Minorities, Protection of

I. Introduction

In almost every state of the world live people whose ethnic, linguistic, or religious identity is different from the majority population. The formation of states often led to borders arbitrarily separating people, who share a common history, culture, religion or social origin; economic pressure and conflict has caused migration movements that continue to change the demography of states. Throughout history, differences in the ethnic, racial, religious or national identity of people have been used by governments and other political actors as pretexts for discrimination and violence, including genocide. Since World War II, the vast majority of armed conflicts developed from tension related to minorities and violence against ethnic, racial or linguistic minorities has cost more than 10 million lives. Peaceful relationships between minorities and between the minority and majority populations based on mutual respect make an important contribution to the prevention of conflict and human rights violations, including genocide, which is fundamental to the → Charter of the United Nations. Therefore, the protection of minorities is a central task of the United Nations.

II. Development of the International Protection of Minorities

1. Protection of Minorities prior to the Foundation of the League of Nations

The need for the protection of minorities within the territory of a state derived from the separation of nations and states. At the beginning, the protected groups were identified on the basis of religion. However, the provisions of the bilateral agreements between states concerned, e.g. the peace treaties of Augsburg (1555) or of Münster and Osnabrück (1648), went far beyond the regulation of religious liberties and included property, education, customs and law. After the Congress of Vienna (1805), the agreements identified the protected groups on the basis of nation rather than religion. This tradition of bilateral agreements on the protection of minorities continues until today, e.g. in the treaties on friendly relations concluded between Germany and its Eastern European neighbors in 1991-1992.

2. Protection of Minorities under the → League of Nations

The → League of Nations applied a system of protection of minorities in situations, where the principle of “one nation, one state” could or should not apply. The regulations on protection favored certain groups of minorities and were basically contained in provisions of the Paris Peace Treaties and other bilateral treaties between the Allied and Associated Powers and states in Eastern Europe and the Balkans (1919-1920). Furthermore, the adequate protection of minorities was one of the criteria that new member states had to meet to join the organization. In addition to a guarantee of equal treatment, the respective provisions of the treaties contained regulations concerning language, culture, and religion. For their implementation, the League of Nations progressively developed a monitoring mechanism of the League Council and created a petition system.

3. Protection of Minorities under → United Nations

In 1945, the Charter of the United Nations (→ Charter of the UN) declaring the universal realization of the principle of non-discrimination on the basis of protection of individual rights and freedoms one of the aims of the organization, discontinued the system of protec-
tion of minorities as a group, as developed by the League of Nations. Not long after the entry into force of the Charter, however, it appeared that additional positive measures would be necessary to protect members of minorities against discrimination and to maintain their identity. To this end, the United Nations progressively developed special rights for minorities and practical measures to complement the principle of non-discrimination.

III. Protection of Minorities within the United Nations

1. Definition of Minority

A generally accepted definition of the term minority and, at the same time, an answer to the question to whom exactly special rights and practical measures should apply, could not be found yet. The situations where certain people could form a minority within a state are too different for a general definition to be applied without the risk of arbitrarily excluding certain individuals. However, the absence of such a generally accepted definition has prevented neither the development of special rights, nor their implementation.

The integration of the criteria of the most frequent situations where people could constitute a minority led to the description of a minority that is considered to be the most widely accepted. Pursuant to this description, a minority is “a group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members – being nationals of the state – possess ethnic, religious, or linguistic characteristics different from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion, or language.” (Capotorti 1979)

There have been discussions whether indigenous peoples could be considered minorities for the purposes of their special protection. Indigenous people may be defined as “those living descendants of pre-invasion inhabitants of land now dominated by others”. (Anaya 1992)


2. Legal Basis for the Protection of Minorities

As mentioned above, the legal provisions regarding the protection of minorities could be divided into the right to non-discrimination and special rights for persons belonging to minorities.

a) The Right to Non-Discrimination

The right to non-discrimination is directed towards the “prevention of any action, which denies to individuals or groups of people equality of treatment, which they may wish”. Discrimination is understood to “imply any distinction, exclusion, restriction, or preference, which is based on any ground such as race, colour, … language, religion, … national or social origin, … birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise by all persons, on an equal footing, of all rights and freedoms”. (Human Rights Committee, General Comment 18 of 10 November 1989, Non-discrimination, UN Doc. A/45/40, Vol. I, Annex VI, lit B, 173-175).

The prohibition of discrimination is contained in a number of international agreements that cover almost every situ-