Majorities, minorities, and the rights of religion and belief

T. Jeremy Gunn

"Underlying most discriminatory practices are prejudices which have crystallized into mores of society. In the particular case of attitudes towards religions or beliefs, perhaps more than in any other field, mores are slow to change since they stem from deeply held convictions". — Arcot Krishnaswami, UN Special Rapporteur, Subcommission on Prevention of Discrimination and Protection of Minorities.

"[F]reedom of thought, conscience and religion is one of the foundations of a 'democratic society' ... 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 [of] a democratic society, which has been dearly won over the centuries, depends on it". — European Court of Human Rights.

In a recent conversation with a Catholic priest from Zagreb, I made what I had intended to be the unremarkable observation that Muslims and Orthodox should be afforded the same religious rights in Croatia that Catholics are now seeking in Russia. In strong, measured tones, my interlocutor rejected my suggestion by responding: 'you cannot take away from us our history'. I was, perhaps naively, startled by this response. It had never occurred to me that I could or should take away his history. Whereas I had imagined only that I was advocating religious tolerance, equality, and universal human rights standards, he apparently understood me to be assaulting his cultural, religious, and national identity.

Rights of religion or belief prior to 1989

Rights related to religion or belief have been the neglected stepchild of the post-war human rights movement. It is true enough that the protection of the rights of religion or belief have been incorporated into the major human rights instruments. Beginning with the 1948 Universal Declaration of Human Rights, international conventions have included articles to protect religion or belief. The language of Article 18 of the Universal Declaration has been the progenitor of most of the subsequent conventions: '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

---

1 Executive Fellow, United States Institute of Peace, Ph. D., Harvard University, J.D. Boston University, A.M., University of Chicago. The views expressed here are those of the author and do not necessarily represent those of the U.S. Institute of Peace. Dr. Gunn is a member of the ODIHR Panel of Experts on Religion.


public or private, to manifest his religion or belief in teaching, practice, worship and observance'.

This formulation was modified in Article 9 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Article 18 of the 1966 International Covenant on Civil and Political Rights (ICCPR), and the religion clause of the 1975 Final Act of Helsinki (Ch. 1 para. VII). In addition to such guarantees for religious worship and practice, most human rights conventions include language prohibiting discrimination on the basis of such factors as religion, race, and sex.

Although the rights of religion or belief were articulated in these and other human rights instruments, comparatively little attention was paid to them in the first forty years after World War II. The 1960 UN publication by Arcot Krishnaswami, Study of Discrimination in the Matter of Religious Rights and Practices, led to little concrete action beyond the adoption of the UN's important but non-binding 1981 Universal Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief. In the Study of Discrimination, which included data collected from throughout the world, Krishnaswami announced that his recommendations were 'as important as, if not more important than, the analysis of information collected'. But the UN never adopted Krishnaswami's recommendations, and it took the UN more than twenty years to adopt the 1981 Declaration on Intolerance, which fell far short of articulating the sound principles Krishnaswami had advocated be included in a binding international convention. The relative lack of international commitment to the issue was underscored by one of the few small positive steps attempted by the UN Commission on Human Rights when it created the office of Special Rapporteur for discrimination based upon religion — but failed as usual to give the office the funds to conduct its international monitoring of religious discrimination.

It was not only the UN that had failed to take the issue of religious discrimination seriously. During its first thirty-five years, the European Court of Human Rights decided no Article 9 religion or belief cases. Almost every Article 9 application that came before the European Commission on Human Rights was determined to be 'manifestly ill-founded' or was otherwise dismissed. Major human rights reports neglected religious discrimination as a subject for specialized or serious treatment. One needed to search diligently in the annual surveys of Amnesty International or the U.S. State Department in

---

5 See 'The Basic Rules,' which was Krishnaswami's proposed draft for a UN convention on religion or belief. Krishnaswami, Study of Discrimination, pp. 63-66. The difference between Krishnaswami's perceptive and enlightened 'Basic Rules' of 1960, on the one hand, and the standard international-instrument language on the other, is dramatic.