

Majority-Minority Issues in Religious Freedom

BY JULIET SHEEN

In celebrating the fiftieth anniversary of the Universal Declaration of Human Rights, our thoughts could well go back to one aspect of its origins: minority rights.

Religious freedom, asserted in Article 18 of the UDHR, has always been central to minority rights. Minority rights have been at the root of the development of modern human rights mechanisms; yet they remain controversial. How does democracy square with the concept of such rights? As for countries which have traditionally accommodated minority communities, is the historical legacy satisfactory? What if a minority is not recognised? We can look at questions such as these in a world context.

Discrimination against minorities for their culture, language or religion is contrary to human rights norms. So is discrimination on many other grounds which affect religious communities as individuals and as groups. It is in terms of norms embracing all humanity that the rights of minorities may be best asserted and new approaches developed.

The modern era has seen so many wars of religion and of empire (the reformation and the counter-reformation; the Ottoman, Napoleonic and Austro-Hungarian empires), of liberation and revolution (France, Greece, Italy, Russia), the first and the second world wars and the continuing crumbling of colonial administrations, the cold war and the dissolution of communism in Europe. Not to mention the rise and rise of nationalism. Indeed, there is scarcely a conflict in which religion and belief, ideology, national or community affiliation, language and mode of life has not played a significant role.

That great humanitarian Yehudi Menuhin deplored the fact that we still act on the basis of territory rather than on the basis of principle.¹ But the two have been tied together throughout history, if only because principle cannot be enunciated except through human agency and that agency always has 'a local habitation and a name'. The human rights instruments we know today emerged not just from the will of nations, but, among other things, from centuries of experience of negotiating and concluding treaties between warring nations, the conquerors and the conquered, those who invaded and those who retreated from their lands.

Out of the two world wars came the Universal Declaration, with Article 18 declaring the right of freedom of religion and belief, acknowledged as one of the basic rights which people have simply through the dignity of being human. In exercising this right fully, human beings also exercise their freedom of thought and conscience, of association with others, of movement, of speech, expression and communication, of educating their children and maintaining their religious institutions, and their right to physical integrity, to their very existence as living beings. Freedom of belief is called a 'non-derogable' right which means that no country may say they will not respect it when they ratify a convention under international law. The 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief further enlarges our understanding of the implications of this right.

Treaties concerned with minorities have been many. Typically they have resulted in a particular power protecting a particular minority defined by its religion, nationality or culture. Where territory has been ceded, certain rights which its inhabitants had been accustomed to enjoy became protected under the new regime, notably their religious, civil and political rights. While some treaties protected the status of a named minority vis-a-vis the rest of the polity, other treaties extended equal rights as citizens to all who had lived in the former territory.

Within national or empire boundaries, various protections developed, depending on political considerations and differing legal systems. One example of this is the millet system. Under the Ottoman empire, the millet system allowed minority communities some autonomy, subject to ultimate accounting to Constantinople. One legacy of the millet system in some Mediterranean countries affects minorities wanting to maintain or rebuild their religious buildings. For instance, in Egypt the Christian Copts, who have been there since before Islam, virtually require a presidential decree to even repair a toilet. Another example of limited minority autonomy is the separate systems of personal law (such as in marriage, di-

voiced, custody and maintenance) which exist in many countries, often side by side with civil law. As ever, women remain the markers of cultural distinction and the battle for women's equality has aroused communal tensions, as witnessed by Taslima Nasreen in Bangladesh.

Returning to the subject of minority treaties, two strands emerge from these treaties which are also to be found in human rights instruments today because they bind states as powers. The minority treaties contained either general guarantees of civil and political rights (including religious freedom) for people defined by territory - those individuals within certain borders - or, on the other hand, guarantees of certain rights to people defined as a specific group, especially as identified by religion: the community of Muslims, or of Catholics or Protestants, or of Orthodox Christians, for instance, together with their rituals, their religious governance, buildings, schools and places of worship.

Since 1948, the Universal Declaration of Human Rights and the other instruments which go to make up the international standards of human rights and non-discrimination, and their protections, have been the global statements of what makes a full human life in society, no matter who you are or where you live, defining interference with the enjoyment of that right in terms which carry moral weight - such as discrimination, intolerance, exploitation, torture, genocide - and are stated to be contrary to the aim of peace and brotherhood among the human community of nations. These interlocking, interdependent principles morally and legally bind States whether through ratified treaties or through customary international law.

Article 27 of the International Covenant on Civil and Political Rights states:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

The question of what constitutes a minority often depends on the context in which the word is used: legal, cultural, political, descriptive. There is no general agreement on its definition, as Francesco Capotorti, the author of the United Nation's first major study on the rights of minorities, has noted.² Questions about size, minority-to-majority ratios, objective

and subjective criteria, minorities' origin and nationality are all issues that affect the consideration of a definition. Under Article 27 of the ICCPR, any group claiming minority status must be numerically smaller than the rest of the population, be different from the rest, occupy a non-dominant position in society and must wish to preserve its special characteristics as a group. One of the significant developments in interpreting Article 27 has been the widening of its breadth of reference and the inclusion of First People's concerns such as land rights.

However, to be recognised as a minority has also been seen as diminishing the community's status to second-class, thus contributing to the controversy which surrounds the question of how minorities should be treated in the general polity. According to this view, even making a distinction between majority and minority automatically imports discrimination and disadvantage. The issue can become a very complex interplay between state policy and the perceptions of minorities who have to live in the country. Let alone, in this era of globalisation, those outside. As in other issues concerning a wide range of minorities, not confined to religion, tensions exist between those who wish to blend with the majority in whatever way is possible, claiming their allegiance is to the whole, and those whose concern is to be as distinctive as possible while maintaining their identity.

Examples of the complexities of minority issues are legion. Here are some; I make no pretence to cover the world.

The year 1999 marks the fortieth year since the Dalai Lama escaped from Tibet to India during the unsuccessful uprising against Chinese rule. Chinese repression of Tibetan Buddhism has been extreme and is well documented. The ban on photographs of the Dalai Lama has deepened and books and plays have been banned under a new campaign declaring Tibetan Culture not to be Buddhist. Re-education and other state-sponsored action against monks has reduced the number of functioning monasteries.³ Meanwhile, state-sponsored internal migration of Han Chinese has gradually been changing cultural ratios in Tibet, a standard technique of colonisers. China demands that the Dalai Lama recognise Chinese sovereignty over Tibet and the Dalai Lama wants to preserve Tibetan heritage. But current tantalising hopes for resolving the issue need to be set beside China's human rights record of state control of religious expression and organisation and its ruthless repression of political dissidence.

The slaughter and destruction in the former Yugoslavia goes on. In the face of accusations that gross human rights violations have been commit-

ted by Serbian army, police and para-military units, the President, Slobodan Milosevic, has been obliged to organise troop withdrawals and accept the monitoring of the withdrawal by the Organisation for Security and Cooperation in Europe.⁴ Kosovans are ethnic Albanians and predominantly Muslim descendants of people who lived under the Ottoman Empire. In 1389, Serbia was defeated at the Battle of Kosovo Field. From 1987, former Communist Party leader Milosevic started to link nationalism to Serbian Orthodox religious fervour so that by the 600th anniversary of the battle, in 1989, Kosovo had lost its autonomy to the vision of a Greater Serbia.⁵ Almost all official Albanian-language education was stopped in 1991 by Milosevic, and ethnic Albanians have had to set up their own schools, often in houses; even these have been gutted with the destruction of whole villages and the fleeing of their inhabitants.⁶ Just as elsewhere in the Balkans, rampant nationalism has replaced with violence some centuries of co-existence among neighbours and religions, a harmony which often still persists despite the depredations of hate and civil war. Serbians who oppose the current ideology have been deprived of access to the state-dominated media which encourages xenophobia and is the only local source of information for those in rural Serbia. Re-broadcasts in Serbian by the BBC and Radio Free Europe have now been banned and professors at the University of Belgrade who are not members of the ruling Socialist Party are being sacked to prevent their views from contaminating student minds.⁷ In these circumstances, a political solution for the Albanian minority in territory under Serb control does not look imminent.

The mix of religion and politics has long been acknowledged as conducive to intolerance. Christian minorities in India have come under increased pressure with the rise of Hindu nationalism, especially after the Bharatiya Janata party won power in the central government.⁸ Religious nationalism has been pushing at the bounds of India's secular system for some time now, affecting Muslims as well as smaller religious groups. In the complex equation of caste, class, religion and ethnic origin which makes up India, Christianity has also come under attack, not only for its evangelism in the so-called 'tribal' areas but, also, as another religious political party, the Vishwa Hindu Parishad, has claimed for endangering national unity and integrity and the cultural ethos of Hindu society.

The dissolution of the Soviet empire has continued to bring instability and violence to Central Asia. The Afghanistan Taliban militia's narrow religious zeal was formed in Sunni Muslim religious schools of neighbouring Pakistan. When the Taliban captured the northern city of Mazar-i-Sharif,

it was reported by Amnesty that the Shi'ite Hazara minority were targeted when, among other killings, seventy men were slaughtered at a Shi'ite shrine.⁹ The Hazaras look distinctively Asian; Persian- or Turkish-based language speakers were killed but Pashtu-speakers were not. Pashtu is spoken by the Taliban. The Mullah who was appointed governor of the city is reported to have offered Shias three choices: convert to Sunni Islam, leave the country or die.

When is a minority not a respected minority? When a member is branded an apostate, a heretic or a blasphemer. Sandi Cornish has recalled the time when the Catholic Church held that error has no rights. To be regarded as having known absolute truth and then rejected it has been considered unforgivable. That situation still holds for minorities in some countries with dominant religions, as Bahá'í communities know to their cost.¹⁰ Religious dissidents and secular believers have been persecuted as apostates. Prosecutions for blasphemy have inflamed communal violence and even prompted a Pakistani Catholic bishop recently to commit suicide to bring world attention to the injustices.¹¹

In Europe, new religious movements have been under political and administrative scrutiny for some years now, leading to complaints about discrimination and persecution.¹² The difficulty of working out exactly what constitutes a group dangerous to society and in need of state regulation and warning to the general populace has been highlighted. A report issued by the Belgian Parliamentary Commission on Sects in 1997 contained a list of 189 minority groups which includes, among others, Bahá'ís and Hassidic Jews, and those Evangelical, Pentecostal and Adventist groups who do not belong to the state-recognised United Protestant Church of Belgium even though they account for half the Protestant population.¹³ Groups on the list will be scrutinised by the newly-formed Information and Advisory Centre on Harmful Sectarian Organisations (the Belgian Observatory on Sects). The non-government organisation Human Rights Without Frontiers has reported concern about the investigation and the policy and structures proposed to implement the recommendations. After the report was issued, there was a rise in intolerance because it was generally interpreted as black-listing groups. Representatives of the Belgian Adventist Church and of the Bahá'ís have encountered unexpected difficulties in renting a public hall, for instance, and the Religious Department of the Ministry of Justice also refused to meet with the Adventists, saying it would only have relations with 'recognised' religions. The Report also contained attacks on a Hassidic Jewish group, the Satmar community, its institutions and schools, as being insular and exclusionist. Rabbi

Abraham Malinsky, who inspects Jewish religious classes in public schools, has commented that ‘since the end of the Second World War, Belgium has been the first European State to publish hostile and unsubstantiated statements against a prominent group of Orthodox Jewry.’

Registration of religious bodies is common in European countries’ administrative arrangements and continental law, as it is in Central and South America. However, some administrative arrangements may have the effect of restricting religious freedom, especially in contrast to traditionally dominant religions. With the emergence of democratic political structures in Russia, the Orthodox Church and the Communist Party deputies drew together to make common cause against minority incursions on the national turf. The law on religion passed by the Duma resembles the old Soviet control mechanisms in many ways. It makes distinctions between three classes of religion and religious organisation as to which are allowed to own property, preach publicly and distribute literature lawfully. ‘Traditional’ religions are recognised and their institutions and activities allowed: Russian Orthodoxy, Judaism, Islam and Buddhism are religions not considered foreign to the wider Russia. All other religious groups can ‘meet privately’ if the local authorities agree to register them. However, this approval would only apply to those currently registered groups which have been operating already for more than 15 years, that is, from the time when Brezhnev lived, in the era when religion and the religious were persecuted. The rest - Roman Catholics, Protestants, Baptists, Seventh Day Adventists, Mormons, Pentecostals, Jehovah’s Witnesses - would have to go through the fifteen-year approval process. During the fifteen years the so-called ‘foreign religions’ would need to get permission to operate from the traditional religions in their area. Some allowance has apparently been made for ‘centralised’ religions but this might not, however, apply to some Catholic orders, let alone indigenous Russian congregations like the independent Baptists or dissident Orthodox. According to the Keston Institute, the fifteen-year rule has been under challenge in the Constitutional Court.¹⁴

What of Australia?

Australian political scientist Marion Maddox has commented that whereas commentary on the religion-politics overlap tends to focus on Christian denominations, ‘the religious issues which have generated the greatest public controversy over recent years have mainly to do with non-Christian traditions.’¹⁵ When the UN Special Rapporteur on Religious Intolerance reported on his visit to Australia, he highlighted not only the

need to respect Indigenous beliefs and practices but also prejudice against other religious minorities.¹⁶

Let me give you the most recent example. The Bangladeshi Muslim community in Bankstown were understandably dismayed to hear that Justice Sheahan of the NSW Land and Environment Court had interpreted the word ‘church’ extremely narrowly when he reviewed the land use for which Council approval had been given in 1954.¹⁷ The Bankstown City Council had allowed the Presbyterian Church of NSW to erect a ‘brick church or office’ on the land. The Bangladeshi community, who have been using the church they bought from the Presbyterians as a mosque, had thought that its existing use as a place of worship would stand. They are not the only non-Christian community to have made such an assumption, especially as the number of adherents of mainstream Christianity has long been shrinking and the formerly consecrated churches become deconsecrated and sold for other purposes.

However Bankstown Council chose to use complaints about noise and parking, complaints which might have been resolved another way, as the springboard for bringing a theological test into the court, a test which had not been in the minds of the original legislators or administrators. The wonder is that, so close to the millenium, the Council was allowed to run with it and that their argument succeeded. An appeal from the decision should definitely be made, especially as so many other councils reportedly have been waiting for this determination in order to deal with similar matters in their own suburbs.

In 1984, the NSW Anti-Discrimination Board’s report on religious discrimination commented on precisely this type of discrimination:

This report contains many examples of the way concepts and practices of mainstream Christianity have been assumed to be universal. Some judicial interpretations of religious terminology contained in legislation have in effect constituted narrow theological tests rather than the wider application intended under legislation. While such terms as ‘church’, ‘worship’, ‘clergy’, and ‘minister’ remain unqualified in our legislation, such over-strict interpretations, bearing little reference to the religious diversity of Australians today, may continue even though the High Court has set down a more liberal interpretation of ‘religion’.¹⁸

Even though the Council’s administrative decision could be direct religious discrimination, that is still not covered by the NSW Anti-Discrimination Act. However, the Council’s decision could well constitute

unreasonable, and therefore unlawful, indirect racial discrimination, if the Bangladeshi community were to make a complaint under the Act concerning the Council's original decision, as indeed they may already have done.

The NSW Ethnic Affairs Commission and the NSW Anti-Discrimination Board have made representations to government on the issue. All non-Christian communities would be affected by Justice Sheahan's decision if it were allowed to stand as legal precedent.

According to the Islamic Council of NSW, the Canterbury and Bankstown Councils have recently rejected or are likely to reject other applications for building mosques and centres. Numbers of young Muslims are rising in those areas and the councils concerned may have overlooked the role of religious institutions in strengthening community ties and educating the young to take their place in civil society.

To conclude, Australia is (or should be) a liberal democracy. There is nothing like championing the cause of minority rights to make one realise that they are mostly simply what the majority or the elite take for granted belong to themselves or consider are universally available. Yet minorities frequently have to struggle for their rights - not special rights, but ordinary rights. In getting them, minorities are subjected to a degree of scrutiny which the majority or the elite do not turn upon themselves as if they have to be convinced of the reasonableness rather than the rightness of the need. 'O! reason not the need; our basest beggars/ Are in the poorest thing superfluous', says Lear. Human rights ARE the bare necessities of life.

Who takes up the causes of the powerless and minorities in democracies with majoritarian tendencies? Human rights, religious organisations and community groups, by mobilising the civil society and developing and leading public opinion. Minority interests can become subsumed in principles advocated by much more numerous groups which have electoral clout. Thus, anti-racism is espoused by those who are not minority members but who, in the name of the equality of all citizens, hold that racism subverts equality. In this way minority interests can contribute to developing pressure within a democracy, pressure which may lead to a political decision by power-holders to further develop Australian policy and law at every level for protecting human rights.¹⁹ Such a resolution does not usually come quickly or easily, but in this society it should be possible.

Zola apparently once said that the purpose of democracy was to make people feel a little less different from each other. But democracies are not truly democratic where minorities are discriminated against. Democracies are only worthy of the name where the interests of all the people are observed, not just those of the majority. The quality of government and civil society and the protection of adequate human rights laws is what makes a democracy worthy of the name.

There is no Quick Fix in human rights. Progress comes from patiently knitting together one right with another, and rights with responsibilities. We should take a strand from this tradition, another from that tradition and weave the old with the new to make a fabric which holds us all together in this world.

Notes

- 1 Yehudi Menuhin, interview with Margaret Throsby, ABC-FM radio, 27 October 1998.
- 2 Capotorti, F., "Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities", E/CN.4/Sub.2/384/Rev.1, New York: United Nations, 1979.
- 3 Kremmer, C., "Hope in exile", Sydney Morning Herald, 28 October 1998.
- 4 Stevens, M., "Ceasefire deal defuses flashpoint in Kosovo", The Australian, 14 October 1998.
- 5 Stevens, M., "Tactical genius destroys it all", The Australian, 13 October 1998.
- 6 Strauss, J., "Cry for help in shattered village", Sydney Morning Herald, 10 October 1998.
- 7 Perlez, J., "Milosevic channels Serb anger into fury at the West", Sydney Morning Herald, 14 October 1998.
- 8 Zubrzycki, J., "Besieged Christians seek succour from Hindu rulers", The Australian, 8 October 1998.
- 9 Kremmer, C., "Why many pray for invasion by Iran", Sydney Morning Herald, 26 September 1998.
- 10 See entries for Algeria, Egypt, Iran, Malaysia, Morocco, Pakistan and Sudan in Boyle, K., and Sheen, J., (eds), *Freedom of Religion and Belief: A World Report*, London and New York: Routledge, 1997.
- 11 O'Kane, M., "The invisible martyr", SMH Good Weekend, 15 August 1998.
- 12 See entries for Europe in Boyle and Sheen, *Freedom of Religion*, supra note 10.
- 13 Fautré, W., press releases issued by Human Rights Without Frontiers, Belgium, 20-21 May 1998.
- 14 Uzzell, L., "Sebentsov offers milder than expected interpretation of new religion law", Keston News Service, 27 October 1997.
- 15 Maddox, M., "What is a "fabrication"? The political status of religious belief", *Australian Religious Studies Review*, vol. 11, no.1, Autumn 1998, pp. 14-15.
- 16 Amor, A., "Visit to Australia", report of the Special Rapporteur on Religious Intolerance, Commission on Human Rights, 54th session: E/CN.4/1998/6/Add.1.

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- 17 Marsh, J., “Q: Why is this church not a church?” and editorial, “A mosque in Bankstown”, Sydney Morning Herald, 29 October 1998.
- 18 Discrimination and Religious Conviction, NSW Anti-Discrimination Board, 1984, p. 167.
- 19 The Human Rights and Equal Opportunity Commission report, Article 18: Freedom of Religion and Belief was issued just after this paper was completed and so has not been referred to in the text. The report proposes a federal Religious Freedom Act for Australia and also a number of policy and legislative changes to ensure respect for minority beliefs and practices.