

International intervention to protect the rights of minorities

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Abstract

The idea of research is about the legitimacy of international intervention in order to protect minorities, and the extent of this intervention is linked to the principle of integrity of intent. Some of the jurists are going to adapt the legal nature of the intervention according to moral rules, as called for by the jurisprudence (Grosius) within the concept of just war, which was confirmed by the United Nations General Assembly resolutions to legitimize intervention for humanitarian purposes, provided that the rights of the state Sovereign, and then explain the effect of the intervention for the protection of minorities on the sovereignty of the state and its impact on the right of minorities to self-determination.

which relate to the sovereignty of states, and others relate to the right of minorities to self-determination, And by clarifying the basis for the legitimacy of this intervention, as stipulated in the Charter of the United Nations of 1945.

research importance:

The importance of research is reflected in the mechanism of humanitarian intervention in order to protect minorities from several aspects, such as the following

- 1- International conventions and documents have ensured the protection of minorities and their public and private rights, and the prevention of any violation of those rights. We

Introduction

Humanitarian intervention to protect minorities is one of the modern methods used in the field of protecting minorities and their rights, especially after the great increase witnessed by the international community regarding the protection of rights and freedoms for individuals in general and for specific ethnic, national, and specific groups called (minorities). With the integrity of the intention available to the states that intervene under the pretext of protection, if it is sound and legitimate, the intervention is legitimate, and if there is ambiguity or the intention of controlling and extending influence, that intervention is illegitimate, and that intervention generates several effects, some of

Research Methodology:

In our research, we will adopt the descriptive and analytical approach that stands when describing international events and evidence, analyzing international agreements related to the protection of minorities from a perpetrator, and indicating the legality of the intervention on the other hand.

Search division:

Our research will be divided as follows, the unit one : we discuss it, the concept of intervention to protect minorities, highlighting the definition of the term “interference” linguistically and idiomatically, with the definition of the term minorities under the first requirement. By clarifying the international agreements that provided protection for minorities, and by clarifying the legal nature of the intervention, by clarifying the opinions or trends between its supporters and those opposing it, and the position of the United Nations General Assembly on the legality of the intervention, and the position of international courts in this regard.

As for the unit two : we devote it to researching the effect of intervention to protect minorities, in terms of the effect of the intervention on the concept of state sovereignty. Is this intervention a derogation from the principle of state sovereignty, which we will explain in the first requirement, while the second requirement: we discuss the applications of international intervention to protect minorities.

also find that most countries joined these

2- international conventions by virtue of their express will, and provided many guarantees for that protection, starting from the international media for human rights, to the Convention on the Protection of Individuals belonging to minorities or ethnicities in 1992.

2- The interest in minorities began since the Paris Agreement of 1856 and the Berlin Conference of 1878, which recognized the protection of Christian minorities that separated from Turkey, and what was approved by Article 93/86 of the Charter of the League of Nations and the subsequent agreements that protect them from the 1992 Convention and the 1998 Convention adopted by the Council of Europe for the Protection of Minorities”.

3 -The recent trends confirmed the legalization of intervention to protect minorities, for several reasons, including the preservation of international peace and security, and the consolidation of democracy.

Research problem:

The problem of research lies in the legality of international intervention with the intention of protecting minorities, and whether the intervention is for humanitarian purposes such as protecting the rights of minorities, permitted by international law or not. personal from this interference.

linguistically and idiomatically in the second section

First section

Definition of intervention

First, the definition of interference, language: it means to interfere, language: its origin, income: entry is the opposite of exit.

And it is said that I entered the house, and the correct thing about it is that if you want to enter the house and omit the preposition, then the object is erected. And entrance: a semi-laurel that enters it and it is made from entering¹.

It is also defined idiomatically: it is the actual pressure exerted by a state on another state with the intent of making it carry out its obligations, or the state intervenes with the intent of protecting its nationals from humanity or the arbitrary behavior of states towards the nationals of other states².

As the jurist Charles Desbos defined: it is the work of a state that aspires to have its interference in the external or internal affairs of a state or several other states with the aim of favoring its own interests³.

1. Abi Al-Fadl Jamal Al-Din Muhammad bin Makram Ibn Manzur Al-Afrifi Al-Masry, Lisan Al-Arab, 3rd Edition, Volume 5, Dar Sader, Beirut, 2004, pp. 228, 229..

2. Meziane Radhia, International Humanitarian Intervention to Protect Minorities between Traditional International Law and Contemporary International Law, research published in the Journal of Human Sciences, No. 48, Volume A, 2017, p. 174.

3. Dr. Amer Al-Jumard, United Nations Intervention in State Affairs, research published in Al-Rafidain Journal of Rights, third issue, 1997, p. 112

Unit One

The concept of intervention to protect minorities

The term intervention raises many problems, and questions, whether this term is legitimate or prohibited in international humanitarian law, and if it comes to the protection of states for their nationals that (minorities) in other countries, if states often intervene according to a national, ethnic, ideological framework, according to the requirements of that Intervention, so before going into the discussion of this important part, we had to go into a definition of the term interference, the term minorities, and the legal basis for the intervention.

From the foregoing, we will divide this topic into two requirements, the first in which we discuss the definition of intervention to protect minorities, and the second requirement, in which we discuss the legal basis.

First Requirement

The concept of intervention and minorities

We must clarify, the meaning of intervention and the linguistic and idiomatic connotations of this term, as well as linking this term with the term minorities because the focus of our research lies in the intervention to protect minorities. In pronunciation, but they differ in meaning, from the above we will divide this requirement into two branches, we will deal in the first section: the definition of interference linguistically and idiomatically, and we define minorities

without the approval of the United Nations⁶.

Second Section

Defining minorities, language and terminology

First: Minorities are defined in language: “region, noun, and plural minorities, minority in the diaspora: a group linked by kinship and origin in language, religion and homeland, living among a people outnumbered by it. a little, and belittled it, meaning: a lack of it.”⁷

Second: Minorities are defined idiomatically: Minorities are defined as “a non-dominant group of citizens of a country less in number than the rest of the population, whose members are linked by racial, ethnic, linguistic or cultural ties that distinguish them from others, and their members are in solidarity with each other to preserve these ties and characteristics.

The International Encyclopedia of Social Sciences defines a minority as “a group of individuals who are distinguished from the rest of the society by ethnicity, religion, or language”.

The Encyclopedia Britannica defined minorities (a group of individuals who are customarily, religiously,

As the jurist (Cavier) defined it as the indulgence of a state in the internal affairs of another state with the aim of imposing its will on it⁴.

As the jurist Adam Roberts defined humanitarian intervention: It is the military intervention of a state without the consent of its authorities, an intervention aimed at preventing the spread of suffering or death among its inhabitants⁵.

We conclude from the foregoing definition of interference, that the will of states, by various means, tends to interfere in the affairs of other countries and by adopting multiple formulas to achieve goals that may be political, economic or other, which ultimately aim to achieve their goals, far away from the intervention that must be For humanitarian purposes, it aims to protect the rights of minorities and to promote international peace and security to be a legitimate intervention.

Intervention is also defined as a coercive action by states to prevent or put an end to gross violations of human rights on behalf of other people, through the state’s adoption of various methods to implement this protection by use of force, whether with or

6.Qallal Yasmina, The Legitimization of International Humanitarian Intervention between Sovereignty as Responsibility and the Responsibility to Protect, research published in the Arab Democratic Center, 2017, published on the website, <https://democraticac.de>.

7.The comprehensive dictionary of meanings, published on the website <https://www.almaany.com>

4.Uday Muhammad Reda Younis al-Tahhan, Destructive Intervention and Public International Law, Master's Thesis, College of Law / University of Mosul, 2004, p. 6

7. ŞABAN KARDAŞ, HUMANITARIAN INTERVENTION: THE EVOLUTION OF THE IDEA AND PRACTICE, JOURNAL OF INTERNATIONAL AFFAIRS, June - July 2001 Volume VI - Number 2,p1. <http://sam.gov.tr/pdf/perceptions/Volume-VI/june-july-2001/SabanKardas2.pdf>.

resort to, according to links that link them with A certain minority, to intervene with the intention of protecting it from that violation, which requires a statement of the legitimacy of that intervention on the one hand, and is there a legal obligation for him to do so?

From the foregoing, we will divide this requirement into two sections , discussing in the first: the international obligation to protect minorities, and the second we devote it, to the legal nature of the intervention, that is, an indication of the legality of the intervention to protect minorities in terms of its permissibility or not.

First section

Legal basis for intervention to protect minorities

The international conventions dealt with providing many guarantees for minorities in terms of their general rights, such as economic, social and political rights, or their private rights. The International Countdown to Economic, Social and Cultural Rights, as well as Political Rights¹¹ of 1966, also included the 1948 Genocide Convention, the violation of the right of minorities to life, from the majesty of the criminalization of many Acts against them The Convention on the Prevention of Racial Discrimination of 1965 guarantees any kind of discrimination against the Athenian assemblies.

11. Article 26 of the 1966 International Covenant on Economic, Social and Cultural Rights.

linguistically, or nationally distinguished from the rest of the individuals from the society in which they live)⁸.

The American Encyclopedia defined minorities (that they are a group of individuals who have a social status in society less than the dominant groups in the same society, have less power than that power or ability possessed by the dominant groups, and minorities exercise fewer rights enjoyed by the majority of their citizens).⁹

Minorities are also defined as a non-dominant group of individuals who share certain national, ethnic, religious or linguistic characteristics that differ from the identity of the majority of the population¹⁰.

The second requirement

The legal and jurisprudential basis for intervention to protect minorities

Minorities have general rights, especially those stipulated in international instruments that consider it to be the most important source of such protection. Therefore, violating or derogating from those rights would lead to a judgment of the illegality of that behavior, but some countries may

8. Luqman Othman Ahmed Ali, Human Rights between Universality and Privacy (Islamic Discourse as a Model) Master's Thesis, University of Mosul, 2003, p. 117 - p. 118.

9.- Salah Abdel-Aty, Minorities and Human Rights in the International Community, Article on Dialogue Taken, No. 1590, for the year 2009

10. Abdul Amir Shamkhi Al-Shalah, Human Rights in the International Community, Civil Dialogue, No. 159, 2009..

Rather, we find that the international community has stressed the protection of that minority, and countries have sought to cooperate in order to activate the protection of minorities, as protection has been guaranteed for them within their internal legislation. We have a good example in this regard, the permanent Iraqi constitution 2005, which provided many guarantees for various minorities and guaranteed them representation of their rights in Parliament, which is the framework of protection for them and ensured that their rights under the constitutional texts would not be violated.

While al-Faqih (Desbaniyeh) goes to a different direction with the previous trend, which supports intervention for humanitarian reasons, and makes his arguments that intervention is not consistent with international stability, but leads to its instability, and leads to chaos within states, and interference in their internal affairs, and believes that reliance on a rule Ethics (humanity) is inconsistent with the legal basis for violating it.

Either the jurist (Grosius) is the first to establish the idea of intervention, and he believes that the intervention is based on a moral base that appears within the concept of just war¹³, and thus is based on the basis that the United Nations came up with, where humanitarian intervention is legitimate

International conventions also indicate that minorities have the right to self-determination, but the matter is different in developing countries due to the low level of development that affects the social structure and for the purpose of protecting these minorities from tyranny and injustice or persecution and deprivation of their basic rights¹².

Second Section

Doctrinal basis for intervention to protect minorities

The jurists differed regarding the adaptation of the nature of the intervention in terms of its legality or not, and the effect of the intervention, as this intervention often involves purely political purposes, which may be considered interference in the affairs of states, which in turn may lead to a diminishment of their sovereignty over their lands, but if we take in accordance with the instinct It is permissible to derive its legitimacy from the basic rules that have emerged over time, starting with the customary principles, traditions and beliefs on which the peoples and main systems of the civilized world have grown, to fruition with international instruments and agreements that give them a description of the obligation to protect those rights. Rights, and that the rights of minorities are implicitly included in the framework of that protection.

13. Anmar Musa Jawad, International Humanitarian Intervention in the Light of Contemporary International Law, research published in Yarmouk Magazine, fifth year, 2013, p. 10

12. Dr. Tawfiq Najm, Ethnic Minorities, Describing the Appreciation of the Standard... in Front of Identity Recognition) Research in the Journal of Law, Al-Nahrain University, Journal 14, 2012, p. 21.

destiny, and to renounce injustice and oppression.

The realistic theory also goes that the intervention is for considerations of national interests only and not for humanitarian considerations, and that the intervening state is responsible for its nationals, and this intervention can also be a pretext for states to intervene to achieve their interests against weak states¹⁵, meaning that states only intervene to protect their nationals in other countries Those who suffer from persecution, and that this theory focuses on the basis that the intervention is for the purpose of protecting the interests of the state by protecting the interests of its subjects. However, we find that this theory is far from the purposes of humanitarian intervention to protect minorities, and that the content of this intervention goes beyond other goals.

On the other hand, the liberal theory, which sees the absolute sovereignty of states, is not a good thing because it may lead to the violation of the rights of individuals and the failure to protect the rights of peoples or the rights of minorities in particular, and individuals in general.

This theory is incompatible with the legitimization of intervention to protect minorities, because it contradicts the idea of sovereignty because states must enjoy complete sovereignty over their

if it is in accordance with the requirements of the protection of security and peace The United Nations also sought to expand its activities with a view to protecting human rights in the 1999 Hague Peace Appeal, in which the United Nations addressed the activation of the rules of international humanitarian law through the establishment of mechanisms for humanitarian intervention operations, and it is thus It is keen that it does not interfere in the affairs of states and their sovereignty over their territories.

While three theories prevailed, in the jurisprudence of public international law, explaining the basis of humanitarian intervention in general, such as the theory of just war¹⁴, which allows states to intervene to protect peoples from the persecution of dictatorial rulers, and if we apply this theory regarding intervention to protect minorities, we find that it is possible to fit with it because the minorities before The people, even if they are a minority now that international law has organized certain mechanisms that guarantee them protection for these groups, but the matter is different in that the intervention here is not for military reasons, and this theory is based on considerations from them for the purpose of providing financial aid to peoples who suffer from the oppression and injustice of tyrannical rulers And that the goal of the intervention is to protect these peoples and help them to decide their own

15. Qallal Yasmina, The Legitimization of International Humanitarian Intervention between Sovereignty as Responsibility and the Responsibility to Protect, research published in the Arab Democratic Center, 2017, published on the website, <https://democraticac.de>

14. Article 2 of the United Nations Charter of 1945.

Unit Two

The impact of international intervention to protect minorities

The intervention of states, as it takes many forms, has several effects, including a clear impact on the sovereignty of states over their territory. The state's intervention to protect certain minorities suffering from persecution, deprivation or bad environmental conditions, constitutes a violation of the sovereignty of the state in which these minorities are located. Especially since the state is in charge of providing protection to the individuals who reside on its territory, the state's sovereignty over its territories is authentic and does not accept division, but it stops at the state's borders without encroaching on it to other states, with regard to the principle of good neighborliness and preventing states from interfering in the affairs of other states.

From the foregoing, this unit will be divided into two demands. The first is devoted to researching the effect of intervention on the principle of sovereignty. We also discuss the second requirement: the impact of interference on the right of minorities to self-determination.

The first requirement

The effect of intervention on the principle of state sovereignty

Sovereignty means that the sovereignty of the state over its territory is a

lands, and this is what all constitutions of the world stipulate in¹⁶, and states that do not enjoy sovereignty, how can they protect minorities or individuals over The region of other countries, this theory is not compatible with recent developments in the international community, and is also not compatible with the multiple purposes of human intervention.

The theory of the world order, which is spearheaded by the thinker (Emmanuel Wallerstein), who looks at intervention is based on several reasons, including economic and political, and the strong relationship between them, and it builds its foundation on the idea of the interrelationship between economic variables and the dominant power over economic capital, and the diversity in the use of force and intervention on the part of Big Powers vs. Developing Countries .¹⁷

The arbitrary acts against minorities are also seen as a clear violation of human rights in general, which are confirmed by international conventions such as the Universal Declaration of Human Rights in 1948 and the two special international covenants in 1969, and that this violation has the effect of threatening international peace and security¹⁸.

16. The first article of the permanent constitution of Iraq for the year 2005 stipulated that "the Republic of Iraq is a single, independent, federal state with full sovereignty, the system of government in which is republican, representative (parliamentary) and democratic...."

17. Jasmina troubles, previous source.

18. Michael Reisman, HUMANITARIAN INTERVENTION AND PROTECTION OF MINORITIES, American Society of International

Law, Vol. 91, APRIL 9-12, 1997.
<https://www.jstor.org/stable>.

rights of individuals in general and minorities in particular.

The internationalization of human rights has become one of the important things that helped countries according to the current changes to increase the interference of countries in the affairs of other countries with the aim of ensuring that protection for minorities.

Also, some of these interventions to protect human rights are under a Security Council resolution, for example, Security Council Resolution No. 688/ dated 4/5/1990 regarding the protection of the Kurds in the northern regions of Iraq²¹, the Treaty of Westphalia in 1648 was one of the actual applications To intervene with the intention of protecting minorities, especially the religious rights of Protestants in Germany, and following this treaty, many treaties were followed that stated the rights of minorities and the need to provide guarantees for them, and among the applications as well, what the European countries stipulated when they ceded the territory of another state, a security state that extended its authority to religious protection For the European groups in the ceded territory, here their intervention under this condition was a pretext for interfering in the affairs of other countries whose sovereignty the ceded territory was subject to.

supreme authority that is not transcended by any other authority. to dispose of its internal and external affairs, but it is restricted by the principles of natural law and the rules of public international law¹⁹.

Interfering to protect minorities is a dangerous matter, especially since it contradicts the principle of the state's sovereignty over its territory. States or the threat of their use is embodied in Article (Article II, Paragraph VI)²⁰, and the use of force by states in accordance with their authority in defending the rights of minorities, and what may be accompanied by interference from the use of force, the Charter of the United Nations has obligated states to follow peaceful means, for the purpose of Maintaining international peace and security, except for that, limiting the use of means or procedures for protection in accordance with the measures taken by the Security Council in accordance with Article (51) of the Charter to achieve the purposes of the United Nations in maintaining international peace and security.

The development that took place in the field of human rights following the violations that affect it would have increased humanitarian intervention as another means of pressure on states to prevent their transgression on the

21. Firas Saber Abdel Aziz Al-Douri, The Problematic of International Humanitarian Intervention and the Principle of Non-interference in Public International Law, Master's Thesis / College of Law, Middle East University, July 2017, p. 76.

19. Dr. Hamid Hanoun Khaled, Principles of Constitutional Law and the Evolution of the Political System in Iraq, Al-Sanhoury Library, Beirut, 2015, p. 42.

20. Article (6/2) of the Charter of the United Nations for the year 1945.

example, the Iraqi constitution, which guarantees minorities many guarantees and singles them out in the provisions of the constitution to activate their protection, as stated in Article (2/Second) "...and guarantees the full religious rights of all individuals in freedom of belief and religious practice such as Christians, Yazidis, and Mandaeans".

Intervention to protect minorities, if combined with the consent of those minorities to the support and aspects of support shown by the intervening countries, is an aid to these minorities to govern themselves by themselves and encourage the separatist desire from the region to which they belong on one hand, and the matter may be reversed and be a pressure exercised by the intervening state or countries to protect Minorities will be a plan to extend their influence over the territories of that country, especially if it is a developing country on the one hand and rich in natural resources and wealth on the other.

Therefore, minorities have the right to decide their own autonomy, manage their internal affairs alone without pressure or coercion, and have a present representation in the international government to which they belong, which enhances their ability to defend their rights.

Conclusion

Legitimacy lies in its consistency with the purposes of nations that maintain international peace and security, and that minorities are among the groups that the international community has

The second requirement

The impact of interference on the right of minorities to self-determination

The principle of the right to self-determination is one of the well-established principles in public international law, and it is the right of peoples to self-determination, and the basis of this principle is what was approved by the French Revolution in 1789, and then was confirmed by US President Wilson in his declaration that included points 14, which he announced after the first world war. The right of peoples to self-determination was among these points, and the right of peoples to self-determination includes several matters, including the right of peoples to choose the form of government that they deem appropriate for them, and the right of non-self-governing colonies to liberate and govern themselves by themselves. From the territory of one state to another, it is not possible until after the approval of the people of that territory through a referendum²².

The International Covenant on Civil and Political Rights establishes in Article (27) the right of peoples to self-determination. By analyzing this article, we find that the term "peoples" is a general term that refers to all sects in society, according to their beliefs and religions.

What states seek to guarantee this right within their internal legislation, for

22. Dr. Issam Al-Attayah, Public International Law, 3rd Edition, Legal Library, Baghdad, 2010, p. 302.

universally recognized. Intervention, whatever its reasons, must be legal, so that it is not considered an attack on the sovereign rights of the state, just as any action taken against any of its components can subject the state to international responsibility. By breaching its obligations under public international law, which can be held criminally accountable before international courts.

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1- Abi Al-Fadl Jamal Al-Din Muhammad Bin Makram Ibn Manzur Al-Afrifi Al-Masry, Lisan Al-Arab, 3rd Edition, Volume 5, Dar Sader, Beirut, 2004, pp. 228, 229.

2- The comprehensive dictionary of meanings, published on the website <https://www.almaany.com>

the reviewer :

3- Meziane Radhia, International Humanitarian Intervention to Protect Minorities between Traditional International Law and Contemporary International Law, research published in the Journal of Human Sciences, No. 48, Volume A, 2017, p. 174.

4- Dr. Amer Al-Jomard, United Nations Intervention in State Affairs, research published in Al-Rafidain Journal of Rights, third issue, 1997, p. 112.

5- Uday Muhammad Reda Younis al-Tahhan, Destructive Intervention and Public International Law, Master Thesis, College of Law / University of Mosul, 2004, p. 6.

7- Qalal Yasmina, Legitimizing international humanitarian intervention

tended to protect, as they have been given priority attention because most of these groups are subjected to persecution and violation, which prompted the international community to organize international conventions to protect them. and intervene to protect those rights.

1 -Minorities, even if there is no clear criterion that considers a group to be a minority in the international and legal sense is correct, but some countries adopt the criterion of political representation to consider a group a minority, and this matter, although it is very accurate in terms of its participation in the political process, is subject to the controlling authority in The framework of the state, the extent of political consensus and the relationship of the rest of the components to it.

2 -The link to the legitimacy of the intervention must resonate clearly through looking at the behavior of the intervening countries to protect minorities, and this reflects the good or soundness of their intention or not, especially that the interference has a significant impact on the sovereignty of states and the right of peoples to self-determination

3 -It is very necessary that the methods and objectives of the intervention be compatible with the purposes of the nations represented in maintaining international peace and security, and the principle of equality among states stipulated in the Charter of the United Nations in 1945.

4- The states enjoy sovereignty over their lands and this concept is

Principle of Non-interference in Public International Law, Master's Thesis, Faculty of Law, Middle East University, July 2017.

18- Dr. Issam Al-Attiyah, Public International Law, 3rd Edition, Legal Library, Baghdad, 2010, p. 302.

19- Luqman Othman Ahmed Ali, Human Rights between Universality and Privacy (Islamic Discourse as a Model), Master Thesis, University of Mosul, 2003.

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21-Michael Reisman,
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8- Privacy (Islamic Discourse as a Model) Master Thesis, University of Mosul, 2003,

9- Salah Abdel-Aty, Minorities and Human Rights in the International Community, Article in the Dialogue Taken, No. 1590, for the year 2009

10- Abd al-Amir Shamkhi al-Shalah, Human Rights in the International Community, Civil Dialogue, Issue 159, 2009.

11- Article (26) of the International Covenant on Economic, Social and Cultural Rights of 1966.

12 - Dr. Tawfiq Najm, Ethnic Minorities: Describing the Standard Appreciation, in Front of Identity Recognition) Research in the Journal of Law, Al-Nahrain University, Journal 14, 2012, p. 21.

13- Anmar Musa Jawad, International Humanitarian Intervention in the Light of Contemporary International Law, research published in Yarmouk Magazine, fifth year, 2013, p. 10.

14 - - Article (2) of the Charter of the United Nations for the year 1945.

15- Dr. Hamid Hanoun Khaled, Principles of Constitutional Law and the Evolution of the Political System in Iraq, Al-Sanhoury Library, Beirut, 2015, p. 42.

16 - Article (2/6) of the Charter of the United Nations for the year 1945.

17- Firas Saber Abdel Aziz Al-Douri, The Problematic of International Humanitarian Intervention and the