

الجمهورية الجزائرية الديمقراطية الشعبية

وزارة التعليم العالي والبحث العلمي

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-قسنطينة-

والشريعة والحضارة الإسلامية

قسم: الشريعة والقانون

الرقم التسلسلي: .....

رقم التسجيل: .....

## حماية الأقليات

# في الفقه الإسلامي والقانون الدولي العام

بحث مقدّم لنيل شهادة الماجستير في الشريعة والقانون

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## Translation of conclusion

**In the end of this essay (thesis), we deduce the following results:**

**First:** term “Minority” is among strange terms on Islamic jurisprudence, but the prophet (Allah’s Peace and blessing be upon him) established the term “ahl-El-Dhima” or covenant in order to mean the non-Muslims. Starting from the principle of religious diversity that is the unique feature to distinguish between Mankind, and the four theological scholars agreed on the elements defined covenant; and that we can gather them in this definition, constant treaty was signed by the Muslims’ adviser or his assistant with non-Muslims reside permanently in Islamic state (Dar-El-Islam), includes recognition of their religion and enjoyment of security and protection, with all rights and liberties – except for special reason. In turn they must pay poll-Tax or-what can replace it also must obey to law of Islam excluding their religions affairs.

However, in the International general law, the term “Minority” is among famous and well-known terms for the international general law jurisprudence, but; they do not agree on making global definition to this term, because they differ in followed characteristics (standards) in order to limit the group that this classification can be applied on it; this case lead to their division of Minorities into religious minority, linguistic Minority, racial Minority, and was not seen in Islamic jurisprudence. But; we prefer the following definition for Minority: «is a group of citizens its number is less than the remaining inhabitants of the state to which they belong and to these individuals there are racial, religious and linguistic, characteristics... what make them differ with state’s inhabitants, all this necessitated to be unified in feelings, coordination and alliance; for keeping these characteristics and developing them».

**Secand:** Both Islamic Jurisprudence and International general law agreed on limiting the legislative center of the individual belonging to Minority considered as citizen of the state where he resides, thus; citizenship is a basic condition for who is inserted under this classification.

Third: The origin of relation that linked religious Minority with Islamic society referred to the treaty which is signed between covenant and Muslims Imam (Ruler); this constant contract that its impacts go beyond the covenant's successors; it means the non-Muslim dweller Constantly resides in Islam home ((Dar-El-Islam)) has got the same position had got his precedents before.

Fourth: Although the contractual relation that gather non-Muslim with Islamic state, this situation does not affect in any case in covenant's position, he is not considered as foreigner, but normal citizen treated like other Muslim inhabitants. Contrary to this, the individual belonging to any Mimority of Minorities that international general law apply; is looked as an element stranger to Majority which formed people of the state, even though, is not mentioned by the internal laws ruling state's affairs.

Fifth: Individuals of religious minority find in the Islamic state large space of freedom and nice attitude, and total respect of their feelings and characteristics, observing the Islamic legislative orders that clarified the general principles in treating this minority in Islamic society; even the covenant faced some disturbances and oppressions in separated periods of successive conflicts that are far to be linked to Islam, but they are results of blinding mevriness because of conditions helped in a manner or another increase of hate ((dislike)) between Muslims and non- Muslims, this has led to hurt this category and touch up the Muslims themselves.

This exception in treating the religious Mimority in Islamic civilizational is the origin of different Mimorities treatment in western civilizational: if these Mimorities treated as un-wished element in countries and governments that follow horrible ways and solutions; in order to get rid of the obliged existence of Mimorities individuals like: obligatory excursivoness, or collective extermination for the purpose of gradual extortion of this hatred element.

Sixth: Individuals of religious minority are granted in Islamic society all rights and liberties that remaining dwellers of Islamic country enjoyed, but we

find it emphasized on rights that have deep relation with religious Minority existence, and it does not expected from these rights only what Islam is condition in giving it like some presidential occupations or (Missions); while, in International general law, even though the text is claiming equality of Minority to Majority in rights and liberties. But the fact shouved the non-availability of this confirmation, the proof is exclusion of Minorities individuals of their simpliest rights that are supposed to be confessed to Man as human before classifying him as minority or Majority.

**Seventh:** Regarding the duties that are forced on non-Muslims on what the Islamic Jurispredence stated remain essential in the question, with possibility to be adaptive to the time and place variations for adequate excution of Islamic legislation and its softness.

And concerning the international general law, the duty to keep the safety union lands of countries stay a major request and important factor for International stability and realization of security, in all universe sides, in equivalence the nations' burden is mission of justice between its citizens that can provide adequate (suitable) climate for palce-cohesion. Thus; work side to side in order to develop the state instead of thinking in separating its power and facing it to dangers of foreigners' intervention which threatened national supremacy, and opened door in front of insecurity state, unsteadiness and divergency of interests.

**Eighth:** Legal documentation are set to protect religious Minorities with initiative establishment of Islamic state. This appeared clearly in the document of EL-Madinah between its Jewish individuals (religious Minority) and whose the document mentioned their rights and duties, on the head front come their freedom to practice their religious rituals, while, in international general law, there are no protection of Minorities in the international official compromises except after been touched by wares of banishment, detention and torment-either by hands of governmental systems or in wars and conflicts.

Ninth: All Islamic compromises cared about the text dealing clearly with covenant, in that focus is an official recognition of existence of this minority in Islamic state, and its acknowledgement or attempt to hide its features by violating treaties texts or integration of its individuals by force as an Islamic Nation element we can note that all these treaties are re emphasized in each time on the covenants rights especially, on what concerns its body and its existence, that is element of religion and what is necessary to it.

Yet; in international general law, the tendency followed is adaptation of Minorities' protection in a general frame of keeping human rights generally. It means protection (safety) of man as human being, without looking to his color, his sex, his language or his religion, and what showed emptiness of most international and local treaties of Minorities term, except, the article 27 of international compromises of civil and political rights, and the private declaration of persons' rights belonging to racial or ethnical Minorities also to religions and linguistic Minorities.

Tenth: the cause of not mentioning the Islamic Contracts on Methods of applying it referred to the great confidence in promising to execute all what it contains, this confidence is due to religions impulse and total abedience to law's orders, including to that, we have to follow the prophet's tradition, remarking that in the case of an offence or violation of the religious Minorities rights, the latter has a right to go to the Islamic court, in order to ask for Justice and right; of the Modern Islamic treaties, are not at the level of previous ones, but in fact the real application confirmed the respect of Islamic states in treating with religious minorities with some attitude that was executed before.

Even though all the international, contracts mentioned the procedures of its execution; yet this latter is not characterized by the needed power fir its application in reality with the evidence of the freedom granted to the countries to approve or disapprove the amendments of those contracts, also they have the possibility not to be restricted to it whenever an opportunity allowed it.

In addition to what presented, the procedures of complaint that Minorities' Individuals will take (if it is permitted to them) for aim to request the withdrawal of offences from which may suffer are complex, long and ineffective a thing that will omit its truthfulness.

Finally, we can say that security and peace do not come in our modern world only by respecting human rights generally, and Minorities rights specifically; considering minorities form pressure –paper may be used by others to cause troubles in any country on its land where this category of Mankind and the Islamic states are not far from this danger, if we do not say are more facing it for causes of its happening have already existed.

Relaying on doubts about ability to apply Islamic legislative rules also lies advertised by Islam enemies about oppression of religious Minorities in Islamic countries.

Thus, Islamic states or whose believed in Islam as religion, must adopt (adjust) its laws and legislation's to what can keep its supremacy, and realize justice and peace on its territories which means stopping way for foreign intervention with so called minorities protection under globalization's cover.