

The Use of the Concept Minority

A Protection or a Burden in Relation to International Law

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MY POINT OF DEPARTURE is an assumption that the member-states of the United Nations are legally and morally bound by international laws, but at the same time violations against human rights, and not the least freedom of religion, are taking part all over the world. Violations against freedom of religion may be experienced by Muslims and Muslim communities in Sweden as well as in other Western European countries. The reality for Christian individuals and Christian communities, as minorities in Pakistan and in countries in the Middle East, is the same. Even if I know that the use of the concept “minority” is “a hot issue” not the least in the countries of the Middle East, I will address the concept since it is included in the regulations of international law.

BELONGING AND RELIGIOUS COMMUNITIES IN THE MIDDLE EAST

A hollow clattering sound is reaching the nearest neighborhood with stubborn regularity. It is the monastery calling for The Divine Liturgy. A small piece of wood suspended with two chains immediately outside the door of the church in the monastery is used as the church bell. Some of the monasteries in the Middle East have kept an old tradition from Ottoman time when they were forbidden to use church bells made of iron. Instead they banged on wood telling the faithful Christians about the time of

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service. You may see and hear it at St. James in the Armenian Quarter in Jerusalem. Today a piece of wood is a reminder of times with strict rules concerning the Christian community, or if you want a minority, living in a Muslim majority society. This is just one example of the historic shadow still present among Christian communities in the Middle East.

Today, Christian communities are scattered among a number of states in the Middle East but are still living with a long tradition and history in the region. In Iraq Christians can, in the modern terminology, claim that the patriarch Abraham was an Iraqi from Ur in Chaldea. In Egypt the Copts claim to be the offspring of the pharaohs, the Maronites of Lebanon talk about the Phoenicians as a historic starting point, and in Jerusalem they talk about the birth of the early church. Archaeological evidences point to a widely spread Christian culture from the fourth century and onward. This helps to legitimize a presence, long historic continuity, and genuine belonging. The presence is often described as being indigenous including claims of historical presence in the region predating the spread of Islam. Of course, the Christian presence has never been isolated but through the centuries in a high degree contributing to the cultural, social, economical, and political development of the region. At the end of the nineteenth century it became common among Christians to talk about *watan*, the homeland with definitions of citizenship and judicial systems based on non-religious and secular principles. To religious communities it would imply a society looking upon everybody as equal citizens in the state.

The feeling of belonging has during the last twenty years been put into print through Christian authors and priests living in Israel and Palestine. The book of father Elias Chacour introduce the belonging already in the title, *We belong to the land*.¹ Elias Chacour, Audeh Rantisi,² Naim Ateek,³ and Mitri Raheb⁴ have all been influenced by the occurrences in Palestine 1947–1948. All of them describe the banishing of the Palestinians, Christians as well as Muslims, being forced to leave the land they had belonged to since generations. They all talk about the importance of a piece of land where to live and work. Naim Ateek inspired by Latin American liberation theology develops a Palestinian theology of libera-

1. Chacour, *We belong*.
2. Rantisi, *Blessed are the Peacemakers*.
3. Ateek, *Justice, and Only Justice*.
4. Raheb, *I Am a Palestinian*.

tion. The historian Albert Aghazarian has reflected on the importance of looking upon the own roots integrated in the Arabic-Islamic heritage and the culture of the Mediterranean as well as a universal approach.⁵ In stressing this identity the focus is on a joined present situation and a future for all citizens in one and the same national unity. The specific Christian heritage does not disappear but there is a strong opposition against being called minority and the Christians want to be considered as parts and parcels of national identity.

The Coptic pope Shenouda III opposed officially 1994 the use of the concept minority as a description of the Coptic citizens of Egypt. The background was the joint venture by the organization Ibn Khaldoun Center in Cairo and the Minority Rights Group in London to conduct a conference in Cairo under the title: "The United Nations Declaration on the Rights of Minorities and Peoples in the Arab World and the Middle East."⁶ A storm of protests, not least in media, opposed the idea of the Copts as a minority and instead they emphasized the Coptic belonging to Egypt and the concept of citizenship. It was in relation to this conference the Pope expressed the opinion that the idea of making any division out of majority—minority perspective was discriminating, separating, and distinguishing. According to the Pope, the Copts do not want to call themselves minority neither do they want others to do so.⁷ The discrepancy was obvious between those claiming the Cops not to be a minority but an integral part of the very complex Egyptian society and those who claimed that the problems of the Copts as a religious minority do exist and are in need of being taken seriously.

A tension appears between the traditional meaning of minority in the Middle East with clear references to the millet-system and the use of minority in the international human rights system. Communities in the Middle East obviously defend themselves against ideas possible to interpret as a return to or any effort of establishing any system treating them as second class citizens. Instead they claim equality and to be equal citizens.

5. Sabella et al. *On the Eve*.

6. "The Conference on the United Nations Declaration on the Rights of Minorities and Peoples in the Arab World and the Middle East." A report was published before the conference: Ibrahim, *The Copts of Egypt*.

7. "Egypt: Violations."

BELONGING AND MINORITIES IN PAKISTAN

It is rather crowded with people in some of the suburbs of Lahore and you may even call Shah Dara Koi a slum district. On Sundays the faithful occupy every single spot in the church and when the service starts it goes out in the surrounding area through a loud-speaker at the top of the church building, even to the Muslim neighbors. And one of the church-leaders explains it with; of course:

We are part of this area, we belong, and even if we are part and parcel of the Christian minority we are Pakistanis.

It is interesting to see that, when the Christian Study Centre in Rawalpindi offers an extensive program on “Interfaith, Ecumenical, cross-cultural Study and Exposure Program” in Pakistan, the lecturers very much describe the Christian position out of a minority perspective. It is about “Dialogue from a minority perspective.” It is about “Religious Minorities in Pakistan: Struggle for Identity,” and about “Islamization and its effects on Minorities.” The same is reflected in the publications from the Christian Study Centre⁸ as well as in the life of the Pakistani Churches, both Protestant and Catholic. The National Commission for Justice and Peace of Pakistan connected to the Catholic Bishops’ Conference of Pakistan has published extensive reports on the religious minorities in Pakistan.⁹ The commission has also presented their case to the UN Commission on Human Rights Working Group on Minorities as a minority case. I quote:

Theoretically the Constitution of Pakistan provides religious freedom and safeguards to religious minorities. However continued incidents of violence against religious minority groups, attacks and destruction of their places of worship, killing and rape of the members of minority communities, is a matter of grave concern.¹⁰

The Christian community in Pakistan is rather outspoken about violations of human rights directed against them because of their religious belonging.

The important focus in the Middle Eastern countries as well as in Pakistan is on a common national identity with citizenship and solidar-

8. Moghal and Jivan, *Religious minorities*. See also articles published in *al-Mushir*, published by the Christian Study Centre, Rawalpindi.

9. See for examples: “A Report on,” 2004; 2007.

10. “Agenda Item: 3 (a).”

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ity with the country as the basic originator of identity. At the same time, in the Middle East the emphasis has been put on belonging to the national identity and in Pakistan there is an emphasis on being a religious minority.

In the academic literature the concept of minority is frequently used in relation to the Middle East as *Minorities and the State in the Arab World, Middle Eastern Minorities and Diasporas* and *Religious Minorities, Nation States and Security* and in relation to Pakistan as *Religious minorities in Pakistan: struggle for identity* and *Religious minorities in Pakistan*.¹¹

RELIGIOUS DIVERSITY

In societies with religious diversity, as well as in all societies there is a need for freedom of religion and belief, freedoms that may be restricted in a democratic society but should be protected by legal obligations.

Jenny E. Goldschmidt and Titia Loenen discuss in an article the position of the State in a religiously pluralist society and look into preconditions for guaranteeing freedom of religion and belief.¹²

The first precondition is the separation of state and religion; in the European case usually between church and state. Of course, different national systems will have different concepts of secularity but there need to be constitutional protection enabling pluralism to be realized. A second precondition closely connected to the first can be the neutrality of the state even if the state seems to take into account values reflecting a dominant culture. I am aware there are plenty of definitions and interpretations of both secularity and neutrality but what I aim at is a model that offers a framework for an implementation of human rights to all. This includes both openness to 'others' in the society as well as a freedom of choice to belong to a particular group or not.

The rights must include both the *forum internum*, the right to hold an inner belief or you may say a conviction by heart, and the *forum externum*, the right to manifest the belief in public as well as privately. Freedom of religion is not to be spared from religious symbols in the public space or to prohibit religious manifestations so that people should be exempted from any public expression of religious activities. Important to the reli-

11. Maos, and Sheffer, *Middle Eastern Minorities*; Apostolov, *Religious Minorities*; Bengion, and Ben-Dor, *Minorities and the State*.

12. Goldschmidt and Loenen, "Religious Pluralism."

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religious communities and a prerequisite for a sustainable democratic society is the protection of the right to religious freedom and freedom of belief (civil and political), the protection of freedom of assembling, freedom of expression, freedom of choice for the individual, and a fair and equal treatment by the state of all religious communities. That would accommodate a diversity of religious communities. And it may be possible due to national law and national implementation of the international conventions and applicable declarations.

To follow the religious rules is necessary for a pious individual living the everyday life without ending up in conflict with the prescriptions of religion and the conscience. But the interpretation made by the authorities and the needs of a religious community are not always talking the same language. Of course, it is the normative way of interpreting the existing laws that counts. That the reality of freedom of religion would be questioned by religious communities as well as by individuals seems to be a surprise or looked upon with ignorance by the authorities. The concept of religion used by the state and the daily experience by religious persons is not the same and the problem becomes obvious when the authorities seem not to care. This leaves us with the important and unsolved question: What is the meaning of religious freedom in the society? It is important that freedom of religion is not restricted to the mind and the religious ideas but also include rituals and religious action. Freedom of religion and freedom of choice for the individual are important values.

Religious people usually do not live in isolated sectors of the society but are involved in everyday life as citizens and as belonging to the society. A usually dominant position by majority religious groups is at the same time usually in a high degree influencing the public and the private spheres in society. Some would claim that historical, social-demographical and religious factors make that kind of dominant positions unavoidable.¹³ But it raises questions: How to deal with religious diversity? And how to deal with not being violated against due to religious belonging? How to be able to practice one's religiosity individually and as a religious community? In relation to international law and human rights issues it seems to be two different options. Either you emphasize being equal nationals in a democratic society or you emphasize being a religious minority in a religious majority society.

13. Bijsterveld, "Equal Treatment."

EQUAL NATIONALS IN A DEMOCRATIC SOCIETY

Human rights, or if you want to use the concept human dignity, is protected by several UN declarations and covenants. A good point of departure is *Article 2* in the Universal Declaration of Human Rights which includes non-discrimination:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinctions of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹⁴

This principle of non-discrimination is then anchored in the international law with the intention of being a guiding principle for national law and working through implementation at all levels in the societies. There are two types of equality provisions. The States are obliged to guarantee the treaty's rights to all individuals under their jurisdiction. The other prohibit discrimination reaching further than the rights in the treaties themselves with equality of opportunities, equality before the law, and protection from discrimination in any context.¹⁵ These latter do not impose on a specific State to undertake measures. Of course, that is a problem. You may, as belonging to a specific religious community, have all the protection you need in for example a Constitution but the State is not obliged to do any affirmative action to upgrade the rights for what is considered to be a "foreign" belief in a dominant society. And when a specific State does not guarantee or protect the direct provisions in the treaties there is an obvious problem for the individuals belonging to a religiously different community than the dominant one.

But the international law is clear about religious freedom as is demonstrated in the International Covenant on Civil and Political Rights stating in *Article 18*:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include 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.

14. *Universal Declaration.*

15. Fottrell, "Ever Decreasing Circles."

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2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The State Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

The covenant talks about both religion and belief of choice, the right to manifest religion or belief and not allowing coercion. The UN-system issues General Comments with normative interpretation of the covenant. In General Comment number 22 it is explained:

Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms "belief" and "religion" are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.

The comment also gives examples of what is considered to be under protection:

1. Ritual and ceremonial acts giving direct expression to belief;
2. The building of places of worship;
3. The use of ritual formulae and objects;
4. The display of symbols;
5. The observance of holidays and days of rest;
6. The observance of dietary regulations;
7. The wearing of distinctive clothing or head coverings;
8. The use of a particular language customarily spoken by a group;

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9. The freedom to prepare and distribute religious texts or publications.

Of course, it is possible to continue quoting declarations and covenants but this may be enough to claim there is a protection for religious people and communities in the combination of equal human rights for everyone and the freedom of religion and belief. May be, that is the way chosen by the communities in the Middle East claiming belonging.

RELIGIOUS MINORITIES IN A RELIGIOUS MAJORITY SOCIETY

Against the relief of a dominant society or a majority culture completely ignoring or even opposing giving space for people of other faith and thereby not giving equal possibilities for other religious expressions than the dominant, you need to further on into the international law.

That will open up talk about non-Christian religious communities in Europe and non-Muslim religious communities in Muslim countries. The abuse hurts the individual but it also hurts all individuals as part of a community. The international law will then offer the possibility to use the concept of minority.

In an article about construction and contingency of the minority concept Eric Heinze explains:

Minority status thus comports its own spectrum of norms. At one extreme would be integrationist non-discrimination rights; at the other, non-assimilationist group rights. Between the two, various blends are possible, according to the specific circumstances and aspirations of each group or of its members.¹⁶

A critical issue is the increase of national minorities with ethnic and linguistic aspirations claiming their rights. But for many religious groups in Pakistan and in the Middle East there are no national aspirations since they are not foremost national, ethnic or linguistic but religious communities and part of the national and linguistic surrounding society. The lack of national aspirations would sometimes be questioned by parts of the community immigrating to the Diaspora in America or Western Europe.

Group rights or minority rights as such are under question even in the human rights discourse but the rights concerned can be looked upon

16. Heinze, "The Construction."

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as rights of individuals as members of their group. It is about the rights of the individual as belonging to a group. *Article 27* of the International Covenant on Civil and Political Rights (ICCPR) states:

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

In a General Comment number 23 given to article 27 it is emphasized that no one are excluded:

Article 27 confers rights on persons belonging to minorities which “exist” in State party. Given the nature and scope of the rights envisaged under that article, it is not relevant to determine the degree of permanence that the term “exist” connotes. Those rights simply are that individuals belonging to those minorities should not be denied the right, in community with members of their group, to enjoy their own culture, to practice their religion and speak their language. Just as they need not be nationals of citizens, they need not be permanent residents. Thus, migrant workers or even visitors in a State party constituting such minorities are entitled not to be denied the exercise of those rights (. . .) The existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria.¹⁷

Concerning rights for a minority as a collective, the human right system is less clarifying although the question is of current interest. There exists no univocal definition in international law of the concept minority. It is even more difficult to get answers to the difference between minority and people. In one perspective minority can signal the difference in number between two or more groups in the same society. When talking about minority there are elements putting one group compared to others in an exceptional position based on for instance religion, sex, color, race, or national origin. The most general description of the concept minority in the international human rights discourse can be found in “The Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities.” *Article 1* states:

17. *Compilation of General Comments.*

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1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.
2. States shall adopt appropriate legislative and other measures to achieve those ends.

According to *Article 2* minority is clarified as “national or ethnic, religious or linguistic minorities.”

There has been developed some suggestions concerning criteria for a definition of “minority” or group including:¹⁸

- numerical inferiority
- socio-political non-dominance
- a distinctive language, religion or ethnic belonging
- a shared history, experience and a sense of solidarity
- nationality or citizen status.

For a distinctive religious group in a dominant, majority setting it is clear that the international law looks upon such a group as a minority and safeguards its existence as nationals or citizens in a specific society or State. This is may be the way chosen by communities and the state in Pakistan.

EITHER WAY OR (...)?

In some societies it may be enough to talk about equal nationals in a democratic society and thereby safeguarding all religious individuals and communities in their belief and practices. In other societies this seems not to be enough and there is need of more protection of vulnerable individuals and communities.

In the Middle East and in Pakistan many groups fit the category “minority” according to a human right perspective. “Compact minorities” have been used to characterize communities, which are in majority in a certain geographic area inside a state. The numerically large people-groups without a state or with an embryo to self-determination include the Kurds and what they call Kurdistan and the Palestinians on the West Bank and the Gaza Strip. Numerically inferior groups in power as the Alawites in Syria and earlier on the Maronites in Lebanon also belong

18. *Rights of Persons*; Thorberry, *International Law*.

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to the concept of minority. At the same time they are a kind of compact minority in their respective areas of settlement. Also the Druze population and to some extent the Yezidis are compact minorities but in rather limited geographic areas.

Minorities according to the international interpretation are also religious or ethnic groups scattered in the different countries of the Middle East and Pakistan as Christians, Ismailites, Samaritans and followers of Baha'i as well as the Jews living in Muslim countries and Muslims in Israel as well as Hindus and Parsis in Pakistan. The Christian and the Muslim communities are divided into different shadings formed as sects and denominations reciprocally consisting of majorities respectively minorities.

All these communities/minorities in the Middle East and Pakistan are deeply rooted in national, ethnic, religious, and linguistic traditions. Whenever the treatment of one or several of these groups in any degree includes discrimination the relation between the majority and minorities will be problematic. Occasionally discrimination escalates to oppression and discrimination in politics, education and legislation.

So when using the international law it is possible to stick to the concept of equality of all individuals. But it is also possible to relate to the concept of minority. Or maybe they are parallel possibilities or can even go together in traditions with ambition to rely on equality, democracy, human rights, and freedom of religion.