

Beyond Belief: The Rights and Security of Religious Minorities:

Session 4: Ways Forward

Some Radical Thoughts to Prompt some Radical Thinking

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In the short time available to me, I wish to make some general reflections on issues concerning the protection of religious (and belief) minorities and offer some thoughts about possible ways forward in addressing the resulting issues. In the interests of time, I will be brief, direct, and will, of necessity oversimplify some complex issues and overstate my thoughts in the interests of prompting robust discussion.

1. In looking for a way forward, it is useful to remember the past. As is well known, concern for religious minorities lay at the heart of the construction of the minorities treaties system under the League of Nations and that system was a singular – spectacular – failure. This system was itself meant to be an improvement on the previous ‘system’ inherited from the 19th century ‘public order of Europe’, in which recognition of new states was based on recognition of either religious freedoms or minority rights. The failure of the inter-war minorities system was a significant factor in shaping the individual rights human rights framework which has dominated for the subsequent 60 years and more, and which has not served either the freedom of religion or belief, or religious minorities, particularly well. Indeed, it needs to be recalled that the entire ‘modern’ Westphalian international system is derived from attempts to address issues concerning religious minorities. The lesson from history is that for more than 500 hundred years Europe has sought to devise institutional

approaches to governance which are adequate to protect the rights of religious minorities – and none have appeared to have been particularly successful. Perhaps we are simply trying to do something which cannot be done in the way in which we are attempting to do it.

2. There is an awkward question of congruence between the various conceptual approaches which lie at the heart of contemporary approaches to human rights protection. It is very difficult to combine minority rights, equality and non discrimination in a coherent and sustainable package. It is of course possible to reconcile these allied approaches, given the relevant legal tools, in a fashion which is convincing to a point. Nevertheless, granting one group particular protections which are not available to others is never an exercise in equality, or in non-discrimination, irrespective if this is the goal which it seeks to achieve. Moreover, in the contemporary international setting, equality and non discrimination have been reified to a point at which doing what is necessary to protect the rights of any minority is increasingly problematic if it is seen as running counter to these values. This is particularly problematic when it is argued that these values should be put to the side in the interests of and specific minority groups which are seen as being ‘minorities of choice’ – that is, groups which have come about as a result of ‘choices’ which its members have made. Religious minorities are, at least in much of the western world, considered to be the exemplar of such minorities. Whilst this might be possible in respect of a particular (religious) minority in a particular place for a limited period of time, it is very difficult to be able to sustain such particularist protections over time. At best, then, short term approaches aimed at addressing the situation of the most obviously disadvantaged are more likely to have traction, rather than long term regime-based ‘solutions’ which will – inevitably – over time breed resentment and hostility and tend to become counter-productive.

3. It is also an uncomfortable truth that whilst rights might be universal, the state of their enjoyment is not universally uniform. To the extent that minority protections for religious

groups should be seen as ‘correctives’ to the problems which they face, rather than privileges which attach to them by virtue of their status, such protections should be tailored to the particular context in which they are to be applied. What is an appropriate ‘solution’ in one situation may be entirely inappropriate in another. There is a need to be willing to embrace this lack of uniformity at a given point in time in order to be effective in pursuit of the desired outcome.

4. But what is the desired outcome? There is no clarity on this central question. When it is said that we seek the protection of the rights of religious minorities, what do we mean? Unless there is some consensus regarding what a ‘minorities’ approach is to achieve it is very difficult to see how it will be possible that such an approach can be properly crafted. Just ‘being’ identified as minority, religious or otherwise, should not be the threshold. There has to be a ‘reason’ why being recognised as a minority is appropriate in order to trigger the forms of protections which are necessary, but which would otherwise be unavailable, in order to achieve the desired outcome. To that extent, it may be true to say that there is no such thing - or perhaps ought not to be such a thing - as a legal ‘minority’ in the abstract. It is in the concrete situation in which groups may find themselves in any give place and from time to time which triggers that ‘status’. There are lessons to be learnt here from the evolution of the concept of self determination (which has long been linked with that of minorities). Here, there may be a progression from being a section of the population, to being a minority, to being a people, to being a self-determination unit – and back again. It is not a static status. But when it comes to minorities, there seems to be a wish to have a static status and to build static regimes around them – possibly because of the lack of clarity regarding the end which is sought as a result of doing so.

5. Turning in particular to the rights of religious minorities, there are at least two additional complexities. First, there is no very clear consensus on what comprises a religion

(or belief) for the purposes of human right protection. It is very difficult, therefore, to be clear about what groups can begin to access the benefits of a minority rights approach. It is also trite but true that most (not all) religious groups are a minority somewhere (some, everywhere). But this just reinforces the point about the need to be context specific in ones understanding of the situation. The second major complexity is that there is a lack of consensus around what the freedom of religion or belief as a right entails in practice at all, let alone what it entails as a minority right. As a result, there is a very real danger that religious minorities may be able to benefit more from their minority status than members of the religious majority can benefit from their individual right to freedom of religion. This, in a nutshell, seems to be the problem which is being faced in more and more western European countries, in which there is a perception that the religious rights of adherents to the dominant religious traditions carry less sway than the rights of those who are members of religious minorities. This is the antithesis of good sense and does nothing to assist religious minorities in the enjoyment of their rights.

6. If one wishes to seek a constructive way it might be necessary to adopt a rather different approach.

(a) As a starting point, we need to have a clearer understanding of what the freedom of religion or belief means as an individual right, and as an individual right for everyone. Without this, all else is, ultimately vulnerable to other claims, and offers a protective system which is built on sand.

(b) ‘Traditional’ human rights – and minority rights – thinking remains largely rooted in the idea of identifying and providing remedies for situations in which rights have been breached. But this inevitably implies that violations of rights have already occurred, and it may be better to focus not solely on the identification of violations

and upon remedial action, but to think in terms of a system which ‘gets ahead of the breach’ in order to lessen the likelihood of violations occurring: in short, to develop a preventive approach.

(c) Such an approach might involve an exploration of the circumstances which may give rise to such violations and that those tasked with doing so should then offer practical suggestions which might contribute to ensuring the better protection of the rights of the minority groups concerned. This might include devising targeted, bespoke and, if necessary, time limited, measures, tailored to the practical realities of particular situation in question and supported by effective means to oversee their implementation and gauge their effectiveness.

(d) such work might best be undertaken at the national level, with the support of the international community which can assist in establishing effective national processes and through the sharing of practical experience, reflecting the approach of achieving compliance with international human rights standards by offering ‘guidance from without’ but, in the first instance, seeking ‘solutions from within’.