CHAPTER TWO

PROTECTION OF MINORITIES UNDER INTERNATIONAL LAW
AND THE CASE OF SOUTH TYROL

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I. Introduction

The case of South Tyrol—an ethnic conflict in which a minority group (German-speaking South Tyrolese) challenged the Italian state over its discriminatory policy in a territory that had been annexed to Italy after World War I—epitomizes the development of minority protection under international law.1

The concept of protection of minorities is one of the oldest concerns of international law, finding its origin in the rise of the nation state, when many treaties were concluded for the benefit of specific minority groups.2 The ideas underlying the protection of minorities have since the League of Nations been twofold: to allow minorities to live in a country alongside the rest of the population in a position of equality and to preserve the characteristics and the separate identity of minorities.3

Yet the protection of ethnic, linguistic and religious minorities has been long-neglected by international lawmakers largely because of fears that claims to special protection would inexorably lead to demands for autonomy and, eventually, secession or terrorism—a danger to the integrity and security of the state.

Hence, most of the peace and human rights treaties signed after World War II did not contain clauses protecting minorities but only general rules on non-

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1 For an analysis of the historical facts of the South Tyrol case, see the chapter by Emma Lantschner on the history of the South Tyrol dispute in this volume.
2 The Treaty of Paris of 30 March 1856 that settled the Crimean War between Russia and the alliance of the Ottoman Empire, France and the United Kingdom contained, for example, provisions referring to the protection of Christian minorities in the Ottoman Empire, or the Treaty of Berlin of 13 July 1878 between the United Kingdom, Austria-Hungary, France, Germany, Italy, Russia and the Ottoman Empire accorded a special legal status to some religious groups. See Thomas Buergenthal, International Human Rights in a Nutshell (West Publishing Company, St. Paul, 3rd ed. 2002), 7.
3 This double-track system of protection was confirmed by the Permanent Court of International Justice, in particular in its leading case on the Minority Schools in Albania. In this case, the Permanent Court introduced the concept of equality in law and fact: “Equality in law precludes discrimination of any kind: whereas equality in fact may involve the necessity of different treatment in order to attain a result which establishes an equilibrium between different situations [. . .] The equality between members of the majority and of the minority must be an effective, genuine equality.” PCIJ, Minority Schools in Albania, Advisory Opinion, 6 April 1935, 34th Session, Series A-B, No. 64, 19.
discrimination with emphasis on individual rights and freedoms rather than on

group protection; history had shown that states such as Germany had relied upon

minority provisions in treaties to intervene militarily. The abuse of minority trea-

ties by Germany\textsuperscript{4} and the consequent failure of the League of Nations had thus

left minority clauses with a poor reputation.

The only instrument that was seen as positive for a minority in that period was

the Paris Agreement signed by the Italian Prime Minister Alcide Degasperi and

the Austrian Foreign Minister Karl Gruber (also known as the Gruber-Degasperi

Agreement) in favour of the German-speaking South Tyrolese group in 1946 and


The Paris Agreement represented a compromise among the parties involved:

Italy sacrificed full sovereignty over a section of its territory; Austria sacrificed

the re-annexation of the province; while the German-speaking South Tyrolese

sacrificed \textit{de facto} the right to ‘external’ self-determination.\textsuperscript{5} Besides, the Italian

government had to bear in mind the effect that the autonomy for South Tyrol

would have had on similar minority situations elsewhere in the country, primarily

the French minority in the Aosta Valley and the Slovene minority in the area of

Trieste. Indeed, it took almost two years until, on 29 January 1948, the Constitu-

tent Assembly of Italy approved the Autonomy Statute for South Tyrol.

The 1948 Autonomy Statute was considered by the German-speaking popula-

tion in South Tyrol to be inadequate and insufficient in regard to content and

\textit{vis-à-vis} the ultimate objective of self-determination.\textsuperscript{6} Moreover, the implemen-
tation of the Paris Agreement was particularly disappointing because Italy for

a long time obstructed the enactment of the laws necessary to implement the

Autonomy Statute.

\footnotesize{\textsuperscript{4} The Polish Minorities Treaty between the Principal Allied and Associated Powers and Poland,

signed at Versailles on 28 June 1919, provided (Art. 8): “Polish nationals who belong to racial, reli-
gious or linguistic minorities shall enjoy the same treatment in law and in fact as the other Polish


and the Rights of Minorities} (Clarendon Press, Oxford, 1991); Jacob Robinson \textit{et al.} (eds.), \textit{Were the

Minorities Treaties a Failure?} (Austin Press, New York, 1943); Inis L. Claude, \textit{National Minorities,

an International Problem} (Harvard University Press, Cambridge, MA, 1955); and Antonio Cassese,


\textsuperscript{5} Günther Pallaver, “South Tyrol, the ‘Package’ and its Ratifi cation”, 2(1/2) \textit{Politics and Society

in Germany, Austria and Switzerland—Journal of the Association for the Study of German Politics and

the Institute of German, Austrian and Swiss Affairs} (1990), 70–79; at 74; Peter Hilpold, “Seszession

und humanitäre Intervention—völkerrechtliche Instrumente zur Bewältigung innerstaatlicher


\textsuperscript{6} Stefan Wolff , “Settling an Ethnic Confl ict Through Power-sharing: South Tyrol”, in Ulrich

Schneckeck and Stefan Wolff (eds.), \textit{Managing and Settling Ethnic Conflicts—Perspectives on Suc-

cesses and Failures in Europe, Africa and Asia} (Hurst and Company, London, 2004), 57–76, at 60;

Peter Hilpold, “Die völkerrechtliche Absicherung der Südtirolautonomie”, in Joseph Marko \textit{et al.}

(eds.), \textit{Die Verfassung der Südtiroler Autonomie} (Nomos, Baden-Baden, 2005), 38–46, at 40–41;

id., “Aspetti Internazionali dell’Autonomia dell’Alto Adige”, in Joseph Marko, Sergio Ortino and

Francesco Palermo (eds.), \textit{L’ordinamento speciale della Provincia autonoma di Bolzano} (Cedam,

Padova, 2001), 89–100, at 91–92.}