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Minority rights in Europe: from Westphalia to Helsinki*

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Sovereign insiders and minority outsiders

The 'problem of minorities', with its numerous implications for both international theory and practice, has been a significant issue in international society for centuries. It has constituted an ongoing friction between states, a pretext for separatism, irredentism and intervention, and a direct and indirect cause of local and general wars.[1] Why?

Because although in theory state sovereignty postulates a neat fit between boundaries and politically significant identities, in practice the two rarely coincide. Minorities are political outsiders whose identities do not fit the criteria defining political membership in the sovereign jurisdiction on whose territory they reside.[2] In the seventeenth and eighteenth centuries, religious minorities were at odds with the ecclesiastical loyalties of their sovereign, and thus violated the principle of *cuius regio eius religio* upon which the first modern international order in Europe was based. Over time, of course, the character of political identities changed, and accordingly the initial formulation of *cuius regio eius religio* was replaced by *cuius regio eius natio*. Although prefigured in earlier centuries, since the end of World War I the nation-state has been the uncontested normative grounding of political independence in the modern states system. Since Versailles such political outsiders have been labelled 'national minorities' to distinguish them from other minority populations—for example, immigrants, migrant workers or refugees—which are not capable of making legitimate claims to political independence. Yet although the

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[1] Among the best works which examine various aspects of the 'problem of minorities' are the following: I. Bagley, *General Principles and Problems in the International Protection of Minorities* (Geneva, 1950); I. Claude, *National Minorities: An International Problem* (Cambridge, MA, 1955); G. Gotlieb, *Nation Against State* (New York, 1993); W. Kymlicka, *Multicultural Citizenship* (Oxford, 1995); J. Laponce, *The Protection of Minorities* (Berkeley, CA, 1960); C. Macartney, *Nation States and National Minorities* (London, 1934); J. Mayall, *Nationalism and International Society* (Cambridge, 1990); H. Miall (ed.), *Minority Rights in Europe* (London, 1994); D. Moynihan, *Pandaemonium; Ethnicity in International Politics* (Oxford, 1993); and P. Thornberry, *International Law and the Rights of Minorities* (Oxford, 1991).

[2] For a discussion of inside/outside distinctions in international relations see R. Walker, *Inside/Outside: International Relations as Political Theory* (Cambridge, 1993).

independence of national minorities may in theory be legitimate, in practice it is not easily obtainable because of inherent difficulties in the territorial redistribution that it requires. As a result, the political aspirations of many minorities not only will remain unfulfilled but, as the history of international society demonstrates, may become serious sources of international instability and conflict.

Minority rights are an attempt to limit the potential destabilizing effects of such exceptions to the prevailing rule of state legitimacy. Behind these guarantees is the assumption that the granting of special concessions to minorities will make them less inclined to challenge the territorial *status quo*. Consequently, questions concerning the status of minorities usually come to the forefront of international relations at precisely those moments when a new international order is being established. Thus, it is in the great settlements of modern international relations that the changing norms of minority rights are most apparent. By examining treaties and other elements of international law and diplomacy, especially those congresses and conferences that established new international orders, this article will attempt to demonstrate that each successive formulation of minority rights has accommodated itself to the prevailing standard of legitimate political independence through a process of continuous selection, rejection and addition. It is hoped that this historical study of international practice regarding minorities in Europe will shed light not only on that subject, but also on international society at different stages of its development and thus on international change.

Westphalia, Vienna and Berlin

The Congress of Westphalia

The Congress of Westphalia is conventionally taken as the dividing line between the medieval and modern periods in the conduct of international affairs.[3] By 1644 when this Congress assembled at Münster and Osnabrück, the horizontal, feudal society of medieval Christendom had clearly been replaced by a modern, vertical society of sovereign, territorial states. In other words, the fundamental spatial organization of modern international relations had been established.[4]

As one might expect, the anomalies posed by those communities which did not fit this modern spatial framework also began to emerge at about the time of the Westphalian settlement. In the 1640s there were of course no minority rights as we understand them in the 1990s, i.e., as attaching to certain individual human beings by virtue of their membership in a particular national community. Nevertheless, international agreements from the seventeenth and eighteenth centuries reveal an early political formulation of minority rights as religious freedoms bestowed upon certain Christian communities by the sovereign. Religion, rather than some other

[3] The actual transformation from medieval to modern international relations was of course a gradual development which began in the 1550s and ended with the 1716 Treaty of Utrecht. The Westphalian Settlement occupies a special position within this process because it was the charter of a Europe permanently organized on an anti-hegemonial principle. See A. Watson, *The Evolution of International Society* (London, 1922), ch. 17.

[4] H. Bull and A. Watson, *The Expansion of International Society*, (Oxford, 1984), pp. 14–17.

defining characteristic such as language or culture, was the focus of minority rights during this period, because religious affiliation was the most important dividing line between different communities in Europe at this time. Men and women in the seventeenth and eighteenth centuries defined their social relationships in terms of religious similarity or difference; Catholic or Protestant, Lutheran or Calvinist rather than Irish or English, German or French were the labels variously used to separate insiders from outsiders.

Minority questions usually arose at precisely those moments when the spatial framework of the states system was being modified and new anomalies between the pattern of human communities and international boundaries—insiders and outsiders—were being created. For example, the Treaty of Westphalia itself not only detailed a general territorial redistribution amongst the various sovereigns who had become entangled in the Thirty Years War, but also granted certain concessions to those of the 'Confession of Augsburg' (i.e. Protestants). Protestants received back the churches and ecclesiastical estates that they had possessed in the year 1624, and were guaranteed the free exercise of their religion both in private and in public. Likewise, both the Treaty of Nijmegen (1678) and the Treaty of Ryswick (1697), which settled disputes arising from the French/Spanish struggle to control the Netherlands, guaranteed the continued enjoyment of all 'honours, dignities and benefices' both 'secular and ecclesiastical' that adherents of all Christian faiths in the transferred territories had enjoyed prior to the outbreak of war. Similar stipulations can be found in the Treaty of Oliva (1650), the Treaty of Dresden (1745), the Treaty of Hubertusburg (1763) and the Treaty of Warsaw (1772).

Such guarantees, however, did not extend to members of that same religious community who were already subjects of the sovereign receiving the territory. These agreements concerned only those inside/outside anomalies being created by the spatial redistribution at hand and not any pre-existing anomalies. Consequently, these minority provisions should not be interpreted as evidence of an emerging international norm in favour of religious freedom *per se*, but are better understood in terms of the special relationship between a prince and his co-religionist subjects. Since princes determined the religious affiliations of the peoples they ruled, there remained even in the seventeenth and eighteenth centuries a sense in which the sovereign had certain moral responsibilities for the survival of these transferred co-religious communities.

Although international law from Westphalia onwards would not sanction intervention by one prince in the affairs of another solely on religious grounds, this did not preclude the inclusion of religious guarantees within international treaties as a condition of peace. Hence, in the Treaty of Paris (1763), George III of Great Britain gave Roman Catholics in lands formerly belonging to France the freedom to practise their religion, as a gesture of good faith towards Louis XV. Thus,

> His Britannick Majesty . . . [agreed] to grant the liberty of the Catholick religion to the inhabitants of Canada . . .[5]

However, this freedom would only extend 'as far as the laws of Great Britain permit'.[6]

[5] C. Parry, *Parry's International Treaty Series*, vol. 42, pp. 324, 326.
[6] Ibid. p. 324.

This particular text thus makes very clear the widely held view that any such minority religious guarantees were special concessions granted by the sovereign to his new subjects in the interests of international peace and stability. These subjects were in no way understood to inalienably possess such rights by virtue of their humanity, or natural law, etc.; they owed them to the discretion of the sovereign. Moreover, the laws of the sovereign would prevail in the event of a conflict between the interests of the sovereign and the treaty stipulations pertaining to such communities. In short, the sovereign authority of a prince receiving territory was in no way limited by these early minority religious guarantees but instead remained absolute.

The Congress of Vienna

At about the time of the 1815 Congress of Vienna a new legitimizing principle began to appear in the relations between states: nationalism and its corollary, the nation-state. The rise of nationalism is of course linked to the experience of both the American and the French Revolutions and to the Napoleonic era which followed. The American Revolution did much to popularize Lockean ideas of toleration, natural rights and political representation and to link these ideals to the concept of legitimate power. The French Revolution went on to make the rights of nations a corollary of the rights of man. In the final years of the eighteenth century and at the beginning of the nineteenth, Napoleon offered a certain degree of national independence, at the price of association with the expanding French Empire, to those subject peoples that continued to live in dynastic rather than national states.

This is not to say that the old society of princes was suddenly replaced by a new society of nation-states.[7] Far from it: the international affairs of Europe largely remained a preserve of sovereign rulers and their most senior representatives, such as Castlereagh, Talleyrand, Metternich, Grey, Delcassé and Bismarck, until the First World War finally swept the last remnants of the old dynastic order away. Even in Great Britain and France, the two great European nation-states of this period, there was still only minimal consideration of popular opinion in the formulation of foreign policy until the end of the nineteenth century.

The transformation of international society from an association of princes to one of nation-states was a gradual process spanning several generations. Nevertheless, already in the Final Act of the Congress of Vienna there is evidence that the political formulation of minority rights had begun to change, in response to the rise of national identities as the new characteristic distinguishing insiders from outsiders and thus having the potential to threaten international order. The various treaties signed at Vienna are a noteworthy stage in the evolution of minority rights because they mark the first occasion on which minorities were defined as national groups rather than religious communities.

Article One of the General Treaty, which set out the partition of Poland between Prussia, Russia and Austria, gave Poles the right to maintain their national insti-

[7] For an account of the Congress of Vienna which discloses the continued pre-eminence of the society of princes see H. Nicolson, *The Congress of Vienna* (London, 1946).

tutions, although the precise extent of this guarantee was left to the discretion of the sovereign concerned.

> Les Polonais, suject respectifs de la Russie, de l'Autriche et de la Prusse, Obtiendront une representation et des institutions Nationales reglees d'apres le mode d'existence politique, que chacun des Gouvernments auguels ils appartiennent jugeru utile et convenable de leur accorder.[8]

This vagueness, coupled with the lack of any stipulated enforcement measures, meant that the guarantee was in effect only a statement of general intent designed more to placate French and British public opinion than to preserve some form of Polish national self-expression. Nevertheless, France was later to cite these stipulations as cause for its objection to Russia's repressive measures after the Polish uprising of 1831, and Great Britain and Austria followed suit in 1863 to justify their intervention in Russian-controlled Poland.[9]

At this time, too, there was a corresponding change in the content of minority rights which reflected new understandings of sovereignty as ultimately vested in the people rather than the prince: hence the new impetus for incorporating into the body politic minority communities or outsiders acquired through territorial readjustments. The Vienna Final Act provides some of the earliest evidence of civil and political rights, in addition to religious freedoms, being guaranteed to peoples transferred from one sovereign authority to another. In Article LXXVII of the General Treaty, the people of Berne and the Bishopric of Basle transferred to the Cantons of Berne and Basle were guaranteed equal political and civil rights with the rest of the inhabitants of the said cantons regardless of their religious affiliations. Similar guarantees can be found in Annex X of the General Treaty concerning the unification of (Catholic) Belgium and (mainly Protestant) Holland and in Annex XIV of the General Treaty concerning the transfer of (Catholic) lands formerly under the jurisdiction of the King of Sardinia to the (Protestant) Canton of Geneva.

Of course, alongside this impetus for political incorporation was a corresponding tendency towards assimilation of minority communities within the dominant national, cultural and linguistic group. It is therefore important to remember that minority guarantees defined in terms of equal civil and political rights are compatible with assimilationist objectives. The tendency to use minority rights to equal treatment as a justification of assimilationist campaigns designed to transform outsiders into insiders has been a recurring feature of international minority guarantees from Vienna onwards.

The Congress of Berlin

As the nineteenth century progressed, this new national formulation of minority rights gained currency until, by the 1878 Congress of Berlin, the question of minorities had become a corollary of the rise of new nation-states outside Western Europe. As international society expanded eastwards by adding new members, particularly in the Balkan peninsula, the right of minorities to civil and political

[8] Parry, *Treaty Series*, vol. 64, p. 457.
[9] Macartney, *Nation States*, p. 161.

liberties as well as religious freedoms came to be the price exacted by the great powers for their acquiescence in border changes affecting new nation-states such as Greece, Serbia, Montenegro, Romania and Bulgaria.[10] There was in these treaties, however, unlike those of earlier periods, a substantial element of unequal sovereignty imposed on new states by existing powers. As a condition of their international recognition such states had to demonstrate a willingness to comply with a 'standard of civilization'[11] (defined by, for example, adherence to the rule of law, respect for civil liberties and minority guarantees) which went beyond the traditional, minimalist criteria for establishing sovereign independence that historically concerned only the effective control of territory and people. Thus, minority undertakings included in international treaties from the late nineteenth century onwards were no longer voluntarily assumed by states as gestures of international goodwill, as they had been in earlier periods, but were externally dictated preconditions for the new nation-states' membership in international society. Behind such great-power minority dictates was of course the presupposition that peoples outside of Western Europe were backward, if not intrinsically inferior, and therefore required great-power tutelage in matters such as minority questions, which could potentially threaten international order and stability as defined by great-power interests.

One of the earliest examples of minority guarantees as external impositions upon new and weak states was the various requirements of the London Protocols of 1830 establishing Greek independence from the Ottoman Empire. As a condition for recognizing its independence, France, Great Britain and Russia bound the new Greek state to respect the rights of Muslims within the territory it controlled, including their freedom to practise their own religion and to maintain religious institutions and foundations. Even further afield, the so-called unequal treaties imposed by the great powers on nineteenth-century China following her defeat in the Opium War also afford evidence of externally dictated rather than voluntarily assumed minority guarantees. Thus, the 1858 Treaty of Tientsin signed by China under threat of renewed Western military hostilities included a commitment to respect the freedom of Christians (Protestant and Catholic, Chinese and European) both to practise their religion and to proselytize.

However, it is in the 1878 Treaty between Austria-Hungary, France, Germany, Great Britain, Russia and Italy for the Settlement of Affairs in the East, more commonly known as the Treaty of Berlin, that the practice of imposed and indeed paternalistic minority obligations is most apparent. C. A. Macartney maintains that the Berlin Congress was the 'most important of all international bodies concerned with minority rights prior to 1919'.[12] This interest is hardly surprising since the

[10] There is an earlier precedent for minority guarantees in south-eastern Europe which predates even the Treaty of Westphalia. The inclusion of religious guarantees for Christian communities in Ottoman lands was a common feature of relations between Christian and Islamic powers from the Middle Ages onward. Such Christian minority guarantees obtained from the Sublime Porte, however, usually differ fundamentally from those minority stipulations later demanded of the new states in Eastern and Central Europe. First, such conditions were not prerequisites for European recognition of Ottoman independence. Secondly, the Sublime Porte usually interpreted such guarantees as international confirmation of traditional Ottoman practices regarding religious communities rather than serious external impositions or curtailments of its domestic power. The *millet* system, which prevailed in the Ottoman Empire from the fifteenth century to the 1920s, gave each religious community substantial autonomy with regard to education and property as well as religious affairs.

[11] For a discussion of the standard of civilization in international relations see G. Gong, *The Standard of Civilization* (Oxford, 1984).

[12] Macartney, *Nation States*, p. 166.

Great Eastern Crisis of 1875–8 was, at its most fundamental, concerned with the national aspirations of the Balkan peoples. As A. J. P. Taylor writes,

> the Southern Slav movement was a true national revival, a translation into Balkan terms of the spirit which had brought Italy and Germany into being . . . [and this] new national emphasis in the Eastern question transformed the structure of international relations.[13]

In Articles XXVII and XXXIV of the Treaty of Berlin, the states of Montenegro and Serbia, as a condition of their independence, were bound to recognize the religious freedom of Muslims, and gave assurances that religious affiliation would not be used as grounds for discrimination within their new jurisdictions. The minority guarantees regarding Romanian independence were even more elaborate. Not only was religious freedom and non-discrimination in the enjoyment of civil and political rights, public office, membership in the professions and in industry guaranteed to religious minorities, it was also extended to the 'subjects and citizens of all the Powers' who were resident in Romania. In this regard, the Romanian provisions of Article XLIV are similar to the treaties imposed upon China, many of which concerned the rights of European civilians resident there. Article IV pertaining to the independence of Bulgaria is also noteworthy since it ensured that the interests of all national groups—Turkish, Romanian, Greek and others—would be taken into consideration when drafting electoral regulations and the 'Organic Law of the Principality'.

Failure to fulfil these requirements did not result in the withdrawal of recognition once it had been given. Nor were any enforcement mechanisms regarding non-compliance specified in the treaties themselves. Nevertheless, I. L. Claude maintains that the great powers undoubtedly considered that the Treaty of Berlin gave them the right of interference in the case of non-fulfilment.[14] Evidence of this conviction, however, is more apparent in statements made by great-power representatives than it is in their actions *per se*. Prior considerations of national interest and the balance of power prevented such interference in most cases. The only exception to this rule occurred with regard to Romania, where intervention did take place to rectify mistreatment of the Jewish minority.[15]

The League of Nations minority system

The great powers' response to the events of 1875–8 established a standard of treatment that was later applied to those new nation-states which emerged out of the defeated Ottoman, Habsburg and Hohenzollern Empires in East-Central Europe after 1919. These successor states were unavoidably ethnographically diverse despite the fact that national self-determination was publicly avowed as the wellspring of their legitimacy. As the so-called Committee on New States charged with the task of fixing the post-1919 boundaries of East-Central Europe was quick to discover, it was virtually impossible to create homogeneous nation-states in the region. Consequently, certain nationalities—Ruthenians, for example—were unsuccessful in

[13] A. J. P. Taylor, *The Struggle for Mastery in Europe, 1848–1918* (London, 1954), pp. 232–3.
[14] Claude, *National Minorities*, pp. 8–9.
[15] Ibid.

obtaining that entitlement which wartime rhetoric on self-determination had proclaimed was a right of all peoples—independent statehood. At the same time, other nationalities were only partially successful and found themselves members of new, multiethnic entities not entirely of their own making: for example, Slovaks in Czechoslovakia, or Slovenes and Croats in Yugoslavia. Not only did national groups intermingle within their traditional territories, but significant numbers of the former ruling elites—Germans and Hungarians—remained in the newly independent states, where they resented their loss of power and privilege to those mostly Slav peoples they had long considered as inferiors.

The victorious powers recognized that ethnic dissatisfaction with the territorial *status quo* had the potential to escalate into domestic and even international violence. Thus, they continued to make the recognition of independence or enlargement of the East-Central European states—Poland, Czechoslovakia, Romania, the Kingdom of Serbs, Croats and Slovenes and Greece—contingent upon their acceptance of certain minority guarantees.[16] At the same time, Albania, Lithuania, Estonia, Latvia and, outside of Europe, Iraq were persuaded to accept minority obligations as part of the terms of their admission to the League of Nations. Similarly, minority guarantees were imposed as a condition of peace upon those East-Central European states—Austria, Hungary, Bulgaria and Turkey—that had been on the losing side of the war.[17]

The confinement of the League minority system to the small states of Eastern and Central Europe represented a continuing refusal to apply the doctrine of equality of states universally. If minority conflicts were a threat to international peace and stability in all those states which acquired new territories, and with them new minorities, in the 1919 treaties, then why were such international obligations not imposed on Italy, France, Belgium, Denmark or even defeated Germany, all of whom satisfied this description? The answer to this question reflects the same combination of balance-of-power calculations and Western prejudice against allegedly illiberal East-Central European regimes which underlay the Treaty of Berlin minority stipulations: minority safeguards were deemed unnecessary for politically mature Western European states who could be relied upon to fulfil the 'standard of civilization'.

Nevertheless, the political formulation of minority rights inherited from the Berlin Congress was modified under the Versailles settlement in ways that made it appear to be in keeping with the liberal idealism of the interwar period. First, the category of minority rights was expanded to include language rights and a minimal degree of cultural autonomy. This development reflects the concept of nationhood which was current in those liberal countries of Western Europe and North America that emerged as the victorious powers of 1918–19. At this time, distinct linguistic and cultural characteristics were widely accepted as proof of nationhood. If the peoples inhabiting a particular area had a unique language and culture then they could legitimately claim a right to national self-determination and independent statehood.

[16] Poland was so bound as a result of the 1919 Treaty of Versailles, Czechoslovakia by the 1919 Treaty of St Germain-en-Laye, Romania by the 1919 Treaty of Paris, the Kingdom of Serbs, Croats and Slovenes (later renamed Yugoslavia) by the 1919 Treaty of St Germain-en-Laye, Greece by the 1920 Treaty of Sèvres.

[17] Austria accepted guarantees for her minorities as a result of the 1919 Treaty of St Germain-en-Laye, Hungary did likewise by the 1920 Treaty of Trianon, Bulgaria by the 1919 Treaty of Neuilly-sur-Seine, and Turkey by the 1923 Treaty of Lausanne.

Thus, for example, Thomas Masaryk argued that Czech and Slovak were simply two dialects of the same language and therefore the Czech and Slovak peoples were one nation and should be incorporated in one political unit, i.e., Czechoslovakia. Linguistic and cultural arguments of this kind were also made in favour of a common South Slav kingdom. Similarly, if a nation was unable to form its own independent political unit and instead was forced to exist as a national minority within another nation's state, then this minority nation was entitled to preserve its own distinct identity as reflected in its language and culture.

Secondly, and once again in keeping with the liberal idealism of the interwar period, the provisions of these interwar treaties, unlike those of earlier periods, were guaranteed by an international organization, namely the League of Nations. In theory this legalistic procedure was designed to ensure compliance through a combination of collective decision-making and the moral approbation of international public opinion. In practice, however, this consensual conflict-resolution formula broke down because the international goodwill it relied upon was not forthcoming. The League Council, the body charged with enforcing the various minority treaties, failed to act upon complaints from minorities accused of disloyalty towards their postwar governments. Indeed, there was a general willingness to ignore state policies aimed at the assimilation of national minorities when these were deemed necessary for the internal stability of the state concerned. And on those occasions when the Council did decide to investigate alleged infractions of the minorities treaties, members from Western European states, particularly Great Britain and France, were reluctant to become involved when their national interests were not concerned. This reluctance enabled those members of the Council whose ethnic kin formed minorities in other jurisdictions (i.e. kin-states like Germany and Hungary), and therefore whose national interests were at stake, to take the initiative in implementing League guarantees.

As a result, minority questions degenerated into a political struggle between, on the one hand, minorities and kin-states with revisionist aims towards the international boundaries set by the treaties of 1919 and, on the other hand, those treaty-bound states that wished to preserve the territorial *status quo* where it was to their advantage, e.g. Germany vs Poland, Germany vs Czechoslovakia, Poland vs Lithuania, Hungary vs Romania, Austria vs Yugoslavia, Bulgaria vs Greece, Greece vs Turkey, and Greece vs Albania. Consequently, and ironically, the League of Nations System of Minority Guarantees, with few exceptions,[18] ultimately became an instrument for fomenting international rivalry and discontent. Treaty-bound states resented their exceptional position in international law and sought to avoid their minority responsibilities whenever possible. At the same time, German and Hungarian minority grievances (both real and contrived) were deliberately exploited by revisionist Germany and Hungary throughout the 1920s and 1930s.

[18] One noteworthy exception to the interwar failings with regard to minority protection is the Aaland Islands Agreement of 1921 between Finland and Sweden. Although technically not a part of the League of Nations minority system—it was not a condition of Finland's admission to the League of Nations and does not appear in the treaty series of the League of Nations but only in the Council minutes of 27 June 1921—this agreement, together with the additional guarantees given by the Finnish government in a domestic act of 1922, provided the Aalanders with both minority protection and an organization to develop local self-government. These Aaland provisions not only outlived the League of Nations but were reaffirmed and strengthened in the domestic Finnish Aaland Autonomy Act of 1951 which remains in effect today.

These various shortcomings and the animosities they engendered eventually succeeded in destroying the League minority system which effectively came to an end on 13 September 1934 when Poland denounced her treaty obligations. Following this unilateral action, the system became increasingly ineffectual until it was finally destroyed by the Second World War. It was officially judged to be extinct by the United Nations Secretariat in 1950 which based its findings on the effect of the Second World War, the dissolution of the League of Nations, and the abrogation of the minorities treaties implied by the coming into effect of the United Nations Charter, and by the stipulations concerning human rights and fundamental freedoms in the peace treaties of 1947.[19]

The postwar settlement

After 1945, minority rights lost their hitherto independent standing in international relations and were subsumed under the newly created universal human rights regime. The failure of the League of Nations discredited minority rights, and the minorities themselves tended to be viewed with suspicion owing to the wartime complicity of certain minority leaders in Nazi aims in East-Central Europe; though it should also be pointed out that these aims cleverly exploited minority fears and aspirations within the region. Consequently, unlike in previous eras, minority rights were considered contrary to international peace and security. Thus the interwar system of minority guarantees was not resurrected and no new minority rights provisions were included in the various agreements of the 1940s which laid the foundations of the Cold War human rights regime.

There were, of course, very many issues on the immediate postwar agenda, but significantly the question of minorities was not primary among them. During the years 1945–8, international actors were concerned first and foremost with questions of a military and strategic nature such as the division of Europe, the postwar administration of Germany, and in particular the position of Berlin. In fact, minorities were frequently in danger of being excluded altogether from the early postwar agenda. In part, this general disregard for minorities in the postwar settlement may be explained by the fact that international boundaries in Europe after 1945 were for the most part restored to the *status quo ante* of 1919 and indeed remained frozen for the duration of the Cold War. To recall, when boundaries in Europe have changed, minority issues have generally been pushed to the forefront of international relations. This was, of course, the case after World War I when the League minority system was created. Even earlier than this, the great settlements which ended the Napoleonic and Thirty Years Wars also reveal a concern for anomalous minority communities. Following this line of reasoning, so long as boundaries were not challenged, there was little need for international society to review the fate of particular minorities, let alone the broader normative conclusions such cases might precipitate. Awareness of minority issues was only kept alive in the immediate postwar years by the fact that minorities were both victims of the war who required Allied assistance and also villains who were subjects of war crimes tribunals.

[19] United Nations Document E/CN.4/367.

The role of national minorities in the Second World War was contradictory, and consequently evoked ambivalent responses. On the one hand, certain minorities were innocent victims of the Nazi regime and as such inspired great sympathy and moral outrage. Thus there was an overwhelming postwar conviction that the international order should be constructed so as to prevent atrocities like the Holocaust from ever occurring again; although, of course, the Jewish question in Europe was ultimately resolved not through minority rights but instead through the fulfilment of Jewish national self-determination in the creation of the state of Israel. On the other hand, minorities had also been pretexts for and accomplices in Nazi aggression. Hitler had adroitly played the nationalities game to divide and conquer Europe. He claimed for Germany every territory diaspora German groups occupied, and used the ideal of uniting all Germans within the German motherland as a pretext for aggression. Similarly, some, though by no means all, members of German minorities in Europe had acted as a fifth column to spread Nazi propaganda and destabilize existing interwar political regimes, and, when invasion did finally occur, held posts as Nazi officials. As well, certain non-German minorities in East-Central Europe had co-operated with the Nazis to further their own nationalist aspirations. Thus, in return for their national independence, the Slovak and Croat governments, for example, had agreed to support Nazi aims. Similarly, Hungarian allegiance to Hitler was rewarded with the transfer of southern Slovakia and half of Transylvania to the Hungarian state in 1940. Because of episodes like these, the claims of national minorities in the immediate postwar period were often viewed as redolent of ethnonationalism, irredentism, aggression and duplicity.

Indeed individual human rights, as opposed to minority rights, were favoured by many international actors at this time because they were considered compatible with domestic policies aimed at both the assimilation and the transfer of potentially disloyal minorities. While the principle of assimilation was not included in the peace settlements that ended the Second World War, there was nevertheless a certain sympathy towards this practice as a means of finally overcoming the difficulties associated with political outsiders of this kind. This was especially true in the United States where the problem of minorities was often characterized as a struggle of individuals for civil and political equality in the face of discrimination based on irrelevant ascriptive characteristics such as ethnicity or religion. Americans who took this view—and, of course, their thinking dominated international relations at this time—were guided more by the particularisms of their own experience of minority groups seeking and yet being denied assimilation than they were by the history of minority demands in East-Central Europe. In this region, minority national groups were very often fighting to maintain their cultural distinctiveness in the face of unsolicited efforts to deny or erode their identities. Yet because the problem of national minorities in East-Central Europe was characterized solely in terms of discrimination—i.e., of outsiders seeking and yet being denied insider status—individual human rights amenable to policies of assimilation, especially rights to equality, were supported by America and her allies in the late 1940s.

Similarly, population transfers were accepted by the great powers immediately after the Second World War as a respectable means to resolve certain outstanding minority questions; the irony of this historic approval is unmistakable from the perspective of the 1990s international condemnation of ethnic cleansing in Bosnia. In the earlier part of this century the idea of transfer was endorsed and

implemented as a legitimate solution in situations where insiders and outsiders did not fit tidily into nation-state divisions. The 1923 Convention Concerning the Exchange of Greek and Turkish Populations between Greece and Turkey was the most commonly cited precedent for the idea of transfer as sanctioned by international law. Hitler and Stalin had of course also made extensive use of forced population transfer during World War II. Although opponents of transfer called attention to this far more dubious precedent in their attempt to discredit the idea of forcibly moving populations, their endeavours not only failed but in certain respects produced public reactions contrary to those they had intended. Many officials and private individuals in early postwar Europe believed Nazi activities of this kind justified a similar punitive policy towards those German minorities that remained in East-Central Europe after 1945. The Allied Control Council for Germany in 1945, for example, approved the forced transfer of 6.5 million ethnic Germans from Czechoslovakia, Poland and Hungary.[20]

Advocates of transfer were motivated by a concern for the welfare and security of the nation-state and the realization of the majority group's right to self-determination. Similarly, the act of transferring a national minority to a jurisdiction in which its ethnic group formed the majority was seen to be a fulfilment of its national self-determination. Nor was the idea of transferring populations generally considered contrary to the main tenets of human rights. Instead, it was argued that the civil and political rights of transferees would still be respected in their new jurisdiction and, since they were no longer outsiders, such individuals would be less likely to experience discrimination and inequality. Indeed, the 1946 Paris Peace Conference provided for transfers of ethnic Italians, Croats, and Slovenes between Italy and Yugoslavia while at the same time also recognizing individual human rights, evidently without considering the one provision to be a violation or contradiction of the other.[21]

A general consensus thus emerged in favour of the view that human rights by themselves, rather than coupled with more specific minority provisions, were the preferred response to minority questions that should be set out in the postwar settlement. The San Francisco Conference of 1945 included a commitment to human rights alone in the United Nations Charter. Similarly, the Paris Peace Conference of 1946 incorporated clauses that affirmed the principle of human rights, and bound states to prohibit discrimination and promote civil and political equality, but said nothing about cultural or language rights. Moreover, the peace treaties with Romania, Bulgaria, Hungary, Finland and Italy all contained guarantees against discrimination, but, unlike those that ended the First World War, none made reference to minority provisions. In sum, minority rights were noticeably absent from those international agreements of the 1940s which restored inter-

[20] United Nations Document E/CN.4/Sub.2/214, p. 3.

[21] The UN Trusteeship Council, however, did make recommendations in favour of adopting minority rights provisions in those non-European territories with which it was concerned. This tendency to link minority questions with border revisions, which of course has deep roots in the history of international society, culminated in the 1953 Resolution 520 F (XVI) of the Economic and Social Council which recognized the principle of providing minority guarantees on occasions of territorial redistribution. This resolution had little practical effect during the Cold War, as the process of decolonization in Africa and Asia did not modify the pre-existing colonial boundaries but instead elevated them to an international status.

national society to postwar Europe. And this can be read as evidence of a strong desire not to repeat the mistakes of 1919.

The Cold War

This general antipathy both inside and outside Europe continued for the duration of the Cold War, as is evident in the record of international organizations like the United Nations, the Council of Europe, and, to a lesser extent, the Conference on Security and Cooperation in Europe (CSCE), subsequently renamed the Organization for Security and Cooperation in Europe (OSCE) in January 1995. Not one of these organizations adopted a separate minority rights text during this period. Furthermore, while these institutions all included within their various human rights instruments guarantees against discrimination on grounds of national affiliation or membership in a minority group, thus carrying on the traditions of the nineteenth and earlier centuries, they did not repeat or carry forward the League's efforts to provide minorities with language rights and a certain degree of cultural autonomy.

The only United Nations human rights instrument adopted between 1945 and 1989 which even incorporated a specific minorities clause is the 1966 Covenant on Civil and Political Rights. This provision, however, gives state signatories the freedom to determine whether or not ethnic groups in their jurisdictions constitute minorities. Needless to say, very many states that possessed minorities effectively avoided their international obligations in this regard by redefining these groups under a different rubric, be it 'immigrant', 'aboriginal', or whatever. Meanwhile, the UN Sub-commission on the Prevention of Discrimination and Protection of Minorities, the only UN body specifically charged with examining minority questions, tended to ignore the second part of its mandate in favour of the first.

Similarly, the 1950 European Convention on Human Rights, signed under the auspices of the Council of Europe, lacks any specific mention of minority rights. Nevertheless, between the years 1949–61 the need for more specific minority guarantees was discussed on several occasions, particularly in the Consultative Assembly. Each time the matter was raised, however, it was quickly pushed aside because of a publicly avowed determination not to repeat the League's failed minority experiment.[22]

The 1975 Helsinki Final Act departs from this general postwar avoidance of minority questions in specifically mentioning minorities in three different places: the Declaration on Principles, Principle VII and the section entitled Co-operation in Humanitarian and Other Fields. However, the content of the provisions is, once again, confined to anti-discrimination measures and allows states a wide latitude in interpreting the kind of actions that could and could not be undertaken in regard to

[22] Nevertheless, outside the auspices of the Council of Europe, certain of its members did enter into minority agreements to resolve outstanding minority questions; for example, the De Gasperi–Gruber Agreement of 1946 between Austria and Italy concerning German-speaking minorities in Bolzano and Trento, the 1955 agreement between Denmark and the Federal Republic of Germany concerning Danes and Germans on either side of the border in Schleswig, and the Austrian State treaty of 1955 concerning Slovenes and Croats in Carinthia, Burgenland and Styria.

minorities. Moreover, this initial interest in minority concerns was not sustained in the various 'CSCE Follow-up Meetings' which took place between 1975–89. Instead, these meetings were dominated by a concern with the treatment of political dissidents and the violation of individual human rights, particularly those civil and political liberties associated with the movement towards democracy in Communist states.[23]

After the Cold War

The revolutions of 1989–91 finally ended forty-five years of international silence on minority issues. The fall of Communism in East-Central Europe and the former Soviet Union was of course accompanied by an outpouring of antagonistic nationalism on the part of both minorities and majorities.[24] The dissolution of multinational states like Czechoslovakia, Yugoslavia and the Soviet Union into their major constituent national units during the early 1990s confirmed that secession was once again a very real possibility in those states where national minorities were regionally concentrated and might therefore come to demand their own, independent political units. Since there are very many East-Central European states which fit this description—Romania, Bulgaria, Hungary, Slovakia, Croatia, Bosnia and Serbia, to name only a few—minority demands which remained unanswered were identified as potential threats to the post-Cold War international order. At the same time, a new-found freedom of mobility made it possible for members of national minority groups to join their ethnic kin in those states where they already formed the majority. Many thousands chose to make this move, and consequently the early 1990s saw the greatest movement of peoples in Europe since the end of the Second World War. Germany, Hungary and Turkey received the largest numbers of ethnic migrants, but significant numbers also fled to Austria, and the conflicts in Croatia and Bosnia dispersed huge numbers of ethnically cleansed refugees throughout former Yugoslavia and beyond. These mass migrations were themselves identified as possible sources of political instability in the states both of emigration and of immigration.

Thus were minority questions once again an important subject of international discourse and action. In keeping with long-established practice, the various bodies charged with determining the criteria for international recognition of new states in East-Central Europe again acknowledged minority provisions as essential prerequisites. For example, the Badinter Commission, which was convened to establish a common policy for the European Union member states' recognition of the breakaway Yugoslav republics, identified the guarantee of minority rights as a fundamental requirement that would have to be satisfied before recognition could take place. In the event, of course, Germany's determination to recognize the independence of Croatia and Slovenia sooner rather than later, which itself owed a

[23] V. Mastny, *The Helsinki Process and the Re-integration of Europe 1986–1991* (London, 1992), pp. 11–21.

[24] A gradual process of transformation, including the re-emergence of national identities, had of course already been under way in Communist East-Central Europe and the Soviet Union for some time prior to the cataclysmic events of 1989–91. See, for example, J. Rothschild, *Return to Diversity* (Oxford, 1989), and G. Smith (ed.) *The Nationalities Question in the Soviet Union* (London, 1990).

great deal to the presence of a well-established and successful Croatian immigrant community in Germany, made the Badinter Report redundant. Nevertheless, the practical difficulties associated with establishing a common European Union foreign policy do not diminish the normative significance of the Badinter Commission's findings nor the historic continuity they represent.

Issues of recognition aside, after 1989 the situation of minorities in East-Central Europe and the former Soviet Union was taken up by the CSCE as both a security concern because of possible minority/majority conflicts, and a human rights concern because of possible oppression of individual members of minority communities. Likewise, the condition of national minorities was examined by the Council of Europe as a potential obstacle to the democratic development of former Communist states in the region and as an economic and social problem in these kin-states that were on the receiving end of minority migrations.[25] One of the main diplomatic challenges thus confronting the CSCE and Council of Europe in the early 1990s was to recognize some form of minority rights that was on the one hand strong enough to afford the possibility of genuine protection for national minorities, while at the same time reassuring those states which possessed such communities that their sovereign powers and territorial integrity were not being challenged, i.e., to demonstrate that the League of Nations' shortcomings in this regard would not be repeated. This was attempted by recognizing individual rather than collective rights, by making the content of these provisions largely reflect the post-1945 human rights *status quo* and by explicitly acknowledging that such provisions were limited by the traditional tenets of international relations such as equal sovereignty, territorial integrity, non-intervention and the like.

For example, the CSCE's 1990 Copenhagen Document built upon the human rights provisions already acknowledged in the 1975 Helsinki Final Act by recognizing the rights of national minority members to form their own associations both within and across international frontiers, to freely use their minority languages in public and in private, to have access to and receive information in their minority language, and to conduct religious ceremonies and education in their minority language. These minority commitments were later reiterated in the 1990 Charter of Paris for a New Europe, the 1991 Geneva Report on National Minorities, the 1992 Moscow Document and the 1992 Helsinki Document. Both the Council of Europe's 1995 Convention for the Protection of National Minorities[26] and the Parliamentary Assembly of the Council of Europe's 1993 Proposal for a Minority Rights Protocol

[25] It is important to note that international organizations not specifically concerned with Europe were also rediscovering the importance of minority questions during the 1990s. Thus, for example, the United Nations Sub-commission for the Prevention of Discrimination and Protection of Minorities, which had ignored minority issues for the duration of the Cold War, began serious work on minority rights texts. This activity culminated in the 1992 UN Declaration on the Rights of Persons Belonging to National, or Ethnic, Religious and Linguistic Minorities. This text can be regarded as the global minimum standard for the treatment of minorities, although within Europe itself the OSCE and Council of Europe minority texts require an even more stringent code of state conduct.

[26] The Convention was opened for signature on 1 February 1995. As of 31 March 1995, there were twenty-two signatories: Austria, Cyprus, Denmark, Estonia, Finland, Hungary, Iceland, Ireland, Italy, Liechtenstein, Lithuania, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and the United Kingdom.

to the European Convention on Human Rights[27] contained similar guarantees for minority associations and religions. In addition, the Council of Europe's 1992 Charter for Regional or Minority Languages made extensive provision for the use of minority languages in education, judicial and administrative bodies, the media, cultural activities and facilities, economic and social life and trans-frontier exchanges.

While most OSCE and Council of Europe provisions for minority rights augment the post-1945 human rights regime, the 1990s response to this problem also reveals both an important reappraisal of League of Nations linguistic and cultural guarantees and the nascent formulation of rules with no clear precedent in international agreements. The extensive provision made for minority language use and cultural development in the various minorities texts of the 1990s represents an important continuation of earlier League initiatives in this area which had been largely forgotten or ignored during the Cold War. Even more importantly, the recent prohibitions against assimilation and forced population transfer and suggestions for various forms of autonomy evident in the Copenhagen Document and the 1995 Minorities Convention embody innovative responses to the demands of national minorities.

The right to freedom from assimilation and from forced population transfer was a direct response to situations like ethnic cleansing in Bosnia as well as other assimilationist campaigns such as those carried out against ethnic Turks and Muslims in Bulgaria, and against ethnic Hungarians and Germans in Romania under the old Communist regimes. There was a precedent in international agreements for sanctions against assimilation in its most violent and extreme form, namely extermination or genocide. Genocide was of course prohibited in international agreements such as the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. However, no such precedent existed for the prohibition of lesser forms of assimilation that are intended to alter an individual's language, culture and ultimately his or her ethnic or national identity or to transfer an individual forcibly from one locale to another on the basis of ethnic or national identity. Prohibition of these sorts of government practice was not previously the subject of human rights or other international agreements. The Copenhagen Document thus broke new ground when it stated that 'persons belonging to national minorities have the right freely to express, preserve and develop their ethnic cultural, linguistic or religious identity . . . free of any attempts at assimilation against their will'. In a similar vein, the 1995 Minorities Convention specified that states shall refrain from both 'practices aimed at the assimilation of persons belonging to national minorities against their will' and 'from measures which modify the proportions of the population in areas inhabited by persons belonging to national minorities'.

In suggesting various forms of autonomy for minority communities, these texts moved still further away from post-1945 human rights traditions in international relations and appeared to be refining the right of nations to national self-determination by advocating minority self-government within existing states where

[27] The heads of state and government of the member states of the Council of Europe decided at their Vienna Summit Meeting on 9 October 1993 to adopt both a national minorities protocol to the European Convention on Human Rights (ECHR) that would be open to all signatories of the ECHR and a separate convention on national minorities which would be open to both members and non-members of the Council of Europe.

outright independence could not be realized. This at least appeared to be the case in the Copenhagen Document where reference is made to 'appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of . . . minorities' and in the Proposed Minorities Protocol where it is stated that 'in regions where they are in a majority, the persons belonging to a national minority shall have the right to have at their disposal appropriate local or autonomous authorities or to have a special status, matching the specific historical and territorial situation'.

Needless to say, such suggestions were and are highly controversial, since empowering national minority communities through the concession of self-government would have the effect of diminishing or disempowering existing state bodies. As a result, all suggestions of this kind specifically acknowledged the state's right to determine how or even if autonomy would be implemented. So, for example, the Copenhagen Document identified autonomy as only 'one of the possible means' to achieve the promotion of national minority identities, and acknowledged that all such measures must be 'in accordance with the policies of the State concerned'. Likewise, the Proposed Minorities Protocol deferred to the 'domestic legislation of the state' in its characterization of minority autonomy. It remains to be seen how much if any effect such provisions will have on the emergence of new norms in international relations or on the redefinition of state sovereignty as it has been traditionally understood.

Nevertheless, there clearly has been a *substantial normative shift* on the issue of minority rights following the end of the Cold War. The most important change of all is perhaps the most easily overlooked: after 1989, *minority questions were once again legitimate subjects of international society*. It should again be emphasized that this has not always been the case. Between the years 1945–89 minority issues were considered to be a province of domestic politics, and states that possessed minorities were by and large left to deal with them as they saw fit.

Confirmation of normative shift on this issue was implicit in the minority rights provisions of the Copenhagen Document and was subsequently made explicit in the Geneva Report which categorically states that

> issues concerning national minorities, as well as compliance with international obligations and commitments concerning the rights of persons belonging to them, are matters of legitimate international concern and do not constitute exclusively an internal affair of the respective state.

This fundamental acknowledgement was later reiterated in the Moscow Document and the Helsinki Document. The 1995 Minorities Convention contains a similar declaration; Article One holds that

> the protection of national minorities and of the rights of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation.

As a result of such statements, by the mid-1990s it was no longer possible for states accused of mistreating their minorities to defend themselves against international criticism by arguing that minority matters were strictly matters of domestic politics. International society is now once again plainly concerned with the condition of national minorities.

Conclusion

Two main lessons can be drawn from the history of minority rights in Europe. First, the international history of this subject is, significantly, a constitutional history. This is the case notwithstanding the condition of anarchy which has prevailed throughout. By 'constitutional' I mean that minority rights are clearly a legitimate concern of various congresses, conferences and treaties. That is how minority questions are dealt with. When viewed from this perspective, international change appears to be an evolutionary process, albeit one that proceeds in fits and starts, characterized by the ongoing readjustment of inherited practices rather than a few decisive breaks with the past. Moreover, this process is rule-oriented: revision, reinterpretation, rewriting, etc. of the rules of the game as they pertain, in this case, to the treatment of minorities. Second, the evidence of evolving norms to do with minorities reveals a close relationship between necessity and innovation in international practice. As the identity of minorities shifted over time in conjunction with changing definitions of international legitimacy, so too did the formulation of minority rights designed to mitigate the potentially disruptive effects of their political claims.

Yet this conclusion implies more than just the confirmation that *Realpolitik* plays a crucial role in international change. Minorities pose a threat to international order only because their existence reveals a gap between the practice of state sovereignty and the principle of legitimacy. This is an important and timely reminder that international change is not about power politics pure and simple: norms such as *cuius regio eius religio* or *cuius regio eius natio* also have an important place in the conduct of international relations. It would be difficult to make sense of the 'problem of minorities' if this were not the case.