



## PROTECTION OF MINORITIES IN INTERNATIONAL LAW AN APPLIED STUDY ON THE RUSSIAN MINORITY IN UKRAINE

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**Abstract:** Minorities, whether ethnic, linguistic, or religious, are considered a chronic problem in international law, and some minorities have suffered from persecution and extermination, and this problem has not been fully resolved in international law. The problem remains in place according to the degree of protection enjoyed by these minorities, and it is growing to open the door to foreign intervention under the pretext of protecting minorities. Hence our interest in discussing this problem with the application to the Russian minority in eastern Ukraine and the threat of Russia's military intervention, which ignites A third world war.

Keywords: Minorities, international law, Ukraine, Russian.

### 1. Research problem

The protection of minorities by law is an issue of great importance (1), as it ensures the protection of the individual against persecution, and the entry into force of the criminal court system was the first step towards the actual implementation of minority protection.

In light of the weakness of international protection, the mother state seeks to provide protection for its minorities in the territories of other countries, and this protection may run to military intervention or humanitarian income. Russian is spoken by about 20% of the total population of Ukraine.

Considering that the Russian Federation is preparing the military equipment represented by one hundred thousand fighters and thousands of armored vehicles and artillery to invade Ukraine and force it to respect the rights of minorities and grant autonomy to the Russian minorities.

On the other hand, NATO countries intervene to uphold the conflict by supplying weapons or providing fighters, which makes the world on the edge of the abyss.

Hence, we considered it necessary to discuss the international protection of minorities and its sufficiency with the application to the case of Ukraine and the protection exercised by the mother country.

### 2. Research Plan

Accordingly, we divide this research into:

The first topic: the concept and situation of minorities in the world

The second topic: the rules of protection of minorities

The third topic: the application of these rules to the Russian minorities in Ukraine

### 3. Research Methodology

The research needs to follow the analytical approach to analyze international texts and covenants, extract existing legal provisions or what they should be, and apply the inductive approach to measurement on the established provisions, as well as the historical approach to track events from a temporal point of view.

**First Topic:**

## **The Concept and Types of Minorities in The World**

I divide this topic into two parts: The first part: the concept of minorities. The second part: the types of minorities in the world.

### **First Item**

#### **The concept of minorities**

A minority is a group of people who share a religion, speak a language, belong to a nationality, or are nationals of a particular country. They have acquired the nationality of the country, and they constitute a small percentage compared to the population.

If the concept of minorities is the result of the division of the world into states based on an ethnic or linguistic basis, then this divided world has not yet been able to agree on a unified definition of the concept of minority (2).

The international conventions and agreements were devoid of an international definition of the concept of minorities, to remain a controversial point, intended to raise problems and justify unjustified interference in other countries.

Accordingly, we are looking for a specific definition of the concept of a minority, so that it can be dealt with as an ethnic or linguistic human group that deserves to live in equality, practice its rituals, and speak its original language in secret and in public.

We present the definitions contained in regional international law, where public international law is devoid of a specific definition, and we present the definition in the international judiciary and then the jurisprudential definition, to conclude with a statement of the chosen definition.

#### **First: Definition in regional law:**

Public international law did not include a definition of minority, whether in general international treaties, international declarations of rights, Security Council resolutions and recommendations of the United Nations General Assembly.

Hence, the United Nations Charter did not refer to minorities per se, but referred to some of their provisions in Article 3 of the Charter, which makes one of the goals of the United Nations is to achieve international cooperation based on the promotion and encouragement of respect for human beings and fundamental freedoms for all without discrimination. Because of gender, language or religion.

On the other hand, minorities benefit from the Universal Declaration of Human Rights of 1948 in combating racial discrimination and ensuring human dignity and right to equality, freedom and justice without discrimination for any reason other than competence.

Also, the United Nations General Assembly was unable to define regionalism in the Declaration on the Rights of Minorities and indicated that it is difficult to adopt a unified solution regarding this problem, which is characterized by special aspects in each country in which it arises (3). However, the texts of the Declaration of Human Rights can find an echo in the protection of minorities, since these rights are established for all human beings, and members of the minority do not require more than that they have the protection prescribed for all, as what they fear is that their rights will fall below the rights of the majority (4).

This applies to religious minorities or linguistic and ethnic minorities. Accordingly, these groups share with the majority, for example, the same foundations for acquiring the nationality of the state.

Therefore, there is an organic relationship between human rights and the protection of minorities. The United Nations strategy is based on two pillars: human rights and non-discrimination.

This is ratified by the Universal Declaration of Human Rights and the Charter of Political and Social Rights of Man, as well as the Declaration on the Protection of the Rights of Minorities, i.e. the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities of December 18, 1992 by Resolution No. 135/47 of the General Assembly to the United Nations.

The declaration mentioned four types of minorities: the ethnic or national minority, the religious minority, the cultural minority, and the linguistic minority.

This declaration enjoined the protection of these minorities, respect for equality between them and the majority population, and the development and improvement of their living conditions (5).

It also obligated states to preserve the existence and identity of these minorities and their right to preserve their distinct identity and components.

Therefore, the texts of nations establish the rights of equality and subjectivity and the preservation of the cultural, linguistic and religious identity of minorities without defining them.

At the European level, the European Committee for Minority Democracy, which is in the process of preparing a draft European convention for the protection of minority rights, defined it as:

“A group that is numerically small in relation to the population of the state, as the members of this group have ethnic, religious or linguistic peculiarities that are different from the rest of the population and are motivated by the will to preserve their culture, customs or religion” (6).

On the other hand, the draft Additional Protocol to the European Convention on Human Rights of 1/1/1993 contained in Article (1) the following definition:

The term national minority means a group of persons in a State:

(a) They reside in the territory of this State and are its nationals.

B - They have old and continuing ties with this country.

C - They differ to a large extent and their number is smaller compared to the rest of the population of the state or a region in it.

Some international agreements have objected to the rights of minorities, but without defining them by referring only to that they are racial, linguistic or ethnic groups distinct from the rest of the population, such as the Convention on the Prohibition and Resistance of Torture, the Convention on the Rights of the Child, and the importance of this last convention is due to the fact that it was signed by most countries of the world (7).

The child shall have the right to live in a group with members of his group, to enjoy his culture, to practice his religion and to use his language.

So he has the right to education, treatment, the use of the minority language, freedom of belief and the use of all methods to develop the culture of the minority.

The jurisdiction of the Criminal Court includes the persecution of racial groups individually or collectively, whether this minority is political, ethnic, cultural, religious, or on any other basis.

Therefore, the entry into force of the United Nations system is an important practical step towards protecting minority rights and deterring crimes that threaten their existence.

Therefore, the existence of the court is a guarantee that individuals will be punished, whatever the position they occupy, if they commit crimes against minorities.

There is a trend that expands from the minority to include not only the loss of ethnic, religious, linguistic or cultural groups distinct from the rest of the population, but extends to include all the oppressed groups in society, in terms of political or economic and social terms (8).

The expanded concept includes refugees, immigrants, political opponents and the economically marginalized.

#### **Researcher's opinion:**

We prefer to adopt the narrow concept of its consistency with the real established reality of the concept of a minority that is based on the subjectivity of language, religion, race or culture.

The broad concept also contradicts the establishment of a legal system for minorities in the strict sense, to include the international protection system for every oppressed in the state's society, and then makes this system a tool to protect any attack on human rights.

Let us now consider the definition of the minority in the provisions of the international judiciary.

#### **Second: Judicial Definition of Minority:**

The Permanent Court of International Justice defined the minority in its advisory opinion in 1930 on the Greco-Bulgarian Agreement by saying:

“It is a group of people living in a specific country or place with a specific race, a specific religion, a special language and customs of its own, and this group is united by this race, religion, language and customs with feelings of solidarity with the aim of preserving its customs and maintaining the form of its worship ensuring the direction and education of its children in accordance with the spirit of and traditions he knew and the provision of reciprocal services to each of its members” (9).

The Permanent Court has issued several important advisory opinions on the protection of minorities.

It is noted on these advisory opinions: 1- They were not binding. 2- It was specific to specific cases and was not of general application. 3- It did not set up a legal mechanism to implement it.

#### **The position of the International Court of Justice:**

The effects of the issue of Serbia's responsibility for the genocide in the application submitted by Croatia against Serbia in 1999, and Serbia did not accept the jurisdiction of the court until the year 2000, and then the court ruled not to accept the request, since Serbia on this date was not a member of the United Nations. Hence, the application was required to be submitted after the admission of this country to the United Nations.

Also, Serbia later argued that it did not become a party to the Genocide Convention until 2001, two years after the lawsuit was filed. And then the court is not competent (10).

The majority of the members of the Court considered Serbia to be bound by the Genocide Convention, because it declared in 1992 that it is bound by all the treaties signed by the Federal Yugoslavia, including the Genocide

Convention. Nevertheless, the court concluded that it did not have jurisdiction over the case, and missed the opportunity to decide on the crime of genocide of an ethnic minority and to define a definition for this minority.

**Researcher's opinion:**

The International Court of Justice could have dealt with examining the problem of Serbia's violation of the Genocide Prevention Treaty, based on the declaration of these countries' commitment to all the treaties signed by the predecessor evidence. without requiring its admission as a member state of the United Nations.

The Court was not keen on applying international law and achieving legal harmony as much as it was keen on keeping pace with the Security Council. Hence, it demonstrates that it is a political body with a legal nature that takes into account the considerations of appropriateness, and follows the general desire of the political body of the international organization.

Let us now look at the jurisprudential definition of the minority, which of them has this description and thus deserves international legal protection?

**Third: The legal definition:**

**A- Definition of the Italian professor: Francesco capotorti**

A minority is a group that is small in number compared to the rest of the population of the state, in a legal position less than that of the majority. Its members have ethnic, religious, and linguistic characteristics that differ from the peculiarities of the rest of the population, and they show, even in an implicit way, a feeling of solidarity in order to preserve their culture, customs, religion or language (11).

**b- Definition: Jules des chenes**

He is a member of the Subcommittee on Human Rights of the United Nations. He introduced this definition in 1984 during the preparation of the Universal Declaration of the Rights of Minorities. He defined a minority as: "A small group of citizens of the state in terms of number, status or status in this state with ethnic, religious or linguistic characteristics that differ from those of the majority of the population, and they are in solidarity with each other, motivated by a collective will to survive and aim for de facto and legal equality with the majority of the population."

This definition was based on the 1992 Declaration on the Rights of Minorities.

In fact, reaching a universal, unified definition that is acceptable to all countries is a very difficult issue.

**c- Definition of Max Van der:**

He defined a minority as: "a separate or distinct group, well-defined, and stable in the territory of a state, and the members of this group are subjects of this state and have a particular religion or other characteristics that distinguish them from the majority of the population."

**Researcher's opinion:**

Jurisprudential disputes rage over the definition of the concept of the minority (12). However, we can note that the minority has formative elements that are:

1- The numerical component: the minority is necessarily a smaller group compared to the majority of the population in the country, and the minority and the majority are measured against a specific legally constituted and internationally recognized country.

2- The discriminatory element: It is the component of distinguishing this group with a certain characteristic that is different from the majority of the population. This characteristic may be race, religion, language, and we see the need not to expand the classification by adding any other group in terms of culture or political affiliation, as this leads to more One of the few and does not serve the required protection.

3- The presence of this group, which is different from the majority of the population, in a lesser position from the social point of view, i.e. the existence of a legal or realistic treatment that makes this group in a position and a legal status less than the legal position established for the majority of the population.

Accordingly, consideration should be given to the protection of the religious, ethnic or linguistic minority if this group has a legal status equal to those of the majority of the population, but rather this group may be in a better social and legal status than the general population.

**Linguistic definitions:**

The French lexicon Larousse defined a minority as a non-dominant group distinguished from the majority of the population by ethnic characteristics, language, religion, customs and traditions (13).

The lexicon of legal terms *lexique des termes juridique* (14) defines a minority as a group of persons in a state that bears special characteristics in terms of ethnic, religious, linguistic or social terms that are distinguished from the rest of the population belonging to the same state.

It has been defined in English dictionaries as a limited group that lives within a larger group and is distinguished by its ethnic origins, its territory, its history, its language, its culture or its religion (15).

The Collins Dictionary defines it as a small group of people or things in the middle of a large group, and this group is less than half, and they are different in terms of race, politics, or any other reason.

It has been defined in the Oxford Dictionary of Legal Terms as a small group of people from the people within a state or group and it differs from the main people in race, religion, language or political conviction (16).

We conclude, then, that there is an unspoken agreement that the minority:

A small group.

It differs from the majority of the population in terms of language, religion, ethnicity or customs and traditions.

And we discuss the second requirement of minorities in terms of their component base.

### **The second item:**

#### **Types of Minorities in the world**

Minorities vary according to the basis on which they are based, and we believe that this basis should not be expanded, as the countries of the West aim to tear apart the rest of the world, especially the countries of the East and African countries. Therefore, the real basis for the formation of minorities is religion, language and ethnicity, along with a weak factor or basis is customs and traditions. .

Accordingly, we find there are religious minorities such as Catholics in Egypt, or Protestants, or Muslims in France, Muslims in the United States of America, or Uighur Muslims in China.

There are linguistic minorities such as the Russians in Ukraine or the Berbers in North Africa such as Libya, Algeria, Tunisia and Morocco.

#### **First: Religious minorities:**

These minorities have a religious belief different from the majority of the population. Some trends have gone to the fact that the minority is a smaller number compared to the majority of the population.

In fact, in our opinion, the minority does not exceed a quarter of the population of the state. Otherwise, if the number of this minority exceeds that, we cannot speak of a minority, but rather an original or major component of the people of the state.

In all cases, this minority is a group of people who have embraced individually or collectively, and this is something that will form over time a religion different from the main religion espoused by the majority of the population of the country.

It does not matter that the religion is one of the three monotheistic religions i.e. Judaism, Christianity and Islam. Rather, there are non-heavenly religions such as Buddhism, Magianism, Baha'i and hundreds of other religions. There may be groups in the people of the state that believe in them (17).

On the other hand, migrations in search of livelihood led to the formation of religious groups such as the Indian Sikh groups in the Gulf states. These groups are considered minorities, as the group residing in the territory of the state is not necessarily a part of its population.

The United Nations charters and human rights declarations have recognized freedom of belief and the inadmissibility of discrimination on the basis of race, religion, or any other reason.

Among the countries in which there are religious minorities is the State of Iran, which is limited to the Sunni minority, and they are the supporters of the Sunni sects in the midst of the Shiite majority of the population of the country (18).

On the other hand, ethnic minorities are increasing, there are Arabs, Baluchis, Turks, and Kurds.

We also note the presence of a small Jewish community or minority within the population of the Islamic Republic of Iran.

Some believe that religion is not given importance in dividing minorities, on the grounds that ethnic affiliation is the most important factor among the foundations of minority formation (19).

#### **Researcher's opinion:**

This tendency does not agree with reality, as religion is an important factor in the formation of subjectivity and personality, and it bestows upon a person different characteristics from a person who follows another religion. On the other hand, religion may push a person to certain political practices, such as defending the oppressed or defending a national cause with religious roots, as is the case with the Palestinian cause.

Accordingly, since ancient times, religion has been a reason for persecuting and torturing its followers, as happened in the practices and actions of the Roman emperors with the followers of the Christian religion, and the followers of the Islamic religion at the beginning of the emergence of Islam and the Crusades.

Therefore, violence, discrimination or persecution against a minority may often be based on religion. Its goal is to force members of the minority to leave their religion and live as the majority lives.

The aim of persecution may be to force the minority to live miserable lives as second-class subjects.

The danger may threaten the lives of the religious minority or their money simply for the practice of their religious rites, and not the massacres of Myanmar not far away or the massacres of Uighur Muslims in China. The strange thing is that the world is as if it is blessing or congratulating the rogue state China for its crimes of genocide.

We add that the Chinese constitution guarantees freedom of belief, provided that belief does not conflict with public order, harm health or interfere with the educational system. Nevertheless, the communist belief is the first place in the beliefs and everyone must accept it, and therefore neither Catholics nor Muslims can practice their beliefs.

**Second: the ethnic minority:**

There is a race, which is based on common physical features and biological components, or both, as they are cultural characteristics inherited from the place of origin.

**People are divided according to race into:**

- The white race.
- Black or African American race.
- Asian yellow race
- American Indian or Alaska Native.
- Native Hawaiians.
- Arabs.

In fact, this division is not based on a correct basis for the mixing of races so that there is no pure sex, and then all the foundations of segregation and discrimination fall.

However, the division based on the white, black, yellow, and Arab populations has settled in the conscience of the societies. Or on the basis of black Africans and yellow Chinese and Arabs alongside the indigenous population in a country such as Britain (20).

Ethnic affiliation arises from the birth of a person in a specific family in a specific place, so that he carries the genes and features specific to this race alone (21).

In most cases, the difference of race is accompanied by a difference in language, religion or nationality, for each race to be concentrated in a specific place that has been given its nationality.

It can be noted that ethnic groups exist in all countries beside the majority of the population who are mostly united by a general race, for example, the French nation, which belongs to Gaul, yet there are ethnic groups in France from blacks, Arabs, Asians and others (22).

International conventions and declarations of human rights protect minorities from persecution and torture, but it remains governed by the mechanisms of exhausting internal litigation methods and filing a case before the Criminal Court through its three aspects.

This reveals the weak protection established for the rights of minorities and the need to draw up a comprehensive international agreement to protect minorities and establish specialized courts for such cases alongside the specialized international judiciary (23).

**Researcher's opinion:**

No country is devoid of ethnic groups, as there are Kurds in Iraq and there may be Assyrians or other ethnicities, as well as ethnic groups in Turkey where there are Arabs, Armenians and Iranians. There are also Berbers in Algeria. These ethnic groups represent an ethnic minority that needs protection if their rights are infringed.

**Third: Language-based minorities:**

There are groups that are united by ethnicity and language as well, for example, the Turkmen in Iran, the Bolshes and Arabs in southwestern Iran in the region of Ahvas, and the Arab minorities in European countries. As well as the Russian-speaking minorities in Ukraine, especially eastern Ukraine.

The fundamental rule is the necessity of equal and just treatment between minorities and the majority of the population (24).

**The Second topic**

**International protection of minorities**

Protection includes activities aimed at ensuring full respect for these rights in accordance with the letter and spirit of the relevant laws.

Protection also includes the procedures practiced by the specialized organs of the United Nations or what is practiced by the special international protection organs responsible for monitoring the implementation of states' obligations to respect human rights, which were established under the agreements of the specialized international agencies and the agreements that followed the Charter of the United Nations.

For example, the United Nations High Commissioner for Human Rights, who is mandated to submit an annual report on the situation of minorities in the world, and also the sessions held by the United Nations Human Rights Council, as happened in its forty-third session on the violation of human rights, persistent racism and violence perpetrated by the police against African individuals and violence against peaceful protests (25).

Judicial protection has been added to this protection, and it determines the jurisdiction of the primary criminal court for crimes that occur on a racial basis against a particular race, members of a particular religion, or a national linguistic sect, including crimes against humanity, torture and persecution, as well as crimes of genocide and war crimes that occur during military operations.

In addition to the protection provided by the mother country in terms of its movement to help minorities belonging to its race, language or religion.

And then we discuss in the first item the aspects of international protection for minorities and in the second item we discuss the weak international protection for minorities.

### **The First Item**

#### **The aspects of international protections for minorities**

The international legislator did not put adequate protection for minorities, and it can be said that it is verbal protection or verbal protection that depends on condemnation, statement or warning, and it did not go outside the scope of that, and then the hand of the state remained free to strike and persecute whenever it wanted without international deterrent punishment.

Despite the fragility of international protection, given that it is up to the state of nationality to decide the procedure that can be followed, following criticism directed at it by international or regional bodies (26), we will present the aspects of this protection and explain the alternative, especially since the mother state may have to intervene intervention to protect, as is the case in the case of the Russian minority in Ukraine, and the threat to invade Ukraine. Yes, there is the conflict between the West or the NATO alliance that aims to expand, and the Russian Federation is the heir of the Soviet Union and the defender of the Eastern bloc.

Undoubtedly, protection includes individual rights as well as collective rights equally, and whether the minority is completely under the rule of the state or has a kind of independence (27).

On the other hand, the countries of the European Union guarantee protection through institutional agreement mechanisms rather than judicial mechanisms, unlike the situation in the United States of America, where the tool for activating protection for minorities is through the courts.

On the other hand, there is an organic relationship between human rights and the protection of minorities, so that it can be said that the state is internationally legally obligated to protect minorities in its territory as individuals residing in the state's territory, that is, an application and extension of the state's obligation to protect human rights (28).

Protection is established within the framework of human rights through the charter's organs and through the specialized organs. These organs give recommendations to states as directives to achieve pluralism and group treatment. As for the specialized organs, they are made up of independent experts appointed to ensure respect for international conventions on human rights, and periodic examination of reports submitted by States on the implementation of the treaty. The committees advise states on how to implement their commitments.

It should be noted that civil society organizations or non-governmental organizations may provide information to specialized agencies about human rights violations.

On the other hand, there is the basic right established for minorities, which is their right to non-discrimination and non-discrimination against them and their members, whatever the reason behind racism. This implies the minority's right to participate in government and its right to vote and to administer public affairs at any level. The right to benefit from and benefit from public utilities at any level and on an equal basis with all citizens, the majority.

The right to participate in social life and the right of the minority to develop its own affairs.

Therefore, the minority has the right to exist, the right not to be discriminated against, the right to protect its identity, and the right to participate in the state or society in which it lives.

The text of Article 27 of the Charter of Civil and Political Rights establishes her right to assemble and live with her members, her right to her culture, her right to practice her religion, her right to use her own language, and Article 39 of the Convention on the Rights of the Child confirms the same rights. Therefore, every state that is signatory to any of these two conventions has a legal obligation to protect minorities.

The criterion for respecting the right of minorities to exist is according to an objective criterion, and not according to what is declared by the state in which the minority resides. Moreover, the protection granted to the minority is not linked to the nationality of the state, that is, individuals who hold the nationality of the state

are not only granted, but it is for individuals residing on its territory even if they do not have the citizenship of this state.

On the other hand, the minority may exercise these rights either individually or collectively, for example the right to worship in places of worship that bring together all members of the minority or schools that teach the minority language (29).

Therefore, the necessity of protecting the rights of minorities in order to maintain international peace and security and to preserve the identity of minorities that guarantees pluralism and the cultural richness of society, not the isolated and reclusive one-cultural society, and coexistence between the different minority and the rest of the people in peace, cooperation, non-exclusion, non-discrimination and non-discrimination (30).

In addition, the protection of minority rights extends the protection of human rights by protecting the person's entity and protecting his morals.

There is no doubt that this serves the interest of the individual and the state's interest in progress and stability. Therefore, the rights of minorities are not an absurd issue (31), although some countries, especially the arrogant countries, are working to employ them politically to pressure the weak countries.

Therefore, there is a collective right for the minority to protect its existence and protect its cultural identity and preserve it from extinction, and this is guaranteed by international law.

The subjective rights are determined for each individual in opinion in education, coming and going and expression individually, and they reflect the rights of the group individuals (32). It is the customary, linguistic, religious or cultural element that is not shared by the rest of the population of the state (33).

Protection sometimes extends to discrimination based on gender, such as persecuting women and placing them in a lower legal position (34), however we consider excluding this issue from the study of minority rights, because women are half of the society and their numbers are even more than that in many societies, and therefore the targeted protection for them is Social protection and needs awareness and dissemination of education in the state. We will first present the international mechanisms to protect the rights of minorities, then the regional mechanisms.

#### **First: International Mechanisms:**

These mechanisms, as mentioned above, are represented in the framework of the world organization and its organs.

##### **1- Functions of the General Assembly of the United Nations:**

The General Assembly of the United Nations issued the Universal Declaration of Human Rights on December 8, 1948 and it was the biggest gift to the oppressed in the world, and therefore it is the general document establishing human rights, regardless of religion, color, language, nationality or political affiliation (35).

There is a difference in opinion about the extent to which the Universal Declaration is obligatory, but the most correct opinion is that the Universal Declaration of Human Rights is mandatory, as it expresses an actual translation of the Charter of the United Nations, and there is no doubt that this Charter is mandatory (36).

After that, it issued the International Covenant on Civil Political Rights 1966 and the Covenant on Economic and Social Rights, which states have signed, and they became binding agreements.

The two covenants expanded on the articles of the Declaration of Human Rights and turned them into binding legal texts, and stipulated the right of peoples to self-determination and their right to dispose of their wealth (37).

Then the General Assembly issued agreements aimed at special protection for minorities, such as the 1979 Convention on the Elimination of All Forms of Discrimination against Women, the 1989 Convention on the Rights of the Child and the 1999 Convention on the Protection of the Rights of Migrant Workers and Their Families.

In fact, the Charter of the United Nations has entrusted the General Assembly of the United Nations with an important role in developing human rights and working to protect them in Article 3 so that it is based on the development of international law in the economic, educational and health fields and in helping to achieve all human rights and fundamental freedoms, without discrimination between them in terms of gender, language or Religion does not differentiate between men and women.

It should be noted that respecting human rights, respecting minorities, preserving their rights and social peace is the way to maintain international peace and security (38).

Violation of the rights of minorities:

A specific country or group of countries or the Secretary-General of the United Nations or the Security Council may request the General Assembly to examine the violation committed by a minority of the minority, and in this regard it may:



It discusses the matter - conducts an investigation - sends a fact-finding committee requesting the concerned state to provide a statement or clarification on this case. It issues its recommendations for the required action from the concerned country, and if it deems that the matter may threaten international peace or security, it asks the Security Council to meet and take the necessary action (39).

## **2- The role of the Security Council:**

The Security Council is the supreme political and executive authority in the United Nations and the international community, and its main objective is to maintain international peace and security. It deals with minority issues if it comes to a threat to international peace and security.

The Council convened on Sunday, January 31, 2022, to consider the Russian threat to the state of Ukraine, in view of Russia's military readiness to intervene in Ukraine to protect the Russian minority if necessary.

We have no doubt that the Security Council, despite its great importance for maintaining peace and preventing the use of force, is bound by the veto system, meaning the right of each of the five permanent members to prevent the issuance of a resolution by the Security Council (40).

Therefore, the Council cannot work properly and effectively except in the issues of developing countries, without the issues of the Nordic countries, i.e. the rich countries, and this is the dysfunctional criterion of justice.

Yes, the Security Council succeeded in prosecuting violations of the rights of Bosnia and Herzegovina, and in Rwanda, while it failed in Palestine, failed in Iraq, or failed to protect blacks in America itself.

The Security Council can intervene humanitarily to protect the persecuted minority, provide foodstuffs to the needy, or form special courts to try criminals for crimes against minorities.

## **3- The Human Rights Council:**

It was established by United Nations General Assembly Resolution No. 60/251 on March 15, 2006, and its headquarters are located in Geneva, and replaced by the Human Rights Committee. The Human Rights Council reports directly to the United Nations General Assembly and not the Economic and Social Council.

The Council is concerned with working to respect human rights by all countries of the world and to address human rights violations through the reports of its delegates or the complaints of individuals, states or groups.

The Council works in peacetime and in time of war, for example it sent a fact-finding committee during the last Gaza war (41).

On the other hand, international NGOs and local organizations can submit information or complaints to the Human Rights Council.

The Economic Council formed a human rights sub-committee, which in turn formed a team to follow up on minorities' affairs.

The Working Group is the only international forum which is exclusively aware of persons belonging to minorities, accepts representatives of minorities and promotes the Declaration of Minorities, compiling information on problems faced by minorities.

The team makes use of non-governmental organizations and local human rights associations. A report shall be submitted to the Human Rights Council.

On the other hand, the Council submits an annual report to the General Assembly, and the Human Rights Council has the right to form investigation committees and fact-finding committees. The Council forms these committees in the event of a human rights violation, to examine the violation and submit a report on it.

The role of the Office of the High Commissioner for Human Rights:

The General Assembly of the United Nations established a High Commissioner for Human Rights by resolution 48/141, dated December 1993, which is an advisory body that mediates, monitors and writes reports.

It should be noted that there are specialized organizations that aim to protect children's rights, such as the Education and Culture Organization, as well as the International Labor Organization, which calls for the protection of labor rights and the prevention of discrimination between them for any reason other than efficiency at work.

All these organizations were provided with mechanisms to activate protection, but they do not depart from the mechanism of receiving information and complaints, researching them, and issuing recommendations or good offices, but they lack a binding decision.

## **Researcher's opinion:**

Any protection awaits from organs that do not have the power to issue a binding decision, other than condemnation or condemnation, even within the developing countries themselves, if the violation does not threaten international peace and security, then there is silence about this violation.

It is not enough to say that a search is conducted or that information is received or that a complaint is made, but to authorize these agencies the power to impose a penalty, and if the violation is an international crime, they have the right to report to the International Criminal Court. The party from which this violation occurred, whether Russia, China, the United Kingdom or France, as the third world countries have become aware of it to discriminate against them in favor of the permanent members and then lose confidence in the international organization (42).

Let us now consider regional mechanisms to protect the rights of minorities.

### **Second: Regional Protection of Minority Rights:**

The general international protection was disappointing, and therefore we hope that the regional protection will not be on the same level from just a theoretical protection centered on writing a report or receiving a complaint without satisfying the right of the victim or the minority aggressor.

Regional protection can be viewed from several axes, from the European, the American, the African and the Arab, and we will show the most pictures that affect minorities, whether in the Arab countries or African countries.

#### **First: the protection of minorities in Europe:**

Europe is crowded with many ethnic and religious minorities, due to:

Diversity of race and ethnicity in Europe.

- The increase and continuation of migrations to Europe, due to the existence of job opportunities or shelter from persecution and torture (43).

- Europe's control over North Africa and many African and Asian countries, during long decades of enslavement and attrition, which generated a heavy presence of the subjects of the colonial countries in the occupying country to serve the masters, and they continued to do so to this day (44).

Europe has worked to unite within the framework of the European Union, which has been active in uniting European countries and setting directives and regulations to unify laws within the framework of these countries, the most important of which was the European Charter on Minority Rights (45).

However, the twentieth century witnessed the bloodiest violations of the rights of minorities, as Muslims were exterminated in Bosnia and Herzegovina, Kosovo and Chechnya. The massacres were stopped in the first case thanks to the intervention of NATO in the light of the principle of intervention for protection.

The European Organization for Security and Cooperation considers the beginning of the European regulation for the protection of minorities.

In fact, this charter explicitly guaranteed linguistic diversity and the protection of linguistic minorities, yet it was considered the cornerstone of the complete protection of minorities.

The basis of protection was laid by the pan-European organization, the council of Europe, which was established in 1949 and now includes 46 countries, which are almost all of Europe.

The Europeans also rely on the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1961 to introduce the Social Pact along with the European Convention for the Prevention of Torture and Inhuman Treatment of 1987 and the Convention on Human Rights and Biological Medicine 1997. The European Union also issued Directive No. 43 of 2000 issued by the Council on June 29, 2000 related to the application of the principle of equality without discrimination on the basis of ethnicity or race, and Directive No. 78 of 2000 related to equality and non-discrimination in work and wages based on sex, color, religion or political affiliation and setting a policy Resisting discrimination against minorities and strengthening the bonds of belonging among the peoples of the European Union, which includes 450 million people.

Accordingly, the protection of minorities is one of the values of the European community, and the reality is, as some say, that the definition and protection are not agreed upon at the international level (.). Therefore, it is necessary to define the concept of the minority and determine the degree of aggression that justifies protection, and not leave the issue as an excuse to interfere in the affairs of other countries.

An example of Muslim minorities in all European countries, the Russians in Lithuania, Ukraine, as well as immigrants to Europe.

The European Union is working to create a kind of regional citizenship, which means all residents of the European region without regard to any other factor (46).

On the one hand, the European Council set the Framework Convention for the Protection of Minorities without discrimination because of color, gender, or any other reason to apply to everyone who enters the European sphere.

In addition to the judicial protection provided by the Human Rights Court, which is concerned with cases brought by individuals against member states of the Council of Europe, and it issues enforceable judgments. The European Court of Justice also guarantees protection to monitor the compliance of legislation in European countries with European values, foremost of which is the non-violation of the rights of minorities (47).

**Follow-up control:**

The Committee of Ministers shall follow up to respect the rights of the minority and not deviate from them. It shall draw up a report after examining the international reports submitted by the member states.

It relies on European values, the European Charter for the Respect of the Rights of Linguistic Minorities of 1992, and the Framework Convention for the Protection of Minorities, which entered into force in 1998.

Notes :

- 1 - Despite the numerous political and judicial protection tools for the rights of minorities, nearly half of the members of the Council of Europe have not ratified the Charter of the Rights of Linguistic Minorities.
- 2- Some countries are not obligated to respect the rights of religious minorities, especially in Western European countries, where a wave of hostility against the Muslim minority prevails, after the events of September 2001, and the restriction of the freedom of this minority in its dress and the practice of its religious rites.
- 3- The Court of Human Rights and the European Court of Justice remain among the largest institutions protecting the rights of minorities.

**Second: Regional protection of the rights of African minorities:**

The African Charter on Human Rights was adopted in 1981 and entered into force in 1986.

The charter established the African Commission on Human Rights and the African Court of Human Rights.

**A- The African Commission on Human Rights:**

This committee was formed in accordance with Article 30 of the Charter on Human and African Peoples' Rights. It is made up of a member of the candidates from the states parties and they are chosen by ballot by the Assembly of Heads of State and Government for a term of six years.

**The role of the committee in protecting minorities:**

- 1- Receiving complaints from countries, NGOs and individuals and examining these complaints.
- 2- It may ask the states to repair the damage caused and to take temporary measures.
- 3- It collects information and documents about the actual violation and may conduct an inspection or send a fact-finding committee.
- 4- An amicable settlement shall be made. If an amicable settlement is not reached, the committee shall submit a report to the Conference of Presidents.

**B- African Court of Human Rights:**

This court is one of the achievements of the Charter of Human and African Peoples' Rights, and the African Court of Justice has been merged into it so that it has jurisdiction to consider:

- 1- Violations of human rights and minorities, before which the lawsuit filed by the victim directly, by non-governmental organizations, or by the state of the victim is accepted.
- 2- It is concerned with examining disputes between states about human rights violations or other disputes between states.
- 3- Since 2014, it has played the same role as the International Criminal Court, i.e. prosecuting the perpetrators of international crimes of genocide, crimes against humanity, war crimes and crimes of aggression.

In fact, the complaints of individuals and non-governmental organizations are not acceptable unless the state complained against submits a statement that it accepts the jurisdiction of the court to examine this case.

**Researcher's opinion:**

We see that this restriction paralyzes the hand of the individual and detracts from his judicial capacity and places the neck of the victim at the mercy of the offender. How can we accept that the state against which the defendant is accused authorizes the jurisdiction of the court

, And if the African Human Rights Commission accepts an individual complaint without the consent of the state complained of, then why this retraction?

Therefore, we call on the African Union to lift this restriction immediately, to activate the protection afforded to the individual. As well as giving the court the right to adjudicate international crimes is an important matter and eases the burden on the International Criminal Court, and reduces the accusation of the Court of lack of independence and inadequacy by two standards, but will the regional court succeed?

Therefore, the court is transformed from a people's court to a court of states only, and therefore there is little protection for the rights of minorities or the rights of peoples (48).

Let us now consider the situation in the Arab countries under the Arab regional system.

### **C- The Arab Regional System and the Protection of Minorities:**

The Arab League established a Human Rights Committee in 1968 whose mission is to receive complaints about human rights violations and gather information about them.

An Arab Court for Human Rights was established in 2004 AD. The establishment of this committee and that court was based on the Arab Charter on Human Rights signed in 1994, which was prepared by the Arab League Council. This charter entered into force in 2008.

He assisted in preparing the charter for the United Nations High Commissioner and many international and regional organizations. Countries submit an annual report on the implementation of the charter to the follow-up committee.

The system of the Arab Court of Human Rights has not yet been ratified. On the other hand, the parties to the lawsuit are the states only, and therefore the individual does not have the right to resort to the court except through his state against the state from which the violation occurred.

Only the concerned state, whether it is a plaintiff or a defendant, may grant the right to file a lawsuit to an international non-governmental organization operating in the territory of the state (48).

The researcher's opinion: 1 - The Arab system is still a minor one that has not developed clear texts to protect the rights of minorities, and this is due to the dictatorship that controls the Arab countries.

2- The individual does not obtain his rights in the state of his nationality or in the state of his residence.

#### **The second item**

##### **Weak international protection for minorities**

The theoretical reality determines that the law determines protection for the individual, whether at home or abroad, by domestic or international law. However, public international law has not established sufficient guarantees to protect these rights. The individual is still not a maker of this law. Rather, it is a law made by states and individuals do not participate in its manufacture. .

The limited procedural capacity granted to an individual is a capacity granted by states and based on their will. It is noticeable that international law did not reach a definition of a minority, and did not agree on the level or situation in which there is an attack on the rights of the minority. The case of the violation of the rights of the minority remained until the chances of determining it were a realistic matter that was left to the discretion of each country separately.

Also, the rights of minorities, there is no agreement on their identification and suitability, then, it is noted that the rights of minorities have been absorbed by the general concept of human rights, and attention to individual rights and freedoms is more than interest in collective rights.

In addition to the fact that the current international law is not the best way to protect minorities, as this protection is the protection of reports or the protection of sympathy, if we may express it, and the committees called the Human Rights Committee at the international level are deficient, just to give the victim the opportunity to announce his tragic events, and tell the world He had violated his right.

The situation at the regional level, with the exception of the European organization, is much worse, where the right to complaint is restricted or the complaint is to the committees only, and the individual does not have the right to file a case before the human rights judiciary except through the state of nationality, and it will think a thousand times not to file this case, and the assault may be reality of it.

The importance of international law defining the minority appears, as the state or group of states may refuse to give a particular group the description of the minority, and thus deny the occurrence of an attack on it (49 ).

It remains the only effective procedural protection represented by the International Criminal Court, which is competent to consider international crimes committed by individuals, whether they are leaders, soldiers or officers, against minorities in the form of genocide, humanitarian crimes, war crimes or crimes against humanity and the crime of aggression.

The role of the individual remains limited in the possibility of filing the case directly before the court, especially since the role of the court is a reserve role and not an original role, meaning that the court does not have jurisdiction unless the country of nationality or the countries where the act occurred are not serious about prosecuting the perpetrators or they have been sentenced with simple rulings.

Therefore, the role of international criminal protection remains weak in terms of:

The role of the individual is limited to complaining to the public prosecutor himself, or through a non-governmental organization, or through his country.

- Or the matter is referred to the court by the Security Council if the situation is a threat to international peace and security.

- We know the difficulty of reaching a decision within the framework of the Security Council, when the approval of the permanent members is required, or the non-opposition of a country to the issuance of the decision, and it is sufficient to abstain from voting.

- We therefore need an international judiciary with original jurisdiction over an individual's claim without waiting for the internal litigation methods to be exhausted.

We also note that the international conventions that protect the rights of minorities at the international level lack a mandatory mechanism, as it is just the United Nations declaration of the Charter of Minority Rights, and not in the form of a binding international agreement.

The Universal Declaration of Human Rights was satisfied with the general protection of human rights, and therefore there is only one text that can be used as a reference in international covenants, which is Article 27 of the Charter of Political and Civil Rights of 1966, previously mentioned (49).

On the other hand, states protect the minority under the pretext of protecting the national territory, not interfering in its affairs and not being bullied abroad (49).

### **The position of the mother country:**

There are linguistic minorities in European countries such as Latvia, where the Russian community represents 26% of the population (50).

Also, the Russian minority amounts to about a third of the population of Ukraine. Hence, the lack of respect for minorities pushes the mother state to intervene to protect these minorities, and this intervention is carried out under other pretexts, which is to protect the state borders or the national security of the Russian state.

Ukraine is located in Eastern Europe, bordered by Russia to the east, without Russia to the north, Poland, Slovakia and Hungary to the west, Romania and Moldova in the southwest, and the Black Sea and Azov Sea in the south.

The Russian minority in Ukraine is the largest minority and the largest expatriate community in the world, about eight million people, representing 17.3% of the population of Ukraine.

Russia considers Ukraine as part of the Russian Empire and was called Malorssiya or Little Russia, meaning that it was a small member of the empire, and the tsars aimed to erase the Ukrainian language and Ukrainian culture.

In the Middle Ages Ukraine was part of Russia and there is a statue of Vladimir mentioning that he is the ruler of Russia and Ukraine residing in Moscow. Russia in 2014 invaded Ukraine and annexed the Crimea region and looked to the Denbas region. The Crimea and Dinas are home to the Russian minority.

Putin's philosophy is based on the world of Russia to the effect that the Russian civilization extends where the Russian ethnicity and race live, and the Russian state has the obligation to protect and defend the Russians wherever they are.

Russia has armed pro-Russian Russian-speaking separatists in Ukraine's Donsk, Donfsk and Luhansk regions since 2014.

Thus, Ukraine falls between the attractiveness of Russia's world and the attractiveness of Western influence seeking to expand NATO by including Ukraine.

Ethnic tension indicates the melting of Ukraine into the Soviet Union since 1922. The Stalin famine of 1932-1933 occurred in Ukraine, which killed nearly four million Ukrainians. In eastern Ukraine. The famine was known as the Holodomor, and it caused the Russian minority to move to the rest of Ukraine, especially the Denbas region, which is the heart of industry in Ukraine.

All Ukraine's regions began independence from the Russian Federation in 1991, and the Russian minority was considered part of this state.

The Russian minority lived in peace until 2010, when a citizen of the Donetsk region took over the presidency, who declared that he preferred the Russian affiliation, unlike the following presidents who preferred to join Europe.

Ukraine signed an association agreement with Europe in 2013. As for the Ukrainian president, he joined an economic union with Russia, and popular protests erupted to overthrow him.

Russia's seizure of Crimea (50). The main pretext was to protect the ethnic Russian minority living on the peninsula.

The separatists in eastern Ukraine seized several cities, and the Russian-speakers did not support entering the Russian influence automatically, at the time when they were offered Russian citizenship.

Accordingly, we will discuss the following topic: the protection of the Russian ethnic minority in Ukraine.

### **The second topic**

#### **Protection of the Russian ethnic minority in Ukraine**

Ukraine is a multi-ethnic country, with a population now of 51 million, including 11.5 million Russians, half a million Jews, half a million Belarusians, half a million Moldovans, Bulgaria, Romania and Poland. Despite the plurality of minorities, they are associated with the state and the majority of the population in Ukraine.

Ukraine's leaders have called for equality, renunciation of hatred and non-ethnic discrimination.

Also, the 1990 Ukrainian Declaration of Independence stipulated respect for the rights of patriots in Ukraine without discrimination and equality before the law.

The Constitution also stipulated respect for the rights of minorities, as well as granting citizenship to all residents of Ukraine at the time the law came into force.

The Language Law of 1989 allows each ethnic group to use its own national language.

The Equal Nationality Declaration of 1991 stipulated equality in the economic, political, social and cultural rights of all citizens.

The National Minorities Act of 1992 also stipulated the right of non-Ukrainian minorities to use their own language, such as the Ukrainian language.

However, the economic crisis showed inequality in economic rights, the government's failure to provide support to ethnic groups, a shortage of teachers to teach minority languages, difficulty in carrying out cultural activities for the minority, and a lack of funds to spread their culture in the mother tongue.

The All-Ukrainian Congress called for increasing support for minorities and appointing a Minister for Minority Affairs in 1993.

The 1993 US Congressional Report commended the treatment of minorities in Ukraine (51).

He was appointed Minister of Minority Affairs for the year 1993. It also called on the parties to protect minorities and respect their rights, except for the Kharkiv party, which called for the expulsion of minorities and rejected a united Ukraine, and considered the Russian and Jewish minorities responsible for the economic troubles. As well as the Organization of Ukrainian Patriots has called to Ukraine for patriots only and not for minorities.

#### **Dominance of the Russian language:**

There are 59.5 Ukrainians who speak Russian while 13% of the population consider it their mother tongue.

Added to the bad relations between the Russian minority and the Ukrainian nationalists is the bad relationship between the Russian Orthodox Church and the Catholic Church in western Ukraine.

And the number of Russians in the western part of Australia is only 7%. In fact, despite the problems between the Russians and the Ukrainians, the situation is normal, with the exception of the Crimea.

On the other hand, a large number of Ukrainian immigrants live in Russia in cities, and they have a reasonable social status.

In fact, racial discrimination against the Russian minority was only observed in the Crimea and the western part of Ukraine.

It is also noted that the Russian minority has complained of the attack on the Russian language and considering it a second language in education and not a first language, which threatens the national identity of the minority.

Thus, parents were deprived of choosing a language for their children.

In addition, the number of newspapers printed in Russian reaches one hundred thousand newspapers out of seven hundred Ukrainian publications.

Tension has increased recently, Russia has mobilized more than one hundred thousand combat soldiers with thousands of war pieces, Ukraine has mobilized its NATO-backed forces, and American forces have flocked to Romania near Crimea, as well as by the French and English, which portends a global war at the door, or at least the return of not only The Cold War, but a limited global war, therefore we discuss in the first item intervention in the name of protection and in the second item Russian intervention in Ukraine and its relationship to the responsibility to protect.

#### **The first item**

##### **intervention to protect**

Some countries may accept the stage of failure where crimes, violations, arms circulation and internal fighting spread, and then the rights of minorities are violated or exterminated ().

The International Committee on Intervention and State Sovereignty called at the second millennium meeting at the United Nations to develop global consent and consensus on the necessity and legitimacy of intervention against a state that fails to protect its nationals or residents of its territory and who are vulnerable.

I have called this principle my responsibility to protect.

This was already applied through NATO's operations in Kosovo in 1999. So, the sovereignty of the state over the region is conditional on respecting a certain level of human rights, ie respecting the dignity and all rights of the people.

The principle of the responsibility to protect appeared in 2001 within the framework of the United Nations and was supported and endorsed by the document issued by the 2005 World Summit.

Sovereignty of the state means non-interference in its internal affairs, and it also means the state's ability to protect its people. If it is proven that the state has failed to protect its people, the international community has the right to intervene to protect the civilian population, victims of genocide, war crimes, crimes against humanity, ethnic cleansing, and this intervention that Commanded by the Security Council may take the military form provided for in Title VII of the United Nations Charter, diplomatic endeavors, or humanitarian aid (51).

The military intervention was implemented to enforce the responsibility to protect in Libya in 2011, following the killing of demonstrators in the revolution against the former regime.

The Security Council began with the resolution that called on the Libyan authorities to exercise their powers to protect their people and to immediately stop the use of force. The second resolution No. 1973 gave member states the right to intervene and use all necessary measures to protect the civilian population, and established a no-fly zone.

In fact, the responsibility to protect is different from humanitarian intervention, as the situation that requires humanitarian aid and assistance has aggravated and the disaster has occurred, and the responsibility for control and prevention has failed, so the responsibility to protect begins, that is, to remove the damage caused and to prevent bloodshed and damage, even by armed force, meaning that military intervention is the last solution. The justification is humanitarian rescue and not for personal political purposes.

There is a justification for humanitarian intervention, the increase in the number of dead people dramatically, whether with the intent of genocide or unintentionally, as the failure of the state may be the result of neglect, inability, failure, or a state of ethnic cleansing on a large scale, which is carried out by killers, or forced expulsion, terror, intimidation and rape.

As well as crimes against humanity and violating the laws of war as stated in the Geneva Conventions, the collapse of a state leaving the people vulnerable to starvation or civil war and unusual natural or environmental disasters if the concerned state cannot face that and ask for help and there were many deaths that occurred or could occur.

Therefore, military intervention is justified and legitimate if it leads to the elimination or avoidance of human suffering (51).

Therefore, it does not justify the intervention to modify the borders or to support the right of self-determination or to change the system of government in a state or a minority.

So, sovereignty has come to mean responsibility and not absolute sovereignty, as the state monitors what it does with its people, whether it treats them well or leads to bad torment ().

On the other hand, the use of force is not free, but it must be done through the Security Council, in accordance with the Charter of the United Nations, which is the only body authorized to take this decision (51).

Based on this, the sovereignty today is the sovereignty responsible for protecting the people from the aforementioned comprehensive mass crimes, and the state cannot get rid of this responsibility by claiming its inability or unwillingness, as the international community is responsible for protecting the people of the state, and it is a precautionary or complementary responsibility (51).

#### **Researcher's opinion:**

There is no doubt that there has been an amazing development in the effectiveness of international human rights law and international humanitarian law. Hence, if the state fails to protect its subjects, including the majority and minority population, the role of the international community comes to carry out this protection by itself.

There is a violation of the principle of state sovereignty, not compromising its territorial integrity and independence, and non-interference in its internal affairs.

However, a departure from this principle may be made by the Security Council or by the General Assembly of the United Nations, in accordance with the decision of the Union for Peace.

Yes, there is a lack of credibility in terms of:

That the responsibility to protect existed to deal with African affairs only without declaration, and it does not apply in Asia or Europe.

#### **The second item**

### **Russian intervention in Ukraine and its relationship to the responsibility to protect**

The national state is obligated to protect the rights of its nationals, with its obligation to respect these rights in accordance with its internal laws and international authority, which imposes on it an international obligation accompanied by executive power to compel it to respect these rights if it fails to do so.

Hence, these rights are protected by international law, and this force is erga omnes, that is, it is absolutely authoritative in the face of all, and then if the state violates human rights, then this issue, if it is dangerous, leaves the national space and enters the responsibility for protection ().

The intervention takes the form of humanitarian assistance, such as the United Nations General Assembly resolution in 1988 and 1990 to assist the population in the event of natural disasters and other similar situations Resolution No. 43/131 of 8/12/1988 and Resolution 45/100 of 14 December 1990.

We note that the role of the national state should be the first role in saving its citizens, then comes the role of humanitarian actors from international governmental organizations, states and non-governmental organizations.

This decision is at the stage of forming an international custom, and the concerned state cannot refuse impartial and impartial humanitarian assistance.

Resolution No. 62/92 issued on December 17, 2007 is a reiteration and confirmation of that.

The principle of the responsibility to protect permits military intervention, and Britain relied on it to justify its intervention in Iraq ().

Russia has also invoked this principle to justify the intervention in Georgia, and it is invoked today to justify the intervention in Ukraine to protect the Russian minority.

#### **The responsibility to protect is the last line of defense.**

He opened the door to Satan through this dangerous principle, and thus the strong interfered in the affairs of the weak and imposed his agenda by force, claiming that he intervened to protect the people against the unjust authority.

Therefore, this principle is conditional on that the last line of defense be a le dernier resort, that is, if all available means and means fail to protect the population and solve the problem, the international community will have no choice but to intervene militarily.

So, the Security Council can open an investigation before that, or send a fact-finding commission or send a special rapporteur to the region. On the other hand, the Security Council must authorize the military intervention or carry it out by itself in accordance with Chapter VII of the Charter of the United Nations.

Hence, any action outside the Security Council is an illegal procedure, so if the permanent members refuse, the General Assembly of the United Nations will resort to it.

So, despite the welcome and acceptance of the principle of the responsibility to protect, which came after the massacres in Bosnia and Herzegovina, Kosovo and Rwanda, as a result of the pressure of international and local public opinion to emphasize that sovereignty in matters of minorities is just hypocrisy.

In fact, minorities are concentrated in Eastern Europe in Germany, Poland, Ukraine, Hungary, Slovakia and Albania, beside minorities in the Middle East and Africa.

The military intervention is not unanimous, as the intervention in Kosovo, Bosnia and Herzegovina and Libya was unanimous in the West and rejected by Russia, China and India.

Hence, Russia has rushed its forces to achieve the following goals:

- Protecting its eastern borders from NATO weapons that are ready to launch from Ukraine.
- Access to the Black Sea and its right to navigate and be militarily present in it.
- Securing Russian minorities in Crimea, Banas and other Russian-speaking regions.

But the question remains, is there an application of the principle of the responsibility to protect?

In fact, the Russian minorities were not subjected to genocide, crimes against humanity or ethnic cleansing. There may have been calls for the Ukrainian language and Ukraine to be given priority to Ukrainians only, but they did not have a serious impact.

So why this invasion?

Rather, the issue is a matter of entering into the balance of power between the East and the difference between the Western forces of evil led by America, and between the terrified Russia, which has tasted the bitterness of the invasion.

And in the face of the Western rush and its feverish pursuit of possessing the world and annexing Ukraine, the clash is inevitable, and therefore the solution is not in the responsibility to protect, but in resorting to the United Nations General Assembly and concluding a non-aggression treaty between Russia and Ukraine and Russia's neighbors, and pledging not to give facilities to the NATO forces. NATO, thus defuse the war.



Has the principle of the responsibility to protect become a customary rule?

The customary rule means the general acceptance of the announced, continuous and permanent behavior and its application for a long period without opposition, with the emergence of a feeling of obligation to this behavior.

Accordingly, the principle of the responsibility to protect does not create an obligation on the international community, and if the international community does not intervene, it is not responsible (52).

That is, this principle is just a rule of conduct or a mechanism of action to be followed that can be the beginning of the formation of customary law.

So this rule of soft law, and this soft law is not binding and expresses the need for a more specific written formulation in the form of an international treaty to which all states are bound.

It defines cases of intervention by the Security Council, cases of intervention if the Council is unable, cases of urgency that require rapid action, and the extent of the eligibility of affected individuals or countries to request intervention.

Accordingly, the principle of the responsibility to protect is a soft law or a quasi-law or the beginning of a law. We have not yet reached an international obligation to intervene for protection, because the existing mechanism lacks a legal sanction that can be applied if the intervention is not taken. All there is is pressure from world public opinion and pressure groups from the international civil society, ie international non-governmental organizations.

And if international responsibility is absent, there will be no international law. Responsibility is the other side of international law. Responsibility, then, is the key to the legal system (52).

However, others believe that the responsibility to protect remains with them and in particular the responsibility is for states to maintain peace between opponents without being linked to a mistake made by states, but an obligation to perpetuate and maintain peace (52).

So this view is an attempt to keep the state responsible for maintaining peace and its permanence and responsible for protection without acknowledging the existence of a penalty to be imposed on it.

In all cases, we cannot say that there is a state's responsibility unless it is an illegitimate event, such as the states that impede the issuance of a decision to intervene militarily against a state responsible for crimes against civilians, as is the case for the United States and Britain to address pathological diarrhea in the use of the veto to protect the Israeli aggressor.

Whatever the case, what is certain and absent from dictatorial regimes is that the state was created for the sake of the individual and individuals and not the other way around. The goal of the state is to protect the people and not to crush the people, as is the case in the countries of the East, where the armies and the civil police were prepared to suppress the people and flay them, and then all the measures taken by the international community to protect the people are legitimate, and it is the secret of the state's existence.

In all cases, the state of nationality or the state where serious crimes were committed shall remain fully responsible and shall be questioned internationally and criminally responsible for why it allowed these crimes to be committed.

Evolution remains the transformation of international human rights law from mere declarations and directives to peremptory texts with international enforcement, which the international community must take the initiative to protect.

#### **Our own opinion:**

The international custom needs a long time to form, and we do not know what is needed in light of the texts represented in the Charter of the United Nations, General Assembly resolutions, and the 2005 International Summit Resolution, which decides to activate the responsibility to protect, especially since the international community plays a backup role.

We are, therefore, facing a new era to protect individuals and peoples, and all we need is for the Security Council to use one standard.

The rulers of Africa, Asian countries, Latin America and some Eastern European countries must realize that sovereignty is not a luxury and without restrictions, but rather a function that must be performed, which is to protect the people.

We note that the failure of the Security Council to implement Chapter Seven when its conditions are met is a mistake or omission that complicates its responsibility, and it has to raise this problem before the General Assembly of the United Nations, or before the International Court of Justice by holding the responsibility of the abusive countries to use the veto.

If the council takes the decision to intervene and limits the countries to which it is entrusted with this intervention, it will be directly responsible for this mistake.

It should be noted, in this case, the responsibility is the responsibility for the risks and not the responsibility for the error.

#### **Russian intervention lacks legitimacy.**

We have presented the conditions for implementing the responsibility to protect, which is the failure of the state responsible for protecting its citizens in the face of serious crimes of genocide, crimes against humanity and crimes against international humanitarian law during wartime. All of this does not exist.

So what is the justification?

Russia works to achieve its interests in the expansion of security and the removal of NATO from its borders, and then it seeks, if necessary, to occupy all of Ukraine and to include all the Russian-speaking regions to it, not just the occupation.

Russia ignores international law if it stands in the way of achieving its interests.

Accordingly, the primary goal is not to protect Russian minorities but to increase and strengthen Russia's national security. Russia has surrounded two-thirds of the Crimean beaches overlooking the Sea of Azov.

Russia also believes that some of the territory of Ukraine is Russian territory, and Russia has claimed the existence of genocide crimes in the Donbas region, which gives Russia the right to protect its nationals abroad, even by using armed force.

In all cases, if the intentions are good, the General Assembly of the United Nations must meet immediately and intervene in the name of the Union for Peace, and call for the determination of the fate of the regions in dispute with a Russian majority, in order to avoid a war whose extent no one knows, and which could turn into a nuclear war.

#### **4. Conclusion**

After examining the protection of minorities in international law and its application to the Russian intervention in Ukraine, we make the following observations:

1 - International law did not define minorities nor the required level of protection, and therefore this is left to jurisprudence through the circumstances of each case separately.

However, it is agreed that a minority is a group of individuals living in a country, whether it is a national or a foreign national, distinguished from the majority of the population by religion, language, ethnicity or culture. Moreover, the assault on this group must be grave and dangerous, reaching the point of religious or social persecution, ethnic cleansing or racial segregation.

2 - The protection of minority rights has diminished in light of the growth of human rights. Nevertheless, the twentieth century witnessed the most heinous massacres against ethnic or linguistic minorities, and religious minorities were subject to extermination in Myanmar and China, and the world has not moved so far.

3- International minorities are protected through the mechanisms of the Security Council, the General Assembly of the United Nations, the Economic and Social Council and the Human Rights Council.

These mechanisms depend on annual reports and complaints submitted by individuals or international non-governmental organizations and only result in sending a commission of inquiry, fact-finding or a delegate to a particular region with condemnation to the responsible state.

The Security Council does not act unless the violation reaches the level of serious international crimes, with a fundamental flaw, which is the right of veto.

4 - We have noticed that regional protection is effective at the European level, as the individual has legal capacity and can file a case before the courts of the European Council, the Court of Human Rights or the International Court of Justice, and he can submit a complaint to all responsible bodies.

As for the African regional level, it has dead texts that need to activate the already existing organs such as the Human Rights Commission, the African Court, a Human Rights Court, an African Court of Justice and an African Criminal Court.

As for the Arab level, the missing thing does not give him, how does the wolf protect the sheep, that the Arab rulers are the ones who enslaved the Arabs, and trampled on the necks of the mortal Sheikh, the developing young man, the woman and the child, and then found weak and soulless devices, we call on the Arab peoples to unite and force their rulers to transform democracy, and thus provide full protection for minorities.

5- We applied this protection to the Russian minorities, and in light of the failure of international protection, is it possible to apply military intervention or the responsibility to protect?

We have seen that the responsibility to protect is an obligation on the state to protect its nationals, and if it refrains from that, the obligation is transferred to the international community.

We have observed the Russian intervention in the state of Ukraine under the pretext of protecting the Russian minority in eastern Australia, and the possibility of a war that may quickly turn into a confrontation between the West and the East.

We believe that this problem does not find a basis for it to intervene for the sake of protection, and the international system should intervene and implement the right of self-determination.

## 5. Recommendations

1- We recommend the necessity of developing a comprehensive and comprehensive definition of the concept of the minority and the assault on it.

2- The world needs to draw up an international convention to determine the degrees of protection that minorities deserve and to prevent their extermination or their integration into the majority, provided that the texts are detailed, the serious assault and the very serious assault are explained, and the establishment of regional courts to settle minority disputes.

3- The Western world needs a democratic transition and the development of a comprehensive charter of human rights and mechanisms for the protection of individuals and minorities, compulsorily, and granting full eligibility to an Arab or resident in the Arab world.

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