

Some Minority Problems in International Law

by Charn Kiu Kim*

I

The term "minority" is not easy to define. The Subcommittee on the Prevention of Discrimination and Protection of Minorities offered a definition in 1950: "those non-dominant groups in population which possess and wish to preserve ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population." The Subcommittee went on: "the members of such minorities must be loyal to the state of which they are nationals." But this definition could not gather general support of the governments, and the work of the Subcommittee in attempting to secure agreement on measures for the protection of the minorities has resulted in little success.

The United Nations Commentary on the Draft International Covenant on Civil and Political Rights adopted a different definition: "separate or distinct groups, well defined and long established on the territory of a State," excluding groups which would seek to establish separate entities within the State concerned.

There is only one article, concerned with minority problem, contained in the International Covenant on Cultural and Political Rights of 1966: In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language (Article 27).

* Professor of Law, Kyung Hee Univ.

II

The treatment of nationals by a state is basically a matter of domestic concern. It does not involve any question of international law in the absence of specific treaty provisions or shock to the conscience of mankind.

The history of the protection of minority can be traced back in the context of the protection of human rights. At the Brussels Conference of 1890, an Anti-slavery Act was signed, and later ratified by eighteen states, including the United States, Turkey and Zanzibar. It not only condemned slavery and the salave trade, but drew up a list of agreed measures for their suppression both in Africa and on the high seas, including the right of visit and search, the confiscation of ships engaged in the trade and the punishment of their masters and crew. It also provided for the creation of a special office in the Foreign Ministry of Belgium and for an International Maritime Office in Zanzibar to assist in implementing these provisions.

At the end of the World War I, the Principal Allied and Associated Powers concluded a number of treaties with countries in Eastern Europe and the Balkan Peninsular. They contained stipulations to the effect that all inhabitants of the states concerned were to be given full and complete protection of life and liberty and free exercise of any creed, religion or belief, without distinction of the states concerned, were accorded equality before the law and the same civil and political rights. Article 8 of the treaty on the protection of minorities concluded between the Allied and Associated Powers and Poland stated in part that "Polish nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Polish nationals." Already in its first Advisory Opinion in a dispute involving the protection of minorities the Permanent Court availed itself of the opportunity to give the broad interpretation of provisions such as article 8, to which interpretation it adhered throughout. It did so, as the Court explained five

days later in its next Advisory Opinion, in order to safeguard the effectiveness of the system of minorities protection:

“... in the Advisory Opinion on the questions put concerning the German colonists in Poland, the Court has already expressed the view that an interpretation which would deprive the Minorities Treaty of a great part of its value is inadmissible.”

A number of miscellaneous equality provisions appear in treaties following World War II. Most emphasize the negative aspect of equality by concentrating on non-discrimination provisions, but special measures for positive minorities protection were included in later instruments. Thus the peace treaties signed with the Allied and Associated Powers in 1947 provided that each state concerned should take all measures necessary to secure to all persons within their jurisdiction, without distinction as to race, sex, language, or religion, the enjoyment of human rights and of the fundamental freedoms including freedom of expression, of press and publication, of religious worship, of political opinion, and of public meeting. The protection afforded by this provision extends to all persons under the jurisdiction of the states concerned and not just to nationals as in the post-World War I treaties.

Before signing the 1947 peace treaty, Italy executed an agreement with Austria providing for the fair treatment of the German-speaking minority in South Tyrol, which has been termed ‘notorious’ by one commentator. It provided for elementary and secondary teaching for the German-speaking minority, and for the exercise of autonomous legislative and executive regional power. In addition, the Italian Constitutional Law of 29 February 1948 containing the special statute for Trentino-Alto Adige contained elaborate provisions on representation and the use of languages.

Other bilateral treaties containing provisions for minority protection have been concluded, in particular the Treaty of Friendship and Mutual Aid between Poland and Czechoslovakia in 1947, and the treaty between India and Pakistan in 1950. The former guaranteed the possibility of national, political, cultural,

and economic development to Czechs in Poland and Poles in Czechoslovakia 'within the limits of the law, and on the basis of reciprocity'. The latter granted political representation to the respective minorities at both the central and provincial level, and provided for control systems by both local and international committees.

The United Nations is not indifferent to the protection of minorities. The International Covenant on Civil and Political Rights adopted by the GA in 1966 guarantees the right of minorities to their own culture, religion and language. In fact, the treatment of minorities has now been replaced by the wider concepts of elimination of racial discrimination or apartheid and even of protection of human rights for all people without distinction as to race, sex, language, religion and so on.

International Convention on the Elimination of All Forms of Racial Discrimination, adopted unanimously in 1965, represents a detailed prohibition of nineteen most objectionable discriminatory practices, with nine articles devoted to implementation. That instrument entered into force on January 4, 1969.

III

Now the protection of minorities should be viewed from two aspects. Historically, the term "protection of minorities" is linked to the political troubles. It recalls the dangers of Balkanization, disruption of the unity of the State, separatism, disloyalty to the State, irredentism incited and exploited by conational State and so on. All this results in serious international tensions, and possibly in armed conflict. Overemphasis on the protection of minorities tends to result in the national disintegration, as we witness in some regions of the African Continent.

On the other hand, if we underestimate the importance of protection of minorities, minorities will tend to be sacrificed on the pretext of national development. Balance should be sought between those two extremes for us to achieve stability internal as well as external.