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THE VERSAILLES TREATY: FRENCH AND GERMAN PERSPECTIVES IN INTERNATIONAL LAW ON THE OCCASION OF THE CENTENARY

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MINORITY PROTECTION WITHIN THE SYSTEM OF THE LEAGUE OF NATIONS – UNDER PARTICULAR CONSIDERATION OF THE POSITION OF THE UNITED STATES, FRANCE, AND GERMANY[*]

par

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The minority protection system conceived within the League of Nations order is probably one of the most fascinating subjects to be remembered from this era. Where does this fascination draw upon? It may result primarily from a peculiar dichotomy: on the one hand we have an extremely sophisticated group of norms that were gradually developed further over the years and which can be considered to be the very precursor of the modern human rights protection system. On the other hand, these norms are all but forgotten. They are living on in many modern-day concepts and mechanism the roots of which have become neglected. One first explanation for this awkward situation could be identified in the fact that next to nothing has survived from this era and the minorities themselves these provisions were meant to protect have been swept away by the storm of World War II. And even more bizarre: those minorities not covered by these norms had better chances to survive that the protected ones![1] But why, then, does this exceptional situation not stir up a sort of archaeological passion with academic writers to dig in the sands and ruins left over by the World War to

[*] See also P. HILPOLD, 'The League of Nations and the Protection of Minorities – Rediscovering a Great Experiment', *in* 17 *MPYUNL* (2013) p. 87-124; P. DE AZCARATE, *League of Nations and National Minorities – An Experiment*, Carnegie Endowment for international peace, Washington, 1945, 209 p.

[1] This is in particular true for the German speaking inhabitants of a province in Northern Italy, South Tyrol, ceded by Austria to Italy after WWI. Italy had not been prepared to grant any sort of protection to this minority and, after the advent of a fascist government in 1922, this minority became subject of outright discrimination and persecution. It is interesting to see how contemporary writings of this era, when dealing with the imperfections of the League's minority protection system, regularly referred to the appalling situation of the South Tyroleans in order to point out that without the League's protection minorities were even much worse off. See, for example, L. P. MAIR, *The Protection of Minorities*, Christophers, London, 1928, p. 207: "[…] there is one country with minorities in dire need of protection, who can have no recourse to the League because of the difficulty of asking a 'Great Power' to undertake obligations not generally recognised: the Slav- and German-speaking populations of Italy". See also E. REUT-NICOLUSSI, *Tyrol under the axe of Italian fascism*, Allen & Unwin, London, 1930.

bare the leftovers of this monumental edifice? There must be further reasons for this agnostic attitude which will be treated toward the end of this contribution. They will also deliver a specific background to the visions propounded by the main actors contributing to the development – and also the demise – of this protection system: the United States, France and Germany. Proceeding this way, a special focus on this otherwise extremely broad subject is also guaranteed, a focus that is equally intended to best pay tribute to a meeting between French and German International lawyers.

I. THE ROOTS OF THE SYSTEM: AMERICAN UTOPIANISM MEETS EUROPEAN REALISM

There can be no doubt that, at least at the beginnings, the US was, in particular in the person of their President, Woodrow Wilson, one of the main sponsors of the League of Nations. Thereby, Wilson also had to deal with the minority issue, even though this happened rather by accident than by wilful decision. In fact, Wilson's pet issue was self-determination, not minority protection. His "American Utopianism"[2] was driven by ideas that could well be interpreted as an immediate expression of his home state's liberal democratic values as they result from his famous Fourteen Points of 1918. The same is true of the following revealing statement: "No nation should seek to extend its policy over any other nation or people, but that every people should be left free to determine its own policy, its own way of development, unhindered, unthreatened, unafraid, the little along with the great and the powerful".[3]

American utopianism, however, soon entered into conflict not only with the complexity of the European ethnographic situation, which made the creation of ethnically homogenous nation states on the territory of the former European middle powers simply impossible. It also conflicted with particular interests of the European Allies that were intended to draw the borders of the newly created states more in perspective of their own power and security interests than in that of the populations concerned.

In this context, Wilson's dreams of a fair, unfettered and equal implementation of the principle of self-determination should soon clash with that of France's President Georges Clemenceau plans for Middle and Eastern Europe. The most notable case is that of Poland: France had become the most voiceful advocate for a resurrection of a strong Poland, also as a counterweight to Germany. The larger Poland should become territorially, the lesser the principle of self-determination could be respected. A strong, territorially vast country could therefore be justified only if appropriate minority protection measures were adopted if the basic ideals for which America had entered into war should not be totally betrayed.

[2] See H. KISSINGER, *Diplomacy*, Simon & Schuster, 1994, p. 240.
[3] See W. WILSON, *The New Democracy. Presidential Messages, Addresses, and other Papers (1913-1917)*, New York/London, 1926, vol. II, p. 307/405.

Wilson sailed for the after-war Peace Conference slowly and reluctantly, accepting the idea that the concept of self-determination needed some refinement by minority protection measures.[4] At the Peace Conference itself in the various drafts for the League of Nations Covenant provisions on the protection of "racial or national minorities" and on the protection of religious freedom were introduced and deleted, while in the final document no trace of such provision can be found. The general climate for the introduction of such provisions was not propitious: for France, the assumption of such an obligation could not only endanger her self-perception as an ethnically homogenous country but could have raised questions as to her treatment of the German-speaking population in Alsace-Lorraine.[5] Furthermore, from the very beginning France's President Georges Clemenceau considered the League's reason for existence in a strictly utilitarian fashion: this organization should help to further France's interests.[6]

An ambiguous role was played by Italy and Japan, both countries finding themselves rather unaccustomed in the role of "Great Powers". Italy was first of all looking inwardly, as it had to strive to overcome the costs of the Great War and the ensuing political upheaval that finally resulted in the fascist seizure of power of 1922. As far as the Peace Conference was concerned, Italy's main interest was the confirmation of the territorial promises made by the Entente in exchange of Italy's entry into war. The ensuing minority problems resulting from the cession of territories with ethnically and linguistically diverse populations made this country potentially inimical against the inclusion of minority protection provisions in the Covenant from the very beginnings. After 1922 the rejection of minority protection became even more explicit.

As to Japan, several conflicting interests stood in the way of becoming a prominent actor on this scene. In principle, this country had a genuine and sincere interest to promote the cause of racial equality as it tried hard to establish itself in an international society that was dominated by the Western white race. At the same time, however, this strong impetus to internationalize and to be accepted in this community prompted Japan, first of all, not to antagonize and to

[4] As Jacob Robinson et al. (*Were the Minorities Treaties a Failure?*, New York, 1943, p. 4) reports: "He [Wilson] did not conceal his 'embarrassment' at the antinomy between giving the right of self-determination to sovereign peoples, while at the same time securing the rights of the non-ruling nationalities. Reiterating his credo that 'there cannot be any peace with disturbed spirits, there cannot be any peace with a constantly recurring sense of injustice'."

[5] On this issue see H. THOß, '„Purifier – centraliser – assimiler" – Reannexion and Vertreibung im Elsaß und in Lothringen nach 1918', *in* F. L. KROLL/M. NIEDOBITEK (eds), *Vertreibung und Minderheitenschutz in Europa*, Duncker & Humblot, Berlin, 2005, p. 281-296.

[6] See Robinson, *op. cit.*, note 5, p. 7 citing Edward Mandell House, President Wilson's top adviser at the Peace Conference.
Colonel House made the following entry in his diary for January 7th, 1919: "I convinced him (Clemenceau), I think, for the first time that a League of Nations was for the best interest of France." After a number of arguments in favour of the League of Nations as of possible benefit to France, "the old Tiger seemed to see it all and became enthusiastic. He placed both hands on my shoulders and said, "You are right. I am for the League of Nations as you have it in mind and you may count upon me to work with your." (*Ibid*., p. 275, note 11).

primarily portray itself as a mediator.[7] Therefore, Japan actively participated in this discussion without taking all too strong positions, and eventually also accepting a Covenant making no mention at all of race.

Thus, in the end among the Great Powers it was up to the United Kingdom to devise the path to be taken. Traditionally, the United Kingdom has evidenced much sensibility as to the fight against discrimination for ethnic, linguistic or religious reasons on a world-wide scale. In fact, in the past this country has also been one of the most important champions of the idea of "humanitarian intervention".[8] But, again, politics of this country were also divided as to the opportunity of introducing generally applicable minority protection rules. In the crumbling empire, race and religion had become more and more disruptive elements and it was feared that the adoption of a general protection rule in this field in the Covenant could have added further fuel to this tension. The United Kingdom thus worked for a compromise and finally also succeeded in this attempt: minority protection rules should be adopted but outside the Covenant on the basis of special provisions which could be tailored for specific needs and which made sure that the Great Powers themselves should not be burdened.

The result was an extremely complex system of protective measures that should form a compromise between protective needs, overall stability interests within the League of Nations and specific interests of the Great Powers. It was composed of the following elements that could be sub-divided into four categories.[9]

Needless to say that this system was limping; to some countries, especially to newly-created ones, it seemed to be outrightly discriminatory and, as a consequence, strong criticism was voiced against this system at the Peace Conference, in particular by Poland, a country that, at first sight, should shoulder the most far-reaching limitations on sovereignty and whose minority protection treaty should become the blueprint for all further minority protection instruments. This criticism, however, missed decisive points and was itself the result of a biased perspective overstating sovereignty interests at the expense both of international community's security interests as of the individual rights by minority members in the ceded territories.

Now it was up to the President of the Peace Conference, Georges Clemenceau, to set things straight. In his answer to the complaints brought forward by the Polish Foreign Minister Jan Paderewski, he revealed to have turned from a doubter of the League of Nations to its most fervent advocate. In his attempt to convince the Polish government he proceeded along different

[7] See as to this role T. W. BURKMAN, *Japan and the League of Nations*, University of Hawai'i Press, Honolulu, 2008.
[8] See P. HILPOLD, 'R2P and Humanitarian Intervention in a Historical Perspective', *in* P. HILPOLD (ed.), *The Responsibility to Protect (R2P)*, Brill/Martinus Nijhoff, Leiden/Boston, 2015, p. 60-122; B. SIMMS/D. J. B. TRIM (eds), *Humanitarian Intervention – A History*, Cambridge University Press, Cambridge, 2011, and G. J. BASS, *Freedom's Battle*, First Vintage Books, New York, 2009.
[9] See G. CONETTI, 'La protection des minorités', *in* R. KOLB (ed.), *Commentaire sur le pacte de la Société des Nations*, Bruylant, Bruxelles, 2015, p. 1185-1205.

paths, where he both lavished praise on this country and gently reminded it whom it owed gratitude for its restoration and for the ongoing guarantee of its independence.[10] At the centre of his reasoning, however, stood the attempt to relativize the burden imposed on Poland and to demonstrate that Poland had only received the same treatment as other countries in similar situations, back to the Congress of Berlin, when the recognition of Serbia, Montenegro, and Romania was at issue. The specifics of this minority protection system may have changed but so had the overall situation. The re-erection of Poland had created an unprecedented situation with over a third of her population pertaining to different nationalities and with a political climate where groups pitted against one another in the most acrimonious way. The creation of an international guarantee should overcome the pitfalls of the former approaches, where protective powers were attributed to single states or groups of states: these guarantees were either not maintained or they were abused as a licence for intervention for other purposes. The mere existence of an international guarantee should establish confidence and provide thereby for stability: "It is believed that these populations will be more easily reconciled to their new position if they know that from the very beginning they have assured protection and adequate guarantees against any danger of unjust treatment or oppression."

Perhaps in this phrase, protective goals and security interests are best blended and similar considerations could also be found in modern protective instruments. In other parts of his letter, however, President Clemenceau is very far away from modern approaches, for example when protection of German speaking residents is limited to territories ceded to Poland or where Clemenceau tries hard to assure the Polish addressee that protection for Jews had been limited to the utmost minimum.

For US President Wilson a promise of some protection of Jews in Central and Eastern Europe had been an important goals when he started for the Peace Conference[11] but he could hardly be satisfied with the outcome of the Conference: visibly marked by the strokes he had suffered in September and October 1919 and without any further influence on the League's activity when the US Congress opposed a ratification of the Versailles Treaty in November 1919, he had to bury most of his aspirations.[12]

[10] See 'Letter Addressed to M. Paderewski by the President of the Conference Transmitting to Him the Treaty to be Signed by Poland under Article 93 of the Treaty of Peace with Germany', *in* 13 *AJIL* (4/1919) p. 416-422.

[11] See ROBINSON, *op. cit.*, note 5, p. 6.

[12] By the way, it can be said President Wilson's aspirations failed on a broad scale. This was, for example, the case with the necessity to help Armenians against the Turkish genocide. President Wilson was fully aware of the facts on the ground but could not make up his mind to intervene. The creation of an independent state of Armenia foreseen by the Treaty of Sèvres of 1920 that would have given protection to the Armenians against the Turks would also have needed an intervention by American troops, which President Wilson was not willing or not able to grant. So Armenians were subject to further annihilation campaigns by Turkish forces. See G. BASS, *Freedom's Battle: The Origin of Humanitarian Intervention*, Knopf, New York, 2008, p. 315 ff. and HILPOLD, *op. cit.*, note 9, p. 107 ff.

Wilson's somewhat ingenuous ideal of a peace where "every race should have justice"[13] was by far not achieved. What had been implemented was the principle of self-determination and the arbitrary fashion in which this happened best revealed the ambiguity of the very concept. The implementation of national self-determination in a nationally (or ethnically) mixed region as Central and Eastern Europe happens to be logically impossible. The magnitude of this problem may not have been known to Wilson at the beginning of the Conference, but it had become perceptible to him, at least to some extent, in the aftermath. The introduction of a minority protection system might have constituted a viable compromise, but the resulting system was imbalanced: national self-determination has led to national states exalting their sovereignty; minority protection was no real counterweight but rather some sort of nuisance, an unjust offence towards their sovereignty. Every means was retained to be permitted to soften this vexation and eventually to get rid of it altogether. Only then would national self-determination have reached its natural full strength. International minority rights obligations were therefore a hindrance towards full sovereignty and sovereign equality.

How could such a dismal situation come by? Because concepts and ideas in this field were widely underdeveloped at the Peace Conference. Not only was it unclear how long this system should last, but it was not even spelled out what its ultimate goal was: the lasting conservation of diversity in a multicultural national setting, or rather slow and softened assimilation?[14]

Even if this question had to be left open and the present and the more immediate future was what should be cared about, the Minority Protection system, endowed with ephemeral resources and political strength, had to do a Herculean job. In retrospect, it is even hard to state which attitude had worse consequences: American idealism, neglecting the hard on-the-ground reality in Europe and ignoring the downsides of national self-determination, or the omnipresent aspirations in Europe for vengeance and celebration of nationalism.[15] To overcome this perilous situation in the after-war order, the League of Nations would have needed strong powers for intervention based on a clear commitment to this cause by the Great Powers. These elements were evidently lacking.

[13] See ROBINSON, *op. cit.*, note 5, p. 6f.
[14] Reading the most fundamental monograph by Pablo DE AZCARATE *op. cit.*, note 1, who was surely one of the most active advocates for minority interests within the League of Nations system one cannot help but getting the impression that it was the second goal that was primarily pursued by the League of Nations.
[15] As it was said, the oppressive multi-national states in Central Europe were dissolved and replaced by even more oppressive small multi-national states. See E. SÁNDOR SZALAY, 'Minderheit – ein permanentes Konfliktpotential? Ein Mythos aus mitteleuropäischer Sicht', *in* D. BLUMENWITZ et al. (eds), *Minderheitenschutz und Demokratie*, Duncker & Humblot, Berlin, 2004, p. 167-184 (170f).

II. THE LEAGUE OF NATIONS MINORITY PROTECTION SYSTEM AS A LIVING INSTRUMENT: ACHIEVEMENTS AND DISAPPOINTMENTS

The minority protection obligations stipulated in Versailles were, first of all, of a material nature. It was made clear that they had fundamental law character and did not constitute internal affairs so that interest by other states in their fulfilment did not amount to an intervention[16] − a logical consequence of an international protection obligation today,[17] but a great, revolutionary step forward back then.

As to their content, these stipulations contained, first of all, rules on citizenship with a right of minority members to opt for the citizenship of their new home state or for their kin state, having, however, to leave the country of residence in this latter case. The provisions on the prohibition of discrimination (in particular admission to public employment, exercise of professions) and on freedom of belief were further paramount. Depending on the consistency of the minority group more far-reaching rights (such as primary education in the minority language and the right to use the minority language before administrative authorities and in judicial proceedings) were also granted. In exceptional cases even autonomy rights were awarded.[18]

The procedural provisions, on the other side, were meagre. A dominant role in this regard was attributed to the Council and to its members:

- Any member could bring any infraction, or any danger of infraction, of any of the obligations contained in the Treaties to the attention of this body.

- The Council had the right to take such action and give such direction "as it may deem proper and effective in the circumstances".

- Any member had the right to refer to the PCIJ any difference of opinion as to questions of law or fact arising out of the instrument's minority provisions.[19]

These provisions were hailed as revolutionary at that time,[20] but from a present-day perspective they constituted nothing else than an interstate complaint procedure and, as is well-known from a long experience since 1945, such mechanisms do not work well with human rights issues.[21] It happened only three

[16] See P. KOVÁCS, ‚The Protection of Minorities under the Auspices of the League of Nations', *in* D. SHELTON (ed.), *The Oxford Handbook of International Human Rights Law*, Oxford University Press, Oxford, 2013, p. 325-341 (329).

[17] See, now, most prominently, the *Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights* in Vienna on 25 June 1993.

[18] The treaty with Czechoslovakia granted autonomy to the Ruthenes of the Carpathians, the treaty with Romania granted autonomy in religious and educational matters to the Szeklers and the Saxons of Transylvania, and the treaty with Greece granted autonomy in religious, welfare and educational matters. The most successful autonomy regulation was that granted to the Alanders by Finland. See P. THORNBERRY, *International Law and the Rights of Minorities*, 1991, p. 43 ff. as well as HILPOLD, *op. cit.*, note 1, p. 98 ff.

[19] See DE AZCARATE, *op. cit.*, note 1, p. 96 ff.

[20] *Ibid*., p. 97.

[21] Only a very small number of inter-state complaints were presented after this instrument was

times, between 1929 and 1932, that the PCIJ was seized, and always by Germany.[22] Of the 950 petitions filed between 1919 and 1939, 758 were declared admissible (compared to the practice of modern human rights instruments a fairly high proportion), but only 16 of these petitions eventually made their way to the Council.[23]

It soon became clear that a different procedure was needed, a procedure more accommodating to the needs of individual plaintiffs that would make the supervisory mechanism actually work. It came about by organisational practice.

According to the Treaties, individuals had no *locus standi*, but the Minority Section of the League's Secretariat nonetheless accepted individual petitions provided some basic requirements were fulfilled.[24]

After this first admissibility check which, by the way, was passed by a remarkable 55 per cent of all claims[25], the petition was examined by a "Committee of three", composed of the President of the Council and two members neither involved in the issue nor from neighbour countries of the country the petition was directed against.

Now a dialogue with the respondent state set in. This process was directed at a clarification of the case and subsequently a mediation was tried. The plaintiff was not part to this process. In the first years, up to the year 1929, he was not even informed of the outcome of these transactions. Confidentiality was the paramount principle governing the whole procedure. While at first all petitions and answers by the responding state were communicated to all Council members, after protests by Czechoslovakia and Poland communication took place only subsequent to a specific request.

With the broader public the impression was created that most petitions had no consequences at all. In reality, however, this was not the case. The "Committee of the Three", together with the Minorities Section of the League's Secretariat, tried hard to find acceptable solutions and they often engaged with time consuming negotiations that in part also involved field mission. Often a compromise was found. The respondent governments were given the assurance

introduced in human rights instruments. Olivier De Schutter writes of a "striking underuse" of this instrument. See O. DE SCHUTTER, *International Human Rights Law* (2010) p. 96.

[22] See R. VEATCH, 'Minorities and the League of Nations', *in The League of Nations in retrospect*, Walter de Gruyter, Berlin/New York, 1983, p. 369-383 (373). It is much unfortunate that two of these cases (Prince von Pless Administration and The Polish Agrarian Reform and the German Minority) were withdrawn by Hitler-Germany in 1933 as they would have been suited to allow the PCIJ to elucidate fundamental issues of international minority law. Nonetheless, considering also the Advisory Opinions relating to minority questions, the contribution given by the PCIJ for the clarification of minority protection question is quite considerable and lives on notwithstanding the demise of the League of Nations system. See also, in this context, G. ALFREDSSON, 'German Minorities in Poland, Cases Concerning the', *in MPEPIL* (online ed., 2010).

[23] See A. MEIJKNECHT, 'Minoritiy Protection System between World I and World War II', *in MPEPIL* (online edn, 2013) para. 22.

[24] The communication had to regard commitments taken by the respective state, it had not to be anonymous, politically motivated or held in an offensive language. Further petitions with regard to matters the Council had already decided upon were inadmissible *(ne bis in idem).*

[25] See VEATCH, *op. cit.*, note 23, p. 372.

of utmost secrecy and thereby it was hoped that they would be more willing to compromise. As contemporary reports by members of the Minorities Section reveal,[26] the primary goal was to provide some help in critical situations. The drawback of this approach was that no general minority protection practice could evolve. It was difficult to devise new standards. There was little precedence minorities could refer to. But for a "naming and shaming" approach that revealed to be so effective in the UN practice, the League's Secretariat simply lacked the power. One could get the impression that the governments bound by these minority protection obligations became more and more aware of this uneven power situation that played into their hands, and they became less and less cooperative over the years.

Some publicity could be achieved if the case was put on the agenda of the whole Council, either by the "Committee of the Three" (this happened in 14 cases out of 325 taken up by the committees), by single Council members (this happened three times by Germany between 1929 and 1932)n or recurring to Article 11 of the Covenant, alleging a threat against peace (a practice however qualified as a circumvention tactics and blocked by the Council by 1928).[27]

Even in these rare cases, however, no decision could be taken against the will of the respondent state.

Perhaps the most important – and lasting – contributions to the development of an international minority law were given by the Permanent Court of International Justice, even though the cases treated by this Court were not numerous:

- The Court gave four advisory opinions to the Council (three with regard to Poland and one with regard to Albania).

- It was seized three times by Germany (always against Poland) but only in one of these cases a judgment was rendered, since Nazi Germany, no longer interested in treating minority issues according to the rules developed by the League of Nations, dropped two pending cases in 1933.

III. GERMANY'S ATTITUDE TOWARDS THE MINORITY QUESTION

After 1945 Germany's role in the development and in the actual demise of the League's minority protection system was often portrayed in an incomplete, distorted, and unfair way. A closer look reveals a different, far more complex reality.

In the immediate aftermath of the Versailles Treaty Germany was practically without any power to sustain German populations left in the ceded territories. In a first moment the German population in Poland had hoped on a revision of the Peace Treaty, but soon it became clear to them that this would not happen. Even less support was given by Austria to the *Sudetendeutsche* in Czechoslovakia.

[26] See in particular the monograph written by Pablo DE AZCARATE, *op. cit.*, note 1.
[27] See, for more detail, VEATCH, *op. cit.*, note 23, p. 373 f.

Both countries strictly had to adhere to their obligations of non-interference. In the meantime Poland conducted a fierce nationalist policy while media promoted an anti-German ideology.[28] Tens of thousands of Germans were expulsed, German nurses, teachers, and government officials lost their jobs and land reform discriminated against Germans so that vast territories were redistributed to people of Polish nationality.[29] In particular in the strategically important Polish corridor Germans were subject to extreme discrimination while the League remained mostly inactive in these cases.[30]

However, important improvements were achieved when Germany joined the League of Nations in February 1926. When preparing this move, which was not generally acclaimed by the German public, the German Foreign Minister Gustav Stresemann in particular stressed the possibility to thereby gain more leverage for the protection of German minorities abroad.[31] To a certain extent this might have been tactics, but nonetheless it cannot be denied that in the remaining three years of his life Stresemann managed to improve the lot of the German minorities abroad to a considerable extent. Much was achieved by bilateral negotiations, especially with Poland, but also in Geneva at the League of Nations. He managed to develop the procedure further[32] and his cordial relationship with his French counterpart Briand created an atmosphere of *détente* in which it became far easier to solve specific problems on the ground.

It was mainly due to German pressure that at least some elements of transparency were added to the procedure. Up to the year 1929 petitioners were left totally ignorant about consequences, if any, of their complaints. From the perspective of the League's Secretariat's Minorities Section there were good reasons for such a confidentiality as this permitted to look for diplomatic solution without publicly denouncing the respondent state, thereby creating irritation detrimental to the minorities themselves. Often, however, the impression was created with the minorities and their kin states that nothing at all had happened, so that they grew more and more impatient with the League's minority protection system as such. In 1929, a compromise was found in the sense that petitioners should be informed if their petitions were found "inadmissible" and, furthermore, the Council should include an annex of all petitions received and their result in

[28] See E. K. JENNE, *Nested Security and the League Minorities Regime: Lessons from Conflict Management in Interwar Europe* (manuscript, 2011) p. 15.
[29] *Ibid*., p. 15 f.
[30] *Ibid*., p. 17 f. and C. R. VON FRENTZ, *A Lesson Forgotten*, Lit-Verlag/St. Martin's Press, Hamburg/New York, 1999, p. 130 ff.
[31] See C. FINK, 'Defender of Minorities: Germany in the League of Nations, 1926-1933', 5 *Central European History* (4/1972) p. 330-357 (338 ff.), referring to the League of Nations Council decision of June 10, 1925.
[32] In 1925, however, a year before Germany joined the League of Nations, the Council modified the procedure in the sense that members who were ethnically related to the petitioner or who bordered on the accused state were excluded from the Committee of the Three. Thereby, Germany had no possibility to act in favour of German minorities within this Committee. Subsequently, however, Stresemann bypassed this reform by claiming the right of any Council member to bring petition directly to the attention of the Council. See FINK, *op. cit.*, note 32, p. 337 ff.

its annual report to the Assembly.[33] Gustav Stresemann had demanded much more but at least this was a step in the right direction.

In the years 1930-1931 the minority protection system reached its apex with the presentation of 204 complaints at the Secretariat, 131 of which were declared admissible.[34] Afterwards confidence in this system declined sharply: in the years 1938-1939 only four complaints were filed in Geneva.[35] At that time, the League's minority protection system was already in ruins; its decline had begun long before.

With the seizure of power by the Nazis in 1933, Germany has turned from a champion of minority rights to the opposite. The persecution of Jews became of international relevance in Upper Silesia, a territory for which Germany had also assumed minority protection obligations.[36] The Council was determined to stand up against this discrimination and it was France in particular that required strict observation of the minority rights obligations. However, Germany withdrew from the League in October 1933.

In January 1934 Germany concluded a non-aggression pact with Poland and soon after Polish Foreign Minister Jozef Beck declared to suspend collaboration with the Minorities Secretariat until the minority obligation would be universalized – a request he knew to be inacceptable even to the most liberal states like the United Kingdom. The central building bloc of the minority protection system had been lost.

After the war millions of Germans were driven from their homes in Poland, Czechoslovakia and other countries were they formerly had enjoyed protection, at least formally. Tens of thousands were killed.[37]

The minority protection system fell into abeyance.

All too easily, the responsibility for this was afterwards attributed to the German minorities that, as it was often portrayed, had abused this system and were used as "fifth column" by Nazi Germany.

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[33] See T. SMEJKAL, *Protection in Practice: The Minorities Section of the League of Nations Secretariat, 1919-1934* (Senior Thesis, 12 April 2010, <https://academiccommons.columbia.edu/doi/10.7916/D8Q52WJZ> (last visited on 22 December 2018)), p. 47.

[34] See C. SCHMIDT, 'The Minority Protection System of the League of Nations and the Central and Eastern European States', *in* 7 *Baltic Yearbook of International law* (2007) p. 35-48 (44).

[35] *Ibid*.

[36] These special rules for Upper Silesia, however, were limited in time until 1937 (the Convention between Germany and Poland relating to Upper Silesia of 15 May 1922 was set to last only 15 years). In 1933, Germany had to withdraw anti-Semitic legislation as it applied to Upper Silesia as a consequence of the so-called Bernheim complaint. These racial laws, however, were re-introduced in 1937. See D. ENGEL, 'Minorities Treaties', *in YIVO Encyclopedia of Jews in Eastern Europe*, 2 September 2010, <http://www.yivoencyclopedia.org/article.aspx/Minorities_Treaties> (last visited on 22 December 2018).

[37] It should not be forgotten that these states were created after WWI as multinational states. Huge territories predominantly inhabited by minorities were ceded to these countries and minority protection should counter-balance these concessions. 25 years later these countries were nearly without minorities but kept the territories gained after WWI or were even territorially enlarged. In the inter-war period, both in Poland and in Czechoslovakia minorities made up about one third of the entire population. After WWII this percentage dropped to 5% in Poland and to 10% in Czechoslovakia.

The reality is quite different. Hitler Germany could never abuse the League's minority protection system since, for most of the time, it was outside of it. Weimar Germany, to the contrary, had given important contributions to stabilize it and, most important of all, to raise awareness about the fate of minorities. As to the factual situation of complaining minorities, thorough empirical studies have undertaken in this field only in recent years.[38] They reveal an appalling situation with minorities being discriminated in the interwar period all over Europe, while their complaints in Geneva to a considerable extent remained unanswered, dismissed, or considered only to a very limited extent. Surely, it was not the Minorities Section in Geneva who was to be blamed for this but rather the general political situation, where the fate of minorities was nearly of no interest to the Great Powers.[39]

The mass deportations towards the end of the war and the killing of thousands of people who should have been protected by the League's system risked staining the UN order created with the promise to provide far more extensive protection under the heading of human rights.

For the UN the League's minority protection system had disappeared as the very subjects of this protection system were no longer present and the UN secretariat invoked the *"clausula rebus sic stantibus"*.

It was all too easy to attribute the responsibility for this situation to the very victims of these developments, that had no possibility of raising their voice against it.

Why should we still take interest in this subject, why should we bring to the light the tragic history of populations that have long disappeared? The injustice done against these peoples can no longer be redressed. They have been driven from their homes, been murdered, they have died as a consequence of famine and the hardship of flight and internment. Those who had survived, however, were soon integrated by the societies of the countries they had fled to. Those who were responsible for these events are mostly no longer with us. What sense does it make to keep the memory of these events alive? Does this not raise the danger of requests for revenge and of further conflict? There can be no doubt that after such a long time all demands for material compensation or even restitution have to be abandoned. The beneficiaries of large-scale compensation measures would mostly not be those who had immediately suffered the deprivation, while the burden would have to be shouldered mostly by people bearing no personal responsibility for these events. True, more and more preparedness can be noticed

[38] See VON FRENTZ, *op. cit.*, note 31.

[39] The Minorities Section sought concrete solutions for concrete problems and the opinion prevailed that this would best be achieved by measures of quiet diplomacy. It could be argued that already in 1920s it was foreseeable that the whole minority protection system was destined to succumb sooner or later and therefore more resolve and more publicity could have attracted more international support. On the other hand, the Minorities Section lacked the political power to do so and the overall political setting, with rising nationalism and authoritarianism created a clearly unfavourable climate for minorities. Legally speaking, the Minorities Section of the League of Nations' Secretariat had only an administrative, assisting role in regard to the Committee of Three (even though in practice its influence was considerable), which again depended upon the Council.

in international law to seek redress for historical injustice, in particular if this is necessary for human rights reasons or for reasons of criminal justice. However, these pre-requisites do not apply here. Nonetheless, the victims of these killings and mass expulsions deserve the honour of the truth. The minority protection system of the League of Nations was a wonderful achievement, a sophisticated set of rules that, in many ways, was ahead of its time. However, it lacked a sufficient basement in an efficient legal machinery that could resist a backlash in the overall political attitude against minorities. Sweeping territorial concessions were made to newly created states who gave protection guarantees that were not suited to withstand the test of time. Therefore, keeping the memory of these tragic facts alive is also helpful to avoid similar mistakes in the future. The modern human rights system was built on rocks that were inundated by the vicissitudes of nationalism and war.[40] Although widely invisible after 1945, they have constituted a pillar of knowledge and experience without which international human rights law would surely not be what it is today.

[40] It is interesting to see how also in discussions within the League System now and then insight shined through that hinted at the fact that minority protection should become part of a larger human rights protection system. So, in 1933, when the complaint by Franz Bernheim, a Jew discriminated by the Nazis in Upper Silesa in clear violation of the German-Polish Treaty of 1922, was discussed by the Council, the Norwegian Representative, rejecting the German position that this was an internal problem, pointed out that any problem arising in one country had and in most cases has, effects outside this country so as to make it an international problem. Thereby he indirectly hinted at a concept that later on would be qualified as the *erga omnes* obligation to protect fundamental human rights (see on this concept P. PICONE, *Comunità internazionale e obblighi "erga omnes"*, Jovene, Naples, 2013). And the Polish Representative made the following statement that can be qualified as revolutionary for the year 1933: "A minimum of rights must be guaranteed to every human being, whatever his race, religion or mother tongue. That minimum must be independent of the effect of changes in public life which it was impossible to forsee." Cited according to von Frentz, *op. cit.*, note 31, p. 166. This statement did not reflect the law of that time, but it gave expression to something like a "natural law sentiment" and it anticipated well what later on should become binding international law. See also Immanuel Kant in the tractatus on the Perpetual Peace, already in 1795: "Since the narrower or wider community of the peoples of the earth has developed so far that a violation of rights in one place is felt throughout the world, the idea of a law of world citizenship is no high-flown or exaggerated notion. It is a supplement to the unwritten code of the civil and international law, indispensable for the maintenance of the public human rights and hence also of perpetual peace. One cannot flatter oneself into believing one can approach this peace except under the condition outlined here." (*Third Definitive Article for a Perpetual Peace*, last paragraph).

4 septembre 2020