

The reality of international protection of the rights of Muslim minorities between text and practice

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Abstract:

Was not the protection of minorities, has attracted attention until recently, due to the increase in ethnic and religious conflicts, spread addressed within the framework of the human rights protection system. However, the rights of minorities to privacy, thus the international community to adopt international conventions and declarations relating to this category, as well as the imposition of mechanisms for the protection of these rights in the face of violation.

Keywords: international law, Muslim minorities, international responsibility, rights

Introduction:

Almost all countries have one or more minority groups living within their national territories, characterized by an ethnic, linguistic, religious, or racial identity that differs from the identity of the majority of the population. The harmony of relations between minorities and the majority, as well as each group's respect for the identity of the other, is a fundamental element in building democracy.

Similarly, the protection of minority rights and the provision of necessary means for them by the government contributes to reducing tensions within and between countries.

The importance of studying this topic is manifested in its connection with the field of human rights protection, and it sheds light on the extent of violations and transgressions that Muslim minorities are subjected to in the face of international silence. This requires reconsidering the ability of international supervision and its guarantees to impose respect for minority rights and prevent the violations they may be subjected to.

The importance of this study also emerges in the connection of the issue of religious minorities with the characteristic of diversity and its pivotal role in stabilizing international relations. In a world that is increasingly dependent on each other economically, politically, and culturally, no system that

exists to guarantee the stability of relations between its units can operate correctly unless people respect diversity and difference in religion.

This is made possible by the philosophy of human rights, whose core idea is the equality of individuals and the non-admission of discrimination between all people, regardless of religiosity on their part, because if one person is better by nature than another, then there is no better race or people by nature and faith, no lower layer of society in rank and dignity than another. Hence, the keenness to guarantee the rights of religious minorities is a major guarantee to encourage a more open approach that allows difference and invests it in coexistence for the sake of stability, development, and prosperity.

From all the above, the following question can be posed: **What is the reality of international protection for the rights of Muslim minorities?**

The aim of the research is to understand the rights of Muslim minorities and how to protect them in international law. Therefore, the topic was addressed through the analytical approach to international legal texts and related agreements to provide protection for Muslim minorities, in addition to the descriptive approach to understand the extent of suffering of Muslim minorities in order to reach a clear and comprehensive picture of the situation of a binding convention and an effective international mechanism to protect Muslim minorities under public international law. To answer the posed question, the study was divided into the following:

- The international legal framework for the protection of minority rights.
- Control procedures to embody effective international protection for Muslim minorities.

1. The International Legal Framework for the Protection of Minority Rights

In this section, we will first discuss the nature of minority rights, secondly, the protection of minority rights in international texts, and finally, the protection of minorities through specialized bodies and organizations.

1.1. International Protection:

Jurists of international law have differed in defining the term “international protection”. Some have expanded its definition and demanded it, while others have narrowed this definition and defined it. It is noteworthy that all the conventions and treaties that mentioned the term “international protection” did not attempt to define it and did not provide a definition for it, but rather mentioned a set of procedures that states are obliged to, whether this obligation is legal or moral.

The idea or term of international protection is relatively recent. Its first appearance was aimed at protecting religious minorities in the European Treaty of Westphalia in 1648. Later, the international system sought to establish a specific system to protect political rights and minority rights within countries so that these rights do not become an internal matter subject to internal political developments to protect political rights within countries, as well as limit making these rights from internal affairs monopolized by states.

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Over time, and after the concept of international law has moved from a law for a group of countries to a law that applies to the entire international community (according to the principle of universality), the concept of international protection has become a solid reality on the ground¹.

The scientific dictionary of humanitarian law defined international protection as “protection means the recognition that individuals have rights, and that the authorities that exercise authority over them have obligations, and it means defending the legal existence of individuals, alongside their physical existence. Therefore, the idea of protection reflects all the material actions that enable individuals at risk to enjoy rights, and the assistance stipulated in international agreements and in all cases on relief organizations to consecrate these laws in a tangible way.”²

In contrast, we find that jurists of international law have put different idiomatic definitions for international protection, where jurists of international law give protection a general meaning by saying “caring for the interests of a person or institution, and this protection takes different forms and aspects depending on the person or thing protected, as well as methods of protection.”³

1.2. Concept of Minorities

It is important for a minority to have a universally accepted definition because the protection of minorities from discrimination and persecution requires defining who is included in this protection. However, the efforts made to define the minority in a way that is satisfactory to all have failed.

Several definitions have been proposed for this concept, some of which will be mentioned as examples in order to arrive at a comprehensive and inclusive definition.

The American Encyclopedia defines minorities as: “Groups that have a social status within society less than the status of the dominant groups in the same society, possess less power and influence, and exercise fewer rights compared to the dominant groups in society. Often, minority individuals are deprived of adequately enjoying the privileges of first-class citizens.” One of the most widely circulated definitions is the one proposed by the special rapporteur Francesco Capotorti. In his 1979 report, he defined a minority as a group that is numerically less than the rest of the population in a state, is in a non-dominant position, and its members - who are citizens of the mentioned state - have ethnic, religious, or linguistic characteristics different from the characteristics of the rest of the population, and they show, even implicitly, a spirit of solidarity directed towards preserving their culture, traditions, religion, or language⁴.

In 1949, during the deliberations that would eventually lead to the adoption of the Declaration on Minorities in 1992, the Human Rights Committee asked the Sub-Committee to reconsider the

definition. After reviewing various national and international precedents, a member of the Sub-Committee, Tadshinis John, proposed the following definition:

“A group of citizens in a state, who constitute a minority in terms of numbers and occupy a non-dominant position in this state, and they have ethnic, religious or linguistic characteristics that differ from the characteristics of the majority of the population, and they are in solidarity with each other, and are driven, even implicitly, by a collective will to survive, and aim to achieve equality in reality and law with the majority.⁵”

As stated in the memorandum of the Secretary-General of the United Nations dated: 27/12/1949, the term minority is: "Groups that have the same ethnic, linguistic, religious characteristics... and are predominantly national in character, and members of the minority also recognize that they have a feeling that they form a group, or a group under a banner that differs from the dominant element.

The definition provided by the Sub-Committee for the Prevention of Discrimination and Protection of Minorities of the United Nations in 1985, stated that minorities are: “A group of citizens in a state who constitute a numerical minority and occupy a non-dominant position in this state, and they have ethnic, religious or linguistic characteristics that differ from the characteristics of the majority of the population, and they have a sense of solidarity among them, and their goal is to achieve justice and equality with the majority in reality and in law.” From the previous definitions of minorities, we can deduce a set of criteria and elements, which are:

- **Number:** The number of minorities must be less than the rest of the population who represent the majority, and the size of the minority must be considerable to highlight its distinctive characteristics. However, the quantitative or numerical criterion has faced many criticisms, because sometimes no group constitutes the majority, an example of this is the Lebanese society, which contains a diversity in religious minorities and equal in number, i.e., there is no majority among them.
- **Non-dominance:** It is necessary for the minority to be less in number than the original population, which requires the availability of protection for it.
- **Feeling of difference:** The difference of the minority from the majority lies either in terms of language, religion, nationality, or culture, which makes it feel distinguished from the majority.
- **Demand to practice privacy:** A group is considered a minority when it demands certain rights as a distinguished group from the majority⁶.

The definitions varied and multiplied, but minorities can be defined based on what was presented by the Sub-Committee for the Promotion and Protection of Human Rights of the Human Rights Committee of the United Nations as “groups affiliated within a people who enjoy traditions and specific ethnic, religious or linguistic characteristics that clearly differ from those existing among the rest of the population, so they desire to preserve them.” The United Nations’ definition of minorities comes implicitly through declarations, covenants, agreements, and resolutions.

1.3 Classification of Minorities:

Thus, minorities can be classified into:

A. National and Ethnic Minorities: The term ethnic includes all biological, cultural, and historical characteristics. National minorities represent a group of people who, in addition to the characteristics of ethnic minorities, desire to participate in the political decision-making process as an independent group from individuals within the state.

B. Linguistic Minorities: Language is a central element in human nature and culture, and one of the most important expressions of his identity. As a result, matters surrounding language elicit high emotionality and importance among variables in the linguistic minority universities who intend to maintain their community and distinct cultural identity under or without the challenges of marginalization, exclusion, and discrimination. Therefore, linguistic minority can also be referred to as any other person or group of persons who may be required to use a language other than the official or national language when working or in any other capacity other than the official or national language. They strive to maintain their community and distinct cultural identity without the challenges of marginalization, exclusion, and discrimination.⁷.

C. Religious minorities: is the subject of study in which the sect within one religion such as Catholic, Orthodox, and Protestant within Christianity, and Sunni, Shiite, Druze, and Alawites within Islam.

The term religious minorities is applied to groups of individuals who are distinguished from the rest of the individuals of the societies in which they live by an element, where religion is considered the main pillar of their identity and their distinction from other groups who share the same religion or belief. This religious diversity is the general rule for all societies where homogeneous religious states are rare, and it does not acquire internal or international political importance unless conflicts arise in the field of values, wealth, or power⁸.

Religious minorities have been the first types of minorities throughout history, where religion and belief were the main reason for the emergence of this problem and its magnification. In the Western Roman and Eastern Roman states, exclusivity and rejection of plurality were followed. The Roman paganism persecuted the Christians at first, and when the Romans converted to Christianity, they made the same persecution with the pagans and the Christians who disagreed with them in the doctrine, and in all their pagan or Christian eras they practiced persecution against the Jews, genocide, and demolition of temples, and this coercion and oppression continued in the regions of Western civilization and its extension throughout history, and there are many examples of the persecution that was its slogan the words of the will left by Saint Louis (1214-1270), where it came in it that: "When the common man hears that the Christian law has been defamed, he should not defend that law except with his sword, which he must stab the infidel in his bowels with a clear stab", and although these words were written centuries ago, but its consequences were and still are on religious minorities to this day.

On the other hand, the difference in religion is an inevitable fact and the heavenly religions or non-heavenly religions could not block the religions that preceded them, so Christianity did not block Judaism and Islam did not block the religions that preceded it, which led to the survival of groups that differ in their belief from other groups that embraced the new religion, and these previous groups will be the nucleus of religious minorities, and whatever the matter is, religion can be a factor of unity and harmony, and at the same time it can be a factor of problems and divisions and generating sectarian conflicts in societies and what accompanies them from persecution and discrimination⁹.

Hardly any country in the world is devoid of its people being composed of ethnic minorities or religious sects and different religions with their origins and cultures, and there is no state in which there is one religion and one language, but that does not necessarily mean that religious, ethnic, and sectarian diversity is a door to create political problems or civil wars. There are minorities that seek to keep their self-identity independent of the components of the state, and thus practice political activity that collides with the interests of the state and its orientations. Conversely, there are other religious minorities that seek to integrate with the rest of the components of society, and practice their political activities in this direction in a way that serves the interests of the state¹⁰.

The participation of the individuals of a group in the religious belief truly represents a prominent component of its self-components, as the religious belief has a profound effect on the behavior of the group in a way that may sometimes exceed the effect of the unity of the race or language in this regard, and under certain positions and conditions, one may overlook in his behavior the bond of race or language or even ideology for the sake of religious belief. Soviet Jews were living in Soviet society, speaking its language, and adopting its Marxist ideology as a basis for social organization. However, due to their attachment to their religious belief, they preferred to immigrate to Israel, which has a language different from their language, and the capitalist doctrine, which differs in its components from the Soviet society in which they grew up.

Despite the fact that international protection for minorities was originally enacted for Muslim minorities, there is still no official definition for this type of minorities, which is logical as long as the term minority itself suffers from difficulty in adjustment and determination. Many jurists are content to consider religious minorities distinguished from others by their religion, which differs from the prevailing religion among the majority within the state, although the effect of religion or belief often does not only result in generating religious minorities. In addition to other factors, it may give the minority more than one description or nature. A minority may be ethnic, cultural, or ethnic, and yet its members adhere to the element of religion as a distinguishing feature from others¹¹.

As a result of the previous considerations, the description of a certain group as a religious minority is more difficult than it appears from a theoretical point of view, as it is closely linked to religion or belief as a basic criterion for determining the features of religious minorities, and

the matter is complicated by the difficulty of determining the practices, behaviors, ideas, and beliefs that fall within this framework. They are all purely psychological and mental elements that cannot be precisely enumerated and generalized to all people, especially since they may differ from person to person and from religion to another. This was expressed by the Committee on Human Rights in its forty-eighth session when it adopted its General Comment No. 22 for the year 1993 on freedom of thought, conscience, and religion, in which it affirmed that the concept of religion in international law does not stop and does not include only ancient groups, but must go beyond to contemporary groups that have recently appeared¹².

2. Control Measures to Embody Effective International Protection for Muslim Minorities

Any attempt to evaluate the control measures related to the international protection of minority rights fundamentally depends on stating the sources that initially approved the principle of this protection, then stating their position towards this principle. By sources, we mean the covenants that stipulated the rights of Muslim minorities, which can be divided into three sections:

2.1. General International Covenants Concerning Human Rights:

These are the covenants that addressed human rights as a human being, no more, no less. These covenants are considered the main source for most of the rights that any individual should enjoy. These covenants are commonly referred to as the “International Law of Human Rights”, and include:

A. The United Nations Charter and the Universal Declaration of Human Rights:¹³

Recently, we have witnessed the emergence of problems related to the Islamic religion, especially after the emergence of the Zionist entity since 1948 and the fierce wars that took place between it and the Arab countries. Also, the war in Bosnia and Herzegovina and the issue of Kosovo have shown, according to recent reports issued by many organizations and concerned parties, the extent of the seriousness of discrimination based on belief in human rights. The violence and discrimination practiced by governments against religious groups, as well as the hostile acts practiced by several actors, have reached their peak in all regions except the two Americas. This perception is supported by the results reached by a recent report issued by the US Department of State, which concluded that the year 2013 witnessed “the largest displacement of religious groups in recent memory”.

Religious fanaticism often forms a fundamental part of contemporary racism. The multiplicity of attacks on religious symbols and attacks on places of worship expresses sharp and dangerous forms of racism. Therefore, the debate has heated up around the vote on Article 20 of the Covenant and extended to define hate speech and fanaticism, with the recognition that there is no acceptable definition for them in international law despite the frequent use of these two terms in legal and non-legal fields¹⁴.

The United Nations’ interest in this matter has reached the point where the Sub-Committee on the Prevention of Discrimination and Protection of Minorities appointed Ms. Swami Krishna

to conduct a study on discrimination in relation to religious rights and practices. The rapporteur submitted her final report to the Committee in its second session in 1960. This report was welcomed as it included a deep analysis of the problem of discrimination related to religious practices and rights. The General Assembly was able, in light of it, in 1981 to adopt the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief¹⁵.

B. The Two International Covenants on Human Rights, and the Protocols Attached to Them:

Muslim minorities have also been protected in most international conventions and covenants. We find that the Universal Declaration of Human Rights in 1948 stated in the text of Article 18, that “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 public or private, to manifest his religion or belief in teaching, practice, worship, and observance.¹⁶”

This was also confirmed by Article 18 of the International Covenant on Civil and Political Rights, which states that “Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching.¹⁷”

It can be noted that Article 27 of the International Covenant on Civil and Political Rights is considered an important reference framework in the rooting of minority rights, and the duties of states towards them, especially in relation to the recognition of the right to freedom of belief and its protection¹⁸.

2.2 International Covenants Concerning Human Rights:

These are of two types, covenants that specialized in a certain category of individuals (people belonging to minorities, refugees...), and others that dealt with specific topics and situations (intolerance and discrimination based on religion or belief, racial discrimination...). These covenants include many international declarations and agreements, and we will limit ourselves to mentioning some of them as examples, not exhaustive.

A. Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief:

In its quest to reduce discrimination in the field of freedom of religion and belief, the Sub-Committee on the Prevention of Discrimination and Protection of Minorities in 1956 appointed Ms. Swami Krishnaa to conduct a study on discrimination in relation to religious rights and practices. The rapporteur submitted her final report to the committee in its second session in 1960, which was widely accepted as it includes a deep analysis of the problem of discrimination related to religious practices and rights. The General Assembly was able, in light of it, in 1981 to adopt

the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, in which states pledged to commit to preventing and eradicating all forms of discrimination based on religion or belief¹⁹.

This type of discrimination took a dangerous turn in Christian Europe during the 16th century after the Protestant sect split from the Christian religion. With this split, the conflict between Catholics and Protestants intensified to take a bloody character that led European countries to intervene to protect minorities that share the same religious belief with their citizens and reside in other countries, and rush to affirm the importance of religious tolerance and recognition of freedom to practice religious rites. However, this situation was exploited for intervention in states suffering from religious minorities, the results were two dreadful world wars.²⁰

B. Declaration on the Rights of Persons Belonging to National or Ethnic, Linguistic and Religious Minorities 1992:

This declaration is one of the most prominent international covenants that explicitly recognized the rights of minorities and paved the way for the consolidation of these rights more than in the declarations and international agreements that followed this declaration.

This declaration reaffirmed the principle of non-discrimination, especially in its preamble and Article 03 of it, which is a translation of previous provisions included in the covenants that preceded it. The novelty that this declaration brought at the level of freedom of belief is manifested in two matters:

- Protection of minorities: Although the 1992 declaration is a step forward towards establishing effective protection for the rights of minorities, especially Muslims, it still needs steps to embody the expected protection system.
- Enhancing the legal status of minorities at the level of their countries' legislation in a way that guarantees their basic rights and freedoms in theory and practice, and this is clearly evident in Articles: 4, 5, 6.

3.2. Regional International Covenants

Due to the multiplicity of mutual interests between countries of the same geographical region, and the resulting bilateral relations in various fields, these countries needed regional covenants to regulate these relations, where the contracting states attach great importance to these covenants, sometimes they may make them above international covenants or equal to them²¹.

A. The European Convention on Human Rights:

This convention stated in its preamble that the Universal Declaration of Human Rights is one of the basic pillars on which this convention is based, and therefore it did not deviate from what came in this declaration regarding freedom of belief for minorities but came content to affirm the principle of non-discrimination as one of its basic principles.

B. The American Convention on Human Rights:

This convention stated in its preamble that the basic human rights do not derive from being a citizen in a certain state, but are based on the distinctive qualities of the human personality, and confirmed what came in the Universal Declaration of Human Rights, and its slogan was non-discrimination, and the right to protection without distinction, including freedom of religion, and freedom of belief was referred to in several articles of the convention, the most prominent of which are Articles: 1, 12, 16²².

C. The African Charter on Human and Peoples' Rights:

Despite its temporal delay, this charter inaugurates a new era of African recognition of the rights of individuals embodied in the Universal Declaration of Human Rights, and because most of the countries that signed this charter suffered the woes of colonial policy based on racial discrimination and the reduction of human dignity, this charter considered that freedom, equality, justice, and dignity are basic goals that must be worked on to achieve the legitimate aspirations of the African peoples, and took into account the Charter of the United Nations and the Universal Declaration of Human Rights.

Therefore, this classical principle included in most of these agreements, which is the principle of non-discrimination, was a prominent feature in this agreement²³.

This principle was governing the right to freedom of belief for individuals, without referring to minorities except what may be understood implicitly from the phrase ethnic, racial, religious group.

It is worth noting that Asia is the only continent where its countries have not come together to establish a regional international system to protect Asian human rights, and perhaps this is one of the reasons that made Muslim minorities in the continent of Asia the most persecuted in the world²⁴.

3. Conclusion

The international law has made efforts for a long time to find appropriate solutions to protect Muslim minorities around the world by establishing mechanisms and stipulating protective measures capable of implementing these rights, especially incorporating them into domestic laws and constitutions, as well as considering them as issues of international dimension that require humanitarian intervention. In the end, we derive a set of results and recommendations.

First: The Results

- The international law has made efforts for a long time to find appropriate solutions to protect the rights and freedoms of Muslim minorities by establishing mechanisms and stipulating protective measures capable of implementing these rights, especially incorporating them into domestic laws and constitutions.

- The application of Islamic law is in itself a guarantee for Muslim minorities to enjoy their rights, as it is not only applied at the local level but is also guaranteed by religion and customs.
- The limitation of the complaint mechanism to states, organizations, and individuals only in some committees and bodies has prevented many violations of the rights of Muslim minorities from reaching the corridors of accountability.

Second: The Recommendations

- The necessity of activating international mechanisms to protect Muslim minorities by associating them with deterrent penalties, and not just writing reports and condemning and denouncing practices contrary to the rules of international law.
- Efforts towards creating an integrated system to protect the rights of Muslim minorities will not be achieved except through imposing positive obligations that go beyond merely refraining from discrimination or restricting human rights and basic freedoms. States must, under the penalty of oversight, take positive measures to protect religious freedoms and combat any manifestations of discrimination and intolerance towards those who differ from the majority or the dominant group in one of these characteristics and features.
- The necessity of providing the possibility for Muslim minorities to seek asylum as a group through the complaint mechanisms before the international committees working in the field of human rights, as well as regional courts and committees, in case their collective rights are violated.

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