

Enhancing the effectiveness of international, regional and national human rights mechanisms in protecting and promoting the rights of religious minorities

Expert Workshop

Vienna, 22-23 May 2012

REPORT

Summary

The expert seminar held in Vienna and organized by OHCHR in cooperation with the Government of Austria was the first in a series of consultations commemorating the 20th anniversary of the adoption of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Minorities Declaration). The seminar focused on the rights of religious minorities, and it brought together over 60 experts on minority rights and/or freedom of religion or belief – including the Independent Expert on minority issues, the Special Rapporteur on freedom of religion or belief; representatives of Governments, relevant regional bodies, national human rights institutions and civil society to discuss how to enhance the effectiveness of human rights mechanisms at all levels in order to protect the rights of religious minorities. The expert seminar offered a unique opportunity to examine the contribution of minority rights standards and mechanisms for the protection of religious minorities. The participants highlighted several areas of concern, discussed how to overcome in a most efficient manner the identified challenges, and shared good practices on the promotion and protection of the rights of persons belonging to religious minorities. This report captures in summary the presentations of the panelists and a number of recommendations and observations made participants.

Background

The 20th anniversary of the adoption of the only UN human rights instrument devoted to minority rights, the UN Minorities Declaration, offers an important opportunity to reflect on the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities, as well as on achievements, best practices and challenges with regard to the implementation of the Declaration. In this regard, OHCHR is organizing in

the course of 2012 a series of activities in different regions, each focusing on specific topical minority rights issue. These events aim not only at taking stock of the current human rights situation with respect to the given issue but particularly at exploring ways in which stakeholders could strengthen cooperation towards advancing minority rights.

The focus of the Vienna expert seminar finds justification in recommendations and conclusions issued by human rights treaty bodies, special procedures mandate holders and other UN and regional mechanisms. They all reveal hostility, discriminatory attitudes, even violence directed toward religious minorities in all parts of the world. These human rights violations are often directly related to the weak implementation of the Minorities Declaration, which provides guidance for the protection of “national and ethnic, religious and linguistic” minorities. Although these four categories can in some cases overlap, in the minority rights context it is the national, ethnic and linguistic minorities that have often been the main focus of consideration when it comes to the implementation of international minority rights standards. At the same time, rights of persons belonging to religious minorities have been approached largely from the point of view of non-discrimination and freedom of religion. In order to overcome this gap, the seminar participants discussed in depth whether and how bringing minority rights mechanisms further to the fore when tackling discrimination and human rights violations faced by religious minorities could advance their protection. They also identified good practices in this regard and explored ways of targeting the discrimination of persons belonging to religious minorities more effectively.

Participation

The two-day event was attended by 67 participants, comprising of government representatives from 16 countries (Austria, Azerbaijan, Canada, France, Holy See, Hungary, Italy, Liechtenstein, Lithuania, the Netherlands, Norway, Romania, Slovenia, Switzerland, the Russian Federation, Turkey), the UN Independent Expert on minority issues, the UN Special Rapporteur on freedom of religion or belief, high-level experts from relevant regional organizations and entities (Office of the OSCE High Commissioner on National Minorities, Council of Europe, EU), NGO representatives (e.g. Amnesty International, Minority Rights Group International, Pax Justicia, Austrian Muslim Initiative, Human Rights Without Frontiers, Christian Solidarity Worldwide) and distinguished academics, such as Professor Emeritus Asbjorn Eide (a former member of the Sub-Commission Prevention of Discrimination and Protection of Minorities and the main author of the Commentary on the Minorities Declaration).

Introductory remarks were delivered by: Ms. Marcia V.J. Kran, Director, Research and Right to Development Division, OHCHR; Mr. Johannes Kyrle, Secretary General, Ministry for European and International Affairs, Austria; Mr. Heiner Bielefeldt, UN Special Rapporteur on freedom of religion or belief; Ms. Rita Izsák, UN Independent Expert on minority issues. The introductory remarks focused on achievements and challenges under the Minorities Declaration and avenues for the strengthening of its implementation. The first day was chaired by H.E. Ambassador Christian Strohal, Permanent Representative of Austria to the United Nations Office at Geneva and the second day by Ms Kran.

The seminar offered an opportunity to explore the inter-connections between minority rights and other human rights standards pertaining to religious minorities. The participants also looked at the interconnections between UN mechanisms and regional ones. In both respects good examples were shared and recommendations for increasing interconnections and cooperation offered. Below is a summary of the most salient points and conclusions that emerged at the seminar.

Session I: Global trends in the human rights situation of religious minorities

The introductory session of the seminar began with Professor Brian Grim, Senior Researcher, Director of Cross-National Data, Pew Research Center's Forum on Religion & Public Life presenting on "Global trends in the human rights situation of religious minorities". He began with an overview of the study analysing the extent to which governments and societies around the world impinge on religious beliefs and practices. As part of the study two indexes were developed: a Government Restrictions Index and a Social Hostilities Index both designed to measure obstacles to religious expression and practice. They were used to rate 198 countries and self-governing territories. The report on the study which focuses on constraints on religion in each country found that about 70% of the world's population was living in countries where governments imposed high restrictions on religion or where there were high levels of religious restrictions in society. A second study based on the first sought to assess how government restrictions and social hostilities are changing globally. The new study revealed that more than 2.2 billion people – about a third of the world's population–live in countries where government restrictions or social hostilities involving religions were increasing. The study also found that about 1% of the world's population live in countries where government restrictions or social hostilities are decreasing.

In terms of patterns, professor Grim submitted that the study disclosed that the substantial increases in restrictions and hostilities tended to be in countries where they are already high while the decreases tended to be in countries where they are already low. The pattern suggests that a gradual polarization could be taking place and that restrictions on religious beliefs and practices rose between mid-2006 and mid-2009 in 23 of the world's 198 countries (decreased in 12 countries or 6% unchanged in 163 countries or 82%). While the study focuses on constraints on religion in each country it does not attempt to analyse the factors that might explain why restrictions have arisen.

Session II: Protection of religious minorities under international human rights standards: synergies, achievements and obstacles

Religious minorities under the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, ICCPR Article 18 on freedom of thought, conscience and religion, and Article 26 on non-discrimination

As the first speaker on this item, Mr. Heiner Bielefeldt, UN Special Rapporteur on freedom of religion or belief, submitted that all the guarantees enshrined in the human right to freedom of religion or belief (including the right to have or adopt a religion or belief of one's choice, as guaranteed in article 18.1 ICCPR) apply to persons belonging to religious

minorities must be fully respected and preserved. He asserted that it would be wrong to define the difference between freedom of religion or belief on the one hand and minority rights on the other hand along an assumed dichotomy of individual versus communitarian rights. Both the right to freedom of religion or belief (article 18 ICCPR) as well as religious minority rights (article 27 ICCPR or the Declaration) refer (albeit in different ways) to the rights of individual human beings in their multifaceted communitarian relationships.

Measures adopted to improve the situation of religious minorities should have a consistent human rights basis. In this context, the right to freedom of religion or belief on the one hand and minority rights on the other hand can mutually reinforce one another. A clear understanding of the nature of these rights – as universal norms representing the consensus of the world community – can help to avoid typical misperceptions and concomitant pitfalls. The Special Rapporteur also highlighted the need for States to ensure that a legal personality status is accessible to religious minorities, and he stressed that education in public and private schools needs to take into account the specific needs of members of religious minorities and that religious instruction as part of the general school curriculum must always include the option of low-threshold exemptions. Furthermore, he urged States and other concerned to encourage, promote and facilitate interreligious communication.

In her capacity of Commentator, Ms. Nazila Ghanea, Lecturer in International Human Rights Law, University of Oxford, observed that, historically, religious minorities were the primary trigger for the institutionalisation of the international framework of minority rights. It was religious minorities who spearheaded minority rights concerns onto the regional and later international level. Despite this background, religious' minorities have not yet been fully addressed under modern minority rights norms and mechanisms.

Ms. Ghanea went on to enumerate six key elements in minority rights which could serve to complement and enhance the protection of religious minorities beyond the protections offered through freedom of religion or belief:

- Firstly, religious minorities stand to gain enhanced protection through minority rights for their language and culture. In the broader minorities' landscape, preservation of minority culture has at times led to particular arrangements and policies for such purpose.
- Secondly, she argued that religious minorities would gain a broader scope of protection of their group rights through the minority rights regime. The language of Article 27 of the ICCPR: 'in community with other members of their group' in their culture and the practise of their religion; contrasts with the ICCPR's Article 18 language of protection of manifestation "either individually or in community with others, and in public or private... in worship, observance, practice and teaching.
- Thirdly, the objective determination of the existence of religious minorities is supported more sharply by the minority rights regime rather than under freedom of religion or belief provisions. The Human Rights Committee has emphasised that "The existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria".
- A fourth reason is that positive measures of protection should enable a minority group to "maintain its culture, language or religion". The Human Rights Committee has stated

that this means “... positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practise their religion, in community with other members of the group [...]” The relevance of positive measures is not found in any of the international freedom of religion or belief instruments.

- Fifthly, the minority rights regime emphasises the effective participation of religious minorities in decisions which affect them and their full participation in the progress and development of their country. The Human Rights Committee states that the enjoyment of cultural rights: “may require ... measures to ensure the effective participation of members of minority communities in decisions which affect them” (Human Rights Committee, General Comment 23, Article 27).
- The sixth reason is that whereas minority rights norms uphold the “survival and continued development” of the “cultural, religious and social identity” (Human Rights Committee, General Comment 23, Article 27) of minorities; freedom of religion or belief standards themselves make no mention of being directed towards the survival and continued development of religious minorities, let alone observing that this would enrich the fabric of society at large.

Ms. Ghana explained that in recognising religious minorities we need to be particularly vigilant about the need to consider non-dominance alongside numerical inferiority. Proposed definitions of religious minority can prove somewhat wanting. The state religion or the state ideology is a key factor in determining the power dynamics and colours the ‘dominance’ criteria in the definition of minorities. These power dynamics will often be more significant than the numerical criteria in the process of determining who the religious minorities are in particular contexts. A related question is how we are to recognise ‘religious’ minorities. The onus here is not on their ‘minority’ aspect but their ‘religious’ aspect. There are several dimensions to this and minority rights instruments do not always provide clear answers to such questions as the first is whether ‘religious’ minorities include ‘belief’ minorities.

Contribution of the minority rights standards in the protection of religious minorities: UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and ICCPR Article 27 on the rights of persons belonging to minorities

As presenter under this agenda item, Ms. Rita Izsák, UN Independent Expert on minority issues referred to her great concern for the protection of the rights of religious minorities which she intends to make a high priority in her work as a mandate holder. She expressed alarm about the volume of information received from civil society detailing human rights violations against religious minorities. She noted that negative trends and an increasingly hostile and unwelcoming legislative and social environment is a global phenomenon, and she added that those belonging to “non-traditional” minority faith groups are also frequently facing restrictions to their rights and freedoms as well as harassment and sometimes violent attack.

She stated that the challenges we face in improving the rights and security of religious minorities are significant and require short, as well as medium and long-term solutions. Immediate action is required to address widespread violence being perpetrated against

religious minorities. She expressed regret that human rights mechanisms have often not been able to play perhaps their most important role - a preventative one. While human rights mechanisms can contribute to picking up the pieces of broken and divided societies and help to rebuild peace, trust and understanding, those mechanisms must do more and respond much earlier to the signs of emerging tensions and possible sectarian violence before it breaks out. Therefore at the core of her message is that more must be done to enhance the role of human rights mechanisms in prevention and in promotion of social stability. Efforts should always be focused at the national level since that is where problems exist, where solutions must be applied, and where real change must take place.

Commenting on Ms. Izsák's presentation, professor Asbjørn Eide pointed out that many minorities differ from the majority on several grounds at the same time and that it can be quite difficult to disentangle the religious from the ethnic dimension. He stressed that "religion" in human rights law is part of the wider concept of "religion and belief" which has a broad meaning, including both theistic and atheistic beliefs as well as agnostic beliefs and endorsed Ms. Izsák's emphasis on the importance of the recognition and protection of the different religious groups in society. Protection against discrimination and against all acts of violence on religious grounds is essential; also in order to avoid ethnic tension and conflict. It is also essential that states adopt measures to create favourable conditions for the manifestation of religion by persons belonging to minorities, in accordance with the Minorities Declaration Article 4.1.

In his comments, professor Eide emphasised the need to combine the protection of religious minorities with the quest for social stability and cohesion based on human rights for all. In this connection he emphasized the importance of inter-culturalism also in the religious field. He called for inter-religious dialogue and reciprocal understanding, intercultural education, and emphasis on what is common to all mankind, the recognition of and support for human dignity of every person irrespective of their religion and belief. Parents shall have the right to secure for their children a religious education in conformity with the belief of the parents as set out in many human rights instruments including the Covenant on Economic, Social and Cultural Rights. It is however equally important that children are brought up to recognize the human rights of everyone including those with a different religion.

Strengthening the effectiveness of international human rights mechanisms in the protection of religious minorities

Ms. Jane Connors, Chief, Special Procedures Branch, OHCHR began her intervention by stressing that human rights of religious minorities are violated in many ways and that these violations are not restricted only to those of freedom of religion or belief, but cover the full spectrum of civil, cultural, economic, political, and social rights. In this respect, the role of the UN with its international human rights law and mechanisms is to promote and protect human rights, through sustained engagement with national authorities, national human rights institutions and civil society. Human rights mechanisms constitute tools national actors can use in their everyday efforts and advocacy, to empower and build capacity of NGOs and others. Accordingly, great emphasis is placed by OHCHR on its activities in the field, spearheaded by its field presences. The Office's efforts are consistently directed

towards locating regional and country level opportunities to strengthen implementation of international standards nationally.

Highlighting the importance of the work of the 36 thematic Special Procedures mandates in advising and assisting States to fulfil their obligations Ms. Connors underscored their role in providing support toward implementation at the national level. Special procedures thematic studies, reports and recommendations provide valuable guidance and often highlight good practices that can be used by States and others. Country visits allow mandate holders to analyse situations in detail, including those of religious minorities, and provide finely-tuned recommendations that are based on direct consultations. Many mandates emphasize the need to strengthen technical cooperation thus underlining the importance that OHCHR step up its provision of such human rights assistance. While much is already being done, opportunities have not been fully exploited for follow-up and country engagement based upon the recommendations emerging from human rights mechanisms.

Turning to the mandate on freedom of religion and belief, she stated that it has helped to develop understanding of key thematic issues relevant to religious minorities as well as to articulate recommendations and tools to assist national Governments. Further, while the Independent Expert on minority issues is a relatively new mandate, it also has already made a significant contribution to this area.

Regarding the human rights treaty bodies, she referred to their role in assisting State parties to comply with their human rights obligations through consideration of reports, individual petitions, formulation of general recommendations and, where applicable, country visits. For example, General Comment 22 of the Human Rights Committee emphasizes that the terms "belief" and "religion" should be broadly construed and that the application of article 18 must not be limited to traditional or dominant religions. Its General Comment 23 establishes that it is not for a State alone to decide which groups constitute minorities so as to claim minority rights, but rather that this decision should be based on objective criteria, an issue of great importance to those religious minorities who are denied recognition as minorities and on that basis denied their rights. Other human rights treaty bodies also consider issues relating to religious minorities. While not explicitly mandated to address religion, the Committee on the Elimination of all Forms of Racial Discrimination, for example, has often considered the situation of national or ethnic groups which also constitute religious minorities. The Committee on the Elimination of Discrimination against Women frequently addresses discrimination against women from religious minorities.

In terms of the policy level, resolution 16/18 of the Human Rights Council on combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence, and violence against persons based on religion or belief also proposes an action-oriented approach to combating religious intolerance, protecting freedoms of expression and religion and calling for specific measures to combat religious intolerance. General Assembly resolution 66/167 of December last year confirmed this approach. The Istanbul Process for Combating Intolerance and Discrimination based on Religion and Belief seeks to sustain these commitments through a series of implementation meetings aimed at identifying best practices, producing concrete proposals in areas such as training

government officials, establishing enforcement mechanisms, and engaging with members of religious communities.

OHCHR has sought to create a better understanding of challenges and possible solutions globally relating to incitement to religious hatred. Article 20 (2) of the ICCPR prohibits any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Following an initial expert seminar in Geneva in 2008, in 2011 OHCHR organized four regional workshops on the prohibition of incitement to national, racial or religious hatred in Vienna, Nairobi, Bangkok and Santiago de Chile. The objective was to create a better understanding of the legislative patterns, judicial practices and different types of State policies to tackle incitement to hatred and to propose concrete actions and solutions.

As Commentator, Mr. Mark Lattimer, Executive Director, Minority Rights Group International (MRG) submitted that one of the reasons why minorities do not rely more on the Minorities Declaration is because it is not the strongest instrument. MRG does its best to promote the Declaration and will continue to do so particularly during this 20th anniversary year. Its great value lies in what it adds to Article 27 of the ICCPR in terms of promoting the participation of minorities. It was a great achievement to put that at the heart of the Declaration. But it is only one of the concerns that minorities around the world face.

Mr Lattimer argued that despite the range of human rights mechanisms, there are gaps in their coverage as far as the concerns of religious minorities are concerned. He noted the differences in terms of tools and mechanisms to address ethnic discrimination and religious discrimination, recalling that although the Convention on the Elimination of Racial Discrimination has a rather broad coverage it does not refer religious discrimination. While religious minorities are naturally drawn to Article 18 of the ICCPR and the work of the Special Rapporteur's mandate, freedom of religion or belief is only a small part of the problems experienced by minorities. Using as example a death sentence based on blasphemy laws, Mr. Lattimer asserted that the death sentence imposed on the victim by the court also involved the right to a fair trial and the right to liberty and ultimately the right to life. The main aspect of the case did not engage the right to freedom of religion and belief while the main aspect of freedom of religion and belief was the justification used by the persecutors of the victim. Most persecutions based on religion are not limited to issues of freedom of religion or belief. He also referred to the limitation of certain minority rights instruments, noting that for example the Framework Convention on National Minorities does not offer wide protection to the Muslims in Europe because a number of States Parties have not accepted them as national minorities in their countries. In other areas of the world, including in the Middle East and Asia, there are no strong regional instruments or strong regional monitoring mechanisms. Hence, protection for religious minorities is very seriously lacking compared to many other groups, and religious minorities feel particularly aggrieved by the fact that they are being ignored not just in their own communities but under the international system.

Referring to Professor Grim's conclusions, Mr. Lattimer stated that he was struck by how effectively restrictions on religious freedom and on the rights of religious minorities

generally were on the rise and that concurs with the findings at his own organisation. In 2010, MRG published “[t]he State of the World Minorities and Indigenous Peoples” which focused specifically on religious minorities. MRG’s conclusion essentially was that religious persecution was the new racism. This is not to say that racism has gone away but that increasingly religious communities are being subjected around the world to the same persecution that many people associate with racism, and communities which have previously suffered from ethnic persecution are now being targeted because of their religion. Problems which were seen as deriving from ethnic differences are now increasingly seen in religious terms. There is a shift in perspective which is manifested through the growing targeting of religious minorities in many countries including by far right groups which are constrained by the laws on hate speech and racial hatred but are now deliberately targeting groups on account of their religion.

Session III: Regional human rights mechanisms and other initiatives protecting the rights of religious minorities at the European level

The nexus between minority rights standards and the protection of religious minorities within the OSCE and the Council of Europe

Starting with a presentation by Ms. Zdenka Machnyikova, Legal and Political Adviser, Initiative on Quiet Diplomacy, this session explored how protection of the freedom of religion or belief is guaranteed under the normative standards set in the European Convention on Human Rights (ECHR) and other treaties of the Council of Europe.

The extensive jurisprudence of the European Court on Human Rights as regards Article 9 of the ECHR has for a long time played an important role in addressing violations of freedom of religion with respect to religious minorities. However, the protection of religious minorities cannot be as narrowly focused and equated just with securing the right to freedom of religion or belief. In this context, the full protection based on measures ensuring non-discrimination and full equality (including positive measures) in all spheres of life is necessary. From this perspective the Council of Europe’s FCNM could play a positive role in securing the protection of religious minorities.

The FCNM, as well as other European minority rights standards, such as the OSCE commitments, is applicable for the protection of national minorities. Regarding the scope of protection for religious minorities, the FCNM is not as specific as the Minorities Declaration nor Article 27 or the ICCPR. Similarly, the FCNM suggests that it is dedicated to national minorities, yet the Convention does not provide a definition of national minorities or specify the beneficiaries of the protection. It is left to a large extent to the state parties to determine the subjects of protection. State practice in this area varies.

There are states’ parties that limit protection explicitly only to specific minorities or provide a definition based exclusively on ethnic criteria. The practice of the Advisory Committee as a matter of principle challenges such narrow application of the Convention asserting that in application of the Convention the protection of persons belonging to national minorities should be considered on an article-by-article basis. In addition, the Advisory Committee in a number of situations noted that the fact that a group of persons may be entitled to a different form of protection, cannot by itself justify their exclusion from other forms of

protection provided by the Convention. The essence of minority rights provisions of the FCNM provides some scope for addressing human rights concerns of religious minorities from the perspective of specific rights and with careful and effective work of the Advisory Committee it offers some, although rather moderate, potential to ensure equal conditions for full participation of religious minorities in the European states.

The European Commission against Racism and Intolerance (ECRI), the Council of Europe's monitoring body, which specialises in combating racism, xenophobia, anti-Semitism and intolerance in greater Europe has regularly addressed the situation of religious minorities in its work. The thematic work of the Commission is of a great import in guiding state policies. ECRI has adopted to date twelve General Policy Recommendations, covering some very important themes for the treatment of religious minorities. These include: General Recommendation N°1 on Combating racism, xenophobia, anti-Semitism and intolerance , Recommendation N°2 on Specialised bodies at national level, and Recommendation N°7 on National legislation to combat racism and racial discrimination.

Concerned at signs of religious intolerance towards Muslim communities in European countries ECRI's has adopted the General Recommendation N° 5 on combating intolerance and discrimination against Muslims. Although the recommendation is focused on Muslim minority, it provides useful guidelines for developing national policy and measures for treating religious minorities generally.

These measures include for instance: removing unnecessary legal or administrative obstacles and adopting the necessary measures to eliminate any manifestation of discrimination on grounds of religious belief in access to education, employment and take the necessary measures to combat social exclusion of Muslim minorities. Another General Recommendation N° 9 focuses on the fight against anti-Semitism and provides the most detailed European guidelines for national strategies to counter anti-Semitism and to combat violence, hatred or discrimination against persons on the grounds of their Jewish identity or origin.

The 1986 Concluding Document of the Vienna Meeting of Representatives of the Participating States of the Conference on Security and Co-operation in Europe (the Vienna Document) embodies the most extensive European list of specific obligations to be undertaken by the OSCE states to ensure freedom for an individual and religious or belief communities to profess and practise their religion or belief. The commitments of the Vienna Document are fully concerned with religious minorities and to some extent fill the gap in securing the rights of religious minorities.

The implementation of the above Vienna commitments is regularly reviewed at the OSCE Human Dimension implementation meetings. It is notable that these meetings have specific working sessions addressing two key areas: 1) the protection and promotion of freedom of religion as a right of individuals and religious communities; and 2) the need to address intolerance and discrimination in the OSCE area. These review meetings, with wide participation of minority representatives and religious organisations, allow the detection of emerging negative trends developing within European countries and immediate reaction by providing recommendations to OSCE participating states, bodies and institutions and field operations.

The Office for Democratic Institutions and Human Rights plays a key role in the OSCE with respect to protection of human rights of religious minorities. ODIHR's work focuses on two specific subjects: 1) assisting participating States, religious or belief communities, and civil society in protecting and promoting the right to freedom of religion or belief and 2) preventing and responding to intolerance and discrimination based on religious grounds especially though offering technical support in these areas to the individual states. In this regard the ODIHR's main contribution has been in reviewing legislation for governments to help them bring their legislation into line with international standards, including providing expert opinions on issues related to freedom of religion or belief; and in monitoring cases involving violations of the right to freedom of religion. To this end ODIHR established the Advisory Panel of Experts on Freedom of Religion or Belief to serve primarily as an advisory and consultative body that highlights issues that deserve attention and suggests constructive approaches that might be undertaken by ODIHR to advance religious freedom.

Enhanced cooperation between OSCE institutions and other international mechanisms, including the United Nations Special Rapporteur on Freedom of Religion or Belief, has resulted in the drafting of another set of guidelines implementing the international principles into specific policy and practice measures, The Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools was adopted during the OSCE Spanish Chairmanship in 2007.

The OSCE has also appointed three Special representatives of the Chairperson-in-Office to assist the OSCE chairmanship with special focus on promotion of greater tolerance and on combating racism, xenophobia and discrimination.

Lastly, the OSCE High Commissioner on National Minorities is the OSCE instrument of conflict prevention with regard to tensions involving national minority issues. The High Commissioner's core approach for activities and policy advice is based on the concept of promoting integration with respect for diversity. At the heart of this approach lies the idea that (i) states need to encourage minority participation in the political, social, economic and cultural life of mainstream society with a view to develop a sense of belonging to and having a stake in society at large, while (ii) protecting the rights of minorities to maintain an identity of their own that includes their culture, language, tradition and religion.

Commentator Ms. Ilze Brands Kehris, Director, OSCE High Commissioner on National Minorities expressed the view that Ms. Machnykova rightly pointed out that while the OSCE High Commissioner on National Minorities is a conflict prevention instrument, the High Commissioner uses the standards concerning the rights of persons belonging national minorities as a key tool in his work. In addition, cross-institutional dialogue has played an important role in his activities. She stated that although the scope of the FCNM is broad, there are some limitations, to be determined through dialogue with the Advisory Committee and the State. She noted that while there is nothing preventing a State from including religious minorities in the its interpretation of the scope of application of FCNM, the FCNM generally covers religious minorities as a type of national minorities as opposed to broadly speaking any religious minority. As regards the self-identification principle, the Advisory Committee and the High Commissioner have increasingly stressed the importance of recognising and accepting multiple identities.

Commentator Mr. Ralf-René Weingärtner, Director of Human Rights and Anti-discrimination, Directorate General II of the Council of Europe highlighted that he is not convinced that in the year 2012 it would be possible to establish the types of human rights instruments. It is of crucial importance to focus on their implementation through strengthened collaboration. In addition to several Council of Europe instruments already discussed, he recalled the relevance of the Council of Europe's Charter on Regional or Minority Languages and its monitoring mechanism, which has addressed for example the right of linguistic minorities to have their religious services in their own languages. He also recalled the Day of Remembrance of the Holocaust and for the Prevention of Crimes against Humanity, reflecting the "never again" maxim and the need to remember how systematic hatred against a minority can lead to horrifying crimes.

Freedom of religion and religious minorities within the European Union context

Ms. Pia Lindholm, Equal treatment legislation unit, Directorate-General for Justice, European Commission

began her presentation by making reference to the fact that while the 27 Member States of the European Union have different legal traditions they are unified through the legal principles to which they have agreed. Respect of human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities as outlined in the EU Treaties, the Charter of Fundamental Rights and secondary legislation. The Treaty on the Functioning of the European Union contains provisions referring to religion (Articles 10, 17, 19). Article 17 provides that the Union respects the status of churches and religious associations and communities; promotes dialogue with churches, religious communities and philosophical and non-confessional organisations

The EU Charter of Fundamental Rights provides for non-discrimination under Article 21 based on sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, sexual e.g colour, language, political or any other opinion. The EU secondary law on anti-discrimination is in the form of directives. The Directives need to be implemented through national law in the Member States. The EU monitors implementation by Member States at the national level. If not implemented timely and correctly, infringement proceedings can be lodged against the Member States before the European Court of Justice.

Protection against discrimination is provided for under Directive 2000/43/EC on Racial Equality: racial or ethnic origin. The scope of protection is wide. Discrimination based on religion or belief, disability, age or sexual orientation, are covered only under the employment Directive 2000/78/EC on Employment Equality. Discrimination based on these grounds is protected but only with respect to employment. This Directive protects equally all religions and beliefs.

Commentator Mr. Alan Phillips, former president of the Advisory Committee on the Framework Convention for the Protection of National Minorities asserted that it is important to remember that the 27 EU member States are also members of the CoE, OSCE

and the UN, and that their normative standards on religious minorities share much in common, although the organisations have different competences and modalities of work. He noted that although the European Commission has capable staff, substantial financial resources and considerable powers including legal Directives that are binding in member states, it is a complicated machinery. This that can affect its capacity to respond quickly to the needs of minorities, including religious minorities.

Mr Phillips regretted that the wealth of evidence and analysis provided in the State Reports and the Opinions of the Advisory Committee on FCNM are not used adequately often by academics and policy makers in addressing inter alia major issues of concern to religious minorities.

Session IV: Implementation at national level of recommendations flowing from international and regional mechanisms

Mr. Antti Korkeakivi, Chief, Indigenous Peoples and Minorities Section, OHCHR submitted that the work of UN human rights mechanisms – including UPR, treaty bodies and special procedures mandates – have clearly prompted improvements in the protection of the rights of religious minorities at the country level, resulting, for example, in enhanced registration processes for religious communities and accommodation of religious dress codes in some countries. However, much more needs to be done as the picture is mixed at best. .

The speed with which findings of international human rights bodies are implemented depends of course also on the nature of the recommendations. While there are some recommendations that can be relatively rapidly accommodated at the national level, for example by adapting core curricula to better reflect religious diversity in the country, there are also recommendations, the implementation of which requires fundamental changes, in some cases at the constitutional level and at the highest level of decision-making.

There is a need to constantly demonstrate that advancing minority rights is beneficial to the society at large and to stress that minority rights are not anti-universalist privileges for particular groups but aim to contextualizing universal principles of freedom and equality.

National human rights institutions (NHRIs) and specialized bodies dealing with human rights can play an instrumental role. NHRIs are often the only ones to speak out in defence of discrimination of minority groups including religious minorities, sometimes in the face of trenchant public critique. There is a need to ensure that each country has a national human rights mechanism with a mandate to address human rights of persons belonging to religious minorities, including in countries where specialized bodies currently operate with a mandate that covers ethnic but not religious minorities. National human rights institutions and specialized bodies can play a crucial role in advancing the protection of religious minorities. This can be facilitated by ensuring diversity in their membership and staff. They can also contribute to the efforts of international human rights mechanisms to advance the rights of religious minorities by feeding human rights mechanisms with up to date information and also by raising awareness and encouraging full follow-up to the findings of these bodies, including as regards rights of religious minorities

The UN can also facilitate follow-up at the national level. The OHCHR minority fellowship programme is one example, training activists who have the capacity and knowledge to help also in the follow up to recommendation. The OHCHR field presences can be important partners as OHCHR has presences in close to 60 countries. The UN as a whole can also be more engaged. The new Network on Racial Discrimination and Protection of Minorities can help to make this happen. OHCHR is keen to provide support within its limited resources for national level action to follow up on human rights recommendations, in cooperation with regional organisations.

Proper implementation of minority rights recommendations often leads to improved implementation of subsequent minority rights recommendations. This is particularly true with regard to the right to participate in decision-making. If minorities are part of the decision-making on follow up to the recommendations of human rights bodies, this is likely to result in attention given to minority rights. Similarly, if religious minorities are listened to at the national level and their right to participation is ensured through consultative structures or other means they can facilitate the consideration and eventually implementation of recommendations regarding religious minorities.

Commentator Ms. Eva Lang, Equal Treatment Ombud, Austria stated that as a Department of the Federal Chancellery her work is to counsel people who claim to have experienced discrimination on the basis of religion in their work and employment in the private sector. Most of the request for advice received concerns questions regarding religious dress codes and symbols.

The basis of the Department`s work is found under the Equal Treatment Act of 2004. For the moment anti-discrimination protection in the field of employment is protected if connected to work or employment. The Act offers the same protection for all religions whether one belongs to a minority or majority group and regardless of the nature of the religion and acknowledged as an association or a private entity.

Religious symbols and clothing are protected under the Equal Treatment Act. Ms Lang informed that her Office has published three leaflets on the Islamic headscarf in various languages which explicitly encourages Muslim women to stand for their rights and to wear the headscarf in their places of employment if they so choose. Once we receive a complaint, our role is to mediate with the employer on behalf of the aggrieved party and to seek compensation in the case of violations. If unsuccessful, a claim can be filed with the Federal Law on the Equal Treatment Commission which could result in an award of compensation (for property damage and mortification). In cases of harrassment the minimum amount that one can receive is € 1.000 and up to € 5.000. There is a minimum of € 500 for non-consideration of application on grounds of religion, in cases where the aggrieved party can prove that s/he possesses the best qualification for the job. If successful at least 2 months of salaries can be awarded. Cases can be appealed before the Equal Treatment Commission which can issue an opinion as to whether discrimination occurred. The opinions of the Commission are not legally binding.

The Commission can also issue recommendations to the employer on how to establish equal treatment and is to report within two months on how recommendation is being

implemented. If the employer does not comply, the Commission can file an action at law before the court in this regard. Thus far there has been no such case filed. In terms of figures, she stated that in 2008 out of 491 complaints of violations based on religion, belief, sexual orientation, age, ethnicity 47 of them were successful. In 2011, the Department received 797 cases of which 77 were based on religious discrimination.

Discussion

In each session, presentations were followed by a rich discussion. A range of observations and recommendations were made by participants, including the following:

- Despite many positive initiatives, increased violations of the rights of religious minorities demand that efforts be intensified in order to improve the record on the promotion and implementation of legally binding human rights obligations.
- Many countries are moving towards educational arrangements aimed to familiarize pupils with different religions or beliefs, together with an emphasis of common ethical principles derived from universal human rights. It is of paramount importance that all children become aware of and respect religions other than their own in order to facilitate tolerance and respect among different religious groups
- The creative use of existing mechanisms is very important to filling the gaps in protection for religious minorities. The Universal Periodic Review (UPR) process has been very useful for religious minorities but it should be seen as a complement to other existing mechanisms. It is vital that the full range of mechanisms be used.
- There is a need to constantly demonstrate that advancing minority rights is beneficial to the society at large and to stress that minority rights are not anti-universalist privileges for particular groups but aim to contextualizing universal principles of freedom and equality.
- It is important to strengthen the capacity of civil society organisations to bring complaints, file shadow reports and access the international mechanisms.
- The UN system has to engage more with regional mechanisms, both in Europe and in other regions.
- Interfaith dialogue is one of the vital tools to be used in bringing communities together. It is important that debate on religious minorities is not limited to the religious sphere and that it is embedding in human rights.
- Churches and religious organisations have an important role to play by actively engaging in promoting, and when necessary helping to protect fundamental rights: through education and awareness raising initiatives, by standing up for victims of discrimination, by reaching out to support and advocate for the rights

of religious minority groups, by engaging actively within their community with members of different faiths helping to build trust and better understanding.

- There is a need for European States to bolster their efforts to ensure the implementation of the highest UN and regional standards and to ensure that all religious minorities are protected and that effective participation of religious minorities in social and economic life is ensured.
- It is important to understand the limits of minority rights so that they do not trump other human rights standards, including those against discrimination against women. There is not only a need but a human rights obligation requirement to pay close attention to the nexus between freedom of belief and the enjoyment by women of their human rights.

Closing remarks

Mr. Helmut Tichy thanked the participants for their contribution to the fruitful discussion. He commended the presence of the two mandate holders, the active participation of States and civil society. He expressed appreciation for the decision of the Independent Expert on Minority Issues who selected the rights and the security of religious minorities as one of her priorities during the term of her mandate. He stressed the importance attached to ensuring that the promotion and protection of the rights of persons belonging to religious minorities get more attention at the international, regional and national levels. In this context, he recalled the importance, this year, of the 20th anniversary of the adoption of the UN Minorities Declaration as it offers an important opportunity to reflect and raise awareness on the promotion and protection of the rights of minorities, as well as on achievements, best practices and challenges with regard to its implementation. Finally, the legal advisor highlighted that freedom of religion or belief and the protection of minorities are high on Austria's human rights agenda and made the topic a priority during the Austrian membership in the Human Rights Council.

Ms. Marcia V.J. Kran stressed that the discussions have demonstrated that the focus on religious minorities is long overdue and extremely important in today's Europe and globally. The seminar offered the opportunity to explore the inter-connections between minority rights and other human rights standards pertaining to religious minorities as well as the interconnections between UN mechanisms and regional ones. Interaction between the two UN mandate holders at the Seminar stands as a good example of cooperation particularly as regards the commitment of the Special Rapporteur to address minority rights in his reports and other work and the Independent Expert's commitment to focus on religious minorities. Further such contacts between mechanisms, bringing in also relevant regional actors should be encouraged. The UN Forum on Minority Issues offers the opportunity for stakeholders to work together and participants at the Seminar are encouraged to contribute to the next session to be organized later this year.

While there was a general sentiment that religious minorities deserve increased attention by human rights mechanisms, a range of examples were shared on important case-law, recommendations and other work that have been undertaken to address this issue by both

UN mechanisms and regional ones. This wealth of information can be crucial to advance the right of religious minorities but is all too often scattered and underused. The discussions helped to bring it together for those present, but the aim should be to be more systematic in this respect and encourage knowledge management initiatives that would bring it all together and by made available to the public at large.

Ms Kran recommended that the report on the seminar be shared widely and in this regard, OHCHR will submit it to UN Forum on Minority Issues and the new UN Network on Racial Discrimination and Protection of Minorities. She expressed her appreciation to Ambassador Strohal, Ambassador Tichy and the entire team of the Austrian Federal Ministry for European and International Affairs for co-organising and hosting the event.