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COMMENTARY: Advancing Freedom of Religion or Belief: Agendas for Change

By Sir Malcolm Evans , Principal of Regent's Park College, Oxford

"Rather than being a celebration of a thing of worth, the approach currently adopted by the international political community to religious freedom is dominated by the language of special pleading, disadvantage, hostility, and hate. This must change", argued Professor Malcolm Evans in a lecture hosted by the Archbishop of Canterbury and published in abbreviated form by Forum 18.

Agendas such as "defamation of religions, incitement to religious hatred, combating antisemitism, Islamophobia, Christianophobia, Discrimination against Christians, etc." risk, Professor Evans notes, being "self-defeating by being self-serving". "The predominant interest which faith communities show in the rights of their own" forms a barrier. "Unless and until that barrier is overcome, the ability of the international community to engage effectively with the protection of the freedom of religion or belief as a human right will be diminished".

Calling for work to re-start on a UN Convention, Professor Evans observes of some approaches: "The question which continually gets lost in these twists and turns is simple, but important: 'Why not start with the idea of the freedom of religion or belief for everyone?'" For, states are the source "in reality, [of] most of the restrictions placed on the freedom of religion or belief - and, therefore, much of the hostility and violence which believers face".

Professor Evans identifies the need to "roll back the essentially negative approaches of recent years and champion a more positive vision of what religious freedom has to offer". He ends by noting signs of positive change, and calling on Christians and those of other faiths and none to "champion the freedoms of others as well as of ourselves".

Whilst debate continues over the rightful place of religion in the public life of a liberal democracy, around the world untold numbers of people face the risk or reality of restriction, hostility, violence or death - on an individual or on a communal basis - because of the beliefs they hold, or as a result of their real or perceived religious identities. Recent surveys suggest that over 70 per cent of the world's population live in countries with high or very high levels of restrictions on religious freedom.

At one level, the complacency of the international community when faced with the evidence of such levels of repression is quite astonishing. It is almost as if such repression is "only to be expected" or is something which believers "bring upon themselves" by choosing to believe what they believe, or by believing what they believe in that particular place or at that particular time. In short, that since they are the authors of their own misfortune, the remedy lies within their own hands.

There is a very fine line between raising legitimate concerns about the treatment of religious believers and being seen as championing the cause of forces antithetical to the interests of the state – not least because it may happen to be true! It is also true that states tend to raise issues of religious freedom largely in respect of, and in response to pressure from, the religious groups which have influence within their own jurisdictions. This adds to the sense of partiality or instrumentality. I shall return to this point later, but for now we need to acknowledge that there are many deep-seated reasons why it is not easy for the international community to respond to this situation. The reluctance to do so, whilst dispiriting, is not irrational.

The tool

It is all the more remarkable that there is a potential tool that can be used by the international community to address these issues – this tool is the language of international human rights. Realistically, I see no other way of making significant and sustainable progress in addressing the practical predicaments of religious believers other than by developing the framework of international human rights protection. This may not seem particularly controversial – but it is. There is, however, more. I think it is not only an option, but it is fast becoming a necessity in order to prevent further erosion of the freedom of religious believers in many countries.

This will not be a comfortable message for those who do not like the way the application of human rights thinking has generated outcomes in some high profile western European situations – such as those cases concerning the wearing of religious symbols in the workplace, in schools, in cases concerning attitudes to morality or those concerning issues of sexual orientation. I would, however,

suggest that this may be something which is just going to have to be lived with (or, perhaps more positively, worked on). Without wishing to sound too apocalyptic, a lot is at stake and, whilst certainly not trivial, matters such as these are not of an order to justify rejecting the contribution which human rights thinking can bring to the protection of religious freedom more generally.

The rights of religious believers can and are protected by many other rights in addition to the "freedom of religion or belief". Examples include the right to life, freedom from torture and inhuman or degrading treatment, the freedom of expression, of association, as well as the more procedurally oriented rights concerning detention, fair trial, and the rule of law. These are all very valuable safeguards, and add to the attraction of human rights as a means of addressing the vulnerabilities of religious believers in many societies. At the same time, freedom of religion or belief needs to be addressed as a human right: directly, and not merely as an adjunct to others. For those who adhere to forms of religion or belief, their beliefs represent foundational elements of their conception of life. A rights-based approach which fails to acknowledge and respect this reality is diminished and is inevitably going to lack legitimacy.

Secondly, when I speak of international human rights law as a "tool", I am not only referring to its institutional machinery, such as its various Councils, Committees, and Rapporteurs. (The strengths and weaknesses of these need not detain us.) I am also referring to the power of human rights approaches - when properly mediated through domestic, regional and international political processes - to influence the application of domestic law and administrative practice. Whilst this offers no "quick fix" to the most egregious examples of abuse, it does offer real opportunities for worthwhile incremental development.

Faith communities and religious liberty

The first conclusion to be drawn from what I have said is that if faith communities wish to make a positive contribution to the protection of religious liberty, they must be prepared to (a) fully engage with human rights approaches and (b) to fully engage with the relevant domestic, regional and international political processes in an informed and credible way.

The latter – credibility - is the more difficult of these two desiderata, as a certain asymmetry needs to be overcome. It is generally accepted, and expected, that States will work internationally in their own self-interest, and in the interests of their nationals. It is also generally accepted as legitimate for Non-Governmental Organisations to take an instrumental approach, aimed at realising their organisational goals. But when organised Religions seek to act in precisely the same way, it is often seen negatively, and as exemplifying "the problem" with religion, which is that believers are prone to act inappropriately by seeking to influence matters which are "not their business".

Religious liberty is, however, the business of faith communities: the problem, perhaps, is that they are often seen as being interested only in the rights of their own, and not in the equivalent rights of others – and regrettably this is often the case. Many religious communities and organisations insist that they stand for freedom of religion or belief for all. Yet the number of religious communities and organisations which, as a central part of their work on the freedom of religion or belief, routinely defend the rights of people of other faiths and beliefs and none is small.

The predominant interest which faith communities show in the rights of their own is also quickly discerned by diplomats and others with whom religious communities seek to engage on human rights matters. Whatever the reason for it, this is a barrier which religious communities need to overcome if they are to be listened to.

Unless and until that barrier is overcome, the ability of the international community to engage effectively with the protection of the freedom of religion or belief as a human right will be diminished. This is because those with a key stake in that process – the faith communities themselves – are often unable to find an effective way of fully engaging with the process. But what is there to engage with?

The Forgotten Process

The Freedom of Religion or Belief has not fared particularly well as a human right when compared to some other issues. The 1948 Universal Declaration on Human Rights (UDHR) sets out in Article 18 the basic approach which has been followed in most other international, and many other regional, human rights instruments. That approach is based on the idea that religion or belief is essentially a matter of individual choice and that everyone should have the freedom to hold whatever form of belief (religious or otherwise) that they wish. This "inner freedom" (forum internum) is complemented by the freedom to act in accordance with the beliefs which one holds, this being achieved by recognising the additional right to "manifest" one's religion or belief in a number of ways – through teaching, worship, observance and practice. The exercise of this right to "manifest" one's religion or belief may be restricted in order to protect the rights and freedoms of others, always provided that such restrictions are proportionate to the "legitimate aim pursued". This provides the basic framework within which the debate concerning the contours of the freedom of religion or belief takes place.

For all its iconic status, the Universal Declaration was not intended to be a direct source of international legal obligation. The usual pattern of standard setting that has emerged within the United Nations (UN) is for a non-binding Declaration to be adopted by the General Assembly, and then for a legally binding Convention to be drafted and opened for adoption. In 1962 the UN General

Assembly decided that Declarations and Conventions should be drafted on the twin topics of racial discrimination and on discrimination based on Religion or Belief.

What has happened to the Convention, which would have provided a more detailed, comprehensive and rounded source of legal obligation concerning the freedom of religion or belief? The short answer is "nothing". For many years it has been the received wisdom that it would be "premature" to return to this task. This is a view which previously I subscribed to myself – but it is a view which I no longer hold. Why?

At its most basic, the arguments against returning to the drafting of a UN Convention on the Freedom of Religion or Belief all come down to the argument that it would be unwise to run the risk of unsettling the consensus that exists around the existing accepted standards. This argument fails on at least three counts.

First, it fails because the "consensus" is largely absent. There is no consensus. Not only has there been "push back" on some elements of Article 18 (for example, the issue of change of religion), but there is little consensus over how it is to be applied in practice – as evidenced by the controversies unleashed by decisions of the European Court of Human Rights applying the similarly worded Article 9 of the ECtHR on issues such as: bans on headscarves in Universities in Turkey, the appropriateness of forms of religious education in state school curricula, the presence of crucifixes in classrooms – and much else besides.

Secondly, it fails on the grounds that the current "consensus" has done little to combat the rising tide of restriction, hostility and violence experienced by many religious believers. The achievements of the current "consensus" position are not so impressive that it would be running too great a risk to open it up to debate.

Thirdly, and most decisively, that debate has already been opened up. But rather than being conducted in an open and transparent fashion, focused on enhancing the level of protections offered to all those whose freedoms of religion or belief are under threat, it has been done in ways which tend to do more harm than good: these being the "Defamation of Religions Debate" and the "Rise of the Phobias".

The "Defamation of Religions" Debate

The starting point for human rights law should be the right of the individual believer – alone or in community with others - to hold and to act in accordance with their beliefs. Generally speaking, it is only if the level of adverse comment, criticism or behaviour reaches a level of intensity which prejudices the ability of a believer to exercise their own freedom of religion or belief that grounds for intervention arise.

This has not prevented concerted efforts being made within international fora to support the very opposite idea – the idea that States should be entitled to use their legal powers to restrict those who seek to "defame" a religion. The claim is that restrictions should be applied to those who fail to respect the values of the religious system in question. It is on the basis of such approaches that action is taken against those who oppose apostasy or blasphemy laws. Since the UN Resolutions were couched in the language of the promotion of tolerance and respect, and combating negative stereotyping of religion, it is easy to see why these resolutions resonated with many.

But over time their repressive potential has come to be recognised. As a result, the language used in the Resolutions began to shift away from "defamation of religions" and towards the more widely accepted language associated with "combating incitement to religious hatred". There is a major difficulty with approaches based on "incitement" and this concerns the point at which one seeks to intervene to prevent it. At one end of the spectrum lies intervention in order to prevent the imminent risk of violence, at the other end lies intervention in order to suppress forms of expression or activities which challenge, question or merely run contra to the values of others, and to which they might object.

The realisation that "defamation of religions" was more likely to serve as a tool of repression than as a tool of religious freedom resulted in the language of the debate being shifted to the more widely accepted and legitimated language of combating incitement to religious hatred (and who – in principle – is going to object to that idea?) The problem lies in the malleable contours of that concept. It may be that all that has happened is that the substance of the issue has been transferred from one forum to another. In other words, the forces which seek to subvert the freedom of religion and convert it into a means of repression remain alive, well, and focused.

Why not start with freedom of religion or belief for everyone?

The question which continually gets lost in these twists and turns is simple, but important: "Why not start with the idea of the freedom of religion or belief for everyone, rather than focusing on the action to be taken against those who denigrate the beliefs of others?"

In reality, most of the restrictions placed on the freedom of religion or belief - and, therefore, much of the hostility and violence which believers face - are not the product of anti-religious sentiment within the population at large. They are a result of the negative stereotyping, antipathy, or down-right hostility displayed by many state systems either to certain forms of religion or belief in

particular, or to all forms of religion in general.

Calling upon states to address these problems by taking action against those who denigrate religion is all very well, but such an approach fails spectacularly to address the overriding problem: how to hold States to account for their own failure to respect and protect the rights of all believers. This would be a very much better place to start – and is at the heart of what human rights commitments under international law are actually all about.

It is very tempting for religious communities to accept the protection and support which a State might offer them, even when that support takes the form of repressing the rights of others – and it can be very difficult to champion the rights of those whose views one might believe to be profoundly wrong. Yet if religious communities are genuinely interested in furthering the freedom of religion or belief, this is exactly what they must do.

Faith communities must reject the superficial attractions of claiming or accepting such freedoms for themselves alone, and unhesitatingly support the freedom of religion or belief for all. Unless or until religious communities are prepared to champion for everyone the freedoms that they wish their own followers to enjoy, there is likely to be little opportunity for seriously furthering the freedom of religion or belief at all.

The Rise of the "Phobias"

A second area in which developments have taken place is in the related field of tackling antisemitism and Islamophobia. Both are discernible phenomena which are founded on hatred, prejudice or fear, and both are causes of serious concern. It is right that they be tackled. But how?

There are considerable dangers in tackling the hostility experienced by some religious groups by offering them heightened legal protection which is not offered to others. As we know only too well, those who consider themselves to be subject to the same disabilities but who are excluded from the scope of protection provided inevitably become aggrieved. This becomes a source of friction – as we know from the troubled history of blasphemy laws worldwide. And do we want to encourage a "competitive approach" to victim status? Should we develop concepts of Baha'iophobia or Jehovah's Witnessophobia, as in different parts of the world followers of both these faiths experience extremely serious violations of their rights and freedoms?

Yet this has already happened – to some acclaim – as regards Christianity itself. Increasing numbers of Christians feel increasingly marginalised within parts of Western Europe, as general societal assumptions concerning the place of Christianity within the order of things have evolved. This has been taking place at a time in which the extent of anti-Christian violence in other parts of the world has been both increasing and become increasingly visible. There has been some conflating of these two separate phenomena – despite their extremely different contexts.

As a result, there have been an increasing number of calls for action to be taken against "discrimination against Christians", or "Christianophobia". The use of such language has now become fairly common in international political fora. Yet it is also noticeable that some of those who have been most vocal in promoting concepts of Islamophobia and Christianophobia and the like are chiefly interested in western Europe – and have paid less attention to even their co-religionists in places such as Belarus, Central Asia, or the South Caucasus who experience severe violations of the freedom of religion or belief – let alone the plight of other people.

The "phobias" all too easily lend themselves to special pleading. They also take up time that might be better spent focusing the attention of the international community on the severe violations of freedom of religion or belief that continue unabated and – largely – unaddressed.

After a "wilderness period", a so-called "Christian agenda" (which some Christians strongly disagree with) is firmly established on the political map along with antisemitism and Islamophobia. There is danger in this approach. Organised religions should not be entering into unhealthy competition with each other to gain recognition as a "particularly persecuted category" to gain the attention of the political process. What, for example, would be the threshold of persecution which needs to be crossed? Do we want to encourage a competition for victim status?

Moreover, all this does is magnify the perception that those involved in advancing such concerns – no matter how legitimate they may be – are motivated by preference or partisanship. This only undermines both the effectiveness and the legitimacy of the views expressed or the action taken in the eyes of those to whom they are addressed. As a result, such approaches can fuel the very hostility they are intended to address. It is entirely proper that the particular needs of particular groups are highlighted when it is appropriate to do so. But the problem is that - like the defamation debate – "phobia-isation" has become a surrogate for the lack of progress (or the unwillingness to confront) the underlying issue. This is the lack of a real understanding of, and commitment to, the freedom of religion or belief for all.

Future Agendas?

Are there signs of positive change? I think there are. A great deal of thinking is taking place – for example within the European

Union and its member states - but it is taking place in disparate and disconnected fora. Not only is this disconnected approach undesirable in its own right, it also makes it far harder for others – including religious communities - to know what is happening and to become involved.

It is essential that religious communities find effective ways of contributing to such developments, in a non partisan fashion. Even more importantly, it is essential that they try to influence the manner in which the freedom of religion is addressed by the international community – and that they encourage it to be focused on what the freedom of religion or belief means, on what it requires, and of whom it is required.

Rather than being a celebration of a thing of worth, the approach currently adopted by the international political community remains focused on restrictions on the rights of others, and is dominated by the language of special pleading, disadvantage, hostility, and hate. This must change.

I have no doubt that freedom of religion or belief is attaining a prominence in international affairs unforeseen and unforeseeable even five years ago. The reasons are distressingly negative – based as it is on increasing levels of repression and violence against believers of many faiths. But there seems to be no momentum within the international community to address the issues at the heart of the problem. Instead, the dominant agendas are those I have mentioned – defamation of religions, incitement to religious hatred, combating antisemitism, Islamophobia, Christianophobia, Discrimination against Christians, etc, etc. These agendas all run the risk of being self-defeating by being self-serving, particularly if they are the only agendas which are being pursued.

The well-spring from which all else flows

There is a pressing need to return to the well-spring from which all else flows, but from which there seems to be a reluctance to draw – freedom of religion or belief for all. This involves developing a more precise understanding of what freedom of religion as a human right actually entails, and to do so in a coherent and transparent fashion to which all interested parties can contribute. We might then be better placed to develop the means by which it can be realised.

This will require the willingness to stand back from the advancement of partisan agendas, look beyond immediate concerns for co-religionists and – whilst seeking to address those concerns as best one might – not lose sight of the need to ensure that everyone should be able to enjoy their religion or belief, whatever that might be. This ought to be our entry point into the question.

Reconsidering the question of whether we should recommence the process of producing a global legal instrument on the freedom of religion or belief might be a very good place to start. This would roll back the essentially negative approaches of recent years and champion a more positive vision of what religious freedom has to offer.

It is up to us to champion the freedoms of others as well as of ourselves

What should Christians – and indeed those of other faiths and none - do to further freedom of religion or belief? As people of faith it is up to us to champion the freedoms of others as well as of ourselves. And we must do this based on a positive understanding of the value of freedom of religion or belief for all, grounded as that is in our own understanding of church, conscience and the common good. For if religious believers will not stand up for the religious freedoms of others, irrespective of their faith, why in heaven's name should anyone else?

(END)

- Professor Sir Malcolm Evans (<https://www.rpc.ox.ac.uk/people/principal/>) is Principal of Regent's Park College, Oxford. This is an edited text of an 8 June 2011 lecture hosted by the then-Archbishop of Canterbury, Rowan Williams, when Professor Evans was Professor of Public International Law at the University of Bristol. The full text of the lecture is available here (<https://web.archive.org/web/20110614151139/http://www.archbishopofcanterbury.org:80/articles.php/2062/archbishop-hosts-annual-lambeth-inter-faith-lecture>). Commentaries are personal views and do not necessarily represent the views of Forum 18.

Monitoring and analyses of freedom of thought, conscience and belief in many of the places named in this lecture is available here:

for Belarus (<https://www.forum18.org/archive.php?country=16>);

for Central Asia (<https://www.forum18.org/archive.php?country=27>);

and for the South Caucasus (<https://www.forum18.org/archive.php?country=20>).

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