Opinion

State Oppression and Minority Rights to Self-Determination

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Introduction:
Addressing issues relating to minorities is very important at the level of international law, because this issue is linked to several other issues and concepts sensitively such as; concepts of respect for freedoms and human rights, and the concepts of state, separation, self-determination and sovereignty. Wrongful handling of minority’s issues has long led to conflicts, to regional and international interventions, and to states’ domestic exploitation of minorities; mishandling of this issue by the state can lead to civil and international wars, and thus poses a threat to local, regional and international security and peace.

This paper attempts to address a sensitive issue, namely: How much responsibility do governments have to demand that minorities in the countries they rule should be denied or accorded the right to self-determination? And how does this affect the principle of State sovereignty? To this end, the concept of minorities within the State must be concisely identified, followed by the rights of these minorities, and finally the demand of minorities for the right to self-determination and the link between this and State sovereignty.

Summary of the Concept of Minorities within the State:
Most of the world’s people and societies are diverse. There are always groups within any society trying to assert and protect their unique status by preserving their historical, religious and linguistic heritage. There is no agreed legal definition of the word “minority” in international law, for several reasons, most notably the changing nature of minorities; in other words, the situations of different minority groups vary between one country and another for historical, political or social reasons.

Legal Development of Minorities under the United Nations and its Effectiveness:
In its early days, the United Nations considered the rights of minorities to be an integral part of human rights, deciding, therefore, that minorities did not require any specific additional conventions, treaties or decisions of their own.

The first reference to minorities was in article 27 of the International Covenant on Civil and Human Rights 1966, with the 1992 United Nations Declaration on the Rights of Minorities being the first reference document concerning minorities, while the United Nations Working Group on Minorities was established in 1995.

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3 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities Adopted by General Assembly resolution 47/135 of 18 December 1992
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The appointment of an independent expert on minorities in 2005⁵ and the establishment of the Forum on Minority Rights in 2007⁶ contributed further to exposing the practices of those governments that violate the rights of minorities and to establishing a number of important principles in international law, foremost among which is the obligation of states to repeal or amend laws that threaten fundamental rights.

However, despite all the progress that has been made, which has achieved an important development in the right direction, many United Nations member states remain largely unable to commit to fulfilling their obligations to minority rights. It is true that the rights contained in all major human rights conventions and declarations apply to minorities within every member state, but it is my belief that fundamental human rights principles, such as the principle of equality, non-discrimination, the criminalization of genocide and so on are inadequate to ensure the rights of minorities, with even the 1992 United Nations Declaration on the Rights of Minorities being non-binding.

In the current situation, a leader who has failed to establish mechanisms for monitoring and accountability may ask state agencies to implement the articles of the declaration - but what if the organs of the state itself are the ones which violate the rights of minorities, and do so on a large scale? Finally, while the Minority Rights Declaration addresses the rights of minority citizens of the state, it offers no such rights; even theoretically, to those who are deprived of citizenship, as is the case, for example, with the Kurds of Syria, denied nationality by the Assad Regime.

Meanwhile, with the exception of the United Nations Security Council (UNSC), the organs of the United Nations lack any ability to impose serious punitive measures that might deter those member states infringing or violating the rights of minorities. The Security Council, however, is wholly dominated by the five permanent members whose interests take precedence over international law and fundamental human rights principles. The Security Council has routinely and grossly failed to protect minorities in several countries around the world, such as the Rohingya in Myanmar⁷, the Kurds⁸, the Tutsis in Rwanda⁹, Bosnians in Srebrenica¹⁰, the Romani across Europe¹¹ and so on.

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State Duties towards Minorities:

Articles 1\(^{12}\) and 4\(^{13}\) of the 1992 United Nations Declaration on the Rights of Minorities set forth fundamental determinants of the State’s relationship with minorities. Article 1 spoke of member states’ obligations to minorities not simply as individuals but as “groups”, stating that: “States shall, within their respective territories, protect the existence of minorities, their national or ethnic identity, their cultural, religious and linguistic identity, and create conditions for the promotion of such identity”, adding, “States shall adopt legislative and other appropriate measures to achieve those ends.” Article IV, paragraph 1 of the declaration asserts: “States shall, where appropriate, take measures to ensure that persons belonging to minorities can exercise fully and effectively all their human rights and fundamental freedoms, without any discrimination and in full equality before the law.”

The state’s basic duties towards minorities focus primarily on five main points:

1) Protection of the physical existence of minorities, including cultural, religious and linguistic heritage, including non-exclusion or transfer, and moral existence by protecting them from insult or hate speech and violence.
2) Non-discrimination against minorities.
3) Not to forcibly assimilate minorities but to strengthen their identity.
4) Adopt appropriate legislative measures for minorities through consultation and participation with minorities. These measures shall meet all the provisions of the Declaration and include penalties in case of violation.
5) Minorities and the right to self-determination, and the importance of effective participation: The right of people to self-determination is established in international law, in particular by common article 1 of the International Covenants on Human Rights, which applies to indigenous people and to people under occupation or foreign colonization. In the case of minorities, however, the 1992 United Nations Declaration on the Rights of Minorities did not refer to the right of minority groups to self-determination. The Declaration classifies the rights of persons belonging to minorities as individual rights, although these can, in reality, only be exercised in a collective framework, whereas the rights of peoples are classified as collective rights. This, however, does not prevent persons belonging to a national or ethnic minority from asserting self-determination when acting as a group, in which case they are considered people and are no longer a minority.

Despite the importance of all the protections for minority rights contained in the 1992 Declaration, I believe that the demand of minorities for self-determination is organically linked to the right of minorities specifically to participate, which was affirmed by article 2 of the 1992 Declaration in paragraphs 2 and 3.\(^{14}\)

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\(^{12}\) Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities Adopted by General Assembly resolution 47/135 of 18 December 1992, Article 1

\(^{13}\) Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities Adopted by General Assembly resolution 47/135 of 18 December 1992, Article 4

\(^{14}\) Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities Adopted by General Assembly resolution 47/135 of 18 December 1992, Article 2.
Through participation, minorities express their identity and existence, guarantee their survival and protection, and can assert their involvement in political decision-making at the local and national levels and participate in all State institutions, including their right to elect leaders. On this particularly delicate point, it must be emphasized that minorities are often unable to attain proper representation according to the political structure used in those democratic states that adopt the majoritarian voting system. I believe that a mechanism specifically designed to reserve seats for minorities within the framework of a majoritarian voting systems is an appropriate solution to this problem. The allocation of a certain percentage of women is also essential, with the aim of special measures for minorities being not to give them a privileged status, but because minorities are often vulnerable within a non-representative majoritarian system.

Special measures are required to strengthen minorities’ status and bring them to the same level as the majority: these include not only guaranteed political participation but also ensuring that this is effective participation to give minority representatives the power to take important decisions affecting the lives of their communities. It is this type of genuine participation that leads to a cohesive and pluralistic society based on dialogue and democracy. When minorities feel that they can control their fate and contribute to political change within the society as a whole, the demand for self-determination and separation is likely to fall to a minimum or even end.

**State Persecution of Minority Rights is a Key Factor in the Claim for Self-Determination:**

There are multiple ways in which a state can violate the rights of minorities, creating a state of fear, disintegration, instability, a desire to move abroad, and often leading to demands for self-determination, self-governance, and possibly separation. States must work intensively to avoid such violations; here we shall highlight the most notable of these as concisely as possible, given the limitations on going into expansive detail dictated by the length of this paper:

A. Discrimination and Inequality: The impact of these two factors on the social, economic, and geographical situation of minorities is reflected in a very negative way.

B. Lack of laws and Legislation: Minorities may be deprived of equality before the law, while the constitutional or law articles that exist may contain discriminatory provisions that effectively give minorities the status of second-class citizens, making their rights virtually non-existent. According to a report by the then-UN Secretary-General, in which he conveyed to the General Assembly the details of a report by Special Rapporteur Rita Izsák in 2013, many countries worldwide have no anti-discrimination provisions in their legal systems, and even where minority rights provisions exist these are often excluded or restricted.

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C. Weak Curriculum and the Spread of Hate Speech: Some states prohibit any reference to minorities in their educational curriculum, while authorities in these countries may even engage in deliberate historical revision, denial, and abuse of minorities’ history and culture. This may include slanderous politically motivated allegations, accusing minorities of being outsiders, and denying them access to higher education and other fundamental rights due to their affiliation or minority status. Hate speech disseminated through educational indoctrination and through state- and privately-owned media is another key element in turning minorities into “the other” and making them scapegoats.

D. Violence and the Loss of National Reconciliation: The inflicting of violence by states or by non-state actors against minorities and the neglect of the process of reconciliation.

E. Undermining Political and Social Participation: I believe that all the aforementioned rights are primarily dependent on this right, which is an essential prerequisite for all others, from which they follow. To ensure that such participation is enabled, many countries of the world must overcome obstacles to effective participation.

Oppressive and unjust policies against minorities have weakened and led to the disintegration of many societies, as well as inciting social unrest and sometimes even provoking domestic conflicts, or regional wars. Also, totalitarian governments may exploit the presence of minorities in order to turn them into scapegoats for the majority, or may employ the majority to crush minorities and hold them responsible for political and economic disasters caused by the state’s own corrupt practices. In other words, such countries have not only made no effort to address problems facing minorities and violations of minority rights, but have actively kept these minorities busy with fighting among themselves and resolving problems often created by the state in order to undermine the minorities so that they won’t demand their rights and freedoms. For these leaders their sole objective is to remain in power for as long as possible, albeit at the expense of undermining the state and society.

Many countries worldwide continue to practice the most blatant and brutal forms of injustice, exploitation and persecution against minorities. For example, in Rakhine State in Myanmar, almost one million Rohingya are not recognized as citizens by the Buddhist majority in the Buddhist state due to the Rohingyas’ Muslim faith, despite the Rohingyas being native to that country for generations; this hostility led to horrendous violence against the Rohingyas in 2012 and the displacement of the majority of the Rohingya in 2018.

Similarly, in Syria, the Baath Party removed the citizenship of almost 120,000 Kurds in 1962 and left them facing various kinds of financial and social problems for decades. Besides these examples, there have been genocides in Rwanda, Bosnia and Herzegovina, against the Jews in Europe, the Yazidi minority in Iraq, the Assyrians in Syria, and many more.
The Overlap between Sovereignty, the Responsibility to Protect, and the Right to Self-determination:

Sovereignty means the ability to regulate internal and external affairs without external interference or control, and to make effective decisions regarding the population and resources located in the state’s territory; sovereignty does not and has never meant that a state can act with impunity against some portion of its population, and should never be invoked to justify committing human rights violations. Sovereignty is never absolute; it is restricted both internally and internationally and must comply with the state’s obligations to the terms of the Charter of the United Nations, and to international treaties and conventions, especially concerning human rights issues.

The Charter of the United Nations does not oppose or abolish intervention in favor of the protection of human rights, including the rights of minorities, particularly when the state fails in its obligations to secure the rights of minorities, fails to protect them from crimes against humanity or war crimes, or when the state itself undertakes these types of crimes, putting minorities at risk of displacement or extermination. In such cases, humanitarian intervention, which includes the principle of the responsibility to protect, becomes a duty and a necessity, and there is no longer any justification for prioritizing state sovereignty and the principle of non-intervention in internal affairs over the wellbeing of those being persecuted. Sovereignty should never allow governments and authorities that commit crimes against humanity and the crime of genocide against minorities to escape justice.

Sovereignty is a responsibility, and sovereign States must strengthen their sovereignty by promoting participation, equality, and respect for all groups, non-discrimination and respect for the rights of minorities. All these factors are essential elements of responsible sovereignty, and are effective instruments in achieving state cohesion, and in contributing to this responsible sovereign State in helping other nations to fulfill their obligations and to prevent crimes against humanity and the crime of genocide.

In his address to the General Assembly at its fifty-fourth session, the former Secretary-General of the United Nations made it clear that the concept of sovereignty should be reviewed to meet the aspirations of the people to benefit from fundamental freedoms, and to put an end to states perpetrating heinous crimes against civilians, pointing out the intertwined nature of the relationship between the concept of sovereignty and humanitarian intervention.

In his millennium anniversary report to the General Assembly, Annan confirmed that:

“If humanitarian intervention is truly an unacceptable assault on sovereignty, in what way should we respond to situations of gross and systematic violations of human rights that are prejudicial to every principle of our common humanity like Rwanda, or Srebrenica?” He added, “Surely there is no legal principle, even the very principle of sovereignty that can protect crimes against humanity.”

28 Amnesty, National sovereignty vs human rights? (6 November 2014) [accessed 1 June 2019]
29 Adam Hall, E-International Relations, The Challenges to State Sovereignty from the Promotion of Human Rights, (17 November 2010) [accessed 1 June 2019]
In September 2000, the Government of Canada, together with a group of large institutions, announced at the United Nations General Assembly the establishment of the International Commission on Intervention and State Sovereignty. A year later, in September 2001, the Commission issued its first report, referring to two basic principles:

a) State sovereignty entails responsibility, and the state itself has the primary responsibility for protecting its population.

b) Where the population is seriously harmed because of internal war, insurrection, repression or state failure, and the state concerned is unwilling or unable to stop or avoid harm, the principle of non-interference shall be replaced by the international responsibility to protect.

The concept of sovereignty has been exploited by many states, particularly dictatorships, to justify the repression and exclusion of minorities, the curtailment of their rights and the violation of human rights, on the pretext that what the state or government is doing against its citizens is an internal affair and no one has the right to intervene in it. In such cases, the state uses the principle of legal sovereignty beyond its jurisdiction, and when any state's government, based on the principle of sovereignty, oppresses, denies and fails to recognize minorities, then those minorities have the right to resort to United Nations mechanisms and competent regional mechanisms for the protection of minorities. In the event that such mechanisms are weak and unable to deter that State from its continuing practices against minorities, the international community must be responsible for protecting that minority. The minority has the right to self-determination and its right must be supported in this direction. The report of the Secretary-General on the right of people to self-determination in 2016 and 2017 pointed out that:

“All States have an obligation to promote and respect the realization of the right to self-determination in accordance with the provisions of the Charter of the United Nations.”

The report also stressed that: “States must refrain from interfering in the internal affairs of other states and thus having a negative impact on the exercise of the right to self-determination. The effective implementation of the right to self-determination will contribute to greater human rights, peace and stability, thus preventing conflicts.”

Any state that violates the rights of minorities is the first and main culprit, but the weak application of the mechanisms of the United Nations is the second. If the mechanisms of the United Nations acted as executive deterrents and defenders of human rights, then most countries of the world would not dare to perpetrate violations and persecute minorities. The Charter of the United Nations has given the Security Council absolute powers to make it a dominant power, with the Security Council alone possessing the advantage of power over imposing, implementing, and following-up on sanctions.

Sadly, the history of the Security Council is fraught with multiple failures to protect human rights, because the council always prevails in the interests of the five permanent members. On international law and human rights, the Security Council has failed to protect hundreds of minorities who have been persecuted by their own states.

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31 Report of the Secretary-General on the universal realization of the right of peoples to self-determination, (A/71/229) [accessed 31 May 2019]


33 Minority Rights Group International, Myanmar/Burma [accessed 31 May 2019]
Based on all of the above, this paper recommends:

1. To work towards the creation of a binding international convention on the rights of minorities focusing on the rights of individuals and groups, and, wherever possible, to take advantage of the progress made by the European system of human rights in the area of minority rights.

2. A special committee should be established to monitor and investigate violations of minority’s rights, in addition to supporting the continuing work of the Special Rapporteur on minority affairs, issuing urgent updates and reports as necessary, criticizing and condemning any violating member states’ practices and violation of minority rights. These updates and reports should be disseminated through local and international media in order to expose the practices of all states violating these rights.

3. In the event that the state concerned does not comply with the statements of conviction, documented reports of violations of minority rights, and continues to violate the articles of the Convention, the Convention must include additional provisions enabling it to impose political, economic and legal sanctions against the violating state, without the Security Council’s approval so that the Convention must include a self-monitoring force. In order to achieve such sanctions, the Convention must be able to request all its members to impose political and economic boycotts on any state violating the articles of the Convention. If countries allied to the violating state refuse to penalize its violations, the Convention can be invoked to request the rest of the world to ratify any such action, including sanctions, since providing support for a violating State is itself a violation of the Convention and an incitement to violate its articles.

4. The Convention must be granted the authority to estimate the level and duration of sanctions, depending on the nature and extent of the violations committed by the state. These sanctions could be lifted, reduced or canceled based on the extent of the state’s compliance with its obligations. These functions may be delegated to the Committee of Inquiry of the Convention. A mechanism to pass the decisions - perhaps by majority vote- could be agreed upon, and sanctions must be applied immediately after violations are proved to have taken place in order to send a serious message to the violating government. The Convention must also have the power to suspend the membership of any state that is in clear violation of the provisions of the Convention, and in the event of non-compliance, the state in question must be expelled from the Convention and strongly condemned.

5. The Convention must have legal force, as it could refer the states where widespread violations constituting crimes against humanity and war crimes, are taking place to the International Criminal Court without referring to the Security Council, despite many countries failing to ratify the Charter of the International Criminal Court. In this case, the Security Council must refer the State to the jurisdiction of the International Criminal Court, but the Security Council is governed by interests rather than minority rights.
Finally, the 1992 United Nations Declaration on the Rights of Minorities states: "In no case shall any part of this Declaration be construed as permitting any activity contrary to the purposes and principles of the United Nations, including the sovereign equality of States, their territorial integrity and political independence." Also that the responsibility to protect is a "A principle aimed at confronting the threats to the lives of people rather than as a tool to achieve political objectives, such as greater political independence, self-determination or independence for certain groups within the country, the intervention itself should not be the basis for further separatist demands."\(^{35}\) That is, neither minority rights nor the principle of responsibility to protect is responsible for the minority’s claim to self-determination, which may include self-governance or secession that may threaten the integrity of the territory of the State. The main responsibility lies on two sides: First: The State, second: the absence of binding enforcement mechanisms in United Nations treaties and declarations other than the United Nations Security Council, the countries of the world must respect and promote the rights of minorities to avoid disturbances and conflicts and demands for the right to self-determination.

\(^{35}\) Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities Adopted by General Assembly resolution 47/135 of 18 December 1992