

Role of International Conventions in Protecting Minorities Rights: A Critical Analysis

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Abstract

One of the first issues in international law is the protection of minorities. Discrimination, oppression, exclusion, and identity denial are the main causes of the minority issue. Additionally, they are forbidden from actively participating in political and public life. States have developed various mechanisms to manage these minority-related challenges both on their own and as members of the greater international community. It's possible that the defense of minority rights has never been more important. This paper aims to comprehend the current status of minority rights under international law. In order to achieve this, the introduction will offer a fundamental framework for understanding minorities in general as well as a perspective on the system of international law. The first half of the main section will include a historically shifting historical perspective on politics, statutes, and legal frameworks as they relate to minority protection. This research paper aims to shed light on the necessity of minority rights by analyzing the historical development of minority rights under international law.

Keywords: minority, mechanisms, framework, fundamental

Introduction:

A fundamental component of democratic government and the advancement of human rights in contemporary democracies is ensuring the protection of minority rights. A number of international accords, including the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities (United Nations, 1992), uphold this idea. In cultures where the religion or ideology of the majority significantly impacts public discourse and official policies, religious minorities in particular frequently confront considerable difficulties.¹ There have been reports of minority genocide even in today's world.² The defence of minority rights is now a crucial sign of a country's commitment to social justice, democracy, and human rights. Protecting minority rights is not only required by law but also essential for preserving social harmony and political stability in pluralistic countries where various ethnic, linguistic, and religious groups coexist. A state's capacity to meet the interests and rights of minority groups is indicative of its larger dedication to justice and inclusivity.³

The United Nations (UN) estimates that between 10 and 20 percent of people worldwide are members of minority groups, notwithstanding the lack of precise numbers. Minorities are typically among the most marginalized groups in society, and their members frequently face injustice and socioeconomic discrimination.

¹ Aftab Alam, "The Concept of 'Minority' in International Law", Vol 54, *Indian Journal of International Law*, 92-124 (2014).

² Vallabha Gulati "Minority Rights under International Law towards Participatory Equality" Vol 3, Issue 5, *International Journal of Law Management & Humanities* (2020).

³ Patrick Macklem "Minority rights in international law" Vol 6, Issue 3-4, *International Journal of Constitutional Law*, Pages 531–552(2008).

Their rejection of dignity, identities, and cultures is frequently coupled with their exclusion from positions of authority. Additionally, they are not allowed to actively engage in political and public life.⁴

MINORITY RIGHTS' ORIGIN:

One of the initial concerns in international law has been the protection of minorities. The 1648 Treaty of Westphalia, in which the State parties committed to safeguard the rights of certain religious minorities, is at least where the international protection of minorities can be traced. Minority rights were also somewhat addressed at the Congress of Vienna in 1815. The Treaty of Berlin in 1876 acknowledged the customary rights and freedoms of the Mount Ethos religious minority in Greece. Additionally, protections for the Greek and Turkish minorities were included in the 1879 Bulgarian Constitution. Article 19 of the Austrian Constitutional Law (1867) guaranteed ethnic minorities the right to preserve and develop their languages and nationality. Hungary's Act XLIV of 1868 and the Swiss Confederation's Constitution of 1874 provided the three languages equal privileges in civil services, legislation, and courts. Post-World War I peace treaties emphasized minority rights. The five conventions between the allied and associated powers and Poland, Czechoslovakia, Romania, Greece, and Yugoslavia protected minorities. Albania, Finland, and Iraq pledged to protect their minorities, while Austria, Bulgaria, Hungary, and Turkey included special provisions in their peace accords. Article 27 of the Universal Declaration of Human Rights guarantees the right to community, including the freedom to enjoy one's own culture and participate in cultural forums, associations, etc.⁵ Based on the previous explanation, minority rights emerged in the latter half of the eighteenth and nineteenth centuries.

NEED FOR PROTECTION OF MINORITY RIGHTS:

Compared to minorities, majority communities dominate socio-economic and political power in most multi-ethnic nations. Minorities are typically sidelined from decision-making and power centres, compromising their identity and rights. Minorities face official and private discrimination due to their inferior position. Today, minorities' identities are threatened. Thorn berries say minority culture, history, and customs are “distorted representations, producing low self-esteem in the groups and negative stereo types in the wider community” in several states.⁶

Some of the minority problems include:

- Discrimination
- Exclusion of power
- Oppression and persecution
- Threat to identity

Minorities need special status and protection to ensure they have the same rights and protection as the majority in any society due to their vulnerability. These facts have led to an international and national agreement that minority populations need particular rights and protections to avoid oppression, persecution, and forced

⁴ Li-ann Thio, “Battling Balkanization: Regional Approaches toward Minority Protection beyond Europe” Vol 43, *Harvard International Law Journal*, 410 (2002).

⁵ Faizan Mustafa, “The Constitution on minority rights” *The Hindu*, Dec. 18, 2024, available at: <https://www.thehindu.com/news/national/the-constitution-on-minority-rights/Article 68995551.ece> (last visited May. 18, 2026).

⁶ Aftab Alam “Minority Rights Under International Law” Vol. 57, No. 3 , *Journal of the Indian Law Institute*, 376-400 (2015).

assimilation. Some situations require unique affirmative steps in their Favour to achieve actual and meaningful social equality. In *Minority Schools in Albania Case* (1935), the PCIJ argued that there would be no true equality between a majority and a minority if the minority were given its own institutions and forced to renounce them. The PCIJ further emphasized that minority rights go beyond anti-discrimination goals and strive to preserve minority features.

The Concept Of Minority In International Law:

There's no international definition of minorities appears. It is often stressed that the existence of a minority is a question of fact and that any definition must include both objective (coexisting ethnicity, language, or religion) and subjective (individuals must identify as minority members). International law does not define "minority". It usually refers to a group of people with unique traits like ethnicity, religion, or language who live together in one country. The multitude of minority situations makes this concept difficult to define, as some live in isolated places while others are spread over the country. Some minority have a strong sense of group identity and recorded history, while others have just a fragmentary heritage.⁷

In Article 1 of the 1992 UN Declaration on Minorities, the UN Declaration on Rights classifies minorities:

"Countries shall, within their respective territories, protect the existence, national or ethnic identity, cultural, religious and linguistic identity of minorities, and create conditions conducive to the promotion of such identity".

The 1993 Council of Europe Vienna Declaration on the Protection of National Minorities in European Countries defines national minorities as:

"Groups that have become minorities within the borders of the country as a result of historical events against their will, and the relationship between such a minority and the country is a permanent relationship and its citizens are citizens of this country".

The nine Articles of the United Nations Declaration on the Rights of Persons Belonging to National, Religious, and Linguistic Minorities stressed the significance of protecting minority rights and equal rights with the majority, even though the document was quiet on the definition of minority.

Politically speaking, a minority is defined as a group whose members are conscious of their distinctiveness in comparison to others due to political, social, and economic discrimination, and who share one or more cultural or natural elements or a number of interests that are institutionalized by specific organizations and patterns of interaction.

The aforementioned makes it evident that it is challenging to define the term "minorities" in its entirety; yet, the international community has established a set of prerequisites for any definition of the term.

1. Standard number: Minorities are fewer than the majority population, but in some cases, no majority group is represented and the minority has enough members to develop its own identity. No minority, no matter how small, should be discriminated against and must have international safeguarded human rights.
2. Non-domination: The minority must be non-dominant to be protected. Not all dominant minorities need protection. As in Syria, where the Alawite minority holds prominent posts in the army, security services, and state institutions, certain powerful minorities violate equality and commit discrimination.

⁷ Maarji-Uddin, Qazi Mohammed "Minority Rights in International Law: Problems and Perspectives" Vol. 8, Issue. 1, *National Law School Journal* (1996).

3. Different ethnic, linguistic or religious identity: Minorities have ethnic, religious, or linguistic differences from the majority of the State's population, and they shared citizenship.
4. Individual minority views: Members of minority groups can express their identities in two ways: either by participating in the group to which they belong, expressing their national desire to maintain their identity, or expressing their identities by deciding whether to integrate into the majority or remain a member of the minority. While some minority members Favour separation and autonomy, others Favour integration.

A minority is defined as a non-dominant group of state residents who are typically smaller in number, have distinct ethnic, religious, or linguistic traits from the majority of the population, are conscious of their unique identity, and are prepared to establish it. They strive for substantial and legal equality of rights with the majority, encourage one another, and share a desire to survive.⁸

Generally speaking, the minority is a vulnerable group that has to be protected and have their rights privatized in a way that preserves their uniqueness from the majority. Their capacity to compete with powerful groups in society is often hampered by their social and political weakness and marginalization, as well as the loss of their civil, political, social, and economic rights.

The Evolution of International Law Pertaining to The Rights of Minorities:

The League of Nations' peace accords after World War I were the first systematic, comprehensive endeavour to protect minorities internationally.⁹ The League of Nations system established legally binding minority protection laws through international treaties enforced by the League Council and adjudicated by the PCIJ. A brave and initial experiment, this system improved on the prior system in substance and guarantee. But it was far from flawless. It has major drawbacks. It covered only peace treaty-obligated states. The system prioritized peace over minority protection. The system was discriminatory since major countries like Germany, Italy, and others did not promise to giving their minority the same rights. The League of Nations framework inspires today despite its flaws.

First human rights instrument was the Convention on the Prevention and Punishment of Genocide, adopted one day before the UDHR. It integrates minority rights like the right to exist without directly addressing minorities. Article II of the Convention criminalizes "acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such." Lack of effective enforcement is Genocide Convention's worst flaw. The first permanent International Criminal Court at The Hague was established in July 2002 after 60 ratifications of the Rome Statute on International Criminal Court (as of 1 June 2015, 123 States had ratified it). Genocide, war crimes, and crimes against humanity will no longer go unpunished. Article 1 (4) of the International Convention on the Elimination of All Forms of Racial Discrimination (1965) benefits racial minorities, while the UN Declaration on the Elimination of All Forms of Intolerance and Religion or Belief (1981) benefits religious minorities.

The UN replaced the League of Nations immediately after World War II. However, it approached minority rights differently than its predecessor. The UN showed little interest in adopting the league's minority protection mechanism or developing its own for a long period after its inception. The UN chose to create a universal human rights framework rather than build, internationalize, and improve the minority protection system. It was argued that a broad system of human rights supported by strong prohibitions on race, ethnicity, language, and religion would protect national minorities' legitimate interests without special

⁸ Emilia Papoutsis "Minorities under International Law: How protected they are?" Vol. 2, No. 1, *Journal of Social Welfare and Human Rights*, 305-345 (2014).

⁹ Aftab Alam, "International Protection of Minorities: The League of Nations' Experience" Vol. 47, *Indian Journal of Politics* 18-46 (2013).

measures.¹⁰ Article 18 of UDHR guarantees everyone freedom of thought, conscience, and religion. This right includes freedom to change his religion or believe and to teach, practice, worship, and observe it alone or with others, in public or private. In this context, minorities were excluded from the UN's core agenda. Minorities' protection was definitely declining internationally. Minority rights were not addressed in the UN Charter or UDHR.

Although the UDHR did not directly protect minority rights, the UN general assembly issued a resolution proclaiming that "the UN could not remain indifferent to the fate of minorities."¹¹ It was realized that indifference to minority rights will not solve discrimination. The United Nations Commission on Human Rights (UNCHR) also established a Sub-Commission on Prevention of Discrimination and Protection of Minorities, but the UNHCR initially rejected its minority protection efforts. Finally, in the mid-1970s, this sub-commission was able to include a minority protection provision in the draft of the International Covenant on Civil and Political Rights (ICCPR), which became Article 27. The sub-commission advocated a Declaration on the Rights of Minorities after its special rapporteur, Francesco Capotorti, concluded the most influential minority study in 1978.

Adding Article 27 to the ICCPR (approved in 1966 and effective in 1976), the only international agreement legally obligatory on nations, was a UN accomplishment. Article 27 is the most commonly recognized minority protection clause in international law. The first international standard to universalize minority rights states:¹²

"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."

The UN Human Rights Committee states that it is "necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion, in community with the other members of the group." This interpretation of its scope of application has had the effect of guaranteeing recognition of the existence of diverse groups within a State and of the fact that decisions on such recognition are not the province of the State alone.¹³

The 1966 International Covenant on Economic, Social, and Cultural Rights was the next major step. Article 2 (2) states that "the States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." The Committee on Economic, Social, and Cultural Rights, which implements and interprets ICESCR, has interpreted Article 12's right to health broadly to include minorities. The Committee on Economic, Social, and Cultural Rights states in General Comment No. 14 (2000) that "the right to the highest attainable standard of health states that health facilities, goods, and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, including ethnic minorities.

Another major treaty is the 1989 Convention on the Rights of the Child. Minorities are protected by particular provisions. Article 2 of the Convention requires State Parties to respect and guarantee the rights of all children

¹⁰ David Wippman, "The Evolution and Implementation of Minority Rights" Vol. 66 (2), *Fordham Law Rev.*, 597-603 (1997).

¹¹ UN General Assembly Resolution adopted at its 3rd session on Dec. 10, 1948. Fate of Minorities, GA Resolution 217 C (III) (1948), *available at*: <http://www.un-documents.net/a3r217c.htm> (last visited on May 10, 2026).

¹² Patrick Thornberry "Is there a phoenix in the Ashes? -International Law and Minority Rights" Vol.15, *Texas Int. L. J.*, 443 (1980).

¹³ Human Rights Committee, general comment, 23, Apr. 8, 1994, para 6.2.

within their jurisdiction without discrimination based on race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. Article 30 of the Convention states, “In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language”.

With the conclusion of the cold war, several very public and violent ethnic conflicts, and the possibility for additional violence, the UN and other international organizations began paying more serious attention to minorities' fates in the 1980s and early 1990s. A strong trend toward comprehensive minority rights regimes was seen. The UN general assembly endorsed the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities in 1992.¹⁴ The statement is the first specialized international minority rights instrument. This declaration covers international minority rights for the first time. Although incomplete, the declaration acknowledges the international community's responsibility to protect minority rights and offer normative frameworks. The Declaration may be most significant because it is the first international human rights instrument dedicated to minority rights. It also states in the Preamble and Article 9 that UN organizations help “the full realization of the rights and principles set forth in the Declaration” and links minority rights to the “development of society as a whole and within a democratic framework based on the rule of law”. Minority groups have the right to establish and maintain free and peaceful contacts with other members of their group and other minorities, as well as cross-border contacts with citizens of other States to whom they are related by national, ethnic, religious, or linguistic ties, without discrimination.

Minority rights are protected by the 2001 Durban Declaration and Programme of Action. This Declaration was adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance in Durban, South Africa. ‘We affirm that the ethnic, cultural, linguistic and religious identity of minorities, where they exist, must be protected and that persons belonging to such minorities should be treated equally and enjoy their human rights and fundamental freedoms without discrimination of any kind’.

A startling number of declarations, resolutions, expert reports, and even treaties aimed at bolstering the international legal protection of minorities at the regional level, particularly in Europe, have been adopted as a result of the international community's renewed interest in minority rights. A high commissioner on national minorities (HCNM) was appointed by European organizations such as the Council of Europe and the Organization for Security and Co-operation in Europe (OSCE) with the responsibility of averting conflict. They have done tremendous minority protection efforts recently.¹⁵ The 1994 Council of Europe Framework Convention for the Protection of National Minorities has shaped worldwide minority rights protection. The first and only multinational convention to explicitly address minority rights. Minorities and their members are protected by several European laws. ECHR is the most effective tool for protecting human rights in Europe. Minorities may refer to European convention human rights because minority rights are part of human rights. These European advances substantially affect international minority rights growth. International human rights frameworks guarantee minorities' rights. The important thing is that these tools defend minority rights as well as individual rights.

Conclusion:

In the current era, it is a fact that practically every state contains at least one minority group (or multiple minority groups). In terms of ethnicity, religion, and language, it is not necessary nor feasible for every state to be completely free of these categories. In addition, it is a well-known truth that members of minority groups

¹⁴ *Supra* note 2 at 1.

¹⁵ *Supra* note 10 at 5.

have been subjected to discrimination, forced assimilation, and even genocidal attacks, all of which are currently occurring in many states throughout the present day. Any separate and serious concern for the rights of minorities was more or less absorbed into the larger aim of protecting individual human rights after the Second World War, when the United Nations was established. This occurred after the war. Despite the fact that the subject of minority rights is crucial for the security and prosperity of a modern nation-state system that is multireligious and multicultural, it has remained on the periphery of international human rights legislation. The approach taken by the United Nations was marked by both an inability and a refusal to take into consideration the status of minorities, in contrast to the League of Nations, which had a restricted but recognizable perspective on the protection of minorities. It is also widely acknowledged that the mere observation of equality rights and the prohibition of discrimination could not be sufficient to provide enough protection for minority groups and to solve the issues that they have. Although this is the case, international law guarantees the protection of the rights of minority groups.

Although there are undoubtedly a number of international legal instruments that expressly recognize minority rights, their effectiveness and sufficiency are frequently questioned. The majority of minority rights documents are not enforceable by law. The situation is further weakened by the unwillingness to acknowledge minority groups as possessors of rights. The articulation of minority rights has advanced significantly within the international community. Despite these encouraging indicators, it must be acknowledged that international law is deficient in both the content of minority rights and the issues related to their successful application.