

Article

New and Old Religious Minorities in International Law [†]

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Abstract: In a time of growing transformations of the definition of religious minorities, the chapter aims to investigate the different trajectories of development of this topic in international law. To explore this issue, I propose an analysis divided into four paragraphs corresponding to the evolution of religious minorities' rights (the traditional definition; the enlargement; the inclusion; the intersection). The chapter aims to develop the following contents: (a) an analysis of the traditional criteria defining religious minorities in international documents between 1947 and 1985; (b) a model of investigation of new religious minorities within specific trajectories of transformation of this category (implementation; inclusion; intersection); (c) a vocabulary test concerning the innovations in the linguistic approach to religious minorities; (d) the effects of the different dynamics of innovation on the rights of religious minorities.

Keywords: religious minority; new religious minority; old religious minority; FoRB; LGBT rights; intersection; asylum; migrations; gender identity



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1. Introduction

This paper investigates the legal definition of “new and old religious minorities” in international law. Starting from the traditional definition of this expression, the analysis focuses on the notion of religious minority in the process of change that took place at the United Nations.

Overall, this paper does not focus on any historical definition of religious minority. This notwithstanding, and before proceeding any further, it is best to briefly clarify that the origins of this notion, far from being an invention by the United Nation, can be rather traced back to the end of World War I (Ferrari 2019, p. 25). In fact, it was at that time that the League of Nations elaborated initially the distinction between religious, ethnic, and linguistic minorities; and from there, it turned to define the notion of “majority” on the grounds of nationality. In other words, the idea was that majority groups share the same racial, religious, and linguistic affiliations distinct from those of minority groups.¹ Thus, under the international treaties of the post-WW1 period, religion (together with language and ethnicity) started to represent a degree of fundamental distinctiveness between majority and minority groups within a given nation. Building on this legal differentiation, the League of Nations then codified religious minorities standards of protection within specific treaties², (including peace treaties and Statements before the Council of the League of Nations) (Ferrari 2019, pp. 25–50).³

At this point, and having clarified the centrality of religious minorities in the process towards the creation of a modern legal system of minority rights in general, a clarification is now needed about the meaning of “new and old religious minority” adopted in this paper. In this article, the concept of ‘old religious minority’ coincides with the classic definition propounded by international institutions from 1947 to 1985. The notion of ‘new religious minority’ describes the innovation of the traditional criteria of definition. In relation to this dynamic, the international concept of new religious minorities will be

investigated, starting from the traditional definition, along the three different trajectories of enlargement, inclusion, and intersection. My hypothesis is that the legal definition of religious minority is a powerful indicator with which to map the different trajectories of innovation in international language and law. I do not restrict the investigation of new and old religious minorities to documents in which these expressions are used; rather, I consider the major innovations compared to the official definition, even when such changes are not described with the formula of old and new minorities by international institutions. This approach will also make it possible to map the different linguistic formulas of the three trajectories taken into consideration.

Based on these results, the goal of this analysis is also to expand the ongoing debate among legal scholars. In fact, it can be said conventionally existing academic scholarship makes the notion of “new religious minorities” coincide with migrations (Medda Windischer et al. 2020). In light of this, this article builds on Marco Ventura’s proposal for a wider categorisation of ‘new religious minorities’ that goes well beyond migration themes.⁴ Following this expansionary view, this paper shows how this innovative trajectory touches upon a variety of different phenomena (e.g., belief organisations, women, LGBT people).

Before I examine the dynamics of the transformation of the concept of religious minority in international law, it is advisable to justify the methodology chosen, which favours the criterion of definition, to reconstruct the concepts of old and new religious minorities. The arguments underlying this methodological approach can be linked to the role that the definition of religious minority has in the international law approach to this phenomenon. In international law, in fact, the pursuit of a definition of religious minority has been a constant endeavour since the end of the First World War.⁵ Despite the failure to provide an official legal definition, the development of reflection by the UN institutions has favoured the application of the concept of religious minority to new social phenomena. Following this trend, in 2019 the UN institutions stated that distinctions between traditional minorities and new minorities could be asserted individually in the laws of states, as a direct consequence of the lack of an official definition on the international level. In his annual report to the UN General Assembly, the United Nations Special Rapporteur on Minority Issues, Fernand de Varennes, has stressed ambiguities in and contradictions of the concept of religious minority in Article 27 of the International Covenant on Civil and Political Rights (UN General Assembly 2019, p. 8). To make its mandate more efficient and boost the effectiveness of the rights of minorities under international law, Varennes clarifies the obligations assumed by the states. To achieve this goal, the criterion of definition affects the models of protection of the rights of minorities, including religious ones, in two different ways: the application of Article 27 of the Covenant on Civil and Political Rights and a possible distinction between groups based on the traditional or non-traditional character of a minority.

Firstly, the absence of an official definition limits the use of Article 27 by members of religious minorities themselves. In fact, Varennes clarifies that “(. . .) many communications involving minorities are never dealt with substantively under article 27 since they are disposed of under other human rights standards. For example, matters involving religious minorities are often considered and finalized only by reference to rights such as freedom of religion or belief, or the prohibition of discrimination on the ground of religion, and never reach the stage of being examined under article 27” (UN General Assembly 2019, para. 51).

Secondly, access to the rights of minorities is linked to the relationship between the absence of an official definition and the application of international sources in the various States, and, in some cases, it causes a distinction between traditional minorities and other minorities. This point is made in the following sentence of the annual report: “In some countries, there may be even the assumption that the absence of a ‘definition’ means it is left to each State to determine freely who is or is not a minority. In most of these situations, the uncertainty leads to restrictive approaches: in many situations, persons are deemed to be ‘undeserving’ because they are not ‘traditional’ minorities, not citizens, or not sufficiently ‘dominated’. The end result is that some minorities are excluded because they are not

the ‘right kind’ of minority according to different parties” (UN General Assembly 2019, para. 21). With regard to this trend, in general terms, Varennes’ report maps the genealogy of the concept of minority in United Nations law. In a specific sense, the expert justifies the need for an official definition to elaborate—also on the basis of a questionnaire sent to the states—the meaning of the term “minority” in the UN human rights system.⁶ In the questionnaire, one question regards the existence of explicit distinctions between “new” or “traditional” minorities in the different national laws. This methodology based on questionnaires and the use of the concept of “new minorities” was replicated by Varennes for the drafting of a thematic report on the significance and scope of the four categories of minorities (national or ethnic, religious, and linguistic), which was presented to the UN General Assembly in October 2020. In the text of the questionnaire, the linguistic category of “new minorities” is used, again, to ask whether national governments include this concept in the definition of the categories of an ethnic, linguistic, national, or religious minority (De Varennes 2020).

2. The Traditional Definition

An official definition of a religious minority does not exist in international law, while United Nations institutions have used traditional criteria to qualify a group as a religious minority. However, the traditional process of defining the notion of religious minority can be reconstructed by considering the documents that the UN institutions have developed. Since the Second World War, the Universal Declaration of Human Rights, as a new basis of global peace, does not determine the sunset of the rights of religious minorities (Duffar 1994, p. 16 ss). The international protection of human rights is reflected in the status of religious minorities and, in particular, in the guarantee of religious freedom.⁷ In the new dynamic of human rights affirmation, the absence of the concept of religious minority in the UN Charter⁸ and in the International Declaration of Human Rights was analysed by the General Assembly in 1948 and by the Human Rights Commission in 1950.

In its resolution *Fate of Minorities*, the General Assembly stated the reasons for the absence of the category of religious minority in the United Nations’ legal model. In the text of this document, the Assembly clarified that the difficulties in finding uniform solutions and the universal level of the Declaration of Human Rights motivated the decision “not to deal in a specific provision with the question of minorities” (UN General Assembly 1948). The institution, however, affirmed the importance of protecting minority rights and, in order to create effective measures for the protection of minorities, requested the intervention by the Economic and Social Council. In particular, the Council should encourage the “Commission on Human Rights and the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities to make a thorough study of the problem of minorities (. . .) to take effective measures for the protection of racial, national, religious or linguistic minorities” (ibid.).

In its *Study of the Legal Validity of the Undertaking Concerning Minorities*, the Commission highlighted the relation between human rights and minority rights. In the Commission’s understanding, the new conception of human rights had produced a deep discontinuity between the first and the second post-war period, because “the United Nations Charter recognized a new concept which did not appear in the Covenant of the League of Nations, the concept of human rights and non-discrimination”. This discontinuity did not oppose applying human rights to minorities’ rights. In fact, “the protection of human rights is a substantial element in the protection of minorities” (UN Commission on Human Rights 1950, p. 20).

The theoretical notion of “religious minority” was developed within the Sub-Commission on Prevention of Discrimination and Protection of Minorities framework and in two memoranda of the Secretary-General between 1947 and 1949. This process concerned the content of the definition and the way the definition was developed.

Firstly (the content of the definition), a religious minority was first defined in 1947. In the report of the Sub-Commission on Prevention of Discrimination and Protection of

Minorities, religious minorities were described as “non-dominant groups which, while wishing in general for equality of treatment with the majority, wish for a measure of differential treatment in order to preserve basic characteristics which they possess, and which distinguish them from the majority of the population. The protection applies equally to individuals belonging to such groups and wishing the same protection. It follows that differential treatment of such groups or of individuals belonging to such groups is justified when it is exercised in the interest of their contentment and the welfare of the community as a whole. The characteristics meriting such protection are race, religion and language” (UN Commission on Human Rights 1947, p. 13).

In 1949, the Secretary-General issued the memorandum *Definition and Classification of Minorities* (UN Secretary-General 1949a). In this study, the definition of minority is limited to specific categories of communities and, in particular, “groups united either by a common religion, a common language, or a common ethnic origin, or by any two or all three of these” (ibid., p. 14). In this context, “the term minority should normally be applied to groups whose members share a common ethnic origin, language, culture, or religion, and are interested in preserving their existence as a national community or their particular distinguishing” (ibid.).

Secondly (the way the definition has been developed), in 1949 the Secretary-General, in the memorandum *Suggested Studies of the Problem of Minorities*, proposed four instruments to the Sub-Commission with which to process the notion of a religious, ethnic, and linguistic minority. The technique of definition focused on different sources useful for clarifying the concept of religious minority: an investigation of existing minorities; a survey of international studies and the national legal sources; an investigation into the methodology to apply for the protection of minority rights (UN Secretary-General 1949b). The same year, the second session of the Sub-Commission identified instruments to precisely define the notions of religious, ethnic, and linguistic minorities. The instruments with which to analyse the problem of minorities were information about other international organizations, confidential papers, state communications, and reports (UN Commission on Human Rights 1949).

From 1950 onwards, the theoretical process concerning the notion of religious minority assumed a more practical character. This change was due to the need to create an effective guarantee of minority rights. In this regard, some elements of the theoretical definition of religious minority were applied in the codification of religious minority rights. In particular, the Commission’s project to produce a new pact on human rights reopened the question about the necessity to protect minority rights. In this phase, article projects on religious minorities would be models for the future Article 27 of the *International Covenant on Civil and Political Rights*. The drafting of Article 27 took sixteen years (from 1950 to 1966) and coincided with fundamental institutional acts.⁹ In fact, the final text of Article 25 in the *Draft International Covenants on Human Rights* (future Article 27) (UN General Assembly 1966), approved by the Commission in 1953, provided that: “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” (UN General Assembly 1961, p. 34 ff.).

Starting in 1966, UN bodies developed the interpretation of Article 27 of the *International Covenants on Civil and Political Rights* (ICCPR) that qualifies the status of persons belonging to religious minorities, in relation to rights to “profess and practice their own religion”. In this development, the second definition of religious minority was formulated by Francesco Capotorti, Special Rapporteur of the Sub-Commission, in 1977, within a very extensive report entitled *Study on the rights of persons belonging to ethnic, religious and linguistic minorities*:

“(a) group numerically inferior to the rest of population of a State, in a non-dominant position, whose members—being nationals of the State—possess ethnic, religious, or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity directed towards preserving their culture, traditions, religion or language”. (Capotorti 1979, para. 28)

The third definition was presented in 1985 to the Sub-Commission by Jules Deschênes. It described minorities as:

“a group of citizens of a State, constituting a numerical minority and in a non-dominant position in that State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law”. (UN Commission on Human Rights 1985)

By comparing these definitions, we can highlight traditional criteria of definition. All three definitions identify religious minorities on the basis of: (a) Objective criteria: religion as a characteristic to qualify a group as a minority; numerical inferiority with regard to the majority religion; the possession of nationality or citizenship; (b) Subjective criteria: the relation with the majority given by the non-dominant position; the wish of the group to preserve religious identity.

Starting from the traditional criteria of definition, specific social phenomena (connected to belief organizations, migration, national minority, indigenous community, LGBT people, and women) innovate the international legal approach to the topic through an important shift from the traditional notion of religious minority to a new legal definition. Consequently, innovative definitions of a religious minority emerge in relation to the traditional meaning of that expression. Innovations are reflected in the classic criteria by three different trajectories: enlargement; inclusion; intersection.¹⁰

3. Enlargement

The criterion of religion professed by a group, which expresses the basis of a minority's identity in the classic model, has been redefined thanks to a new interpretation of religious freedom not limited to traditional religious faiths.¹¹ In this framework, the enlargement of the objective criteria of religion has moved in two different directions: the application of the formula ‘belief’ to religious minorities; the development of the overlap between religion and indigenous culture.

In regard to the former direction (belief)¹², consolidation of the use of the belief formula in the religious freedom area, as a protection useful also for non-believers, atheists and agnostics (Comité des droits de l'homme 1993, para. 2) is reflected in the notion of religious minority in the UN legal model. In particular, the Human Rights Committee has qualified the right to freedom of thought, conscience, and religion, protected in Article 18 of the *International Covenant on Civil and Political Rights*¹³, as relevant also to “theistic, non-theistic and atheistic beliefs”. In fact: “The terms ‘belief’ and ‘religion’ are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions” (Human Rights Committee 1993).

Likewise, while in 1994 the “General Comment No. 23: The Rights of Minorities (Art. 27)” (Human Rights Committee 1994) made no reference to “belief minority”, the High Commissioner of Human Rights in 2010 changed the definition of religious minority with the introduction of the word “belief”. In his understanding, religious minorities are groups “in a non-dominant position in the society in which they live and their (. . .) religious or beliefs may be different from the majority or the dominant groups” (UN Office of the High Commissioner for Human Rights 2010, p. 4). This orientation was endorsed in 2013 by the Forum on Minority Issues in the final recommendations of the annual meeting: “The term ‘religious minorities’ as used in the present document therefore encompasses a

broad range of religious or belief communities, traditional and non-traditional, whether recognized by the State or not, including more recently established faith or belief groups, and large and small communities, that seek protection of their rights under minority rights standards. Non-believers, atheists or agnostics may also face challenges and discrimination and require protection of their rights" (Human Rights Council 2014). The quoted sentence clarifies the meaning of belief minorities in international law, as the expression of a new narrative approach to religious minority rights as rights, also, of non-believers.

Following the latter direction (religion and the indigenous culture), the overlap between religious minorities and indigenous peoples favours a new interpretation of religious criteria in connection with indigenous traditions. Religious minorities can be included in the international concept of the indigenous population (International Labour Organization 2007; UN General Assembly 2007). The overlap among indigenous people (Gudmundur 2005, pp. 163–72) and religious minority can be examined from the perspective of the meaning of religiosity in the definition of indigenous people (Meijknecht 2001; Musgrave 1997). The link between indigenous people and religion has emerged in definitions contained both in specific sources of international law and in acts of the UN institutions.

With regard to the sources, in the preamble to the *Indigenous and Tribal Peoples Convention*, the link between the autochthonous group and religion emerges in the recognition of the aspiration of indigenous peoples to maintain and develop their own religion (International Labour Organization 1989, Preamble). Similarly, the *Declaration on the Rights of Indigenous Peoples* makes several references to the relationship between religion and indigenous peoples. Among these references, Article 12, par. 1 is particularly important; here it is stated that: "Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies (. . .)".

In accordance with the UN's institutional acts, indigenous people have been defined by the UN Permanent Forum on indigenous issues as a group that has a specific link with a given territory, which has its own social, political, and economic systems, a language, a culture and specific beliefs (UN Office of the High Commissioner for Human Rights 2013, p. 3). Jose R. Martinez Cobo, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, further defined indigenous peoples, underlining the importance of the religious element. Cobo clarified that "religion as an element of indigenous culture is always implied" (UN Commission on Human Rights 1982, p. 21).

Moreover, in relation to the rights of indigenous peoples, the UN Committee on Human Rights has recognized, since 1994, the right of representatives of indigenous peoples to claim the rights of religious, ethnic, and linguistic minorities protected in Article 27 of the International Covenant on Civil and Political Rights. The Committee clarifies: "The enjoyment of the rights to which article 27 relates does not prejudice the sovereignty and territorial integrity of a State party. At the same time, one or other aspect of the rights of individuals protected under that article—for example, to enjoy a specific culture—may consist in a way of life that is closely associated with territory and use of its resources. This may be particularly true regarding members of indigenous communities constituting a minority" (UN Office of the High Commissioner for Human Rights 1994, para. 3.2.). Native peoples, therefore, can enjoy the rights granted to religious minorities. This faculty was stressed by the Office of the United Nations High Commissioner for Human Rights. In fact, the Office states: "In practical terms, a number of connections and commonalities exist between indigenous peoples and national, ethnic, linguistic and religious minorities. Both groups are usually in a non-dominant position in the society in which they live and their cultures, languages or religious beliefs may be different from the majority or the dominant groups" (UN Office of the High Commissioner for Human Rights 2010, p. 3). In this perspective, "Minorities and indigenous peoples have some similar rights under international law (. . .)" (UN Office of the High Commissioner for Human Rights 2013, p. 3).

The contents of the rights granted to indigenous peoples, however, seem to emphasize the concept of religious minority. In fact, in universal sources, the protection of the religious identity of indigenous peoples coincides with their relationship to religion, cultural tradi-

tions, and territory (International Law Association 2012). With reference to the relationship between religion and the indigenous culture, as highlighted by the United Nations, the recognition of religious freedom of indigenous minority groups can be described through the concept of “indigenous spirituality” (Asia Pacific Forum of National Human Rights 2013, p. 14). This model of spirituality “is inherently connected to culture. Adopting policies that promote certain religions or prohibit indigenous spiritual practices, or the failure of laws or other governmental institutions, such as the police and courts, to respect indigenous spiritual practices, can undermine the right to culture” (ibid.).

The connection between rights linked to land ownership and religious freedom emerges, instead, both in Article 12, pr. 1, of the *Declaration on the Rights of Indigenous Peoples*, which protects “the right to maintain, protect, and have access in privacy to their religious and cultural sites” and in Article 14, pr. 1, of the *Indigenous and Tribal Peoples Convention*, which guarantees the right “of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised”. The international instruments under examination thus link the identity of indigenous religious minorities to specific local traditions. The guaranteed continuity of these traditions is one of the protective means with which to prevent minority groups from becoming victims of assimilation policies by majorities.

4. Inclusion

The phase of inclusion concerns the increase of the recipients of the religious minority rights. This phase develops through two different trajectories: access of migrants, refugees, and stateless persons to the protections granted to religious minorities; access for members of religious minorities to guarantees provided by international law for national minorities¹⁴.

Firstly (migrants, refugees, and stateless persons) in the traditional definition persons belonging to a religious minority must be citizens of the country in which they live. As argued by Francesco Capotorti in his study on the rights of minorities in 1977, foreigners are excluded from the enjoyment of the rights under Article 27 of the *Covenant on Civil and Political Rights*. This exclusion is due to the fact that: “The case of foreigners is different, however, from that of persons who possess the nationality of the country in which they live. As long as a person retains his status as a foreigner, he has the right to benefit from the protection granted by customary international law to persons who are in countries other than their own, as well as from any other special rights which may be conferred upon him by treaties or other special agreements” (Capotorti 1979, para. 57). Abandoning this approach, the criterion of citizenship has been progressively excluded from the definition of a religious minority.

The relationship between minorities and migrations emerged for the first time in 1982 in the final report of the UNESCO World Conference on Cultural Policies. This document affirms the existence of “foreign minorities coming from migration” and recommends that states preserve the cultural identity of these groups, in view of the “particular situation of these minorities” (UNESCO 1982, p. 72). This orientation re-emerged in 2010 within the report by the High Commissioner of Human Rights entitled *Minority Rights: International Standards and Guidance for Implementation* (UN Office of the High Commissioner for Human Rights 2010, p. 5). In the text, the High Commissioner, referring to the *Commentary on the Declaration on the Rights of Persons Belonging to Minorities*, observes that “in practice, under international law, certain minority rights have been made applicable to recently arrived migrants who share an ethnic, religious or linguistic identity” (ibid.). In these terms, although the High Commissioner does not exclude the possibility of drawing a distinction between old and new minorities in the enjoyment of specific rights, the principle of non-discrimination is judged applicable to all minorities and, therefore, also to communities that originate from migration. This principle, in fact, as clarified in the document, is asserted in all international instruments and documents on human rights. In this regard, the right to non-discrimination for migrants is guaranteed in various international sources, which may also directly concern religious minorities, if discrimination affects migrants belonging to a

minority group. According to the High Commissioner, legal sources explicitly concerning migrants, but also applicable to minorities, are: “The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention relating to the Status of Stateless Persons, the Convention relating to the Status of Refugees, and the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live” (ibid.).¹⁵

The link between statelessness and belonging to a religious minority has been stressed by the international institutions when the minoritarian religious identity is the cause of statelessness. Often, in the opinion of the High Commissioner, membership of an ethnic, religious, or linguistic minority determines the will of the state either to deny someone citizenship or to deprive them of it. In these cases, subjects belonging to minorities can invoke a breach of Article 9 of the *Convention on the Reduction of Statelessness*, claiming that membership of a minority is the cause of the violation of the Convention.¹⁶ This application of the international instruments on statelessness does not appear, however, secondary with respect to the minority phenomenon. In fact, the High Commissioner stresses that: “Most of the world’s estimated 15 million stateless persons also belong to ethnic, religious or linguistic minorities. Discrimination against minorities has frequently led to their exclusion from citizenship” (UN Office of the High Commissioner for Human Rights 2010, p. 5). The UN High Commissioner for Refugees (henceforth UNHCR) seems to have transposed this orientation and developed it through the new category of “stateless minorities”. This innovative notion, which seems to express the overlap between minorities and stateless persons, has been expressed in the report “*This Is Our Home: Stateless Minorities and Their Search for Citizenship*” in 2017 (UNHCR 2017). In this document, UNHCR confirms the condition of the vulnerability of stateless persons and their prevalent membership in minorities. In fact: “Discrimination, exclusion and persecution most commonly describe the existence of stateless minorities. More than 75% of the world’s known stateless populations belong to minority groups”. In this regard, the document makes a specific reference to a practical example of the connection between “stateless minorities” and religious minorities: the Rohingya Muslim minority in Myanmar is, in fact, an example of a stateless religious minority (ibid. pp. 2 ff.).

On the basis of the textual references mentioned above, we can therefore argue that the new concept of a stateless religious minority defines a group discriminated or persecuted for the religion professed in the access to citizenship. For example, in France the Council of State has validated the decision of the Prime Minister to deny citizenship to a Muslim woman because, during the public ceremony of naturalization, she refused to shake hands with a public official, invoking her religious convictions (Conseil d’Etat 2018).¹⁷

With specific regard to international protection, however, the status of religious refugee is granted by the Geneva Convention (Article. 1, para. 2) to members of particular social groups persecuted because they share the same spiritual identity. The notion of a persecuted religious group has been defined by international institutions on two levels concerning both the definition of a religious group and the concept of religious persecution. UNHCR has applied the notion in question to “a particular social group”. This concept is defined by UNHCR through two different narrative models denominated “protected characteristics” and “social perception”. According to the first approach, a particular social group coincides with a group of persons who share an immutable characteristic, for example, ethnicity, or a protected characteristic, as religion, relevant to human dignity in the human rights framework. According to the second approach, a particular social group is a group of persons with a shared characteristic that distinguishes it from the rest of society (UNHCR 2002, paras. 6–7). UNHCR proposes a synthesis between these two definitions in the following formulation: “A particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one’s human rights” (ibid., para. 11). In light of this definition, religious minorities and persecuted

religious groups may or may not coincide, since refugee status can be granted to subjects belonging “to a religious minority or majority” (UNHCR 2004, p. 5). In this context, UNHCR has issued an analytic report on the condition of religious minorities in Pakistan. The report has explained, in more general terms, the link between minority status and persecution in relation to membership of a particular social group. In particular: “UNHCR considers that asylum claims made by members of religious minorities require particularly careful examination of possible risks (. . .) Members of religious minorities with the profiles described below may, depending on the individual circumstances of the case, be in need of international refugee protection” (UNHCR 2012a, p. 3; Annicchino 2015).

The overcoming of the criterion of citizenship was recently confirmed by the UN Special Rapporteur in an innovative definition of religious minority within the aforementioned report of 2019 (UN General Assembly 2019). In particular, Varenne, in order to remedy the lack of common understanding about and approach to this concept in international law, proposed the following “working definition” to the General Assembly:

“An ethnic, religious or linguistic minority is any group of persons which constitutes less than half of the population in the entire territory of a State whose members share common characteristics of culture, religion or language, or a combination of any of these. A person can freely belong to an ethnic, religious or linguistic minority without any requirement of citizenship, residence, official recognition or any other status”. (ibid., para. 59)

In this definition, the Special Rapporteur declines minority rights as human rights and (implicitly) identifies the free choice of membership of a religious minority as the only assumption to apply Article 27 of the *International Covenant on Civil and Political Rights*.

Secondly, in the case of national minorities, the concept of nationality has increased the definitional criteria with regard to possible overlaps between religious minorities and national ones. The definition propounded by UN institutions describes a national minority, depending on the case, as coinciding or not coinciding with an ethnic, religious, or linguistic minority. In the UN framework, the Working Group on Minorities has supported the view that, in general there are no national minorities that are not also ethnic or linguistic minorities, religious minorities coincide with a national minority when “minority rights” protect, at the same time, “the profession and practice of their religion” and “the preservation and development of their national identity” (UN Commission on Human Rights 2005, para. 6, p. 3 ff.; UN Commission on Human Rights 2001, para. 6, pp. 2–3). However, according to the experts, this definition does not exclude the existence of specific cases in which the rights granted to the national minority are distinguished from those granted to other types of minorities. The two cases, with specific reference to the religious factor, afford a distinction between national and religious minorities. In accordance with this distinction, the UN expert group stresses that “Persons belonging to groups defined solely as religious minorities might be held to have only those special minority rights which relate to the profession and practice of their religion”, unlike the national religious minorities, which will be recipients of “stronger rights relating not only to their culture but to the preservation and development of their national identity” (ibid., para. 6).

According to the international approach to this topic, the debate between national states, European institutions, and international bodies is open. The problematic conceptualisation of this issue was particularly significant in the European protection system that based its model of protection of minority rights only on the notion of the national minority.¹⁸

In this regard, despite the contribution by the ECtHR to the development of standards of protection for religious minorities¹⁹, in 2005 the UN’s Working Group on Minorities underlined the issues connected to the coordination between the European sources devoted only to national minorities and the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* (UN Commission on Human Rights 2005, para. 8). The Working Group observed that “Regional European instruments on minority rights use only the concept ‘national minorities’ and do not refer to ‘ethnic, religious or linguistic minorities’” (ibid.). In this context, to determine the range of application of

national minority rights to religious minorities, it is important to specify the meaning of “national minority”. Observing this debate, the meaning of nationality appears ambiguous within the overlap between nationality and religious minorities. In fact, it is not clear if nationality regards the legal status of the members of religious groups or the traditional or non-traditional qualification of the religion/belief professed.

Firstly (legal status), despite the fact that “some States argue that ‘national minorities’ only comprise groups composed of citizens of the State”, following the point of view of the UN’s Working Group on Minorities, “citizenship as such should not be a distinguishing criterion that excludes some persons or groups from enjoying minority rights under the Declaration” (UN Commission on Human Rights 2001, para. 10). Following this suggestion, in international law, the members of a national minority should not meet the citizenship requirement.

Secondly (religion/belief), the impact of the distinction among “new” and “old” minorities on religion professed by the group is not evident. If, as argued by the Working Group on Minorities, “in the application of the Declaration the ‘old’ minorities have stronger entitlements than the ‘new’” (UN Commission on Human Rights 2005, paras. 9–11), the range of legal understanding about the relationship between national identity, new or old minorities, and religion or belief remains unspoken. The notion of “old religious minority” could be located in the traditional legal definition of religious minority, developed by Capotorti, or it could relate to the origin of the religious minority.

The first hypothesis is problematic because the traditional meaning of “old religious minority” coincides with a group of citizens, and this is in contradiction with the more recent inclusion of foreigners in minority rights promoted by the United Nations.

According to the second hypothesis, only historic religious minorities could also qualify as national minorities, while the ‘new’ religious minorities that derive, for example, from migratory processes, could not be considered national minorities. The problem is relevant because the circumstance that religious groups belong to one or the other category influences the rights recognized at the international level. Indeed, if my hypothesis will be confirmed, the rights deriving from the national identity of a group can be invoked only by historic religious faiths, as minorities “long established in the territory may have stronger rights than those that have recently arrived” (UN Commission on Human Rights 2005, para. 10).

5. Intersection

The rights granted to subjects belonging to religious minorities by international sources seem to be affected by a specific implementation process linked to the principle of non-discrimination based on gender and sexual orientation.

UN institutions have developed the principle of non-discrimination through the protection of new human qualities in the enjoyment of fundamental rights. Among the new qualities taken into consideration by international law are the personal characteristics of gender identity and sexual orientation.²⁰ The inclusion of these characteristics has produced a new approach to human rights in relation to the right to be free from discrimination based on gender diversity or sexual orientation (Danisi 2015). This transformation can be described by considering LGBT people and women as two different categories of people within religious minorities receiving specific protections from the UN.

In regard to LGBT people, the recent recognition of LGBT rights has had an impact on the legal status of religious minorities in relation to the protection of the right to freedom of conscience and religion of homosexual persons (Bamforth 2015; Ferrari 2015). In these terms, the new international standard of human rights protection, based on the principle of non-discrimination based on sexual orientation, was implemented in relation to the intersection with freedom of thought, conscience, and religion starting from the Yogyakarta Principles of 2007. Principle 21 clarifies that:

“States shall: (a) Take all necessary legislative, administrative and other measures to ensure the right of persons, regardless of sexual orientation or gender identity,

to hold and practise religious and non-religious beliefs, alone or in association with others, to be free from interference with their beliefs and to be free from coercion or the imposition of beliefs.” ([The Yogyakarta Principles 2007](#), p. 26)

The aforementioned principle, which pursues the general end of guaranteeing freedom of religion or belief for LGBT people, finds specific application in the religious minority framework. The UN has stressed the overlap between sexual orientation and religion in relation to the risk of multiple discrimination (additive or intersectional) for LGBT people.²¹ Hence, the religious freedom of LGBT people can be protected against discrimination also in relation to the intersection with membership or non-membership of a religious majority or minority. In support of this contention, the High Commissioner for human rights in the report “Minority Rights: International Standards and Guidance for Implementation” has observed that: “The question often arises as to whether, for example, persons with disabilities, persons belonging to certain political groups or persons with a particular sexual orientation or identity (lesbian, gay, bisexual, transgender or intersexual persons) constitute minorities. While the *United Nations Minorities Declaration* is devoted to national, ethnic, religious and linguistic minorities, it is also important to combat multiple discrimination and to address situations where a person belonging to a national or ethnic, religious and linguistic minority is also discriminated against on other grounds such as gender, disability or sexual orientation” ([UN Office of the High Commissioner for Human Rights 2010](#), p. 3). In the same sense, the Secretary-General has observed:

“While this Guidance Note and the Declaration on Minority Rights focus on the rights of persons belonging to ‘national or ethnic, religious and linguistic minorities, there are persons belonging to other groups that are regularly in a non-dominant position and merit specific UN attention from the perspective of non-discrimination and other human rights standards, including, for example, stateless persons, migrants, victims of forced displacement, persons with disabilities, people living with HIV and lesbian, gay, bisexual, or transgender (LGBT) persons. Their concerns also frequently involve multiple discrimination, including where a person belonging to a national, ethnic, religious or linguistic minority is also discriminated against on other grounds such as disability or sexual orientation”. ([UN Secretary-General 2013](#), para. 9)

The challenges linked to countering multiple discrimination against LGBTQ people belonging to religious communities emerged in 2016 during an international conference organized by the UN’s Special Rapporteur on Freedom of Religion or Belief and Muslims for Progressive Values ([Sonneveld 2016](#)). During this conference, the concept of multiple discrimination found an interesting example in the experience of LGBT Muslim people. In fact, sexual diversity among Muslims can produce discrimination inside or outside communities. LGBT Muslim people can experience different levels of intersectional discrimination “(. . .) within society at large, within the LGBT community, and within the immigrant community, and even within areas deemed as ‘safe spaces’” (*ibid.*, p. 11). Regarding this quote, it is possible to underline internal and external dimensions of multiple discrimination. In the internal dimension, the religious minority restricts the human rights of LGBT people by claiming that such people do not conform to the social roles required by faith or the holy texts.²² In the external dimension, the intersection between Islamophobia and homophobia can produce a specific limitation not only in the exercise of freedom of religion but also in the access to LGBT rights, when the discrimination in society coincides with the stigmatization of the overlap between homosexuality and membership of a religious minority.

Concerning women within religious minorities, the UN institutions have stressed the specific necessity to protect women belonging to religious minorities from discrimination and violence. As the UN Committee on the Elimination of Discrimination against Women observed in 2018, the overlap between gender dimension and membership of a religious minority exposes women “to significant rates of intersecting discrimination” ([UN Committee on the Elimination of Discrimination against Women 2018](#), para. 55). The

growing interest in women's rights in religious minorities has regarded Muslim minorities and the compliance of Sharia law with the principle of non-discrimination based on gender identity (Sen 2005, p. 81). In 2020, the Special Rapporteur on freedom of religion or belief underlined that "women and girls from religious minority communities are often at particular risk of violence, including violence associated with forced conversions and forced marriage, and that 'counter-extremism' measures adopted by States have targeted women from Muslim minority communities with rape, forced sterilization, and forced abortion" (Human Rights Council 2020, para. 26). In this context, already in 2007, the UN Committee on the Elimination of Discrimination against Women, in its concluding comments on Greece, stated that the non-application of Greek legislation on marriage and inheritance to the Muslim minority produced discrimination against Muslim women and, consequently, was a breach of Article 16 of the *Convention on the Elimination of All Forms of Discrimination against Women* (UN Committee on the Elimination of Discrimination against Women 2007, para. 33). Similarly, in 2014, the Human Rights Committee invited Greece to harmonize the application of Sharia Law with respect to international human rights standards (Human Rights Committee 2014, para. 59, p. 13 ff.).

6. Conclusions

In this article, the methodological approach to the legal notions of new and old religious minorities, based on the traditional definition of religious minority in international law, has made it possible to develop: (a) an analysis of the traditional criteria defining religious minorities by mapping the linguistic formulas adopted in international documents between 1947 and 1985; (b) a model of investigation of new religious minorities within specific trajectories of transformation of this category (implementation; inclusion; intersection); (c) a vocabulary test concerning the innovations in the linguistic approach to religious minorities; (d) the effects of the different dynamics of innovation on the rights of religious minorities. The different trajectories taken into consideration evidence that the alternative linguistic formulas mobilized by international institutions (belief communities, traditional and non-traditional religious minority, indigenous spirituality, stateless minorities, particular social group, old and new religious minority, minority women, sexual minority) are polysemic in terms of meaning and different regarding the protection of the rights of religious minorities. Following this range of legal understanding, some conclusive remarks can be developed regarding—on one hand—the meaning of linguistic formulas of definition in implementation, inclusion, and intersection trajectory; on the other hand, the impact of linguistic formulas on the protections of religious minority rights in implementation, inclusion, and intersection trajectory.

From the first point of view (meaning), each innovation model describes the transformation of different traditional criteria of definition.

In the enlargement trajectory, the objective criterion of religion is changed through the new pluralistic category of belief, as a key formula that, by shifting from the general protection of freedom of religion in the international and European arena to the specific context of religious minorities, supersedes the traditional distinction between religious minority and non-believer groups. In this framework, the Forum on Minorities Issues uses, as keywords to underline the pluralistic use of "religious minority", the innovative expressions of "belief communities, traditional and non-traditional (. . .) more recently established faith or belief groups", but not the dualistic concept of "old and new minorities" (Human Rights Council 2014, p. 4). Moreover, the cultural meaning of religion is stressed within the overlap between religious minority and indigenous people and emerges in the innovative linguistic formula of "indigenous spirituality" (Asia Pacific Forum of National Human Rights 2013, p. 14).

In the inclusion trajectory, the objective criterion of citizenship is replaced by that of humankind, in compliance with the advocacy of UN institutions to promote human rights and, in particular, to foster the guaranteeing of freedom of religion or belief. However, the international institutions are mobilizing the expression "old and new minorities" also with

reference to religious communities, to justify, in some cases, differences in the enjoyment of minority rights between old and new minorities (UN Office of the High Commissioner for Human Rights 2010, p. 5). At the same time, when a minoritarian religious identity is the reason for the loss of citizenship or persecution, the concept is expressed via “stateless minorities” or “particular social groups”.

In the intersection trajectory, the subjective criterion of the group’s wish to preserve its religious identity is enriched by the obligation to respect the gender and sexual diversity of the minority’s members. Following this tendency, the minoritarian religious identity will not receive protection in the international legal system concerning homophobic or misogynistic positions. The relation among religious minority rights, LGBT rights, and women rights is expressed by international institutions in the new formulas of “sexual minorities” (Human Rights Council 2020, para. 58) and “minority women” (UN Secretary-General 2013, para. 16).

These possible meanings of innovations concerning religious minorities, however, may increase in the presence of definitions based on the transformation of two or more traditional criteria, or the intersection of the traditional concepts of ethnic, linguistic, or religious minority. Regarding this last meaning, a group of experts has highlighted a new intersectional approach to minority rights in the distinct context of the European Union in a recent report commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs (Carrera et al. 2017). In particular, to protect these groups it is necessary to overcome the traditional distinction among religious, ethnic, and linguistic minorities and recognize that these categories may intersect. For example, a “Syrian living in Europe could be discriminated against on the basis of his/her origins of nationality (Syrian), race, ethnicity or cultural origins (Arab), language (Arabic language speaker) or religion (Muslim)” (ibid., p. 24).

From the second point of view (protection), the concept of “new religious minority” has the effect of increasing or not increasing the rights of members of minorities on the basis of the traditional criterion of definition being transformed.

In the implementation trajectory, the strengthening of a minority takes place through the implementation of recipients. The enlargement of the meaning of religion overcomes the traditional separation between believers and non-believers in the interpretation and application of religious minority rights and incorporates atheists or agnostics among the recipients of these rights. The relation between religious minority and indigenous people fosters the catalogue of rights applicable to both groups at the same time. In fact, when a religious minority is also an indigenous group, members of the community can invoke the specific protections provided by international law for indigenous peoples and vice versa.

In the inclusion trajectory, when citizenship and nationality—as criteria of transformation—regard migrants and national minorities, the international institutions differentiate the protection of minority rights under international law. Concerning migrants, in 2010, the Office of the High Commissioner of Human Rights identified religious minorities with migrant communities and affirmed that “certain minority rights (*but not all*²³) have been made applicable to recently arrived migrants who share an ethnic, religious or linguistic identity” (UN Office of the High Commissioner for Human Rights 2010, p. 5). Within the quoted sentence, the question of which minority rights are excluded from applying to migrants remains an open question. With reference to the inclusion of religious minorities in national minorities, in 2005 the Working Group on Minorities argued that, although in general, “the best approach appears to be to avoid making an absolute distinction between ‘new’ and ‘old’ minorities, (. . .) in the application of the Declaration the ‘old’ minorities have stronger entitlements than the ‘new’” (UN Commission on Human Rights 2005, para. 11). This distinction among new and old minorities is problematic also in terms of the protection of religious minority rights because it is not clear if the relationship between religion, old minorities, and nationality regarded the traditional background of the faith professed or something other. In a different sense, the status of foreigners increases the religious minority’s rights in the cases of stateless persons and refugees through the

possibility of applying the international instruments on statelessness and international protection to a minoritarian community.

In the intersection trajectory, the overlap between women and LGBT rights with religious minority rights produces a specific strengthening of the right of non-discrimination for members of a religious community concerning multiple and intersecting forms of discrimination. The profession or practice of a minoritarian religion, protected under Article 27 of the International Covenant on Civil and Political Rights, cannot justify discrimination or violence against LGBT people and women inside or outside of a minority and, at the same time, religious actors can play a genuinely useful role in reconciling gender diversity and religious practices. As international institutions underline, for example, the implementation of the right to political participation by minorities can achieve this goal. In fact: “States should ensure that all mechanisms, procedures and institutions established to promote and increase the political participation of persons belonging to minorities take into account the specific needs of minority women, as well as those of other groups within minority communities potentially subjected to intersectional discrimination” (Human Rights Council 2009, para. 23). Concerning LGBT rights, it is no coincidence that the progressive connection between religious minorities and LGBT people began in 2015 with the new expression of sexual minorities within the *Fez Plan of Action*, developed by the UN Office on Genocide Prevention (UN Office on Genocide Prevention 2015, p. 20). In this document, the international institutions stressed, in general terms, the role of religious leaders in promoting change in “discriminatory social norms and ideas relating to women and sexual minorities” (ibid.).

In conclusion, compared to a holistic trend²⁴ in the relationship between religious minority rights and human rights, as a consequence of the lack of an official definition of the topic, since 2019, the return to the traditional model of definition to qualify minority rights has posed new challenges in the international arena. In fact, the idea that “definition” is a necessary condition for protection, may well produce new resistances by national states towards the application of international obligations and set a distance between the theoretical model of religious minority and the thousand facets of religious diversity in social phenomena. Following this direction, for example, the persistence of the numerical criterion as a driving factor of definition devised by de Varennes, on the basis of which a minority is only “a group of persons which constitutes less than half of the population in the entire territory of a State” (UN General Assembly 2019, para. 59), risks not grasping some transformations concerning old religious majorities. In particular, the evolution of the social system through democratic or authoritarian processes can reverse the relationships between the groups. In this sense, in highly secularized societies, traditional religions—even though they may retain a quantitative majority—have often lost their power to direct the life choices of the faithful. In these terms, Pope Benedict XVI used the category of “creative minorities” to qualify the mission of the Catholic Church in an increasingly secularized Europe.²⁵

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Notes

- ¹ Cf., *ex multiis*, Azcàrate (1945); Lucien-Brun (1923); Brunet (1925); De Balogh (1930); Fouques Duparc (1992); Mandelstam (1923); Pirro (1924); Rudesco (1929); Sereni (1930).
- ² For example, Treaty of Versailles, 28 June 1919.
- ³ Finland, 27 June 1921; Albania, 2 Ottobre 1921; Lithuania, 12 May 1921.
- ⁴ Marco Ventura has presented three cases of “new religious minorities” at the European Academy of Religion. See the (unpublished) paper on ‘New majorities and minorities ‘The impact of/on religion or belief’ presented in the panel on ‘Freedom to Believe or not to Believe. New Directions of Belief. The Religious Pluralism in Europe’, Bologna, 21 June 2017. About this notion, see, more recently, Ventura (Forthcoming).

- 5 On the difficulties linked to the development of a universal definition of the concept of minority in sources of international law (Capotorti 1979, p. 5).
- 6 Questionnaire, in https://www.ohchr.org/Documents/Issues/Minorities/SR/A74160_Survey.docx (accessed on 28 October 2020).
- 7 The Universal Declaration of Human Rights bases the protection of human rights on the belonging of every person to humankind. This relation is defined by specific human qualities. The reference to conscience coincides with the prohibition of legal differentiations based on personal beliefs (Art. 2, para. 1) and with the proclamation of the right to freedom of thought, conscience and religion (Art. 18). See (Zanghì 2002, p. 1).
- 8 The Charter of the United Nations was adopted in San Francisco on 26 June 1945, upon conclusion of the United Nations Conference. It entered into force, with the deposit of the twenty-ninth instrument of ratification, on 24 October 1945.
- 9 In particular, the UN General Assembly invited in 1948 (Résolution 217 C (III)) the Economic and Social Council to “make a thorough study of the problem of minorities, in order that the United Nations may be able to take effective measures for the protection of racial, national, religious or linguistic minorities”.
- 10 On the concept of religious minority, see (Ghanea 2012; Henrard 2007; Ferrari 2019).
- 11 About the meaning of religion within international legal approach, see (Jeremy 2003).
- 12 For an extensive analysis of the linguistic genesis, mobilisation and possibility of translation of the formula “FoRB”, see (Ventura 2021).
- 13 The twofold terminology used by the conventional legislator, which refers not only to religion but also to belief, seems to distinguish belief from religious faith. This distinction is expressed in the anti-discrimination measures, in the matter of religious freedom, drawn up by the UN Sub-Commission. The latter resorts, in fact, to the double term of religion or conviction, due to the difficulty of defining religion juridically, considering that recourse also to the word ‘conviction’ includes, in addition to the different religious beliefs, values of a different kind, such as agnosticism, free thought, atheism and rationalism. In particular, this interpretation is contained in the *Draft International Convention on the Elimination of All Forms of Religious Intolerance*, where it is emphasized that “for the purposes of this Convention: a) the expression religion or belief applies to theist beliefs, not theistic and atheists”; see UN Doc. E/CN.4/Sub.2/250/1965, Annexe I, p. 76.
- 14 Note here that children are not mentioned in the ‘inclusion phase’, and this is because, in my understanding, under article 30 of the 1989 Convention on the Rights of the Child, the protection of children, that are part of a religious minority in their right to profess and practice religion, does not represent a proper transformation of the traditional definition of religious minority. In effect, children were already (an implicitly) recipients of religious minority rights under Article 27 ICCPR. More exactly, this provision refers to ‘persons’ (thus logically including children) belonging to ethnic, religious or linguistic minorities. See (Ferrari 2019, p. 140 ss).
- 15 In the literature see (Wolfrum 1993, pp. 153–66; Bretscher 2020).
- 16 Article 9 provides that: “A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds”.
- 17 About this case, see (Marguet 2020). In the same terms, the Council of State judged about a case of denied of citizenship for a Muslim woman who wore the burqa as a manifestation of her religious identity; Conseil d’Etat, 27 June 2008, no. 286798 and also Conseil d’Etat, 25 February 2015, no. 385652. For an analysis of these decisions, see (Fornerod 2018).
- 18 In particular, the Council of Europe and the Organization for Security and Co-operation in Europe devoted their legal sources only to the notion of national minority; see (Council of Europe 1995; CSCE High Commissioner on National Minorities 1992).
- 19 An analysis of the ECtHR case-law on this topic falls outside the scope of this paper. In fact, the goal here is only to consider the relationship between international and European bodies in their efforts to develop the concept of ‘national minorities’. See the special issue on European Court of Human Rights and minority religions, in *Religion, State and Society*, Vol 45, Issue 3–4, 2017.
- 20 On the concepts of sexual orientation and gender identity, see the definitions contained in (UNHCR 2012b).
- 21 In regard to these notions, M. Sargeant has clarified that: “Two types of multiple discrimination that have been suggested are additive discrimination and intersectional discrimination. The first consists of a situation where the person complaining of discrimination belongs to two separate groups (. . .) The second type consists of intersectional discrimination where the multiple discrimination cannot usefully or effectively be broken down into its component parts” (Seargent 2013, p. 84). On this see also (Fredman 2016).
- 22 Concerning the clash between LGBT rights and religious traditions, see, at the institutional level, Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity (UN General Assembly 2018). In literature, see, for example (Eskridge and Wilson 2018; Bethmont and Gross 2017; Boisvert and Johnson 2017; Farr et al. 2016; Ferrari 2015).
- 23 Author’s note.
- 24 The new holistic conception of minority rights emerges from the development of new legal sources inspired by Article 27 of the Covenant, the recognition of the overlaps between religious minorities and other social groups protected by international

law (indigenous peoples, particular social groups), the disappearance of the link between citizenship and minority and the development of the principle of non-discrimination. See (MacNaughton 2011).

- 25 Interview with Benedict XVI on the occasion of the Apostolic Journey to the Czech Republic, 26–28 September 2009; Cf. (Magister 2009).

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