1. Introduction

In hindsight, the achievements by the UN in the field of minority rights seem to be an improbable success. In fact, at the beginning, the UN was headed in the opposite direction. After the experience with the League of Nations approach to minority protection, which was characterized by many as negative, the protection of general human rights appeared to offer an alternative and more effective method for the protection of minorities. However, notwithstanding the strong reservations held by many states against any repetition of the pre-War minority

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1) One must, however, be careful in the overall assessment of this experience. In fact, neither the good intentions by the fathers of this experiment nor actual, albeit temporary, successes of this system can be denied. In many cases, where members of minorities were subjects of discrimination and abuses, the Minorities Questions Section of the Secretariat of the League of Nations managed to provide relief. The reasons why this system had collapsed over the years were manifold, and it would therefore be unjust to attribute the failure of this project to the unruly behaviour of some minorities and to the expansionist policy of Nazi Germany, as it can often be read in literature. In 1933, when Hitler came to power, the League of Nations minority protection system was already far beyond its heydays. Minority protection was not really accepted by the states and the state community was not yet sufficiently institutionalized to effectively intervene in the spiral between accusations and counter-accusations where the stronger part eventually prevailed. The lack of a general international human rights law that could have worked as a safety-net contributed further to the rapid degeneration of this protection system once it had come under attack. See P. de Azcárate, *League of Nations and National Minorities* (Carnegie Endowment for International Peace, Washington, 1945) and P. Hilpold, ‘Minderheitenschutz im Völkerbundsystem’, in C. Pan, B. S. Pfeil and P. Pernthaler (eds.), *Zur Entstehung des modernen Nationalitäten- und Minderheitenschutzes in Europa Minderheitenschutzes* (Springer, Vienna/New York, 2006) p. 156.

2) As has been pointedly remarked by J. L. Kunz, “[a]t the end of the First World War, ‘international protection of minorities’ was the great fashion [. . .]. Recently this fashion has become obsolete. Today the well dressed international lawyer wears ‘human rights.’” *Cf.* J. L. Kunz, ‘The Present Status of the International Law in the Protection of Minorities’, 48:1 *American Journal of International Law* (1954) pp. 282–287.
protection experiment, minority protection as an idea was not dead, and even within the institutional system of the UN of the first years, the roadmap for what would later become a wide-ranging minority protection system was already present. In fact, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, established by the Commission on Human Rights at its 1st Session in 1947, gave expression to the particular interest for minorities already in its name. While the Sub-Commission’s denomination appeared to imply that this institution had to give equivalent importance to the fight against discrimination on the one hand and to measures for the protection of minorities on the other, reality proved to be different in the end. Soon, a clear discrepancy surfaced between the way the 18 independent experts composing the Sub-Commission interpreted their mandate and the respective expectations by the Commission on Human Rights, whose members, state representatives as they were, had to give voice to their ‘master’s’ wishes. The Sub-Commission’s proposals of 1947 to insert a minority protection provision in the Universal Declaration of Human Rights was outrightly rejected by the Commission on Human Rights. The General Assembly, mirroring a greater panoply of views, could not totally oppose the idea that some form of minority protection was necessary, but expressed, at the same time, its uncertainty on how to achieve this end. The omission of any reference to minority rights in the Universal Declaration of Human Rights should therefore not be read as a definite denial of the usefulness of such a protection, but reflects rather the need for further studies, as became evident in resolution 217 C(III) Fate of Minorities approved the same day as the Universal Declaration (10 December 1948). The ‘no-indifference-but-no-preparedness-to-take-steps’ position has become afterwards characteristic of the overall attitude of

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3) The authority for this measure was given to the Human Rights Council (HRC) by the Economic and Social Council (ECOSOC) resolution 9(II) of 21 June 1946.
4) As it is known, this Commission was renamed the ‘Sub-Commission on the Promotion and Protection of Human Rights’ by ECOSOC decision 1999/256 of 27 July 1999.
5) This proposal had the following wording:

“In States inhabited by well-defined ethnic, linguistic or other groups which are clearly distinguished from the rest of the population, and which want to be accorded differential treatment, persons belonging to such groups shall have the right, as far as is compatible with public order and security, to establish and maintain their own schools and cultural or religious institutions, and to use their own language and script in the press, in public assembly and before the courts and other authorities of the State, if they so choose.” See UN Doc E/CN.4/SR.52, 9 cited according to P. Thornberry, International Law and the Rights of Minorities (Clarendon, Oxford, 1991), p. 134.

6) “The General Assembly, considering that the United Nations cannot remain indifferent to the fate of minorities,

Considering that it is difficult to adopt a uniform solution for this complex and delicate question, which has special aspects in each State in which it arises,

Considering the universal character of the Declaration of Human Rights,