

The Genesis of Minority Rights in the League of Nations and Beyond

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Abstract: *This article examines the development of minority rights and its protection system in the League of Nations. It traces the evolution of the concept of “minority” and the challenges of defining and designating it in international law. The paper also examines the content, guarantees, and implementation of the protection regime that the League of Nations established for certain minority groups in Europe, based on the treaties and instruments adopted at the 1919 Paris Peace Conference and subsequently. The article further investigates the role of the Permanent Court of International Justice and Minority Committees in interpreting and enforcing the minority rights obligations of the concerned states. In the end, the article provides a critical assessment of the achievements and shortcomings of the minority protection systems of the League and reflects on how these systems were integrated into the framework of the United Nations.*

1. Introduction

After the First World War, the League of Nations (the League), the first international organisation dedicated to peace and collaboration was established. It promoted collective security, disarmament, and arbitration to prevent another war.¹ The League was also the first to prioritise minority protection and developed a minority protection system.² It recognised that peace and security could not be attained without protecting the rights and interests of minorities, who make up a considerable portion of the world’s population and are often persecuted by the majority. The League of Nations created a revolutionary minority protection system that applied to some states, especially in Central and Eastern Europe, with substantial or important minority populations.³

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¹ “League of Nations | Definition & Purpose” (*Encyclopedia Britannica*, June 20, 2023) <<https://www.britannica.com/topic/League-of-Nations>>; “The League of Nations: Definition, WW1 & Failure - HISTORY” (*HISTORY*, October 12, 2017) <https://www.history.com/topics/world-war-i/league-of-nations>. Last retrieved on April 10, 2023.

² Hilpold, P. ‘The League of Nations and the Protection of Minorities – Rediscovering a Great Experiment’ (August 5, 2013). 17 Max Planck Yearbook of United Nations Law 2013, pp. 87-112

³ Scheu, Harald Christian., The Heritage of the League of Nations’ Minority Protection System, *Hungarian Journal of Legal Studies* 61 (2020) 4, pp. 365–369

These states had to respect minority rights to join the League. A succession of treaties and declarations offered certain rights and assurances to minorities in newly founded or reconfigured states in Europe and the Middle East. The League's organs—the Council, Assembly, and Minority Committees—and the Permanent Court of International Justice (PCIJ) issued various advisory opinions and rulings on minority-related disputes to oversee the system. Also, they used to monitor and enforce the duties of the States. The League's minority protection system was intended to establish universal human rights for all, regardless of race, religion, or language.⁴

The League's minority protection strategy also had significant drawbacks. Defining “minorities” and their rights proved difficult in the League system. “Minority” was used interchangeably with “nationality,” “ethnic group,” and “people” in the League's instruments and international law. The lack of a clear definition caused confusion and dispute over who may claim minority status and what criteria should be utilised. The League's definition and subsequent evolution of “minority” reflected shifting political and social circumstances, as well as diverse philosophies and interests.⁵

Interpreting and administering the League's instruments and guarantees consistently and effectively was another challenge. The States, Minority Committees, PCIJ, and the Council of the League could interpret the League's instruments in different ways due to their ambiguity. The guarantees were also unevenly dispersed throughout states and regions, creating a hierarchy of rights and obligations that did not match minority needs. The League's system relied on the collaboration and goodwill of the governments, which were often damaged by nationalist feelings, political pressures, or economic interests. The League lacked resources and the ability to enforce its rulings or intervene in significant infractions or minority confrontations.⁶

This article aims to provide a detailed overview of the minority protection mechanism of the League of Nations and examines minority rights from its founding to its collapse. The article investigates how the concept of “minority” evolved and developed during this period. How it was perceived by different

⁴ See Chaszar E, “The Problem of National Minorities Before and After the Paris Peace Treaties of 1947” (1981) 9 Nationalities Papers 195 <<http://dx.doi.org/10.1080/00905998108407917>>; Hilpold P, “The League of Nations and the Protection of Minorities – Rediscovering a Great Experiment” (2013) 17 Max Planck Yearbook of United Nations Law Online 87 <http://dx.doi.org/10.1163/18757413-90000081>.

⁵ See Rosting, H., Protection of Minorities by the League of Nations, American Journal of International Law, Volume 17, Issue 4, October 1923, pp. 641-660

⁶ Supti AY, “Formation of the League of Nations Was Unique, Though It Failed, Yet” (*ResearchGate*, December 14, 2020) <<https://doi.org/10.13140/RG.2.2.21700.45449>>. Last retrieved on April 10, 2023.

actors and institutions within the system of the League, and how it slowly shaped minority rights in international law. Therefore, the article chronicles the notion of ‘minority’ from 1919’s Paris Peace Conference to 1946’s Sub-Commission on the Prevention of Discrimination and the Protection of Minorities. The study additionally addresses how the PCIJ interpreted and applied minority treaties and agreements between the League and Member States. The study assesses the merits and flaws of the League of Nations’ minority protection regime and its impact on modern human rights.

In the aftermath of World War I, the League’s minority protection scheme was unique and pioneering. Also, the system faced many challenges and limitations. It lacked a clear and universal definition of “minority”. It was also faced with the selective and unequal application of the protection regime to different regions and groups, political interference and resistance from some states and major powers. There was also insufficient enforcement mechanism and sanctions for non-compliance.

However, the system had some positive effects and achievements as well. Such as creating a normative framework and legal basis for minority rights and establishing a supervisory body and a judicial organ to monitor and adjudicate minority issues. It also promoted dialogue and cooperation between states and minorities and influenced subsequent developments in international human rights law and institutions. The League’s minority protection system was a major milestone in minority rights history and provided the groundwork for future progress. The article claims that the system can teach us about protecting and promoting minority rights in a diverse and interconnected world.

The article is divided into five main sections. The first section discusses the challenge of defining ‘minority’ and how it evolved during the League of Nations and beyond. The second section reviews the main international instruments and mechanisms that were adopted to protect minorities in the aftermath of World War I, such as the treaties of peace, the minority petition procedure, and the advisory opinions of the PCIJ etc. The third section analyses the content and guarantees of the protection regime, focussing on the rights and obligations of the states, as well as the supervisory role of the League of Nations. The fourth section evaluates the effectiveness and impact of the protection regime, highlighting its strengths and weaknesses, as well as its influence on subsequent developments in international law. The fifth section concludes with thoughts on the League’s teachings and the incorporation of minority rights in the UN system.

This paper has limitations that need to be addressed too. It does not attempt to develop a new definition of “minority” and uses the term interchangeably with

‘racial’, ‘religious’, ‘linguistic’ and ‘national’ groupings without discussing the reasons or implications of such designations. Also, this study does not review how the minority protection system affected indigenous peoples and other minorities in colonial territories. The article mostly uses official documents from the League of Nations without critically assessing them or including further evidence from other sources. Furthermore, the legal examination of the document does not adequately analyse the political, social, economic, and cultural effects of the League’s minority protection system.

2. The Challenge of Defining “Minority”

There is no internationally agreed-upon definition of who is a minority.⁷ Despite numerous references to minorities in multilateral conventions, bilateral treaties, and international organisation resolutions, there is no universal definition of minority.⁸ To date, neither experts in this field nor international agencies have been able to create a universally accepted definition. This confuses the identification of minorities and their protection in different contexts. Political, legal, cultural, and historical backgrounds can affect the way different actors define minorities. Numerical size, non-dominance, ethnic, linguistic, religious, or cultural traits, self-identification, and recognition by others may be the determinant factors of any minority group. These factors may vary in weight and relevance depending on the situation.

The diversity of minority situations and experiences makes them hard to define universally. Some minority groups, such as indigenous populations in isolated places, live in well-defined zones far from the majority, while others reside throughout the country. Certain minority groups have a strong sense of collective identity and recorded history, while others may have only fragmented knowledge of their common ancestry. This impacts how the majority views and treats them. Minorities with a clear identity and history are more visible and acknowledged, while those with a more fragmented identity may struggle to be heard and protected. Policymakers struggle to meet minority issues without a global definition. Implementing minority rights regulations can be difficult without a universal definition of minority groups. It can potentially misrepresent minority experiences and challenges. This makes it difficult to design policies that reflect the experiences of minorities. The lack of a consistent definition of ‘minority’ can lead to discrepancies in how they are defined and recognised.

⁷ “Minorities | United Nations” (*United Nations*) <<https://www.un.org/en/fight-racism/vulnerable-groups/minorities>>. Last retrieved on April 10, 2023.

⁸ See Jelena Pejic, ‘Minority Rights in International Law’ (1997) 19 *Human Rights Quarterly*, p. 667; Packer, J ‘On the Definition of Minorities’ in Packer and Myntti (eds) *The Protection of Ethnic and Linguistic Minorities in Europe* (1993) ABO Akademik Univ. at 24–7, in O’niions, H. *Minority Rights Protection in International Law: The Roma of Europe*, Ashgate, 2007, p. 180; Rian Gupta, ‘Scrutinizing Minority Rights under International Law’ (2022) 2 *Jus Corpus Law Journal*, p. 1318

This may result in some minority groups being excluded from protections and advantages, while others may get easy recognition and support.⁹

No single criterion determines the status of a minority. Race, religion, language, culture, gender, sexual orientation, nationality, etc. may be important factors to define an individual or group as a minority.¹⁰ Minority status is also based on subjective experiences of discrimination, marginalisation, and oppression.¹¹ Thus, defining a minority must be nuanced and flexible to account for the diversity and complexity of human identities and social realities. Multiple questions and challenges require careful analysis and evaluation of various factors and perspectives. Until these questions are answered objectively, it is impossible to determine whether a person or group belongs to a minority.¹²

Minorities are often identified by their population ratio. This approach defines a minority as a group with fewer members than the dominant group in society.¹³ However, this quantitative aspect may not be sufficient or relevant. How small is a minority? Is a minimum size or percentage required? A numerical ratio does not necessarily reflect a group's social power. In some contexts, a small group may dominate politically or economically. Thus, numerical ratios may not necessarily capture the status of a minority.

Again, self-identification, perception, and experience are subjective factors.¹⁴ A minority group may be identified as such based on its cultural, linguistic, religious, or ethnic differences from the majority. These traits may not be visible, recognised, or legally protected. A group may not identify as a minority but be treated as such by others due to stereotypes or discrimination. Thus, subjective factors only may complicate and diversify minority definitions.

Does ethnic minority status affect the minority definition? Ethnic minorities are groups with a distinct history, culture, or origin. Ethnic minorities may face

⁹ United Nations, *Minority Rights: International Standards and Guidance for Implementation*, New York and Geneva, 2010, p. 2

¹⁰ Oldrich A., 'Report on the Definition of Minorities' (SIM Special No. 19, Netherlands Institute of Human Rights 1989), in Jelena Pejic, 'Minority Rights in International Law' (1997) 19 *Human Rights Quarterly*, p. 667

¹¹ "About Minorities and Human Rights" (*OHCHR*) <<https://www.ohchr.org/en/special-procedures/sr-minority-issues/concept-minority-mandate-definition>>. Last retrieved on April 19, 2023.

¹² Capotorti, Francesco, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, United Nations, New York, 1979, para 20

¹³ "Dominant and Minority Groups" (*Social Sci LibreTexts*) <[https://socialsci.libretexts.org/Bookshelves/Ethnic_Studies/Minority_Studies_\(Dunn\)/02%3A_Dominant_and_Minority_Groups/2.01%3A_Dominant_and_Minority_Groupsy](https://socialsci.libretexts.org/Bookshelves/Ethnic_Studies/Minority_Studies_(Dunn)/02%3A_Dominant_and_Minority_Groups/2.01%3A_Dominant_and_Minority_Groupsy)>. Last retrieved on April 10, 2023.

¹⁴ "Culture and the Self" (<https://www.apa.org>) <<https://www.apa.org/pubs/highlights/spotlight/issue-71>>. Last retrieved on April 10, 2023.

identity, rights, and social issues. Ethnic minorities are not all minorities. Some ethnic groups are dominant in some regions or countries but not in others. Some ethnic groups have multiple or ambiguous identities. Some ethnicities may have more opportunities. Therefore, the status of ethnic minorities may not necessarily define a minority.

Finally, should minorities only include citizens? This question concerns the group's legal and political status and social obligations. Some nations grant citizenship to minorities based on their historical ties or contributions, while others deny or restrict citizenship based on origin or allegiance. Some minority policies recognise the rights and interests of foreign residents, while others exclude or marginalise them. Thus, citizenship may not be enough to define a minority.

The existence of a minority is a matter of fact and is determined by objective and subjective factors,¹⁵ such as the existence of a shared ethnicity, language, or religion. Individuals must also identify themselves as belonging to a national or ethnic, religious, or linguistic minority group.¹⁶ Thus, the definition of minority groups can differ from country to country and depend on a variety of factors.¹⁷ Some countries define minorities in their constitutions by numerical inferiority, non-dominance, historical presence, or cultural distinctiveness. Some countries use more general terms such as vulnerable groups, disadvantaged groups, or people of different cultures instead of minorities. However, a vague definition can also hinder recognition and protection.

International human rights law does not define minorities universally either. However, it recognises the rights of minorities to enjoy their culture, profess and practise their religion, and use their language in private and public. It also recognises the rights of minorities to fully participate in cultural, religious, social, economic, and public life. The International Covenant on Civil and Political Rights (ICCPR), the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UNDM), and the Framework Convention for the Protection of National Minorities (FCNM) call for the protection of these rights.

In some contexts, these rights may be limited by law to protect public safety, order, health, morals, or fundamental rights and freedoms of others. Limitations must not violate international human rights or discriminate against minorities. Minorities must also respect national law and the rights of others, especially the majority. Thus, minorities and majorities can live in harmony based on respect and understanding.

¹⁵ "About Minorities and Human Rights" (*OHCHR*) <https://www.ohchr.org/en/minorities/about-minorities-and-human-rights>. Last retrieved on April 15, 2023.

¹⁶ *Op cit.* 7

¹⁷ *Ibid.*

Minority rights recognise the unique needs and interests of non-dominant groups. This implies that such groups have a distinct culture, language, or religion and face various forms of discrimination, exclusion, and marginalisation. The requirement to be in a non-dominant position is still important, even though some scholars and activists argue that the nationality criterion is too restrictive and excludes groups that may need protection. However, the non-dominance criterion should be flexible and contextual, considering the power relations and history of each case. In some cases, a numerical majority may be a minority-like or non-dominant group, like Blacks in South Africa under apartheid.¹⁸ A majority in a state may be a minority in a region. Furthermore, subjective criteria, such as the will of group members to preserve their own characteristics and the desire of individuals to be considered part of that group, should be considered along with specific objective requirements. It is now accepted that the status of the minority should be determined by both objective and subjective criteria, not just by the state.¹⁹

3. Evolution of “Minority” During the League of Nations and Beyond

3.1. Interpretation by the PCIJ

In 1922, the League of Nations established the PCIJ to settle disputes between states and provide legal advice. The PCIJ protected minorities, which was a requirement for some states to join the League after the First World War. The League’s minority protection system protected ethnic, religious, and linguistic minorities in certain states and monitored their international obligations. The PCIJ clarified the minority protection system in two landmark cases: the Greco-Bulgarian Communities case (1930) and the Minority Schools in Albania case (1935).

In its advisory opinion dated 31 July 1930, the PCIJ made key observations on the (minority) “community” in relation to the Greco-Bulgarian Convention on Emigration. The Convention, implementing Article 56, Paragraph 2, of the Peace Treaty, aimed to regulate the voluntary emigration of minorities from Greece and Bulgaria. PCIJ emphasised the close connection between the Convention and minority protection measures. It defined a “community” as a group of people united by a common race, religion, language, and traditions, striving to preserve their heritage, religious practices, and cultural identity. The determination of whether a group qualifies as a community is based on a factual assessment, rather than a legal question. The PCIJ highlighted that the existence of communities is a matter of fact. Overall, the advisory opinion underscored the importance of the Convention in safeguarding minority rights and provided clarity on the criteria for defining a

¹⁸ “Reading: Racial, Ethnic, and Minority Groups | Sociology” <<https://courses.lumenlearning.com/suny-intro-to-sociology/chapter/reading-racial-ethnic-and-minority-groups/>>. Last retrieved on April 10, 2023.

¹⁹ Op. cit.9, p. 2-3

community.²⁰ This definition aligns with the approach of the League of Nations and remains relevant today. However, it does not include numerical criteria, non-dominance requirements, or nationality prerequisites for minority members.²¹

In the second case concerning Minority Schools in Albania, the PCIJ emphasised the need for minority protection, aiming to ensure peaceful coexistence and cooperation while preserving the distinctive characteristics and special needs of minority groups. The PCIJ stressed the importance of substantive equality rather than formal equality since minority rights aim to address structural imbalances in culturally significant areas. The PCIJ concluded that minority protection treaties not only establish obligations between states, but also grant rights to minorities. The League of Nations had a role in enforcing these treaties, and the PCIJ had the jurisdiction to interpret and apply them. The minority protection system was based on principles of equality, non-discrimination, and the preservation of minority identity and culture while respecting state sovereignty and territorial integrity.²²

3.2. Proposals of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities

The Sub-Commission on the Prevention of Discrimination and the Protection of Minorities was a subsidiary body of the UN Commission on Human Rights from 1947 to 2006.²³ Its principal aim was to define minority rights in a clear and comprehensive manner and offer ways to protect and promote them. At its third, fourth, and fifth sessions, the Sub-Commission recommended that the Commission on Human Rights adopt a draft resolution defining minorities for UN protection. At the third session, the Sub-Commission adopted a draft resolution that it amended at the fourth session to define “minorities”²⁴ as “[T]

²⁰ “CONVENTION BETWEEN GREECE AND BULGARIA RESPECTING RECIPROCAL EMIGRATION” <http://www.pollitecon.com/html/treaties/Convention_Between_Greece_And_Bulgaria_Respecting_Reciprocal_Emigration.htm>. Last retrieved on April 03, 2023.

²¹ Advisory Opinion in the case concerning *Interpretation of the Convention between Greece and Bulgaria Respecting Reciprocal Emigration (Greco-Bulgarian Communities)*, PCIJ, *PCIJ Reports, Series B* No.

17, 1930,19,21,22

²² Mandal, G. C. (2012), “In Search of a Legal Definition of the Concept of “Minority”: Antecedents in International Law”, Dhaka ELCOP, p. 38

²³ The Sub-Commission on Prevention of Discrimination and Protection of Minorities was the main subsidiary body of the former Commission on Human Rights. It was established in 1947 with 12 members. In 1999 it was renamed as the United Nations Sub-Commission on the Promotion and Protection of Human Rights. For details, see “Sub-Commission on the Promotion and Protection of Human Rights” (*OHCHR*) <<https://www.ohchr.org/en/hr-bodies/sc/sub-commission#:~:text=The%20United%20Nations%20Sub-Commission,it%20was%20renamed%20in%201999>>. Last retrieved on April 16, 2023.

²⁴ Op. cit.12, para 22

he existence among the nationals of many States of separate population groups habitually known as minorities and having ethnic, religious or linguistic traditions or characteristics which differ from those of the rest of the population and which should be protected by special measures at the national and international levels so that they may preserve and develop such traditions or characteristics...”

At its fifth session, the Sub-Commission suggested that the Commission adopt a draft resolution defining “minority” based on the above characteristics. Therefore, the definition would include these elements:

- i. The term “minority” encompasses only those non-dominant groups in a population that possess and seek to conserve stable ethnic, religious, or linguistic traditions or characteristics markedly different from those of the rest of the population;
- ii. Such minorities should properly include a number of persons sufficient by themselves to preserve such traditions or characteristics; and
- iii. Such minorities must be loyal to their national state.²⁵

At its sixth session, the Sub-Commission adopted Resolution F to start a global study of minorities and apply a modified version of the definition from the draft resolution mentioned above.²⁶ At its ninth session, the Commission on Human Rights acknowledged Resolution F of the Sub-Commission and invited it to review the complete issue, including the definition of “minority.” The Commission debated the Sub-Commission’s definition of “minorities” in Resolution F.²⁷ They worried it would eliminate protected national groups. They argued that including only groups that wanted to “preserve ethnic, religious, or linguistic traditions or characteristics” was subjective because dominant groups could justify denying equal rights to certain minorities by claiming that those minorities did not want to maintain their individuality. Others thought the recommendations of the Sub-Commission did not clearly exclude foreigners living in the state or immigrant groups. In the absence of a criterion to determine which minorities needed special protection and which did not, it was difficult to understand how such a study could be done.²⁸ At its seventh session in 1954, the Sub-Commission resolved to focus

²⁵ Op. cit.12, para 23

²⁶ “Report of the 6th Session of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities to the Commission on Human Rights, New York, 4 to 29 January 1954” (*United Nations Digital Library System*, February 5, 1954) <<https://digitallibrary.un.org/record/581208>>. Last retrieved on April 16, 2023.

²⁷ “Report of the 9th Session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to the Commission on Human Rights, New York, 18 February to 8 March 1957” (*United Nations Digital Library System*, March 8, 1957) <https://digitallibrary.un.org/record/636442>. Last retrieved on April 16, 2023.

²⁸ Op. cit.12, para 24

on discrimination and postpone a full study of minority protection, including the concept of ‘minority’ until the Commission on Human Rights issues a particular directive.²⁹

In 1950, the Secretary-General presented a Memorandum to the Sub-Commission addressing the “Definition and Classification of Minorities.”³⁰ The Memorandum emphasized that the term “minority” could not be defined simply by its literal meaning. A broad interpretation would encompass numerous communities within a state, such as families, social classes, and cultural groups, rendering the definition useless. The Secretary-General noted that ‘minority’ primarily referred to specific types of community, particularly national or similar communities, which differed from the majority group in a state. These minorities could be sovereign nations or tribal organisations, nations previously existing under their own state but later annexed, or regional or scattered groups that retained solidarity with the dominant group without complete assimilation.³¹

The Memorandum classified minorities based on contiguity, identifying groups that constituted the majority or dominated a region, those that formed a minor portion of a region’s population, groups dispersed across regions or the country, and mixed-nationality groups.³² Furthermore, minority groups were categorized based on their origin and relationship with the state, including existing pre-state groups, groups annexed or transferred to the state, and state-naturalized citizens with shared origins, religion, language, etc. Ultimately, both the Sub-Commission and the Commission on Human Rights acknowledged the difficulty, if not impossibility, of providing a comprehensive definition of minorities and identifying all minority groups requiring special protection.³³

²⁹ “Report of the 7th Session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to the Commission on Human Rights, New York, 4 to 28 January 1955” (*United Nations Digital Library System*, February 4, 1955) <https://digitallibrary.un.org/record/632056>. Last retrieved on April 16, 2023.

³⁰ “Definition and Classification of Minorities: Memorandum Submitted by the Secretary-General” (*United Nations Digital Library System*, December 27, 1949) <<https://digitallibrary.un.org/record/701713>>. Last retrieved on April 10, 2023.

³¹ *Op. cit.* 12, para 26

³² “Definition and Classification of Minorities: Memorandum Submitted by the Secretary-General” (*United Nations Digital Library System*, December 27, 1949) <<https://digitallibrary.un.org/record/701713>>. Last retrieved on April 10, 2023. Also see, Capotorti, Francesco, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, United Nations, New York, 1979, para 54

³³ *Ibid.*

In 1977, Francesco Capotorti, Special Rapporteur of the UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, defined an ethnic, religious, or linguistic minority as “a group numerically smaller than the rest of the population of the state to which it belongs and possessing cultural, physical, or historical characteristics, a religion, or a language different from those of the rest of the population.”³⁴ Capotorti invited governments, specialised agencies, and a number of regional government organisations and non-governmental organisations to send him their observations and opinions on his ‘interpretation’ of the term ‘minority’, among others.³⁵ Some Governments believed that the definition by the Special Rapporteur was too vague, insufficient, and imprecise.³⁶ Others indicated that the Special Rapporteur should adopt a different strategy.³⁷ Some governments even argued against the word ‘minority’ and said that it had

³⁴ Op. cit.12, para 28

³⁵ Op. cit.12, para 29

³⁶ The Greek Government made the following remarks: “*An ethnic, religious, or linguistic minority group of persons should be clearly recognizable as such. The following criteria, among others, should be applicable to a group of persons for it to qualify as a minority: the characteristic features should be sufficiently distinctive for the group concerned to be clearly distinguishable as separate from the majority... Another fact to be considered is that the group is recognized as such by an international treaty or agreement. Article 27 of the Covenant covers only persons belonging to separate or distinct groups, well-defined and long-established on the territory of a State.*” According to the Government of the Netherlands: “*The definition used in the questionnaire is rather wide. The term ‘minority’ would seem to include more constitutive elements than are expressed in the definition. To be regarded as an ethnic, religious, or linguistic minority, a group should be clearly recognizable as such. The characteristic features should be sufficiently distinctive for the minority concerned to be clearly distinguishable as a separate group. Such features may be visual, but this is not essential. Even though there are no visible differences, a group may differ from the rest of the population due to such factors as organizational contacts in particular areas, choice of school or occupation, and housing. The difference between a minority and the rest of the population should not only be sufficiently distinct but also sufficiently big. All sorts of gradual transitions and minor gradations, which are found everywhere and in large countries in particular, would seem to have little relevance since otherwise, every country would be composed of minorities within the meaning of article 27 of the Covenant.*” Other Governments indicated that, in their opinion, the definition proposed by the Special Rapporteur was incomplete and too vague.” For details, see Capotorti, Francesco, Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, United Nations, New York, 1979, para 31

³⁷ The Bulgarian Government stated: “*When conducting a study on this issue on a global scale, it should be taken into account that no generally accepted definition of “minority” exists. The use of the definition proposed by the Special Rapporteur on a worldwide basis might create vague or misleading interpretations because of specific conditions in individual countries.*” According to the Yugoslav Government: “*it is difficult to give an answer as to what criterion should be applied in formulating a legal definition of the term “minority”. The definition given by the Special Rapporteur is not the most suitable because, among other things, it lists language after cultural, physical, historical, and religious characteristics. The definition gives too much prominence to the classical thesis of “minorities” versus “majorities”.*” For details, see Capotorti, Francesco, Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, United Nations, New York, 1979, para 32

been changed in their legal systems.³⁸ Some preferred to make no observations on the substance of the question.³⁹

With regard to the numerical factor, some governments said that the number of people in ethnic, religious, or linguistic groups is not a major factor in defining a “minority.” It is also important to note that their comments did not say much about whether the number of these minorities should reach a certain percentage of the total population in order to get special treatment⁴⁰ except in Sweden⁴¹ and Greece.⁴² According to UNESCO, a “group numerically smaller than the rest of the population” may not be an adequate definition. In some instances, the majority population is a sociological minority; therefore, power distribution should be taken into account when determining “minority rights.”⁴³ Francesco Capotorti’s 1977 definition of a minority group advanced minority rights worldwide. However, the definition has some drawbacks and issues.

³⁸ According to the Government of the Philippines, “*The official concept of the term “minority” in the Philippines has a legalistic base. Recently, to obliterate the presence of a numerical division, the term “Cultural Communities” has been used when referring to “National Minorities.” The term “National Cultural Communities” appeared in the Constitution of the Philippines. Hence, in referring to “minority” in the Philippines presently, the term must be taken in the context of the existence of several cultural groups in a cultural plural national society where there is a distinct culture that is predominantly in the majority vis-à-vis all others taken together.*” For details, Capotorti, Francesco, Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, United Nations, New York, 1979, para 34

³⁹ The Austrian Government stated: “*With respect to the theoretical question raised, it may be remarked that these problems have been under discussion in the relevant literature ever since scholars started to examine minority problems. They have not so far succeeded in formulating a generally accepted definition of the concept of minority - whether ethnic, religious or linguistic. In view of these unsuccessful efforts, it may be doubted whether a satisfactory solution to this problem is possible. Similarly, all efforts made in this field within the framework of the United Nations have failed. Austria, therefore, prefers not to comment on these questions.*” For details, Capotorti, Francesco, Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, United Nations, New York, 1979, para 33.

⁴⁰ The Government of Finland observed that “*the number of persons belonging to a minority group is not, as such, a relevant factor for the definition of the term ‘minority,’ but it is obvious that the group must consist of a noteworthy number of persons before it constitutes a factor of any significance in a society.*” According to the Italian government, the numerical factor is of very little importance.” For details, Capotorti, Francesco, Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, United Nations, New York, 1979, para 38

⁴¹ The Swedish Government stated that “*the concept of an ethnic or national minority in Sweden would presume that the group in question consists of at least one hundred individuals*”. For details, see Capotorti, Francesco, Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, United Nations, New York, 1979, para 38

⁴² The Greek Government stated: “*For a group to qualify as a minority, it should be sizable and form a substantially compact element in the community. There should be taken into account not only the number of persons belonging to a particular group but also the relation between that number and the size of the geographical area in which the group lives.*”

⁴³ Op. cit.12, para 43

The definition covers ethnic, religious, and linguistic minorities, making it inclusive. It also acknowledges that minorities are defined by their unique traits as well as their numerical size. This helps contextualise the variety and identity of minority groups. Another strength of the definition is that it is based on self-identification, allowing individuals to select if they are a minority. This preserves the dignity and autonomy of the minority members. However, the definition has shortcomings and issues that must be addressed.

It does not set a minimum size for any minority group. It is well understood today that a minority must be large enough for the state to recognise and protect it.⁴⁴ With tiny or dispersed groups, this may make it difficult to determine minority status. It may also exclude marginalised groups that outnumber the majority. The definition also ignores minority-majority power dynamics. The definition of Capotorti focuses solely on the numerical inferiority of a minority group and is silent regarding the numerical strength of the group.⁴⁵ It believes that minorities are always subject to the state and dominant group, which may not be true. Certain minorities may oppress other minorities in the same state due to their political or economic power. Intersectionality, the fact that some people are members of multiple minority groups and endure multiple forms of discrimination, is not addressed in the definition.

4. The Development of Minority Rights in the League of Nations

After World War I, several ‘minority treaties’ adopted by the League of Nations represented the first significant effort to identify internationally recognised minority rights.⁴⁶ The League of Nations established a minority rights protection system as a significant component of its programme.⁴⁷ Some rules were created to protect specific populations without attempting a general definition or a universal

⁴⁴ G. Gilbert (1992) ‘The Legal Protection Accorded to Minority Groups in Europe’, Netherlands Year Book of International Law, Vol. 23, pp.72-73, in Khan, B. U. and Rahman, M. M, Protection of Minorities: Regimes, Norms and Issues in South Asia, Cambridge Scholars Publishing, 2012, p. 3

⁴⁵ Khan, B. U. and Rahman, M. M, Protection of Minorities: Regimes, Norms and Issues in South Asia, Cambridge Scholars, 2012, p. 3

⁴⁶ Kymlicka, W., Multicultural Citizenship: A Liberal Theory of Minority Rights, Oxford, 1995, P. 2; For details see *Protection of Linguistic, racial or religious minorities by the League of Nations: Resolutions and Extracts from the Minutes of the Council, Resolutions and Reports Adopted by the Assembly, Relating to the Procedure to be Followed in Questions Concerning the Protection of Minorities*, League of Nations, Geneva, 1929

⁴⁷ The system consisted of the special treaty and declaration-based obligations undertaken by the affected states, whose external “guarantee” was vested in the League of Nations. See details in Gaetano Pentassuglia, “Minority Rights, Human Rights: Basic Concepts, Entitlements and Implementation Procedures under International Law” in *Mechanisms for the Implementation of Minority Rights.*, Strasbourg: Council of Europe, 2004., p. 9

prescription for minorities.⁴⁸ The League of Nations protected minority rights through special treaties and declarations that affected States, agreed to follow.⁴⁹ The key points in the protection mechanism included:

- Acceptance of the minority issue as distinct;
- An effort to protect minority rights for humanitarian and practical reasons;
- A petition system for individuals and groups to enforce rights;
- Promotion of human rights in state constitutions; and
- Treaties and declarations guaranteeing rights for all citizens, including racial, religious, and linguistic minorities.

The minority protection system of the League of Nations was based on the idea that minorities had individual and collective rights that should be protected by their states. Treaties and petitions comprised the system. The victorious nations and the new or expanded governments in Eastern and Central Europe signed minority rights treaties. The clauses varied by state, but typically guaranteed equality before the law, freedom of religion, education in minority languages, representation in public institutions, and cultural autonomy. Treaties were registered with the League of Nations and supervised by it.

Individuals or minority communities could complain to the League of Nations that their states violated their rights. The Minority Section used to review petitions and referred them to the Council of the League of Nations or the Permanent Court of International Justice. The Court could issue binding judgments, while the Council could recommend or censure governments. The Council of the League of Nations could investigate violations of minority obligations reported by council members.⁵⁰ The Permanent Court of International Justice (PCIJ) was authorised to resolve disagreements about regime-related legal or factual issues impartially.⁵¹

⁴⁸ Nationals who belonged to racial, religious or linguistic minorities living within the newly emerged or enlarged states that resulted from the redrawing of boundaries caused by the disintegration of three multinational empires, that is *Austria-Hungary*, *Prussia* and the *Ottoman Empire*. See details, Gaetano Pentassuglia, “Minority Rights, Human Rights: Basic Concepts, Entitlements and Implementation Procedures under International Law” in *Mechanisms for the Implementation of Minority Rights*., Strasbourg: Council of Europe, 2004., p. 9

⁴⁹ Gaetano Pentassuglia, “Minority Rights, Human Rights: Basic Concepts, Entitlements and Implementation Procedures under International Law” in *Mechanisms for the Implementation of Minority Rights*., Strasbourg: Council of Europe, 2004., p. 9; Patrick Thornberry and Maria Amor Martin Estebanez, *Minority Rights in Europe*., Council of Europe, 2004., p. 11

⁵⁰ Gaetano Pentassuglia, “Minority Rights, Human Rights: Basic Concepts, Entitlements and Implementation Procedures under International Law” in *Mechanisms for the Implementation of Minority Rights*., Strasbourg: Council of Europe, 2004., p. 9

⁵¹ *Ibid.*

5. The Minority Treaties and the Protection Regime

5.1. Drafts at the Paris Peace Conference of 1919

During World War I, various congresses and conferences were held by private organizations to develop strategies for protecting the rights of minorities in terms of culture, ethnicity, equality before the law, and religious freedom.⁵² The 1919 Paris Peace Conference considered both private and official concerns related to minority protection.⁵³ Discussions took place on issues including provisions on “racial and national minorities’ and religious liberty in the Covenant of the League of Nations.⁵⁴ The draft by US President Woodrow Wilson prior to independence required new states to treat their “racial or national minorities” equally.⁵⁵ However, these suggestions were not included in the joint American-British draft of the League of Nations Covenant.

The Covenant did not address the rights of ethnic minorities as the British believed that territorial treaties should handle the issue, considering that some minorities sought special treatment while others sought guarantees of non-discrimination. President Wilson proposed adding a clause on religious freedom to the Covenant, but the British delegate proposed an additional clause authorising the Executive Council to intervene if illiberal government actions against a particular religion or belief posed a threat to world peace.⁵⁶ However, the committee revising the Covenant advised against including provisions on religious freedom and worship, and ultimately, the League of Nations Council Committee in 1929 deemed the inclusion of religious tolerance and racial equality in the Covenant impractical or undesirable. The authors of the Covenant were unwilling to make these principles mandatory for the entire League.⁵⁷

52 See C. A. Macartney, *National States and National Minorities* (New York, Russel and Russel, 1968), pp. 212-218

53 After World War I, the victorious Allies met in 1919 and 1920 to set peace terms for the defeated Central Powers at the Paris Peace Conference. It resulted in five treaties that rearranged Europe and parts of Asia, Africa, and the Pacific Islands and imposed financial penalties, dominated by Britain, France, the US, and Italy. Germany and the other losing nations had no say in the deliberations of the conference, causing decades-long political resentments. For details, see “Paris Peace Conference (1919–1920)” (*Wikipedia*, June 19, 2023) <[https://en.wikipedia.org/wiki/Paris_Peace_Conference_\(1919%E2%80%931920\)](https://en.wikipedia.org/wiki/Paris_Peace_Conference_(1919%E2%80%931920))>. Last retrieved on April 12, 2023.

54 Nelsson R, “The Paris Peace Conference Begins - Archive, January 1919” (*the Guardian*, November 10, 2021) <<https://www.theguardian.com/world/from-the-archive-blog/2019/jan/09/paris-peace-conference-first-world-war-1919>>. Last retrieved on April 16, 2023.

55 David Hunter Miller, *The Drafting of the Covenant* (New York, G. P. Putnam’s Sons, 1928), vol. II, p. 91. In Capotorti, Francesco, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, United Nations, New York, 1979, para 85

56 Ibid.

57 Op. cit.12, para 82-91

5.2. *International Instruments During the Protection Regime*

The 1919 Peace Conference established five Minority Treaties to protect and maintain peace by addressing the needs of minorities in Poland, Czechoslovakia, Serbia, Romania, and Greece. Austria, Bulgaria, Hungary, and Turkey, along with the Allied and Associated Powers and the newly formed or expanded governments, were obliged to ratify these treaties.⁵⁸

The Treaties of Versailles, Saint-Germain, Neuilly, and Trianon contained identical clauses in which the aforementioned countries agreed to incorporate provisions deemed necessary by the Principal Allied and Associated Powers to safeguard their interests. The minority protection regime comprised the five Minority Treaties, four special chapters in the peace treaties imposed on defeated governments,⁵⁹ four supplementary treaties,⁶⁰ and unilateral declarations signed

⁵⁸ The five Treaties were the Treaty of Versailles, The Treaty of Saint-Germain, the Treaty of Neuilly, the Treaty of Trianon and the Treaty of Sevres. Three treaties with former Central Powers were signed during the Paris Peace Conference, and two more were signed after the conference ended in January 1920. The Treaty of Versailles, signed on June 28, 1919, was the most important. The “Big Four” prioritised Germany because they believed Germany started the war in 1914. Yet, Clemenceau wanted Germany geographically and militarily split to never again threaten France. Reparations were the most heated and remembered subject. Germany and its allies paid for all war damages, but the amounts were not disclosed. In May 1919, the German delegation, absent from all deliberations, received the treaty text. German delegates signed the Treaty of Versailles at the Hall of Mirrors in Versailles on June 28, 1919, after failing to negotiate some of the harsher conditions and fearing fears of war if they didn’t. After settling with Germany, the Allies focused on the remaining Central Powers. On September 10, 1919, the Treaty of Saint-Germain destroyed the Austro-Hungarian Empire and obliged the new Republic of Austria to acknowledge the independence of nearly 60% of its former territory. Czechoslovakia, Yugoslavia, and part of Poland were included. Two months later, Bulgaria signed the Treaty of Neuilly, ceding territory and the Aegean Sea access to Yugoslavia. Hungary, newly independent from Austria less than a month before the Armistice, lost two-thirds of its land and 58% of its population in the Treaty of Trianon, signed on June 4, 1920. The Allies and the former Ottoman Empire signed the Treaty of Sevres in August 1920, ending the Paris Peace Conference. Mustafa Kemal, a Turk nationalist fighting for independence, rejected it. Sultan Mehmed VI accepted it. The 1923 Treaty of Lausanne recognised Turkey after Kemal’s representatives and the Allies negotiated. The Paris Treaties with equal discussions and compromise lasted the longest. For details, see *Treaties Signed* | National WWI Museum and Memorial ([theworldwar.org](https://www.theworldwar.org/learn/peace/treaties-signed)), <https://www.theworldwar.org/learn/peace/treaties-signed>. Last retrieved on April 17, 2023.

⁵⁹ Austria (Treaty of Peace between the Allied and Associated Powers and Austria, Saint-Germain-en-Laye, 10 September 1919); Bulgaria (Treaty between the Allied and Associated Powers and Bulgaria, Neuilly-sur-Seine, 27 November 1919); Hungary (Treaty of Peace between the Allied and Associated Powers and Hungary, Trianon, 4 June 1920); Turkey (Treaty of Peace between the British Empire, France, Italy, Japan, Greece, Romania, the Serb-Croat-Slovene States and Turkey, Lausanne, 4 July 1923). See para 95.

⁶⁰ The Polish-Danzig Convention of 9 November 1920; agreement between Sweden and Finland concerning the population of the Aland Islands placed on record and approved by a resolution of the Council of the League of Nations on 27 June 1921; German-Polish Convention relating to Upper Silesia of 15 May 1922; Convention of 8 May 1924 concerning the Territory of Memel, between the Allied and Associated Powers and Lithuania. See para 95

by various states upon joining the League of Nations between 1921 and 1932.⁶¹ This system was applied to racial, religious and linguistic minorities in multiple countries. The objective of minority protection was to prevent arbitrary actions and safeguard the rights of minorities in newly established or expanded states. The Minority Treaties ensured religious freedom, language rights, and education in the native language of minorities. Additionally, they established minority councils to advise governments and empowered High Commissioners to oversee compliance. However, the system encountered challenges, including governments' reluctance to fully implement the treaties, a lack of enforcement mechanisms, and the impact of World War II, which led to the dissolution of the League of Nations and the abandonment of the minority protection system. Despite these limitations, the minority protection system remains a significant milestone in the promotion of human rights.⁶²

5.3. The Content of the Protection Regime

There are a number of similarities between international instruments protecting minorities during the League of Nations. Most subsequent treaties were modelled after the initial agreement with Poland.⁶³ In its 1935 Advisory Opinion on Minority Schools in Albania, the PCIJ stated that minority protection instruments are intended to place members of racial, religious, or linguistic minorities on an equal footing with other nationals and to provide them with the means to preserve their racial peculiarities, traditions, and national characteristics.⁶⁴ Special Minorities treaties between the States address nationality, life and liberty, equality, and minority-specific measures.

The accords also prohibit race, language, and religion-based discrimination in public employment, functions, honours, professions, and industries. The treaties also grant privileges to Jewish minorities, Vlachs of Pindus, non-Greek monastic communities of Mount Athos, Muslim minorities, Czechs and Saxons in Transylvania, and Ruthenian populations south of the Carpathian Mountains. One set of provisions ensured equal treatment for members of minority groups,

⁶¹ Albania (2 October 1921); Lithuania (12 May 1922); Latvia (7 July 1923); Estonia (17 November 1923); Iraq (30 May 1932). It will be recalled that in an advisory opinion dated 6 April 1935 concerning minority Greek schools in Albania, the Permanent Court of International Justice expressed the opinion that those unilateral declarations had the same binding force as conventional undertakings (Permanent Court of International Justice, Series A/B, 64-69). It should likewise be recalled that those declarations were generally signed pursuant to recommendations by the Assembly to the States concerned to the effect that they should, if admitted to the League of Nations, take the necessary measures to ensure the application of the general principles laid down in the Minorities Treaties. See para 95

⁶² Op. cit.12, para 92-96

⁶³ Treaty between the Principal Allied and Associated Powers and Poland, Versailles, 28 June 1919

⁶⁴ Op. cit.12, para 98

while the other set protected them. By prohibiting discrimination based on race, language, and religion in certain areas, the States protected minority populations. Special measures were taken to protect the language, religion, and culture of each minority group.⁶⁵

5.4. The Guarantees of the Protection Regime

Domestic and international safeguards protect minorities in accordance with international law. The former mandates that the States recognise minority laws as fundamental and prohibits any legislation or regulation that conflicts with them.⁶⁶ The latter mandates that each state recognise minority rights as international obligations and place them under the protection of the League of Nations. The international guarantee has three components. First, only the Council of the League of Nations had the authority to amend minority-benefitting regulations. This prevented States from reducing minority protections via legislation. Second, the Council could respond to potential rule violations. Third, a State with a minority and a Council Member-State could submit their dispute to the Permanent Court of International Justice, whose decision was final and had the same force and effect as an award under Article 13 of the Covenant. Articles 13 and 14 required League members to submit disputes amenable to arbitration or judicial resolution to the Permanent Court of International Justice, which had the authority to hear and adjudicate international disputes.⁶⁷

Both local and international laws were to protect minorities. The latter mandated that States recognise minority rights as international obligations protected by the League of Nations. The Council of the League of Nations had the exclusive authority to sanction modifications to minority regulation requirements and to intervene if a violation was imminent. The Permanent Court of International Justice had the authority to settle disputes between governments with minorities and Council members. Article 13 of the Covenant equated its decisions to awards with binding force. The Covenant mandated that League Members file disputes with the Court and the Council in order to plan their establishment and request their counsel.⁶⁸

⁶⁵ Op. cit.64, para 98-102

⁶⁶ Protection of Linguistic, Racial or Religious Minorities by the League of Nations: Provisions Contained in the Various International Instruments at Present in Force. Series of League of Nations publications, I.B. Minorities, 1927, I.B.2 (CL.110. 1927.1, annexe), p. 42, in Capotorti, Francesco, Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, United Nations, New York, 1979, para 103

⁶⁷ Op. cit.12, para 105 (c)

⁶⁸ Op. cit.12, para 103-104

5.5. Implementing the League's Guarantee

The Council of the League of Nations adopted a resolution to assure that these treaties are effective outside of the League of Nations.⁶⁹ Minorities could submit petitions and minority committees would evaluate them.⁷⁰ The Council established a petition review procedure⁷¹ that required neither internal recourses nor minority participation. The Secretary-General reviewed the petition's facts momentarily but did not inform the petitioner if they were inappropriate. The Council decided that the Secretary-General should notify petitioners of League of Nations petitions that were not received. Prior to the Council's agenda, the petition's examination documentation was held in strict confidence.⁷²

6. The Minority Committees

The Minority Treaties were created by the League of Nations to protect the people of minority rights in several states. Some members of the League of Nations hesitated to accuse a nation of violating these conventions. In October 1920, the Council resolved this issue by establishing a three-member committee to review petitions or communications alleging violations of minority treaties.⁷³ In 1925, the Council passed a resolution establishing appointment criteria for committee members.⁷⁴ These members must be impartial and not from the state or

⁶⁹ Op. cit.12, para 106

⁷⁰ "It should be noted also that a special section entitled "Minorities Section" was established in the Secretariat of the League of Nations to serve as the administrative organ of the Minorities Committees. This section was gradually enlarged, notably by the establishment of a press information service to deal with minorities questions and the publication of a weekly bulletin containing a summary of newspaper articles from the various countries which had entered into commitments with regard to minorities and which were of direct or indirect interest from the point of view of the protection of minorities., in Capotorti, Francesco, Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, United Nations, New York, 1979, para 107

⁷¹ The right of petition was granted to minorities following the Council's adoption on 22 October 1920 of a report concerning the limits and nature of the guarantees established under the various treaties, prepared by Mr. Tittoni, Rapporteur of the Council.

⁷² Op. cit.12, para 108-117

⁷³ "With a view to assisting Members of the Council in the exercise of their rights and duties as regards the protection of minorities, it is desirable that the President and two members appointed by him in each case should proceed to consider any petition or communication addressed to the League of Nations with regard to an infraction or danger of infraction of the clauses of the Treaties for the protection of minorities. This inquiry would be held as soon as the petition or communication in question had been brought to the notice of the Members of the Council." For details see Capotorti, Francesco, Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, United Nations, New York, 1979, para 118

⁷⁴ "The President of the Council, in appointing two of his colleagues in conformity with the resolution of 25 October 1920, shall not appoint either the representative of the state to which the persons belonging to the minority in question are subject, or the representative of a neighboring state, or the representative of a state whose population consists mainly of the same ethnic group as the minority in

its neighbours. The Council agreed in 1929 that committees should notify council members if a petition was not requested for the agenda.⁷⁵ Committees for minorities met during and between Council sessions. The primary duty of the Committees was to determine whether the council should be informed.⁷⁶ The Committee could bring the issue to the attention of the Council. If the Committee determined that the circumstances did not warrant placing the topic on the Council's agenda, they would speak with the government informally to obtain additional information or to resolve the situation. The Committee was able to the adaptability of adapt to each case due to its procedures. Because the three Minority Committees negotiated with governments in good faith, the Council received fewer issues. This principle has allowed the League and Governments to work together to settle such cases in an equitable manner.⁷⁷

7. The PCIJ's Role in the System

The Permanent Court of International Justice (PCIJ) was the judicial organ of the League of Nations, created in 1920 to settle disputes between governments and provide legal advice. The PCIJ interpreted and applied minority agreements that the League of Nations had imposed on some new states following the First World War. These treaties were to protect the ethnic, religious, and linguistic minorities in the Member States.⁷⁸ The PCIJ could intervene if the concerned Government and any of the Allied or Associated Powers or any other Power that was a member of the Council of the League of Nations disagreed on the interpretation and application of minority protection provisions. Disputes would be decided by the Court instead of the most powerful party and the Court's decision was final.⁷⁹

question." For details see Capotorti, Francesco, Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, United Nations, New York, 1979, para 119

⁷⁵ Op. cit.12, para 120

⁷⁶ Ibid. Para 121

⁷⁷ Ibid. Para 118-122

⁷⁸ Even Article 16 of the Covenant of the League of Nations permitted Member States to adopt economic sanctions against States in breach of certain of their obligations. See, Thouvenin, J., International Economic Sanctions and Fundamental Rights: Friend or Foe? in Weib, W. and Thouvenin, J. (eds), *The Influence of Human Rights on International Law*, Springer, 2015, p. 114

⁷⁹ In a resolution adopted on 21 September 1922, the Assembly of the League of Nations had recommended that: "In cases of difference of opinion as to questions of law or fact arising out of the provisions of the Minorities Treaties, between the Government concerned and one of the States Members of the Council of the League of Nations, ... the Members of the Council appeal without unnecessary delay to the Permanent Court of International Justice for a decision in accordance with the Minorities Treaties, it being understood that the other methods of conciliation provided by the Covenant may always be employed." For details see, Capotorti, Francesco, Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, United Nations, New York, 1979, para 123

Article 14 of the League of Nations Covenant granted the Court advisory authority.⁸⁰ The Court defined ‘minorities’ and the rights of the minorities in several advisory opinions at the request which helped create and clarify international law.⁸¹ In the 1935 Advisory Opinion on Minority Schools in Albania, the PCIJ declared minority rights an international obligation that the League of Nations may implement.⁸² The PCIJ also acknowledged that minorities had a right to preserve their culture, language, and religion and that states had to protect and promote this right.

Though advisory opinions are not binding, the Council had to follow them. The role of the Permanent Court of International Justice in minority protection was crucial to supervision. The jurisdictional and advisory competence of the Court enhanced the Council’s political competence. The Convention on the Elimination of All Forms of Racial Discrimination and the provisions of the ILO Constitution regarding its conventions assign mandatory jurisdictional competence to the International Court of Justice and allow appeals or communications to ad hoc organs.⁸³

The PCIJ’s role in minority protection was vital but controversial.⁸⁴ The PCIJ developed several legal ideas and norms, including objective obligations, the prohibition of assimilation schemes, and the recognition of minority communities as subjects of international law. However, the PCIJ had several challenges in enforcing its findings. Political hurdles included governmental non-compliance, resistance from great powers, and European nationalism and totalitarianism. The restricted jurisdiction of the Court, the ambiguity and inconsistency of the treaty provisions, and the lack of meaningful punishments and remedies were legal

⁸⁰ The Peace Treaty of Versailles, signed June 28, 1919, Part I: The Covenant of the League of Nations, Article 14: “The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.”

⁸¹ Between 1922 and 1940, the PCIJ dealt with 29 contentious cases between States and delivered 27 advisory opinions. The work of the PCIJ made possible the clarification of a number of aspects of international law and contributed to its development. For details, see Permanent Court of International Justice | INTERNATIONAL COURT OF JUSTICE (icj-cij.org) <<https://icj-cij.org/pcij>>. Last retrieved on April 17, 2023.

⁸² Mundi J, “Minority Schools in Albania, Advisory Opinion, 6 Apr 1935” <https://jsumundi.com/en/document/decision/en-minority-schools-in-albania-advisory-opinion-saturday-6th-april-1935>. Last retrieved on March 27, 2023.

⁸³ Op. cit.12, para 123-127

⁸⁴ See Zyberi, G. ‘The International Court of Justice and the Rights of Peoples and Minorities’ in Christian Tams and James Sloan (eds.), *The Development of International Law by the International Court of Justice* (Oxford University Press, 2013), pp. 327-352

hurdles. The then international political and legal regime limited the effective legal contribution of the PCIJ to minority rights.

8. Critical Assessment of Minority Protection in the League System

Minority protection has been a century-old global issue. New nation-states and millions of refugees emerged after the Austro-Hungarian, Ottoman, and Russian empires collapsed in the First World War. In this setting, minority rights came to the forefront, and the international community recognised the need to protect minorities, especially those in newly constituted nation-states.⁸⁵

The League of Nations was founded in 1919 to foster global peace and cooperation. The League promoted minority rights through international treaties. The rights of all minority groups, linguistic, religious and cultural—were protected by the treaties.⁸⁶ After World War I, international protection of minorities improved significantly. The system was based on a few treaty commitments but contained provisions for state obligations. Most notably, the League of Nations guaranteed minority rights and carefully crafted its articles to maintain state sovereignty.⁸⁷

The restricted implementation was one of the biggest flaws of the 1919 regime. Minorities were protected only in a few states. Protecting minorities was seen as limiting sovereignty by some states. The Peace Conference's failure to impose general minority provisions upon Germany and to insist that Belgium, Denmark, France, and Italy undertake similar obligations in respect of the populations of their newly acquired territories showed that the international protection of national minorities was not accepted as a fundamental principle of international law, applicable to great and small powers, Western and Eastern, and Central Euro-Atlantic powers.⁸⁸

Nevertheless, the Second World War caused the system to fail. The Holocaust and other wartime horrors showed the need for a better minority rights framework.⁸⁹ In 1948, the Universal Declaration of Human Rights was adopted, and the United Nations was founded. The Declaration recognised the right of all people to be free from discrimination based on race, colour, religion, sex, or national or ethnic

⁸⁵ Op. cit.12, para 128

⁸⁶ Patrick Macklem, 'Minority Rights in International Law' (2008), International Journal of Constitutional Law, Volume 6, Number 3 & 4, 2008, p. 548

⁸⁷ Op. cit.12, para 129

⁸⁸ Ibid, para 130

⁸⁹ Kymlicka, W., *Multicultural Citizenship: A Liberal Theory of Minority Rights*, Oxford, 1995, P. 2; For details, please see *Protection of Linguistic, racial or religious minorities by the League of Nations: Resolutions and Extracts from the Minutes of the Council, Resolutions and Reports Adopted by the Assembly, Relating to the Procedure to be Followed in Questions Concerning the Protection of Minorities*, League of Nations, Geneva, 1929, P. 2

origin. Minority rights protection has improved since the Universal Declaration of Human Rights was adopted. The International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights defend minority rights.⁹⁰

Notwithstanding these achievements, minority rights protection is still difficult, especially in unstable nations. Minority groups often experience prejudice and persecution, and their rights are not recognised. The international community must continue to protect minority rights and ensure their full respect and protection in all nations.

9. Incorporation of Minority Rights into the United Nations Framework

The Second World War abolished ‘minority treaties’⁹¹ and paved the way for international adjudication based on universal human rights and fundamental freedoms to protect people worldwide.⁹² After the Second World War, the United Nations (UN) replaced the League of Nations. The minority policy of the United Nations differed from its predecessor’s policy, as it did not prioritise European territorial conflicts in Europe.⁹³ The UN promoted and protected the rights of national, ethnic, religious, and linguistic minorities through the Forum on Minority Issues and the Special Rapporteur on Minority Issues.⁹⁴

The UN Charter emphasised human rights, fundamental freedoms, equality, and non-discrimination but did not specifically address minority protection.⁹⁵ These universal principles applied to minority rights as well. The 1948 Universal

⁹⁰ Op. cit.12, para 131-133

⁹¹ The five Treaties were concluded: The Treaty of Versailles, the Treaty of Saint-Germain, the Treaty of Neuilly, the Treaty of Trianon and the Treaty of Sevres. Three treaties with former Central Powers were signed during the Paris Peace Conference, and two more were signed after the conference ended in January 1920.

⁹² See “The Protection of Minorities under the Auspices of the League of Nations” (The Oxford Handbook of International Human Rights Law, Oxford Academic) <<https://academic.oup.com/edited-volume/42626/chapter-abstract/358047973?redirectedFrom=fulltext>>; “Protection of Minorities by the League of Nations” (American Journal of International Law) (Cambridge Core) <<https://www.cambridge.org/core/journals/american-journal-of-international-law/article/abs/protection-of-minorities-by-the-league-of-nations/D0767817D3FA0A0478EE0FE408AB31AC>>

⁹³ See “Impact of World War II on International Politics” (gkscientist.com) <<https://gkscientist.com/impact-of-world-war-ii-on-international-politics/>>. Last retrieved on April 25, 2023

⁹⁴ See “Minorities” (United Nations) <<https://www.un.org/en/fight-racism/vulnerable-groups/minorities>>. Last retrieved on April 22, 2023. See “United Nations Forum on Minority Issues” (OHCHR) <<https://www.ohchr.org/en/hrc-subsiary-bodies/minority-issues-forum>>. Last retrieved on April 22, 2023

⁹⁵ Article 1 of the Charter specifies that one of the UN’s goals is international cooperation in promoting and supporting respect for human rights and fundamental freedoms for all, regardless of race, sex, language, or religion.

Declaration of Human Rights, enshrined by the General Assembly, became a cornerstone of international human rights legislation. Although the Declaration did not expressly mention minority groups, its non-discrimination clauses and other paragraphs have global consequences for minority communities. The General Assembly urged the UN to create flexible solutions that consider the unique circumstances and characteristics of the minority groups.⁹⁶

While addressing minority issues, the UN prioritised individual human rights and colonial self-determination. The 1948 Genocide Convention forbade ethnic, racial, and religious genocide.⁹⁷ The 1950 study of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities established a set of criteria to designate minorities as non-dominant groups striving to maintain their distinguishing traits. The report strongly supported affirmative action, legislative measures, and education to combat minority discrimination.⁹⁸ Conscientious efforts have assimilated minority rights into the UN system. The Sub-Commission on the Prevention of Discrimination and Protection of Minorities proposed an article in the proposed International Covenant on Human Rights protecting ethnic, religious, and linguistic minorities in 1950. The draft resolution was revised to include “persons belonging to minorities” and approved by the Sub-Commission.⁹⁹

The Commission on Human Rights debated adding a minority rights section to the Covenant on Civil and Political Rights in 1953.¹⁰⁰ Article 25 of the Covenant, which protects ethnic, religious, and linguistic minorities, was approved with revisions after many recommendations.

Article 25 of the draft International Covenant on Civil and Political Rights was adopted into the final version as Article 27 in 1966, creating a significant legal mechanism to protect minority rights worldwide.¹⁰¹

⁹⁶ United Nations, A/RES/3/217 C, General Assembly, 183rd plenary meeting, 10 December 1948, Third session, Resolution adopted by the General Assembly, [Part C of General Assembly resolution 217 (III). International Bill of Human Rights], 217 C (III). “The Fate of Minorities” <<http://www.un-documents.net/a3r217c.htm>>; Also consult HR-PUB-12-07_en.pdf (ohchr.org), <https://www.ohchr.org/sites/default/files/Documents/Publications/HR-PUB-12-07_en.pdf>. Last retrieved on April 12, 2023

⁹⁷ Article II, Convention on the Prevention and Punishment of the Crime of Genocide, 1948.

⁹⁸ For details, See “Sub-Commission on Prevention of Discrimination and Protection of Minorities” (un.org) <<https://digitallibrary.un.org/record/1477747>>. Last retrieved on April 03, 2023

⁹⁹ E/CN.4/Sub.2/112. “Commission on Human Rights” (un.org) <<https://digitallibrary.un.org/record/1477679?ln=en>>. Last retrieved on April 10, 2023

¹⁰⁰ See “Commission on Human Rights” (un.org) <<https://digitallibrary.un.org/record/220219>>. Last retrieved on April 10, 2023

¹⁰¹ Article 27 of the International Covenant on Civil and Political Rights reads thus: “*In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall*

Over time, the United Nations approved many human rights treaties with minority rights clauses. ICERD and ICESCR help protect minority rights.¹⁰² The CRC also protects children from minority groups.¹⁰³ Furthermore, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities, issued by the UN General Assembly in 1992, expressly addresses minority rights. It guarantees the right to practise their faith, enjoy their culture, use their language, and participate in public life without prejudice. The widespread adoption of these treaties and declarations has created a legal obligation for states to respect minority rights under international law.

Special Rapporteur Francesco Capotorti's 1979 study on ethnic, religious, and linguistic minorities' rights advanced minority rights in the UN system. Despite initially prioritizing universal human rights and decolonisation, the United Nations has established norms, procedures, and mechanisms pertaining to minority issues. From the era of the League of Nations, the incorporation of minority rights into the UN framework has had a global impact on minority rights. However, challenges persist concerning the reconciliation of state sovereignty with minority rights, the tension between cultural relativism and universal human rights, as well as the effective implementation and enforcement of these rights. It is crucial that the UN maintain its commitment to minority rights in order to foster social cohesion and stability and safeguard the rights of minority groups.

10. Conclusion

The League of Nations was the first international organisation to address minority rights comprehensively and methodically. It struggled to define, recognise, and safeguard the interests of minority groups, but eventually provided them with recognition and protection.¹⁰⁴ The League of Nations created a sophisticated minority protection system that included international instruments, regulatory processes, and dispute resolution by the Permanent Court of International Justice.

The purpose of the League's system was to prevent discrimination and oppression of minorities, promote their religious, cultural or linguistic identity, and assure their participation in public life. The League of Nations also shaped minority groups and their relationships to self-determination, human rights, and cultural diversity. The

not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

¹⁰² See Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, 1965 and Article 2(2) of the International Covenant on Economic, Social and Cultural Rights, 1966.

¹⁰³ See Article 30 of the Convention on the Rights of the Child, 1989

¹⁰⁴ Onions, H. *Minority Rights Protection in International Law: The Roma of Europe*, Ashgate, 2007, p. 61, 186; Also see, "Minority Rights" (*The Princeton Encyclopedia of Self-Determination*) <<https://pesd.princeton.edu/node/531>>. Last retrieved on April 05, 2023.

League also established mechanisms for monitoring and enforcing compliance of the Member States with their obligations, such as the Minority Committees, the Council of the League of Nations, and the Permanent Court of International Justice.

The League system of minority protection was an innovative and audacious endeavour that had a profound influence on the evolution of international law and human rights. It established minorities as subjects of international law and acknowledged both their collective and individual rights. The system also influenced the interpretation and application of international law by the Permanent Court of International Justice, which issued a number of seminal decisions on minority cases. In addition, the League's system inspired the work of other international bodies and organisations that dealt with minority issues, such as the 1946 United Nations Sub-commission on the Prevention of Discrimination and the Protection of Minorities.

However, the minority protection system of the League of Nations faced numerous obstacles and restrictions that undermined its efficacy and legitimacy. The coverage and scope of the League's system were selective and inconsistent since they only applied to certain nations and minorities while excluding others. The system of the League was also dependent on the political will and cooperation of the states, which frequently resisted or violated their system-mandated obligations. In addition, the protection mechanism lacked the necessary resources and authority to ensure that its decisions and recommendations were implemented and enforced. Moreover, it proved ineffectual in preventing or resolving a number of major conflicts and atrocities that affected minorities during its existence. Several governments reacted against it as an intrusion into their internal affairs or a threat to their sovereignty and unity.

World War II showed the inadequacy of the minority protection system of the League of Nations in combating authoritarianism, fascism, and genocide.¹⁰⁵ After the war, human rights and the prevention of discrimination took precedence over the minority protection system. Yet, the minority protection system of the League of Nations had positive effects on international minority rights law and institutions. It inspired and shaped later minority rights activities in the United Nations and in many countries and regional systems worldwide. It also showed how international cooperation and communication may advance minority rights and interests.

Despite the dissolution of the League of Nations as an official institution, the legacy of the minority protection measures implemented during its existence continues to exert influence within the framework of the United Nations, manifesting itself in various forms and approaches.

¹⁰⁵ Ibid.