een moeilijk definieerbaar punt. De concentratie van de werkzame stoffen kan variëren door, bijvoorbeeld, bodemsamenstelling, seizoenen en bereidingswijze. Zonder chemische analyse is nooit uitsluitsel te geven over aard en hoeveelheid werkzame stoffen in een preparaat. **Met behulp met de spaarzame literatuurgegevens en het analyserapport van het laboratorium van de Politie Amsterdam-Amstelland is echter wel een redelijk betrouwbare schatting te maken van de gebruikte doses DMT in de onderhavige casus. Gepubliceerd onderzoek met vrijwilligers die DMT direct in de bloedbaan kregen ingespoten wijst erop dat doses boven 0,2 mg per kg lichaamsgewicht (dus 14 mg voor een persoon van 70 kg) hallucinogeen kunnen zijn en ook de bloeddruk, de lichaamstemperatuur en de hartfrequentie kunnen doen toenemen. De hoogste experimenteel gebruikte dosis was 0,4 mg/kg. Na 30 minuten was geen noemenswaardige hoeveelheid DMT in het bloed meer aantoonbaar. Een semi-kwantitatief onderzoek van de op 6 oktober 1999 in beslag genomen ayahuasca wees op een concentratie van 3 - 4 g DMT in het totale vloeistofvolume van 17,5 liter, dat is 200 mg/L. Nemen wij aan dat men ca 200 ml ayahuasca-thee in één keer kan nuttigen, dan komt dat overeen met een dosis van 40 mg DMT per persoon. In eerste instantie lijkt dit 3x zoveel als de eerdergenoemde 14 mg DMT per persoon als laagste effectieve dosis. In het vrijwilligersonderzoek was DMT echter rechtstreeks in de bloedbaan gebracht, terwijl in de Santo Daime-diensten de thee wordt gedronken. De biologische beschikbaarheid, dat wil zeggen het percentage van de ingenomen stof dat door de darm wordt opgenomen en in het bloed verschijnt, zal ruim beneden de 100% liggen door onvolledige opname en afbraak van DMT tijdens het opnameproces. Daarbij komt dat de piekconcentratie na injectie zeer snel optreedt maar na inname pas na ca 20 minuten. De piekconcentratie zal daarom na inname aanzienlijk lager liggen dan na injectie van eenzelfde dosis. Uit deze beschouwingen mag worden afgeleid dat de doses DMT die de deelnemers aan de Santo Daime-diensten zich toedienen, laag-effectief zijn vergeleken met de bevindingen van het genoemde vrijwilligersonderzoek. In deze beschouwingen wordt overigens geen rekening gehouden met het feit dat ayahuasca nog andere psychoactieve stoffen bevat, waaronder de MAO-remmende harmala-alkaloïden. Deze zullen er ongetwijfeld toe leiden dat DMT langer werkzaam blijft dan de enkele tientallen minuten na injectie van DMT alleen. De beperkte beschikbaarheid van gegevens laten niet toe hier een duidelijker uitspraak over te doen. Overigens dient te worden opgemerkt dat de tekst van de processen-verbaal dd. 6 oktober 1999 enige verwarring schept inzake de in beslag genomen**



hoeveelheden. Vermeld wordt 'ongeveer 15 liter DMT'; dit wekt de indruk dat DMT een vloeistof zou zijn en dat hiervan een volume van 15 liter in beslag werd genomen. Zoals in het analyse-rapport van Drs Jellema dd. 15 oktober werd vermeld, ging het om een totaal volume van 17,5 liter vloeistof waarin zich een totale hoeveelheid van 3 - 4 g DMT bevond.

Afhankelijkheid en verslaving

Over de potentie van ayahuasca tot tolerantie, afhankelijkheid en verslaving zijn geen gegevens in de literatuur aangetroffen. Een beschouwing hierover moet dus worden gebaseerd op een vergelijking met andere hallucinogenen. Tot op heden zijn er geen aanwijzingen dat recreatief gebruik van hallucinogene producten tot (lichamelijke) afhankelijkheid en (psychische) verslaving kan leiden. Zelfs van het krachtig werkende synthetische hallucinogeen LSD is dit niet bekend. Wellicht kan het beste een parallel worden getrokken met psilocybine-/psilocine-bevattende paddestoelen. Bekend is dat deze een snelle tolerantie geven: wanneer men binnen enkele dagen na een paddo-roes een dosis gebruikt om eenzelfde plezierige ervaring op te wekken, blijkt deze niet of nauwelijks werkzaam. Wellicht biedt deze eigenschap op zich al een bescherming tegen verslaving. **Uit de geringe gebruiksfrequentie in de context van de Santo Daime-diensten (ca 2x per maand) mag worden afgeleid dat er geen sprake is van tolerantie en afhankelijkheid van, en verslaving aan ayahuasca.** Niet geheel kan worden uitgesloten dat ervaren gebruikers soms een gevoel van hunkering hebben naar een ayahuasca-ervaring. Een dergelijke hunkering zal echter niet principieel verschillen van de hunkering naar drop of een groene haring bij liefhebbers van deze producten. Ter vergelijking: hunkering naar koffie heeft een andere basis; voor cafeïne bestaat wel degelijk een afhankelijkheid. Veel koffiedrinkers ontwikkelen hoofdpijn wanneer zij hun ochtendkoffie uitstellen: de bekende 'weekend headache'. De drank koffie heeft ook een verslavende potentie; behalve cafeïne spelen geur en smaak daarbij een rol. Psychoactieve werking van plantaardige producten -de opwekkende werking van koffie wordt hier ook onder begrepen- is overigens wijdverbreid. Een minder bekend voorbeeld hiervan zijn de algemeen en vrij verkrijgbare hallucinogene specerijen nootmuskaat en foelie. Eerstgenoemde is de gemalen noot van de nootmuskaatboom *Myristica fragrans*, de tweede is de gedroogde zaadhuid van dezelfde boom. Eén van de actieve stoffen in deze producten is myristicine, dat qua werking verwant is aan DMT en harmala-alkaloiden. Het heeft ondermeer een MAO-remmende werking; een lucifersdoosje vol nootmuskaatpoeder zou al voldoende zijn om hallucinaties op te wekken. Op deze plaats kan ook worden gerefereerd aan *Catha edulis*, een plant waarvan delen worden gekauwd in landen als Jemen en Somalië -en in Nederland door personen afkomstig uit deze landen- als psychoactief, stimulerend, genotmiddel. De werkzame stoffen in deze plant, doorgaans als Qat of Miraa aangeduid, zijn cathinon en cathine, die op lijst I respectievelijk lijst II bij de Opiumwet zijn vermeld. **Niettemin was de Hoge Raad van oordeel: 'De in de art. 2 en 3 van de Opiumwet vervatte verboden hebben geen betrekking op planten en delen van planten, in casu Qat, die met op de lijsten I of II staan vermeld'** (arrest nr. 3235 d.d. 29 november 1994). Een bespreking van de overwegingen van de Hoge Raad, mede in relatie tot de problematiek rond de psilocybine- en psilocine-bevattende paddestoelen, valt buiten het bestek van dit deskundigenrapport.

Gebruik van en voorlichting over ayahuasca in religieuze context

In de opdracht is uitdrukkelijk vermeld, aandacht te besteden aan de religieuze setting waarin ayahuasca-gebruik plaatsvindt, de voorlichting die in dit kader plaatsvindt, en welke de mogelijke gezondheidskundig effecten daarvan zijn.

Voorlichting

Wat betreft de voorlichting kan worden verwezen naar de producties 2 en 4 bij de brief van de raadvrouw Mr A.G. van der Plas dd. 14 februari 2000. Productie 2 bevat beknopte informatie over het gebruik van ayahuasca en cannabis, alsmede enkele vragen naar de lichamelijke en geestelijke gezondheidstoestand van belangstellenden voor een introductiebijeenkomst. (Terzijde dient te worden opgemerkt dat productie 2 niet compleet is; de keerzijden van de artikelen zijn niet meegecopieerd. Niettemin kan een goed beeld over deze materie worden gevormd). De informatie is beknopt; met name kan men vraagtekens plaatsen bij de effecten van de combinatie ayahuasca-cannabis, die wel eens anders zouden kunnen uitpakken dan de som van de afzonderlijke effecten. De gestelde vragen naar de gezondheidstoestand van betrokkenen geven echter voldoende aan dat er mogelijk individuele risico's zijn verbonden aan het gebruik van deze stoffen. Productie 4 geeft aanzienlijk gedetailleerder informatie; blijkens de brief van Mr Van der Plas dd. 14 februari 2000 wordt deze informatie tevoren aan belangstellende introductie's ter beschikking gesteld. De inhoud van deze informatie is in het algemeen correct en up-to-date; er wordt voldoende aandacht aan mogelijke gezondheidseffecten van ayahuasca in relatie tot medicatie, voeding en eventuele ziekten. Er zijn hooguit enkele kleine punten van kritiek mogelijk: op pagina 2, 4e alinea wordt vermeld dat L-Dopa



en Tegretol bij psychiatrische stoornissen zouden worden gegeven; het zijn echter middelen die bij neurologische ziekten worden toegepast [de ziekte van Parkinson resp. epilepsie en trigeminus-neuralgie (aangezichtspijn)]. Tegretol wordt verderop in alinea 8 nog eens vermeld, maar dan onder zijn generische naam carbamazepine. Ondanks deze en enkele andere kleine tekortkomingen is de verstrekte informatie ter zake en geeft een betrouwbaar beeld van eventuele risico's van ayahuasca-gebruik.

Religieuze context

Zowel het produceren van de ayahuasca-thee als het gebruik tijdens de religieuze bijeenkomsten is strikt gereguleerd. Het lijkt a priori uitgesloten dat het plantenextract 'gespiket' (verrijkt) zou worden met synthetisch of gezuiverd DMT of harmala-alkaloïden. (Overigens is niet bekend of DMT ooit als synthetische drug op de markt is gekomen.) Volgens de beschikbare gegevens wordt ayahuasca uitsluitend in het kader van een eredienst gebruikt. Het is niet geheel uit het dossier op te maken wat de frequentie daarvan is. Productie 3 is daarin niet geheel duidelijk. Concentratie-sessies (pagina 20 e.v.) worden op iedere 15e en 30e van de maand gehouden; men mag aannemen dat daarbij de thee wordt gedronken. Op de eerste maandag van de maand worden de overledenen herdacht, waarbij ook ayahuasca wordt gedronken. Of op andere bijeenkomsten eveneens de thee wordt gedronken is niet duidelijk uit de beschikbare gegevens op te maken. Evident is echter dat consumptie gekoppeld is aan rituelen, en dat dit altijd geschiedt in aanwezigheid van anderen die vertrouwd zijn met de effecten. Gedurende de nachtelijke bijeenkomsten wordt de ayahuasca meermalen gedronken, met tussenpozen van ca 2 uur; dit kan wijzen enerzijds op een kortdurende werking, en anderzijds op een geringe capaciteit tot het ontwikkelen van tolerantie. Meermalen wordt in het dossier melding gemaakt van het feit dat deelnemers aan de bijeenkomsten zich nadien goed voelen en zelfs weer meteen aan het werk kunnen gaan. Hoewel het riskant is zonder nader onderzoek aan subjectieve mededelingen conclusies te verbinden, lijkt dit te wijzen op afwezigheid van abstinentieverschijnselen of gevoelens van 'kater'. In ieder geval zijn geen aanwijzingen gevonden voor het optreden van blijvende nadelige verschijnselen van ayahuasca-gebruik in deze religieuze context. In het algemeen mag worden gesteld dat het strikt gereguleerde gebruik in een religieuze 'setting' de gebruikers van psychoactieve producten zoals ayahuasca beschermt voor misbruik.

Conclusies

Op grond van voormelde overwegingen mag worden geconcludeerd:

1. dat het gebruik van ayahuasca in individuele gevallen risico's voor de gezondheid met zich mee kan brengen,
2. dat de voorlichting die de Santo Daime-kerk over deze risico's verstrekt aan deelnemers van hun bijeenkomsten in het algemeen correct en adequaat is,
3. dat de beperkte beschikbaarheid van ayahuasca en de strikt gereguleerde omstandigheden waaronder het gebruik daarvan plaatsvindt een bescherming vormen tegen misbruik door de congreganten, en
4. dat er, gelet op de punten 1-3 alsmede op de beperkte omvang van de Santo Daime-kerk, het volgens de huidige stand van wetenschap niet aannemelijk is dat ayahuasca-gebruik een gevaar voor de volksgezondheid met zich meebrengt.

Aldus opgemaakt op de belofte te Amsterdam, 24 april 2000

Prof. Dr F.A. de Wolff, klinisch chemicus en toxicoloog



6. EXPERT OPINION DOCTOR R. KRANENBORG

Amsterdam, 27 februari 2001

VERKLARING VAN DR.R.KRANENBORG, theoloog en godsdienstwetenschapper, verbonden aan de Faculteit der Godgeleerdheid van de Vrije Universiteit te Amsterdam.

Afgegeven t.b.v. de SANTO DAIME KERK

1) Ter inleiding

Als godsdienstwetenschapper bestudeer ik niet alleen de grote wereldreligies, maar ben ik met name gericht op de vele kleine religies en religieuze groepen uit heden en verleden, die overal ter wereld bestaan. Tot deze religies behoren ondermeer die van Afrika, die van de Indianen en de zogeheten 'nieuwe religieuze bewegingen in het westen'. Bij de bestudering van deze religies gaat het er om een zo compleet mogelijk beeld van hen te krijgen. Tot dit beeld behoort het gegeven dat 'geestverruimende middelen' (tegenwoordig entheogenen genoemd) veelvuldig een belangrijke en wezenlijke rol spelen.

2) Entheogenen en religies

De combinatie van 'geestverruimende middelen' en religie is voor de westerse mens een vreemde combinatie. Dit heeft te maken met het feit dat de drie monotheïstische religies (jodendom, christendom en islam) in hun religieuze praktijk nooit geestverruimende middelen hebben gebruikt. Het was simpelweg niet aanwezig. Vanuit deze afwezigheid ontstond afwijzing wanneer men met religies in aanraking kwam, die entheogenen kenden. Deze afwijzing en veroordeling zijn door de westerse cultuur, ook toen ze steeds minder door het christendom bepaald werd, overgenomen, en bestaan nog steeds.' 'Drugs en religie' horen niet bij elkaar, aldus de gangbare opvatting binnen het westen. Godsdienstfenomenologisch gezien is dit onjuist. In de geschiedenis en de praktijk van vele religies blijkt de combinatie juist uitermate belangrijk.

In een kort overzicht kan het volgende vermeld worden. Binnen de vroegste fase van het hindoeïsme (de 'vedische tijd'), werd een plant, 'Soma' genoemd, als godheid vereerd. Van deze plant werd een drank gemaakt, die bij bepaalde rituelen werd gedronken. Van deze drank wordt vermeld dat ze gelukzaligheid en onsterfelijkheid kon verlenen. Hoe belangrijk dit gebruik was blijkt uit het feit dat deze plant als godheid werd vereerd. Helaas is tot op heden niet bekend om welke plant het gaat. In het na-vedische hindoeïsme wordt Soma niet meer gebruikt of aanbeden.

In het moderne hindoeïsme speelt het gebruik van marihuana soms een belangrijke rol. Met name asceten (sadhu's), mensen die zeer ver op het pad der spiritualiteit zijn voortgeschreden, van sommige orden willen dit middel nogal eens gebruiken (in een rituele rondgang met een pijp). De bedoeling hiervan is om in een 'hogere bewustzijnstoestand' te kunnen komen.

In het oude Griekenland, en ook nog in het Hellenisme, bestonden diverse mysteriereligies; het is bekend dat sommige van deze ook entheogene dranken gebruikten; nadere informatie hierover ontbreekt, omdat het gebruik ervan alleen voor de ingewijden was, en dus in principe geheim. Met het verdwijnen van deze mysteriereligies (zoals de Eleusinische) is ook de kennis over deze middelen verloren gegaan.

Een specifiek gebruik van 'geestverruimende middelen' komen we tegen in die religies, die het verschijnsel 'sjamaan' kennen. Het gaat om religies uit Noord-oost Azië, Afrika en Amerika. De sjamaan is een specifieke religieuze gezagsdrager, die in trance kan geraken, en in deze trance de 'godenwereld' bezoekt; dit bezoek dient ertoe om kennis te verkrijgen voor concrete situaties, ondermeer voor genezing. De trance van de sjamaan kan op vele manieren opgewekt worden. Een van de manieren is het gebruik van 'geestverruimende middelen'. Niet elke sjamaan gebruikt deze; het is niettemin echter een veel voorkomend gebruik. Met name de sjamanen van de Amerikaanse Indiaanse religies komen via deze middelen tot trance. Hierbij zij opgemerkt dat dit middel vrijwel uitsluitend door de sjamaan gebruikt wordt; als regel doen de andere leden van de stam dit niet. Dit heeft te maken met het feit dat de middelen gezien worden als sterk en zeer specifiek, beter niet te gebruiken door de gewone niet getrainde man.



In Amerika is onder de Indianen de situatie een andere. In de Amerikaanse religies worden de geestverruimende middelen niet alleen door de sjamanen gebruikt, maar soms ook door de stam (of een deel van de stam). Er bestaan bij sommige indianenreligies collectieve rituelen, waarbinnen men een bepaald middel gebruikt. Een zeer opvallende ontwikkeling vond plaats in het eind van de negentiende eeuw. Om diverse redenen ontstond er in die periode in de Verenigde Staten een nieuwe indiaanse religie, die in al haar bijeenkomsten en rituelen een bepaald middel (peyote) ging gebruiken. Van deze bijeenkomsten, die onder de strakke leiding van de sjamaan (medicijnman) stonden, waren vrouwen uitgesloten. Dit gebruik van een 'geestverruimend middel' riep problemen op met de Amerikaanse overheid. In eerste instantie verbood deze het gebruik van de peyote (hetgeen uiteraard niets opleverde). De Indianen organiseerden zich in ondermeer de 'Native American Church' (1918), met name om het religieuze karakter van hun activiteiten te ondersteunen. Dit had tot gevolg dat deze Church na verloop van tijd 'gedoogd' werd in haar gebruik van de (verboden) peyote, en tenslotte volledige vrijstelling kreeg (definitieve uitspraak in 1964). Tenslotte, als het over de Indianen gaat, dient het rituele gebruik van tabak ook vermeld te worden; het ritueel van de 'vredespijp' had religieuze en geestverruimende aspecten. De 'Native American Church' is niet de enige 'nieuwere religie' die entheogenen gebruikt. Er zijn er meer. Hier dient met name de Santo Daime Kerk genoemd te worden, als een goed voorbeeld van dergelijke religies. Aangezien informatie over deze kerk al op andere wijze tot U gekomen is, geef ik er hier geen beschrijving van.

3) Entheogenen en religieuze ervaring

De discussie over de relatie 'drugs en religie' werd zeer actueel in de jaren zestig en zeventig in de V.S. (en aansluitend eveneens in Europa). Een nieuwe generatie jonge Amerikanen ontdekte LSD en hashish/marihuana (later aangeduid met de term psychedelica), niet alleen als middelen om zich prettig te voelen, maar ook om tot religieuze ervaring te komen. Klassiek is de uitdrukking geworden, afkomstig van William Blake, en via Aldous Huxley wijd verbreid, dat het in het gebruik van deze middelen gaat om de "cleansing of the doors of perception". De gedachte is dat men door deze middelen niet alleen de dagelijkse werkelijkheid scherper ziet, maar vooral dat er achter deze werkelijkheid een andere, goddelijke werkelijkheid ligt. Die te leren kennen en te ervaren was het hoofddoel. Overigens is het in deze kringen nauwelijks tot organisatievorming gekomen, bovendien gebruikten de meesten deze middelen uiteindelijk enkel om zich prettig te voelen en verdween het religieuze, waarbij ook nog kwam dat de overheden het gebruik van deze middelen (om verschillende redenen) verboden of ontmoedigden. Maar als verschijningsvorm van de combinatie 'geestverruimende middelen' en religie is het een zeer goed voorbeeld.

Dit alles leidt er toe om de volgende vraag te stellen: bestaat er een aantoonbaar verband tussen entheogenen en religie? Wanneer we deze vraag opvatten in de zin van: leidt het gebruik van entheogenen automatisch d.i. in alle gevallen tot religie zal duidelijk zijn dat het antwoord negatief is. Immers, we zagen in het voorgaande al dat producten als LSD ook als genotmiddel gebruikt kunnen worden. We zullen daarom moeten zeggen: de entheogenen leiden niet automatisch en vanzelfsprekend tot religie. Dit is echter niet het gehele verhaal. Immers, in de vele culturen en religies die entheogenen gebruiken is het religieuze kader altijd aanwezig en wordt alles in een religieus verband geplaatst. Wanneer men door bepaalde middelen bijzondere ervaringen krijgt, worden deze direct religieus geïnterpreteerd. Dit heeft als gevolg dat voortaan de producten per definitie religieuze ervaringen oproepen. Ze zijn daarmee als het ware sacramenten geworden. Ook al blijft het gebruik ervan in combinatie met de ervaringen een keuze, we hebben hier niettemin van doen met een oprechte religieuze ervaring. De Santo Daime Kerk heeft er voor 'gekozen' om dit middel te gebruiken en deze te gebruiken als methode tot religieuze ervaring. Daarmee is het middel onontbeerlijk geworden. Daarmee is eveneens gezegd dat de Santo Daime Kerk niet zonder dit middel kan. Het is essentieel voor hun religieuze beleving en godsdienstoefeningen. Zonder dit middel zou Santo Daime geen Santo Daime meer zijn.

4) Enige conclusies

Een tweetal punten is van groot belang: waarom gebruikt(e) men deze middelen en: hoe gebruikte men deze? Om met het laatste te beginnen: het is van groot belang te benadrukken dat het gebruik van entheogenen altijd in een ritueel kader plaatsvindt. Het middel wordt nooit zomaar genomen, in wezen nooit puur individueel, maar altijd in een gemeenschap, en altijd onder de leiding van een deskundige of voorganger. Bij de Native American Church is het zoeken, vinden en klaarmaken van de peyote een langdurig en uitgewerkt ritueel (met vele voorschriften, gebeden en handelingen). Het middel kan met



recht een 'sacrament' genoemd worden, het krijgt een bovennatuurlijke geladenheid. Wanneer de peyote gebracht is naar het gebied van de stam kunnen er een aantal keren bijeenkomsten worden gehouden, zolang de voorraad strekt. We zouden deze samenkomsten 'kerkdiensten' kunnen noemen, omdat er veel gebeden wordt tot God, er schuldbelijdenis (en vergeving) plaatsvinden, etc. Het middel kan dit alles sterker maken en intensiveren. Kortom: alle gebruik van entheogenen vindt plaats in een collectieve setting (dat geldt ook als de sjamaan als enige het middel gebruikt: hij doet dit altijd temidden van een groep mensen, waarbij diverse rituelen worden gebruikt). Een en ander kan ook laten zien dat deze entheogenen niet verslavend werken en ook niet beschadigen. Wanneer het verslavend zou zijn zouden de aanhangers het middel veel vaker en ook individueel gaan gebruiken. Wanneer het beschadigend zou zijn, zou het niet zovele jaren of zelfs eeuwen gebruikt worden. Onderzoek heeft tot op heden niet kunnen aantonen dat mensen of volken die in geregelde sessies entheogenen gebruiken, op de een of andere manier daardoor schade lijden.

Een ander punt is het doel van dit gebruik. Hoewel het af en toe reeds ter sprake kwam is het nuttig om er dieper op in te gaan. Er zijn een aantal verschillende doeleinden, afhankelijk van de desbetreffende religie en de inkadering. In de religies waarin enkel de sjamaan de entheogenen gebruikt gaat het er boven alles om om contact te hebben met de 'hemel', ofwel de andere wereld waar de goden verblijven. Een contact dat niet gericht is op mystieke ervaring maar op het verkrijgen van hogere kennis. Een kennis die niet theoretisch is, doch vooral gericht op de concrete praktijk. De sjamaan verkrijgt kennis over de oorzaak van ziekten en ongeluk, hij verkrijgt kennis over het lot van de zielen van de gestorvenen, hij verneemt wat de goden op een specifiek moment verlangen van hem en zijn volk.

In religies en groepen waarin het gebruik van entheogenen communaal plaatsvindt in een samenkomst gaat het om het verlangen vervuld te zijn van de goddelijke werkelijkheid of kracht, een vervulling die gepaard gaat met het ervaren van geluk en extase. Ook is er het verlangen 'visioenen' te kennen, d.w.z. dat men de dagelijkse werkelijkheid doortrokken ziet van de goddelijke ofwel dat men dingen uit die andere werkelijkheid 'schouwt', gepaard gaande met een dieper inzicht in zichzelf. Door deze rituele bijeenkomsten voelen de gelovigen zich gesterkt, gereinigd, dichterbij God, en hebben ze meer perspectief gekregen.

De vraag of de entheogenen werkelijk dit alles oproepen of dat het een puur chemische reactie is, doet niet ter zake. De gelovigen ervaren het op deze wijze, en de middelen helpen hen in deze ervaring. Bovendien, het zij hier nogmaals opgemerkt, worden de gelovige gebruikers er niet minder van en raken ze er niet door beschadigd. Het geheel van hun religieuze door entheogenen beïnvloede praktijk heeft als regel vrijwel uitsluitend positieve effecten.

Tenslotte een vermelding van de entheogenen die het meest gebruikt worden: de 'doornappel' (datura), de peyotecactus (waaruit mescaline wordt gewonnen), ayahusca, en de paddestoel waarin het element psilocybine aanwezig is (in Mexico de teonanacati genoemd). Al deze planten en hun producten worden al eeuwen gebruikt. In mindere mate komen we tegen: cannabis (hashish/marihuana) en diverse soorten paddestoelen (vliegenzwam, 'paddo's', e.a.), terwijl tabak en alcohol sporadisch gebruikt worden als entheogenen.

Amsterdam, 27 februari 2001

Sk Dr. R. Kranenborg



ANNEX 2

States Parties to the International Covenant on Civil and Political Rights:

Afghanistan, Albania, Algeria, Andorra, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Chad, Chile, China, Colombia, Congo, Costa Rica, Croatia, Cyprus, Czech Republic, Côte d'Ivoire, Democratic People's Republic of Korea, Democratic Republic the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, India, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Mali, Malta, Mauritius, Mexico, Monaco, Mongolia, Morocco, Mozambique, Namibia, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saint Vincent and the Grenadines, San Marino, Sao Tome and Principe, Senegal, Serbia and Montenegro, Seychelles, Sierra Leone, Slovakia, Slovenia, Somalia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, The Former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Uzbekistan, Venezuela, Viet Nam, Yemen, Zambia, Zimbabwe

States Parties to the European Convention on Human Rights:

Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, Moldova, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Russia, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom

States Parties to the American Convention on Human Rights:

Argentina, Barbados, Brazil, Bolivia, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, Venezuela.