

faith in Europe

The Organisation for Security and Cooperation in Europe (OSCE)

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Why are we interested in religious rights from an international law point of view? Because in recent history the two have always been linked.

In the eighteenth and early nineteenth centuries the question of religious liberty was separate from the question of how states were run and how they treated their citizens. But in the later part of the nineteenth century, and particularly in the context of the breakup of the Ottoman Empire, international attention was focused on how religious groups were treated in newly independent states. The motivation was not religious freedom as such, but concern that social friction should be minimised and hence political instability avoided.

Since the Second World War there has been less emphasis on the rights of religious communities and more emphasis on the rights of individuals. The prevailing modern understanding has been that the religious freedom of the individual is to be restricted only by public order issues.

Over the last 10 to 15 years a new theme has emerged. Hitherto the concern had been that states should not overstep the boundary of interference in the religious life of citizens; but there had been little interest in how religious life was organised within a particular state. Now the international language about religious freedom has seen a fundamental change. The state is now to be the neutral and impartial organiser of religious life within its boundaries. The idea is that any state should ensure that it leaves an appropriate place for pluralism and tolerance.

In practice this raises some problems. What sets of values are

underpinning this enterprise? Some states, for example France and Turkey, declare that their values are those of 'secularism'. In Turkey groups advocating sharia law are repressed on the grounds that their aims are incompatible with the secularist aims of the state. This relatively recent change in understanding of the role of the state as that of impartial policeman of the public space tends to squeeze the outward demonstration of religious adherence out of the public sphere and into the private sphere.

One positive result of this situation is that religious groups of all kinds will tend to cooperate in pressing for recognition by the state. However, a less welcome result is that a particular state might favour one particular religion. Recent legislation on religion is increasingly tending to confirm a link between a state and the dominant faith within it.

What can and should international organisations do about this?

The Organization on Security and Co-operation in Europe (OSCE) started involving itself in religious freedom issues only in the mid-1990s. Under the auspices of the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) a Panel of Experts was set up in 1996, and there was a major intergovernmental conference on the subject in the Hague in 1999. Two or three years ago it was decided to restructure the panel of experts. Now each member state can nominate one such expert, and there is also a permanent Advisory Council of 15 individuals (of whom I am one).

The panel has produced a set of guidelines on legislation on religion which has been officially accepted by the OSCE. The OSCE has initiated a process of 'benchmarking' - setting out practical guidelines on what religious legislation should contain - and it reviews proposed legislation and makes alterations and suggestions. Religious communities thus have the opportunity to bring their concerns to an international body. The OSCE has also taken the initiative in a number of cases where individuals or specific groups have had their rights violated. Conferences for consultation and dialogue are regularly organised under the auspices of ODIHR.

One general point: the international human rights community never ceases to be shocked by the attitudes which reveal themselves within religious confessions. The history of the protection of specifically religious rights has been more problematic than that of the protection of human rights of other kinds. Religion tends to be seen as, and indeed to be, part of the problem rather than part of the solution: freedom

for oneself does not necessarily entail freedom for others. The language in international religious rights work now tends to be that of 'alliance of civilisations', countering the assumptions in the Huntingtonian theory of the 'clash of civilisations'. Religions are encouraged to work together on securing rights, while recognising differences in approach.

Discussion

The original understanding of human rights was that they belonged to the individual; the community had no standing in this respect. However, opinion has slowly been moving towards the concept of community rights. The question then arises of how these rights impinge on those of the individual within that community. 'Structured pluralism' is one of the new concepts which aim to achieve a reconciliation between the two.

The Russian Orthodox Church has recently been arguing that human rights are linked with moral duties, with the maintenance of public morality. This is advanced as an alternative to the western liberal understanding of human rights as a function of pluralism and democracy.

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