Minority Rights and an Emergent International Right to Autonomy: A Historical and Normative Assessment

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1. Introduction

One of the key issues regarding minority rights law has been whether autonomy can provide a universal mechanism for resolving disputes between States and minority groups. In this article, I shall address this issue by offering a historical and legalistic perspective on the emergence of an international right to autonomy. In legal studies, autonomy is generally defined as a right to local self-rule, consisting of two types of self-governance: regional autonomy, or the right to exercise limited sovereignty over provincial territorial borders; and cultural autonomy, which can be characterized as a non-territorial and self-administered form of local governance (e.g., councils and trade unions) “in regard to matters which affect the maintenance and reproduction of a group’s culture”.1

The question of whether autonomy constitutes a universal right, however, continues to remain a sticking point for most legal scholars of minority rights law. Some legal scholars, for instance, argue that autonomy constitutes an evolving universal right of minorities, as suggested in the International Charter on Indigenous Rights, which recognizes an indigenous group’s international right to manage their natural resources.2 Yet, others downplay this idea of a universal right to autonomy, arguing that autonomy constitutes nothing more than a ‘grant’ by the State.3 As Ruth Lapidoth notes, “minority groups will always accept a

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grant of autonomy reluctantly, provided that it represents a limited form of control over resources”.

Whether we choose to view autonomy as an evolving right or a limited State grant, it is important to ask the question as to how the internationalization of minority rights is linked to the flexibility of autonomy. In other words, if autonomy now constitutes a generally acceptable and flexible option for resolving intra-State conflicts among minority groups, should we view its flexibility in terms of the evolution of a democratic (internal) right to self-determination? Or should we see its flexibility as a practical and positive manifestation of globalization in which autonomy represents an increasingly efficient mechanism for managing the global dimensions of conflict between and among minority groups (e.g. immigration and refugee flows)?

In addressing these questions, I argue that an evolving universal right of cultural autonomy needs to be viewed as a practical mechanism for resolving global and local conflicts between and among minority groups. On a historical level, I contend that cultural autonomy, while constituting an international mechanism during most of the 20th century, has only recently emerged as an effective flexible option for resolving cultural conflicts. Thus, for instance, during the inter-war period, the League of Nations implemented various treaties in Eastern European States, which contained provisions stipulating minority rights protection. Yet it was not until the post-Cold War era that autonomy emerged as an arguably desirable universal option for accommodating the needs of minority groups.

To examine these issues, I have divided the article into three sections. The first addresses the League of Nations’ ambiguous support for cultural autonomy and self-determination and assesses how national aggression emerged as the corollary of the vague provisions of the League Charter. The second moves on to examine the prevalence of the right to self-determination during the Cold War era and the ways in which the limits of this right necessitated a reformulation of an internal right to self-determination. The third section assesses the new legal developments in international law which have come to express the emergent dimensions of a universal right to autonomy.

2. The League of Nations and its Flaws

The League of Nations, which was established in 1919 to maintain and promote international peace, was one of the first institutions to implement minority rights

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