

The Role of the International Judiciary in Protecting the Holy Places

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Abstract: The protection of the sacred places that constitute the spiritual values of peoples is no less important than the protection of the physical entity of man, because of the attachment of these sanctities as a cultural and civilized entity. There is no doubt that the continuous and significant increase in the violation of the holy sites calls for the need to consider the legal protection of these holy places as an urgent necessity to preserve them. Attacks on holy sites represent a real threat to international peace and security, through the effects of the encroachment or threat to these holy sites, which leads to significant damage caused by armed conflicts, whether internal, regional or international. The legal basis for the protection of the holy places is closely linked to the development of the civilized thought of the international community. What is being reported today in the international community about violence and its escalation is related to the violation of the sacred places that affect the conscience and conscience at its core. The international community should therefore recognize that the more it plays its part properly, the sooner these violations will be put in place the less likely there will be an escalation of violence.

Keywords: International Judiciary, International Law, International Treaties, Holy Places, Judgments, Freedom of Belief.

INTRODUCTION

Gaps and shortcomings in international law have led States to take what they want and leave what they do not, so these gaps should be filled so that none of them can be implemented to prejudice these sanctities.

Hence, many international conventions affirm the freedom of persons of religion and belief practiced in the holy places. Within the framework of equality and non-discrimination.

Article 18 stipulates that "everyone has the right to freedom of thought, conscience and religion, and to express it in education, in practice and in observe (Meron, T. 2000).

Article 18 of the Universal Declaration of Human Rights states that there are other fundamental issues

- Everyone has the right to freedom of thought, conscience and religion.
- No one shall be subjected to coercion which would impair his freedom to belong to religions or beliefs.

It urged the international community of the United Nations to ensure and assure the international protection of freedom of belief in all its forms.

One of the most important articles that came to protect the holy places and the freedom to hold religious rites therein is Article (6) of this Declaration. And the establishment and maintenance of places for these purposes and freedom to teach religion or belief in places suitable for these purposes (Singh, 1992; urai and Niranjana, 2019).

Article 7 of this Declaration stipulates that the rights and freedoms set forth in this Declaration shall be guaranteed in the legislation of each country in such a way that everyone is able to enjoy these rights and freedoms in practice.

The Universal Declaration of Human Rights authorizes in Article (29) the national legislator to set the legal restrictions necessary for the exercise of the rights and freedoms contained in the Declaration, provided that these restrictions are necessary to ensure the recognition of the rights and freedoms of others and to respect the requirements of public order, public interest and ethics in a democratic society.

MATERIAL AND METHODS

In order to review the international treaties related to the protection of the holy places, the descriptive

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approach was relied upon, and then the scope and legal basis of protection were compared through a comparative approach.

RESULTS AND DISCUSSION

As for the International Covenant on Civil and Political Rights, the preamble to this Covenant states that the States Parties to the present Covenant believe that the declaration derives from all members of the human family of their inherent dignity and of equal and inalienable rights in accordance with the principles proclaimed in the Charter of the United Nations as the basis of freedom, justice and peace. States have agreed on several rights and principles, including:

- Freedom of thought, conscience and religion
- Everyone has the right to practice their religion.

Article 18 (International Covenant on Civil and Political Rights, 1976) of the International Covenant on Civil and Political Rights establishes that human freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

The Covenant is also concerned with the provision of guarantees and means to ensure respect for religious freedom by States, including by undertaking that each State party to the present Covenant undertakes, if its legislative or other measures do not in fact guarantee the fulfillment of the rights recognized in the present Covenant, to be taken in accordance with its constitutional procedures and the provisions of the present Covenant. Legislative and non-legislative measures necessary for such realization (International Covenant on Civil and Political Rights, 1976; Miller, 2020).

The Covenant also requires each State party to provide an effective remedy for any person whose rights or freedoms recognized in the present Covenant have been violated, even if the violation is committed by persons acting in an official capacity and ensures that each complainant shall decide on the rights allegedly violated by a judicial, administrative or legislative authority. The competent State or any authority provided for in the legal system of the State and that the State concerned ensure the implementation of judgments in favor of the complainants

As for the Charter of Fundamental Rights of the European Union, the European Parliament clarified the fundamental rights of the European Union and obliged its members to respect the right and freedoms set forth in the Charter, and to establish legal procedures for any act or behavior that violates or threatens public rights and freedoms:

- The right of thought, conscience and religion.
- Respect for cultural and religious differences.
- Respect for places of worship and recognition of their sanctity, and non-discrimination between citizens in various countries of the Union on any reason such as sex, race or religion.

With regard to the Arab Charter on Human Rights and the regional conventions concluded is the Arab Charter on Human Rights, which was adopted in several articles, including:

- Freedom of belief, that freedom of belief, thought and opinion is guaranteed to everyone.

Individuals of every religion have the right to practice their religion and have the right to express their ideas through worship, practice or education, without prejudice to the rights of others. No restrictions may be imposed on the exercise of freedom of belief, thought and opinion except as provided by law (The Charter of Fundamental Rights of the European Union, 2000)

Other texts that are considered as international guarantees that protect human rights in each country, including the right to believe and the interdependence of this right to the protection of the holy places and the freedom to practice religious rites and the right of those who sanctify those places to preserve them by protecting, building and preserving them.

The Arab Charter on Human Rights did not depart from the previous conventions and prohibited in Article (4/1) any restrictions on the freedoms guaranteed by it except as provided by law and considered necessary for the protection of security and the national economy, public order, public interest or the rights of others.

Finally, the International Convention on the Elimination of Intolerance and of Discrimination Based on Religion or Belief, the preamble to this Convention included the affirmation of the Universal Declaration of Human Rights and the International Covenants on

Human Rights, and respect for the general principles of human rights: (Arab Charter on Human Rights, 1997).

- Freedom of thought, conscience and religion.
- Non-discrimination based on religion.
- The right of worship and assembly and maintenance of places of religion.
- Establishment and maintenance of charitable and humanitarian institutions.
- Ensure legal legislation that protects freedom of belief and sanctity of holy places.
- No restrictions on these religious rights and freedoms.

Based on the foregoing, the adoption of these conventions, whether universal or regional, of the right to believe and religious freedom, means the adoption of all aspects of this freedom with regard to the practice of religious rites and the pilgrimage and protection of these places as an important part of freedom of religious belief (International Convention on the Elimination of Intolerance and of Discrimination Based on Religion or Belief, 1981).

The United Nations Human Rights Committee on Combating Defamation of Religions, issued on 12 April 2005, adopted the international legal regulation of freedom of belief and religious rituals and the sanctity of holy places against Muslim minorities in the West and their blatant encroachment on Islamic holy places. Deeply concerned about the frequent negative threat against religions, intolerance and discrimination in matters relating to religion or belief manifested in many parts of the world, attacks on business centers, cultural centers and places of worship of all religions, thereby targeting And religious (The Iraqi Constitution in force for 2005).

The resolution called on the international community to initiate a global dialogue to promote a culture of tolerance and peace based on respect for human rights and different religions. Religious freedoms should be a slogan under the umbrella of mutual respect between peoples to achieve international peace and security.

SUMMARY

We can shed light on the most important prerequisites for safeguarding the sanctity of the holy places and regulating the right of freedom of belief and rites referred to by international treaties and

international and regional resolutions through the following:

First: The organization of freedom of expression of faith and religious rites in the holy places shall be in accordance with the law:

Freedom of belief, religious rites and the sanctity of holy places should be regulated through international and domestic legislation. All this is to create a global environment for dialogues and international tolerance, and to strengthen the human dimension.

Second: Freedom of religion and religious rites in the holy places should not conflict with public order and morals:

The freedom of belief and religious rites and the sanctity of holy places should not contradict public order and morals, which are supreme principles and supreme concepts of community preservation.

This is what the European Court of Human Rights has pointed out to him that freedom of religion and religious rituals in the holy places should be necessary and according to a particular social need and be consistent with the desired objectives (Sherif Bassiouni, 2006).

Third: the appropriateness of freedom of belief and the practice of religious rites and the sanctity and sanctity of their places with humanitarian considerations: -

The idea of the common heritage of humanity, which has received a great deal of attention in public international law, is associated with a number of issues, including religious considerations that are closely related to humanity. Trait in the rules of public international law.

Therefore, we consider that humanitarian considerations that are closely related to religious beliefs and the sanctity of holy places in public international law do not consider the holy places to belong to a certain generation. Criminal Law (Sarhan, 1987).

It can be said that the aggression against the holy places is a crime against humanity, since the violation of the sanctity of the holy places for a certain group or group represents persecution of this group for religious reasons, so the ICC considered it a form of crimes against humanity according to Statute (Gaafar, 2000).

The United Nations should call upon all Member States to establish an international treaty on the protection of freedom of religion and the practice of religious rites and holy places, and criminalize those who violate this protection through the imposition of appropriate punishment.

CONCLUSION

Through the international legal study related to (the international protection of the holy places) can reach the most important findings and recommendations:

- The most valid criterion for determining the nature and concept of the Holy Places is the human standard, which makes the Holy Places a common human heritage. The infringement of the Holy Places is in violation of a rule of international law.
- Adaptation of a criminal act that violates or threatens the Holy Places as an "international crime" is a crime against humanity.
- The United Nations should call upon all Member States to adopt an international treaty on the protection of holy sites and to criminalize those who violate or threaten such protection.

ACKNOWLEDGEMENTS

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

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