
Minority Rights as an International Question

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In the towns with funny names,
hit by bullets, caught in flames,
by and large not knowing why,
people die . . .
People die as you elect
new apostles of neglect,
self-restraint, etc. – whereby
people die . . .
While the statues disagree,
Cain’s version, history
for its fuel tends to buy
those who die.

Joseph Brodsky, *Bosnia Tune*

The international protection of minority rights did not begin in the twentieth century. What was unique were the new political ideas that infused the subject, the new organisations and practices established to protect minority rights, and also the fundamental irresolution embedded in all attempts to intervene on behalf of endangered and oppressed religious and national groups.

Historical background

When Europe established its modern state system in 1648, it also devised the first system of international minority protection. At precisely the moment when the principles of almost unbridled state sovereignty and the balance of power were enshrined in international practice, the great powers recognised the threat to the new order and to the borders they were about to create of minority persecution. Hence, along with major territorial alterations, the treaty of Westphalia in 1648 limited the traditional power of sovereigns (codified since 1555 as *cuius regio eius religio*) by stipulating that religious minorities, transferred involuntarily from one rule to another, were to be accorded protection. The treaty also acknowledged the right of intervention by a foreign power, and it specified modes of enforcement, albeit in vague and non-punitive terms.¹

¹ Fred L. Israel, ed., *Major Peace Treaties of Modern History, 1648–1967*, I (New York: Chelsea House, 1967), 7–49. Articles 28 and 46 dealt with Protestants; 78 and 117 with Catholics; 49 with Sweden’s

From its beginning, the international protection of minority rights was based on fundamentally practical but also inconsistent goals. The primary aim was to reduce the potential of internal convulsions to spread outward. The great powers, recognizing the impossibility of creating homogeneous states anywhere in post-Reformation Europe as well as the tenacity of distinctive religious beliefs and practices within the minority and of intolerance within the majority, sought to restrain spoliation, violence, and expulsions which could destabilize neighbours, invite retaliation, and provoke generalised hostilities.²

This assertion of a collective international interest in the protection of minorities was, however, gravely circumscribed by the absence of implementation procedures. Beyond extracting formal guarantees from states acquiring new territories to preserve existing rights and laws, the European powers – only recently freed from papal and imperial control – were loath to establish any permanent form of extra-state authority with the power to interfere in any state's domestic affairs.³

The development of international minority protection was also impeded by the complexity of the problem. Across the continent, Europe's numerous minorities differed from each other in significant ways. Some were recent, others ancient inhabitants. Some were compact, others dispersed. Some had been absorbed by the ruling people, others had not. Some had nearby mother countries alert to opportunities and prepared to intervene, others had none. Some groups resided among other minorities, others stood alone. Some occupied favoured, or at least protected positions, however transitory, others were subordinated by law or by custom.⁴

As a result of the political and territorial upheavals wrought by the French Revolution and Napoleon, the international protection of minorities was expanded in the nineteenth century. The Congress of Vienna not only redrew the map of central, eastern and southern Europe but also extended the principle of minority rights to national groups. In the Final Act of the treaty of 1815, the signatories required Austria, Prussia and Russia to grant their Polish populations 'the preservation of their nationality' in whatever form their rulers found expedient.⁵ They also endorsed the maintenance of Jewish rights in the newly constituted German Bund.⁶

Because ensuring the protection of minorities abroad posed more peril than advantage for nineteenth-century statesmen and diplomats, the terms of enforcement were deliberately vague. In an updated version of *cuius regio*, Europe's leaders,

privileges in the Empire on behalf of 'the Liberty of the Exercise of Religion'; and 123 and 124 with punishment of violations.

² Lucy Mair, *The Protection of Minorities* (London: Christophers, 1928) and Jacques Fouques-Duparc, *La Protection des Minorités de race, de langue et de religion* (Paris: Dalloz, 1922).

³ C. A. Macartney, *National States and National Minorities* (New York: Russell & Russell, 1968), 157.

⁴ Dragolioub Krstitch, *Les Minorités, l'Etat et la Communauté Internationale* (Paris: Rousseau, 1924); John W. Chapman and Alan Wertheimer, *Majorities and Minorities* (New York and London: New York University Press, 1990).

⁵ Article 1, 'Treaty between Great Britain, Austria, France, Portugal, Prussia, Russia, Spain, and Sweden', 9 June 1815, *Major Peace Treaties*, 520.

⁶ Lucien Wolf, *Notes on the Diplomatic History of the Jewish Question* (London: Jewish Historical Society of England, 1919), 12–15.

liberal or conservative, operated under the assumption that a modern state's laws and institutions, culture and society would reflect the dominance of the ruling nation.⁷ The public, however, aroused by almost instantaneous atrocity reports and the threat of swarms of refugees, clamoured for 'treaty enforcement'. The Ottoman and tsarist empires rejected all outside attempts to relieve the suffering of their subjects; and the newly formed nation-states, although accepting formal minority guarantees in return for their recognition, fiercely resisted outside control.⁸

Within the Darwinian framework of nineteenth-century international politics, the defence of endangered minorities largely depended upon a volatile combination of national interests, power and publicity. Russia, for example, interfered repeatedly in Ottoman affairs on the pretext of protecting its fellow Orthodox and Slavs. West European and American Jews, emancipated and prospering but also alarmed by mounting anti-Semitism at home and abroad, forged alliances and mounted campaigns to safeguard their endangered kin people in eastern Europe and the Levant. Treaty enforcement, however, was rare. The Ottoman Empire long delayed implementing international agreements to improve the lot of its Christian subjects; Russia dismissed Britain's protests against its repression of the Poles in 1863; and Romania defied the terms of the 1878 Treaty of Berlin by granting citizenship to only 200 of its 230,000 Jewish inhabitants.⁹

On the eve of the First World War, despite pogroms, waves of emigration, and the ensuing domestic uproar, uninterested governments were disinclined to challenge the reigning view of state sovereignty and the unitary state.¹⁰ France and Great Britain, facing their own domestic turmoil, hesitated to take up the cause of foreign minority rights. The western powers were also cool towards the proposals of the socialists and Jews to create national-cultural autonomy in eastern Europe.¹¹ When, at the end of the 1912–13 Balkan wars, the combatants redrew their own borders and refused even formal guarantees of minority rights, the excluded great powers were silent.¹²

⁷ In its crudest formulation: 'In the struggle between nationalities one nation is the hammer and the other the anvil; one is the victor and the other the vanquished. It is a law of life and development in history.' Bernhard von Bülow, *Imperial Germany*, trans. Marie Lewenz (New York: Dodd, Mead & Co., 1914), 245.

⁸ On Romania in particular, see Leon Volovici, *Nationalist Ideology and Antisemitism* (Oxford: Pergamon, 1991), 1–43.

⁹ Josef Meisl, *Die Durchführung des Artikels 44 des Berliner Vertrages in Rumänien und die europäische Diplomatie* (Berlin: np, 1925).

¹⁰ Daniel Chirot, *The Congress of Berlin, Romanian Anti-Semitism, and the Dissociation of Liberalism and Nationalism Throughout Europe* (Berkeley, CA: Center for German Studies, nd).

¹¹ Outlined in Karl Renner, *Das Selbstbestimmungsrecht der Nationen* (Leipzig and Vienna: Deuticke, 1918).

¹² Text of the Treaty of Bucharest in *Major Peace Treaties*, II, 1013–18.

In his report of Aug. 25, 1913 to the British Foreign Secretary Sir Edward Grey, the British minister in Bucharest optimistically described the treaty as '... the beginning of a new order of things, marking, as it does, the full coming of age of the Balkan States and showing their ability to settle their quarrels without outside assistance'. *British Documents on the Outbreak of the War, 1895–1914*, G. P. Gooch and Harold Temperley, eds., ix (London: HMSO, 1934), pp. 996–7.

The Balkan wars also produced this significant innovation. The convention of Adrianople between

The First World War, due to its length and ferocity, and to political chaos, signalled a new danger to minorities.¹³ The plunder and persecution of Jewish and other groups caught between the eastern armies created grist for the propaganda mills and outrage in the neutral camp. When both sides pledged to support the political goals of some of their enemies' subject nationalities, others were endangered. The collapse of the four multinational empires in central, eastern and southern Europe exposed the religious and national animosities that had greatly multiplied during the Great War.¹⁴

Public discourse in the First World War had focused less on minority rights than on the issue of self-determination. The Stockholm Socialist Conference in 1917 adopted a resolution sponsored by the Jewish organisation, Poale Zion, calling for a postwar guarantee of personal rights, but refused to endorse minority autonomy. Wilson in his Fourteen Points of 1918 promoted the claims of the allies' client nations but ignored all the others, and Lenin's pronouncements on national versus minority rights were similarly vague.¹⁵

At the end of the war the achievement of self-determination by the Poles, Czechoslovaks and Yugoslavs, and the expansion of their territory by the Romanians and Greeks, created a subordinate level of citizenship for the rest of their population. All the new and enlarged states of eastern Europe, despite their heterogeneity, adopted the model of a unitary or a joint *national* state, thereby eliminating their minorities' claims to partnership in the state-building process.¹⁶ Although the number of minorities in eastern Europe after the First World War was reduced from 100 to some 25 million, the fate of these 'new' minorities, consisting of former ruling people (Germans and Hungarians) and reconquered and divided populations (Ukrainians, Jews, Macedonians, Albanians and Gypsies) posed a daunting challenge to the peacemakers.¹⁷

The League of Nations system

At the Paris Peace Conference of 1919, the 'big three' (France, Great Britain and the United States) not only dictated major territorial, economic and social changes

Bulgaria and Turkey in November 1913 was the first interstate treaty on the exchange of populations, sanctioning the 'voluntary' removal of almost 100,000 Muslims or Christians who had the misfortune to live within 15 kilometres of the new frontier in Thrace. Macartney, *National States*, 430–35.

¹³ Mark Levene, 'Frontiers of Genocide: Jews in the Eastern War Zones, 1914 and 1941', in Panikos Panayi, ed., *Minorities in Wartime* (Oxford: Berg, 1993), 83–117.

¹⁴ T. Ruyssen, *Les Minorités Nationales d'Europe et la Guerre Mondiale* (Paris: Presses Universitaires de France, 1924[?]); also Fritz Fischer, *Germany's Aims in the First World War* (New York: Norton, 1967).

¹⁵ Macartney, *National States*, 212–14, 185–90.

¹⁶ Macartney, *National States*, 208–11, gives examples from their constitutions: 'We, the Polish nation, thanking Providence for having restored liberty after a century and a half of servitude', and 'We, the Czecho-Slovak nation, wishing to consolidate the complete unity of the nation . . . '.

¹⁷ Ewald Ammende, ed., *Die Nationalitäten in den Staaten Europas* (Vienna: Braumüller, 1930). C. A. Macartney and A. W. Palmer, *Independent Eastern Europe* (London: Macmillan, 1966), 142, estimated that one of every five inhabitants of the new eastern Europe was a member of a minority.

in eastern Europe but also created history's first minority treaties.¹⁸ The new international system for the protection of minorities was once more based on a pragmatic goal. The peacemakers, in an effort to promote national consolidation and domestic tranquillity in the unstable region between defeated Germany and Soviet Russia, sought to reduce the prospects of persecution, outside intervention and mass emigration by forcing various old and new east European governments to accept international engagements to protect minority rights, to incorporate these stipulations in their constitutions and administrative practices, and to submit to outside supervision of their enforcement.¹⁹

This straightforward aim, however modestly packaged, was laced with a distinct ideological component. The treaties represented a lopsided victory for Wilson's insistence on individual rights over the minorities' claim for recognition as distinctive groups. The innocuous term 'nationals belonging to racial, religious or linguistic minorities' was substituted for the more politically explosive category 'national minorities'. The great powers forced the minority states to grant basic rights and freedoms to *all* their citizens and equitable treatment to minorities; because of public outrage over the pogroms on their soil, Poland and Romania were required to provide special religious and linguistic rights to their Jewish populations, but not autonomy.²⁰ In upholding the tenets of modern democracy (majority rule) and of almost unlimited state sovereignty, the big three meant to assuage the new states' amour propre and discourage outside (German, Hungarian or Soviet) manoeuvres.²¹

The Allies assigned responsibility of enforcement to the as-yet unborn League of Nations. Recognising their past record of passivity and vacillation, the victors hoped that the new world organisation would act collectively and in a timely manner to protect minority rights. The peacemakers gave the Council, and not the more universal Assembly, the right and obligation to raise complaints of treaty violations. Differences of opinion between an accused government and the League were to be referred to the Permanent Court of International Justice (PCIJ) for a final decision.²²

¹⁸ Carole Fink, 'The Paris Peace Conference and the Question of Minority Rights', *Peace and Change*, Vol. 21, no. 3 (July 1996), 273–88.

¹⁹ Arthur Walworth, *Wilson and His Peacemakers* (New York: Norton, 1986), 468–84; Alan Sharp, 'Britain and the Protection of Minorities at the Paris Peace Conference, 1919', in A. C. Hepburn, ed., *Minorities and History* (Oxford: Berg, 1993), 170–88; *A History of the Peace Conference of Paris*, ed. H. W. V. Temperley, v, *Economic Reconstruction and the Protection of Minorities* (London: H. Frowde and Hodder & Stoughton, 1921).

²⁰ Alliance Israélite Universelle, *La Question Juive devant la Conférence de la Paix* (Paris: AIU, 1919); also, Mark Levene, 'Nationalism and Its Alternatives in the International Arena: The Jewish Question at Paris, 1919', *Journal of Contemporary History*, 28 (1993), 511–31.

²¹ Derek Heater, *National Self-Determination: Woodrow Wilson and His Legacy* (New York: St. Martin's Press, 1994), 82–9.

²² In the original Polish treaty of June 28, 1919, the text began: 'Poland agrees that the stipulations in the foregoing Articles, so far as they affect persons belonging to racial, religious, or linguistic minorities, constitute obligations of international concern and shall be placed under the guarantee of the League of Nations' (emphasis added). Macartney, *National States*, 502–6.

The League's guarantee, written into all the minority treaties, represented a major advance. It ostensibly legitimised the right of 'friendly interference' by outside powers in the internal affairs of their neighbours in eastern Europe. There was much unhappiness in this arrangement. The minorities and their advocates regretted their exclusion from direct access to the League. The minority states objected to the curtailment of their sovereignty and the powers' refusal to create a universal system of minority rights.²³

Hence, the new international minorities system of 1919 was born under the cloud of dictated arrangements imposed on unwilling governments on behalf of highly diverse, unnamed and largely unconsulted minorities in a devastated region of Europe. The peacemakers never doubted their power to create this new system despite their limited understanding of the issues, lack of physical presence in the area and the differences among themselves.²⁴

Although the League of Nations' system for the protection of minorities functioned for almost two decades until the outbreak of the Second World War, its main accomplishments occurred during its first twelve years. The problems were enormous. The public and the minorities expected the League to act energetically on their behalf; the minority states opposed a robust system; and the Council, without US membership, was unprepared for vigorous intervention, especially because its two leading members, Britain and France, were in constant disagreement over almost every other detail of the Paris peace settlement.²⁵

Into this political vacuum entered the League's officials, a new international civil service drawn largely from the members' foreign offices. This corps of young idealists tried to breathe life into Woodrow Wilson's frail organism by devising procedures for an array of delicate political responsibilities dumped on them by the peace conference.²⁶

The League's minorities system was an essentially conciliatory procedure, designed to provide the minimum enforcement of the treaties without inciting minorities or alienating their governments, on whose co-operation the system would ultimately depend. The procedure worked as follows. Minority petitions could be sent from any source, but only individual Council members could place a complaint on the agenda. To relieve their burden without abandoning their responsibility, the Council created the 'committee of three', an ad hoc panel charged with deciding whether a complaint merited the League's attention. To assuage the minority states' fears that the procedure might encourage malicious charges, the Secretariat narrowly restricted the terms of receivability, gave the

²³ Julius Stone, *International Guarantees of Minority Rights* (London: Oxford University Press, 1932), 4–15.

²⁴ Carole Fink, 'The Minorities Question at the Paris Peace Conference', in Manfred F. Boemeke, Gerald D. Feldman and Elisabeth Glaser, eds., *The Treaty of Versailles: a Reassessment after 75 Years* (Cambridge: Cambridge University Press, 1998), 249–76.

²⁵ The League's system is discussed in Tennent H. Bagley, *General Principles and Problems in the International Protection of Minorities* (Geneva: Georg, 1950).

²⁶ Pablo de Azcarate, *League of Nations and National Minorities* (Washington: Carnegie Endowment for International Peace, 1945).

accused government ample time to respond, and shrouded the entire procedure in the utmost secrecy.²⁷

Minority complaints were rarely brought to the League Council,²⁸ but they were also rarely dropped. In most instances, a minority petition led to private discussions between the League's Minorities Director and officials of the accused state which were aimed at eliciting a 'minimum number of concessions or reforms' to resolve the question satisfactorily.²⁹ These 'benevolent negotiations' became the heart of the League's system, often producing small, meaningful, but always concealed, concessions on behalf of minority rights.³⁰

Three cases, pertaining to Poland's minorities, illustrate the rare public side of the League's system. In November 1921, the German minority organization, the *Deutschtumsbund zur Wahrung der Minderheitenrechte in Polen*, coached and supported by Berlin, protested against Poland's expropriations, expulsions and denials of citizenship.³¹ Poland denied the charges, and Germany launched a press campaign against Warsaw's 'politics of extermination'. After several inconclusive Council debates and twenty supplementary petitions, the cases were sent to the PCIJ, which ruled in favour of the minority. However, the final settlement was not achieved in Geneva but through a bilateral Polish-German agreement which the Council formally approved in September 1924.³²

The handling of these 'urgent' petitions revealed the inadequacies of the League's procedures. The case lasted almost three years, including nearly twenty months to obtain an opinion from the PCIJ. Time limits for Poland's responses were liberally extended, and when the Council was not in session, weeks and months passed without action. Council members, ill-informed over the historical and technical details of the two petitions, were nevertheless acutely sensitive to their political implications. And, most important, the Council *could not coerce* a minority state to adhere to its recommendations.³³

The German minority, although technically vindicated, suffered serious consequences. Already in 1922 there were rumours of retaliation, and by December

²⁷ Petitioners received only a terse acknowledgment, and, unless a case were brought to the Council, only members received copies of the petitions and responses.

²⁸ Of the 500 minority petitions examined by committees of three during the League's entire existence, only fourteen were brought to the attention of the Council. Cf. Bagley, *General Principles*, 88.

²⁹ Azcarate, *League of Nations*, 125.

³⁰ See remarks by Erik Colban, 'The Minorities Problem', *The Norseman*, 2 (Sept.-Oct. 1944), 310-26. The League of Nations archives in Geneva contain substantial documentation on the private settlement of most minority petitions.

³¹ *Survey of International Affairs, 1920-1923* (London: Oxford, 1923), 221ff.

³² League of Nations, *Official Journal* (1922), 806, 1181, 1205; (1923) 231, 240, 558, 881, 933, 1333, 1489; (1924) 349, 543, 548, 926, 1309. This agreement did not prevent Poland from expelling nearly 20,000 optants in 1925. Gustav Stresemann, *Diaries, Letters, and Papers*, II (London: Macmillan, 1937), 496.

³³ On 12 Oct. 1923, the Polish Foreign Minister Marian Seyda assured the *Sejm* Foreign Affairs Commission that neither the League nor the Hague Court could force Poland to grant 'intolerable concessions' that 'contradicted its sovereignty.' See Rauscher to Auswärtiges Amt, Germany, Politisches Archiv des Auswärtigen Amtes [hereafter Germ. PA AA] Referat Völkerbund, Minderheiten-Beschwerden, Deutschland-Polen [hereafter RV MB DP], Band 1.

house searches and arrests began. Within a year, the offices of the *Deutschtumsbund* were closed due to charges of 'subversive relations' with a 'foreign power'; the petitions to the League were presented as proof of its disloyalty.³⁴ After the *Deutschtumsbund* was dissolved in January 1924, private German women's organisations, welfare societies and sport, school and religious associations were banned. In response to protests by German deputies in the Sejm, the Polish government launched a press campaign against its 'disloyal minority', whereupon minority petitions to the League sharply declined.³⁵

The German minority in Poland was trapped between a revanchist Berlin and an unyielding Warsaw. Poland, the League's foremost 'client state',³⁶ was also in a difficult position. Faced with a compact, economically powerful German community, half a million strong in its exposed western provinces – and well aware of the intimate contacts between the *Auslandsdeutsche* and Berlin – Poland chose force over conciliation. Its attempt to reverse decades of Germanisation and satisfy the land hunger and national pride of its majority undoubtedly violated the rights of its minorities.³⁷ In the agrarian reform law of 28 December 1925, 90 per cent of a total of 11,750 hectares to be parcelled out to Poles in the provinces of Poznań and Pomorze belonged to German owners.³⁸ Predictably, the German minority protested 'discrimination!' and Berlin's propaganda machine went into action, but it failed to relieve the minority's plight or stave off the waves of emigration from Poland.³⁹

A new stage began after Germany joined the League of Nations in 1926. Foreign Minister Gustav Stresemann, a rabid nationalist in the First World War, who before entering office had pledged to become a 'defender of minorities', immediately became embroiled in the issue. According to the Geneva Convention of 1922, the minority on either side of the partition line of Upper Silesia was granted direct access to the Council. The German Silesians had flooded the Council with petitions in an attempt to protect their economic and cultural hegemony.⁴⁰

The 'Great School petition' erupted as soon as Stresemann arrived in Geneva. Once more the Poles had overreached. The *voivode* of Polish Silesia, suspecting

³⁴ Benndorff to AA, Warsaw, 23, 26 Aug., 8 Sept. 1923. Microfilmed files of the German foreign ministry, US National Archives [hereafter GFM followed by serial, reel and frame numbers], T-120 L683/480/L215974–75, L215978–79, L215780; Stobbe to AA, Poznań, 11 Sept. 1923, *ibid.*, L215981–82. The socialist newspaper *Robotnik* taunted the government for using 'manufactured evidence', but the right-wing press clamoured for even more 'energetic action'.

³⁵ Thereafter only individuals with parliamentary immunity appealed to the League.

³⁶ F. P. Walters, *A History of the League of Nations* (London: Oxford University Press, 1960), 304.

³⁷ Dirksen, 'Polen und der Völkerbund', nd. GFM T-120 4569H/2339/E168533; Benndorff to AA, Warsaw, Aug. 23, 1923, *ibid.*, L683/4801/L215974–75.

³⁸ Herbert von Dirksen, 'Das polnische Agrargesetz', Berlin, n.d., GFM T-120 4569H/2339/E168554–55. In 1923 the Prime Minister had declared: 'The de-Germanisation process ought to be completed in as rapid a tempo as possible'. Quoted in Harald von Riekhoff, *German Polish Relations* (Baltimore: Johns Hopkins University Press, 1971), 196.

³⁹ AA to Reich and Prussian Ministries of the Interior, Berlin, 20 Aug. 1923, GFM T-120 L683/4801/L215969–70.

⁴⁰ Carole Fink, 'Defender of Minorities: Germany in the League of Nations, 1926–1933', *Central European History*, Vol. 5, no. 4 (Dec. 1972), 330–57.

German coercion and fraud to increase the number of minority schools, had illegally ordered examinations of more than 8,000 parents and subsequently barred seven thousand children because they did not know German.⁴¹ The German minority organization, the Deutscher Volksbund protested that minority status was a purely personal choice – *Minderheit ist, wer will* – and not subject to any test or challenge. The appeal had little chance of success. Nowhere, not even in Germany at the time, was a minority granted such privilege, nor could a sovereign democratic state renounce its right to control the education of its population or the expenditure of its resources.⁴² Stresemann prudently agreed to examinations by a neutral Swiss pedagogue, but he also took the case to the PCIJ, which ultimately upheld the petitioners. In the meantime, thousands of children were removed and scores of schools were closed.⁴³

Another result of the flood of Volksbund petitions was that the now-cautious Stresemann, working to achieve détente with the western powers, succumbed to the pressure of German nationalists and launched a campaign to ‘reform’ the League’s minorities procedure. In 1929, after raising fears and expectations, he failed to gain the support of his Council colleagues and achieved only minor improvements.⁴⁴ The League successfully resisted Germany’s challenge to make its minorities system more effective; but it also failed to alleviate the distrust of the minorities, their governments and outside critics, which became more acute after Stresemann’s death and the crash of 1929.

Perhaps the gravest minority dispute in the League of Nations was Germany’s protest over terrorism against its kin people during the Polish elections of November 1930.⁴⁵ During a hotly contested local and national campaign, all of Poland’s minorities suffered verbal and physical abuse and a certain amount of electoral fraud. In an unprecedented move, Stresemann’s successor, Julius Curtius, exercised Germany’s right as a Council member to bring a complaint directly to the Council without any petition from the minority concerned. Poland and Germany sparred at three Council sessions, with August Zaleski accusing Curtius of masking German

⁴¹ Article 74 of the Geneva Convention prohibited the government from disputing a parent’s declaration of his/her child’s ‘racial, linguistic, or religious identity’. On Poland’s insistence this article had been lifted verbatim from its minorities agreement of 24 Oct. 1921 with the free city of Danzig (Unsigned memorandum, September 3, 1926, GFM T-120 5462H/2768/E366866–69). Text of Geneva Convention in League of Nations, *Treaty Series* 9 (1922), 466ff.

⁴² *Protection des minorités en Haute Silésie. Appel du ‘Deutscher Volksbund’ de la Silésie polonaise concernant l’admission des enfants aux écoles primaires allemandes* (Geneva, 1927). Grünau to AA, Katowice, 19 June 1928, GFM T-120 5544H/2747/E385730–34.

⁴³ Manley O. Hudson, *World Court Reports*, II, 268–319; Carl G. Bruns, ‘Das Urteil des ständigen internationalen Gerichtshofes im oberschlesischen Schulstreit und das allgemeine Minderheitenrecht,’ *Nation und Staat*, I (November 1927), 171–7.

⁴⁴ Crusade detailed in Carole Fink, ‘Stresemanns Minderheitenpolitik’, in Marshall Lee and Wolfgang Michalka, eds., *Gustav Stresemann: Wege der Forschung* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1983), 375–99; Bastiaan Schot, *Stresemann, der deutsche Osten und der Völkerbund* (Stuttgart: Steiner, 1984), 47–63.

⁴⁵ Carole Fink, ‘Germany and the Polish Elections of November 1930: A Study of League of Nations Diplomacy’, *East European Quarterly* (June 1981), 181–207.

irredentism in the cloak of 'minority rights'. As expected, the Council produced an anodyne resolution, mildly censuring Poland and reaffirming its obligations for the future.⁴⁶

Germany, ostensibly the victor, had not only surmounted the League's most venerable inhibition with its direct intervention on behalf of a minority; it had also interfered in one of the most jealously guarded prerogatives of a sovereign government – the conduct of its elections. For nine months the Council had singled out the German minority as a special object of its concern and had implicitly condemned Poland. But there were less positive consequences. Because Poland had neither removed nor disciplined the chief culprits, the minority remained at risk and denounced the meagre results. At precisely the moment when the League struggled over the Manchurian crisis, radical voices in Berlin and among the *Auslandsdeutsche* clamoured for a more ardent defence of minorities, and Poland recognised the mounting irredentist danger from its western neighbour.⁴⁷

Even within its modest scope, the League's system was undoubtedly deficient.⁴⁸ The organisation tried to balance three irreconcilable interests, those of the minority states, the minorities and the international community, and the first invariably prevailed. The minority states, the system's grudging objects, guarded their sovereignty, demanded 'clean hands' from their minorities and taunted the great powers to create a *universal* system of minority rights. The minorities and their defenders pleaded for more publicity, direct access to the League and a permanent minorities commission.

Even before Hitler seized power in January 1933,⁴⁹ the flaws in the minority treaties were manifest. East European governments continued to abuse minorities, the latter (often helped by interested parties) protested and the League interfered as little as possible. The League's failures were to some extent due to the enormous economic, social and political problems of interwar eastern Europe. To a greater measure they reflected the victors' overall failure to provide meaningful political and economic support and to institute a system of collective security and disarmament

⁴⁶ League of Nations, *Official Journal* (1931), 165–69; 'Die Mai-Tagung des Völkerbundsrats', *Nation und Staat* (June 1931), 540–8; Curtius to AA, Geneva, 30 Sept. 1931, GFM T-120 3147/1564/D662627–28.

⁴⁷ On 22 Sept. 1931, the opposition National Democratic newspaper *Kurjer Poznański* predicted that Germany would one day provoke a similar border incident and fabricate atrocity reports against ethnic Germans as a pretext for invading Poland. Lütgens to AA, Poznań, Sept. 22, 1931, GFM T-120, L558/5085/L162771.

⁴⁸ N. Lerner, 'The Evolution of Minority Rights in International Law', in Catherine Brölmann, René Lefeber, and Marjoleine Zieck, eds., *Peoples and Minorities in International Law* (Dordrecht: Nijhoff, 1993), 82–6.

⁴⁹ The Third Reich left the League in Oct. 1933 amid growing international complaints over its mistreatment of the Jews. Poland, after signing a ten-year non-aggression pact with Nazi Germany, once more challenged the League to institute a universal system of minority rights and renounced its minority treaty before the League Assembly in Sept. 1934. Pawel Korzec, 'Polen und der Minderheitenschutzvertrag (1919–1934)', *Jahrbücher für die Geschichte Osteuropas*, Vol. 22, no. 4 (1975), 532–55.

which were crucial to establishment of democracy, the rule of law and the protection of minority rights in interwar eastern Europe.⁵⁰

After the Second World War

In 1945 the minority problem in eastern Europe had apparently disappeared. Nazi Germany's slaughter of millions of Jews, Slavs and Gypsies, followed by Stalin's drastic border changes and the postwar expulsion of millions of ethnic Germans and Hungarians, had ostensibly created a grim ethnic and religious homogeneity all over eastern Europe.⁵¹

Both sides of the emerging Cold War were disinclined to revive the issue of minority protection in eastern Europe. During the war the Polish government in exile had announced that it would never accept another minority treaty, and the exiled leader of Czechoslovakia declared that the League system had 'broken down and could not be renewed'.⁵² The West, convinced of the disloyal behavior of the *Auslandsdeutsche* and appalled by Hitler's manipulation of their cause, was reluctant to insert minority treaties in the postwar settlement, and the Soviet-dominated camp rejected any outside intervention in their internal affairs. The de-internationalisation of the minority problem climaxed at the Paris Conference of 1946–47, where peace was signed with all the belligerents except Germany. The expulsions approved at Potsdam were extended in somewhat modified form. Although the treaties with Hungary and Romania included clauses prohibiting discrimination on the basis of sex, race, language or religion, no enforcement mechanism was provided.⁵³

The United Nations underscored the world community's rejection of international minority protection. The League's successor was openly reluctant to revive an onerous obligation.⁵⁴ Led by the US delegation, the drafters renounced the notion of group rights and identity and embraced the broader category of human rights. Neither the UN Charter (1945) nor the Universal Declaration of Human Rights (1948) mentioned the protection of religious and national minorities. Even the 1948 Convention on the Prevention of the Crime of Genocide, which was aimed

⁵⁰ Macartney and Palmer, *Independent Eastern Europe*; also Joseph Rothschild, *East Central Europe between the Two World Wars* (Seattle and London: University of Washington Press, 1974).

⁵¹ Raul Hilberg, *Perpetrators, Victims, Bystanders: The Jewish Catastrophe, 1933–1945* (New York: Aaron Asher, 1992); Theodor Schieder, ed., *Documents on the Expulsion of the Germans from Eastern-Central Europe*, 4 vols. (Bonn: Federal Ministry for Expellees, Refugees and War Victims, 1960–61); Radomír Luza, *The Transfer of the Sudeten Germans* (New York: New York University Press, 1964); Kalman Janics, *Czechoslovak Policy and the Hungarian Minority, 1945–1948*, trans. and ed. Stephen Borsody (New York: New York University Press, 1982); A. de Zayas, *Nemesis at Potsdam: The Anglo-Americans and the Expulsion of the Germans*, 4th edn (Rockport, ME: Picton Press, 1998).

⁵² Quoted in Macartney, *National States*, 505.

⁵³ Macartney, *National States*, 506–7.

⁵⁴ During the negotiations that led up to the writing of the UN Charter, one diplomat remarked: 'What the world needs now is not protection for minorities but protection from minorities.' Quoted in Jan Helgesen, 'Protecting Minorities', in A. Rosas and J. Helgesen, eds., *The Strength of Diversity: Human Rights and Pluralist Democracy* (Dordrecht: Nijhoff, 1992), p. 159.

specifically at protecting endangered people, emphasised the UN's commitment to negative rights rather than to establishing positive codes and practices to protect Europe's and the world's minorities.⁵⁵

War memories receded, practical problems mounted and the UN, faced with rapid decolonisation movements, plunged into minority and refugee questions in the former colonial world. The 1955 Austrian peace treaty contained specific provisions regarding its Slovene and Croat minorities. In December 1960, the UNESCO Convention Against Discrimination urged member governments to permit minority schools which taught in minority languages. In December 1966, the UN Covenant on Civil and Political Rights, in carefully guarded language, included a condemnation of the denial of rights to 'ethnic, religious or linguistic' minorities.⁵⁶ And in 1971 the UN's Commission on Human Rights created a sub-commission to investigate the prevention of discrimination and the protection of minorities.

International minority protection was downplayed in a divided postwar Europe. Article 14 of the 1950 European Convention on Human Rights condemned discrimination on the basis of 'race, colour, language, religion [or] association with a national minority', but the European Commission on Human Rights, established a year later, established no implementation machinery.⁵⁷ Despite several high-profile protests by west European groups seeking to maintain their linguistic distinctiveness, the Commission's findings endorsed individual over collective, and negative over positive, rights.⁵⁸ On the communist side there was silence.

The social and political ferment of the 1960s, followed by the moves towards détente in Europe, led ultimately to Helsinki. At this first pan-European gathering since 1922, the West acquiesced in the Soviet Union's desire to receive confirmation of the territorial status quo and to obtain commercial and technological benefits; in return, however, the West created a new Cold-War weapon, 'Basket 3', which made respect for human rights an essential element of European peace. Although the Helsinki Final Act stressed the inadmissibility of outside intervention and the inviolability of frontiers, it also included a cautiously worded reference to the protection of 'national minorities' in states where they already existed; again, no international machinery was envisaged for its implementation.⁵⁹

⁵⁵ J. Donnelly, 'Third Generation Rights', in *Peoples and Minorities in International Law*, 131–2.

⁵⁶ The drafters of the covenant nevertheless assumed that persons belonging to ethnic, religious and linguistic minorities would be subject to the educational system of the majority.

⁵⁷ After at least two committees in the 1960s recommended that the Human Rights Commission expand its work into minority protection, a committee of experts appointed by the Council of Europe concluded in 1973 that it was 'not legally necessary for the protection of minorities to be the subject of a special provision'. Florence Benoit-Rohmer, *The Minority Question in Europe* (Strasbourg: Council of Europe, 1996), 36.

⁵⁸ Zayas, 'International Judicial Protection', 276–80; James W. Fawcett, *The International Protection of Minorities* (London: Minority Rights Group, 1979), 13.

⁵⁹ Principle VII of the Declaration on Principles Guiding Relations between Participating States specified: 'The participating states on whose territory national minorities exist will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms . . .' Richard Dalton, 'The Role of

Until the vast revolutionary impulses swept eastern Europe in the late 1980s and suddenly toppled the Soviet empire, the question of minority rights had received scant international attention. Europeans were little prepared for the problems which erupted after 1989.

1989 and beyond

Many observers have compared the upheavals of 1989–91 with the great transformation after the First World War, and have looked back to the Paris peace treaties for guidance and cautionary lessons. The sudden disintegration of Europe's last major empire exposed a host of political, economic and demographic problems. The bloodiest struggles in eastern Europe, the former Soviet Union and Russia itself have involved government repression of minority peoples.⁶⁰ Groups, long repressed or manipulated under communism, some real, some manufactured, have made claims to local recognition and international protection.⁶¹ The post-communist successor states, lacking democratic experience and material resources, have proved incapable of settling minority complaints short of violence, separation and outside military intervention.⁶²

Faced with the prospect of new Balkan wars and new floods of refugees, the international community responded. In the 1990s the UN, the Conference on Security and Co-operation in Europe (CSCE), the European Union and even NATO have become involved in the religious, ethnic and political struggles of south-eastern Europe, seeking to 'pay history's debt' by balancing the authority of sovereign states with regional peace and security, and by balancing the power of the majority with the safety of the minority.⁶³

The 1990s produced a new corpus of international legislation blending humanitarianism and pragmatism. The CSCE's broad, detailed treatment of the relationship between minority rights and the functioning of a democracy in its statements at Copenhagen (1990) and Geneva (1991) were echoed in the resolutions of the UN

the CSCE', in Hugh Miall, ed., *Minority Rights in Europe* (London: Royal Institute of International Affairs, 1994), 99–100.

⁶⁰ Patrick Moynihan, *Pandaemonium: Ethnicity in International Politics* (Oxford: Oxford University Press, 1991), 80–81.

⁶¹ None of the sixteen states emerging from communism can be considered ethnically homogeneous. The size of minorities ranges from about 33 per cent in Macedonia, Montenegro and Moldova to 38 per cent in Estonia and almost 47 per cent in Latvia. Moreover, there are still some two million Hungarians in Romania, 600,000 in Slovakia, 400,000 in Serbia, 200,000 in Ukraine, 40,000 in Croatia, 16,000 in Austria, and 10,000 in Slovenia. See István Ijgyártó, 'Codification of Minority Rights', in Ian M. Cuthbertson and Jane Leibowitz, eds., *Minorities: The New Europe's Old Issue* (Boulder: Westview Press, 1993), 274.

⁶² Cyril E. Black *et al.*, *Rebirth: A History of Europe Since World War II* (Boulder: Westview Press, 1992), 288–90; also Ivan Gyurcsik, 'New Legal Ramifications', in *Minorities*, 33–35; David Kresock, "'Ethnic Cleansing" in the Balkans: The Legal Foundations of Foreign Intervention', *Cornell International Law Journal*, Vol. 27, no. 1 (Winter 1994), 203–39.

⁶³ Georg Brunner, 'Minority Problems and Policies in East-Central Europe', in John R. Lampe and Daniel N. Nelson, eds., *East European Security Reconsidered* (Washington, DC: Woodrow Wilson Center Press, 1993), 150–53.

General Assembly (1992) and by the Council of Europe (1993, 1995).⁶⁴ The Copenhagen–Geneva standards, like the treaties of 1919, called on governments to protect the ethnic, religious, cultural and linguistic identity of their minority populations and to create conditions for the promotion of that identity.⁶⁵ The carefully phrased Paragraph 35 of the Copenhagen document offered the possibility of ‘autonomous’ administration and development for minorities.⁶⁶ Not only has the daring phrase ‘national minorities’ gained international currency, but new instruments, new procedures of intervention and new offices have been developed, at least on paper, for the protection of minority rights in eastern Europe.⁶⁷

Beneath the surface, old disagreements have survived. Despite the attempts at Copenhagen and Geneva to integrate the two, there is still a fundamental conflict between Wilson’s liberal and restrictive interpretation of individual rights and the broad, group-rights perspective favoured by certain European countries. Faced with any contest between the unitary nation-state and the rights of minorities, the CSCE and UN documents have tended to favour the former.⁶⁸

For the most part, with the exception of its involvement in the former Yugoslavia, the international community has continued to make distinctions between the prerogatives of traditional sovereign states and the inferior status of minorities. In the CSCE statements, for example, the imbalance between state rights and minority rights was expressed by the fact that while the duties of citizens were carefully spelled out, states were not obliged to recognise or protect a minority people. Simply by denying the existence of a minority, states can absolve themselves of their international commitment. By avoiding a universal standard of group definition, post-communist Europe once more denied minorities a fundamental form of protection.⁶⁹

The international community has not established a procedure for uninterested outsiders to intervene through diplomatic means on behalf of a persecuted minority. After ignoring the maltreatment of the Albanian Kosovars in the late 1980s, the CSCE and the European Union were even less prepared to respond to the atrocities

⁶⁴ Morton H. Halperin, David Scheffer, and Patricia Small, *Self-Determination in the New World Order* (Washington, DC: Carnegie Endowment for International Peace, 1992), 57–60; Council of Europe, *Framework Convention for the Protection of National Minorities* (Strasbourg: Council of Europe, 1995).

⁶⁵ Jan Barcz, ‘European Standards for the Protection of National Minorities with Special Regard to the CSCE. Present State and Conditions of Development’, in Arie Bloed and Wilco de Jonge, eds., *Legal Aspects of a New European Infrastructure* (Utrecht: Europa Institute, 1992); Alexis Heraclides, ‘The CSCE and Minorities: The Negotiations Behind the Commitments, 1972–1992’, *Helsinki Monitor*, Vol. 3, no. 3 (1992), 5–18.

⁶⁶ Arie Bloed, ‘A New CSCE Human Rights “Catalogue”: A Critical Analysis’, *Helsinki Monitor* Vol. 1, no. 3 (1990), 41.

⁶⁷ Benoit-Rohmer, *The Minority Question in Europe*, 22–68.

⁶⁸ The examples of requiring language instruction in the official language and envisaging only modest resources for use of minority languages in the courts, are particularly pertinent. Koen Koch, ‘The International Community and Forms of Intervention’, *Minorities*, 258, 271, n. 5.

⁶⁹ Koen Koch, ‘The International Community and forms of Intervention’, in *Minorities*, 267–68.

in Croatia and Bosnia, and in Kosovo itself. In the passionate words of an observer in the early 1990s:

There is no such thing as an international community united in a philosophical and normative approach to minority questions, prepared to uphold minority rights . . . instead there is a quarrelsome collection of states, fundamentally differing in approaches and policies, prepared to accept compromises only to a certain extent, reluctant to implement commitments and *a fortiori* reluctant to intervene to protect minority rights.⁷⁰

NATO's intervention in Yugoslavia in the spring of 1999 has not diminished the force of this lament.

Some (tentative) conclusions

The international community established a dismal record of minority protection in twentieth-century Europe. The theories of Wilson and Lenin – both based on restricted ideas of self-determination as well as on either capitalist or socialist forms democracy – hindered Europe's minorities from achieving rights and recognition within the framework of the modern nation-state. Since the First World War, the international community has forged various agreements and created new institutions, but it failed to establish solid, enforceable standards, to remove the inhibition against intruding into the sovereign rights of another state (short of force) and to prevent genocide.

Two heralded solutions have proved faulty.

1. The treaties created after the First World War and revived after 1990 provided inadequate regional stability and minority protection. Without an ideal combination of co-operative governments, responsible minorities and vigorous enforcement, the League system was vulnerable to abuse and neglect.

2. 'Surgical' operations, whether through the population exchanges after the First World War or the expulsions after the Second World War, failed to solve the minorities problem on either the national or international plane.⁷¹ Whatever the apparent benefits of religious and ethnic homogeneity, these expulsions have generally been offset by the moral and material losses of a productive population as well as the diminution of the economic and cultural vitality, and the freedom and tolerance, that a pluralist polity provides. On the international level expelled populations have tended to destabilise host countries by fomenting radical, irredentist tendencies and often resentment and backlash against foreigners.⁷²

By the close of the twentieth century three international groups were working actively, but not always in concert, to improve minority protection in eastern

⁷⁰ Koch, 'International Community', in *Minorities*, 261–2.

⁷¹ On this I disagree with William Keylor, 'The Principle of National Self-Determination', in Christian Baechler and Carole Fink, eds., *L'établissement des frontières en Europe après les Deux Guerres Mondiales* (Bern: Peter Lang, 1996), 50–54.

⁷² Until the mid-1960s, the expellees from Poland and Czechoslovakia constituted a radical-nationalist element in West German politics, impeding the efforts of Adenauer and Erhard to achieve rapprochement with West Germany's eastern neighbours.

Europe: the Council of Europe, which formulates legally binding rules on human and minority rights and supervises the judicial settlement of disputes through the European Court of Human Rights in Strasbourg; the OSCE (successor in 1994 to Helsinki's CSCE, which since 1990 has guided the writing of constitutions and the development of administrative practices in eastern Europe) has also established a High Commissioner for Minorities;⁷³ and the European Union, whose Pact on Stability (1995), setting the political groundrules for post-communist states aspiring for membership, has yielded some striking results, ranging from bilateral minority treaties to reversals of domestic policy.⁷⁴

Many observers have expressed the belief that progress in European integration will be the essential element in achieving a fairer treatment of minorities and their integration within their states, thereby creating long-term stability in eastern Europe. It is also conceivable that the post-communist states – which are at present the principal objects of international concern – may in the not-too-distant future revive the demand that their richer, western neighbours consider the adoption of *universal* standards of minority rights.

⁷³ István Ijgyártó, 'Codification of Minority Rights', and Konrad J. Huber, 'Preventing Ethnic Conflict in the New Europe: The CSCE High Commissioner on National Minorities', in *Minorities*, 273–84, 285–310.

⁷⁴ F. Benoît-Rohmer and H. Hardeman, 'The Pact on Stability in Europe', *Helsinki Monitor* Vol. 5, no. 5 (1994), 39–53; Benoît-Rohmer, *Minority Question*, 53–5; 'Czechs Tear Down Wall Isolating Gypsies', *New York Times*, 25 Nov. 1999.