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THE INTERNATIONAL PROTECTION OF MINORITIES UNDER THE LEAGUE OF NATIONS

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THE INTERNATIONAL PROTECTION OF MINORITIES UNDER THE LEAGUE OF NATIONS(1)

CHAPTER I

FOUNDATIONS OF THE SYSTEM

The system of minority protection developed considerably in the period between the two wars. On the one hand the number and size of protected minorities increased, and on the other the protection of minorities, instead of being left to the discretion of the States parties to the treaties granting such protection, was governed by an international organization, the League of Nations.

Section I. Extension of the Protection of Minorities

The system of minority protection was introduced after the First World War in a certain number of States where it had not previously existed.

1. No General Principle Concerning the Protection of Minorities

The system remains an exceptional one. The Covenant of the League of Nations and the peace treaties do not contain any provision establishing the general principle of the protection of minorities in the whole or part of the world. It should be noted that the Covenant of the League of Nations nowhere mentions the question of minorities.

2. States Bound by Obligations Concerning Minorities

The only States with obligations concerning minorities owe these obligations under international undertakings contracted by themselves.

These undertakings are of two kinds: treaties or declarations made before the Council of the League of Nations.

A. Treaties

The treaties in question are either peace treaties with the defeated States, or treaties supplementary to the peace treaties, concluded with countries which had joined the coalition of Allied and Associated Powers.

The peace treaties imposed obligations concerning minorities upon the following Powers which had fought in the war on the side of Germany:

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(1) See the two basic documents on the subject published by the League of Nations.

1. Provisions contained in the various international instruments at present in force - Geneva, August 1927 (document I.B. Minorities 1927 I.B.2)

2. Resolutions and Extracts from the Minutes of the Council, Resolutions and Reports adopted by the Assembly relating to the Procedure to be followed in Questions concerning the Protection of Minorities (Second edition - I.B. Minorities 1931, I.B.1)

/Austria

Austria (1) Bulgaria (2) Hungary (3) Turkey (4)

Treaties providing for the protection of minorities were concluded between the Principal Allied and Associated Powers and Greece, (5) Poland, (6) Roumania, (7) The Serb-Croat-Slovene State, (8) and Czechoslovakia (9)

In addition three other conventions were concluded for the following smaller territories: Free City of Danzig, Territory of Memel, Upper Silesia.

As regards the Free City of Danzig a Convention was concluded between Poland and the Free City of Danzig on 9 November 1920 placing certain obligations on the Free City.(10)

As regards Upper Silesia the German-Polish Convention of 15 May 1922 created obligations for the two signatories as to the treatment of minorities in the part of Upper Silesia allocated to the two Powers respectively. (11) Germany's obligations were created for a period of fifteen years only.

As regards the Territory of Memel a Convention was concluded on 8 May 1924 between the British Empire, France, Italy, and Japan on the one hand, and Lithuania on the other, establishing a system for the protection of minority groups in the Territory of Memel. (12)

B. Declarations

In a certain number of cases the obligation assumed by a State regarding minorities within its territory did not derive from a treaty, but from a resolution of the Council of the League of Nations adopting a Declaration by the Country concerned. In these cases the obligation resulted not from a Convention between States but from a special form of "agreement" between the

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The texts of the treaties listed below is to be found in the collection of Minorities Treaties - League of Nations Publication C.L. 110 1927 I. Annex - I.B. Minorities 1927 - I.B.2

(1) Austria - Treaty of Peace signed at Saint-Germain-en-Laye on 10 September 1919 (Articles 62 - 69)
(2) Bulgaria - Treaty of Peace signed at Neuilly-sur-Seine on 27 November 1919 (Articles 49 - 57)
(3) Hungary - Treaty signed at Trianon on 4 June 1919 (Articles 54 - 60)
(4) Turkey - Treaty signed at Lausanne on 24 July 1923 (Articles 37 - 45)
(5) Greece - Minorities Treaty of 10 August 1920
(6) Poland - Minorities Treaty of 28 June 1919
(7) Roumania - Minorities Treaty of 9 December 1919
(8) Kingdom of the Serbs, Croats and Slovenes - Minorities Treaty of 10 September 1919
(9) Czechoslovakia - Minorities Treaty of 10 September 1919
(10) Polish-Danzig Convention of 9 November 1920
(11) German-Polish Convention of 15 May 1922
(12) Convention of 8 May 1924 between the Principal Allied and Associated Powers and Lithuania (Article 11 - Annex I - Article 27)

Council of the League of Nations and the country concerned.

These cases concerned States which were applying for admission to the League of Nations and in pursuance of an Assembly recommendation dated 15 December 1920 (1) the Council of the League of Nations had made their admission subject to their acceptance of undertakings concerning the treatment of minorities.

This was the case with Finland (for the Aaland Islands only), (2) Albania, (3) Lithuania, (4) Latvia, (5) Esthonia, (6) Iraq. (7)

3. Why Certain States Were Bound by Obligations Concerning the Treatment of Minorities

The seventeen States (8) or self-governing territories which were bound by obligations concerning the treatment of minorities included only one great Power - Germany; and even in her case, the obligation undertaken did not affect the whole of German territory but only that part of Upper Silesia recognized as part of Germany by a decision of the Council of the League of Nations and the obligation was limited to fifteen years.

It will be noted that the sixteen States originally parties to the system of minority protection all belonged to Eastern and Central Europe. It was not until 1933 that the system was extended to an Asiatic State, Iraq, at the time of its admission to the League of Nations.

It will also be observed that the seventeen States in question comprised

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(1) The Assembly had drawn up the following recommendation:
"In the event of Albania, the Baltic and Caucasian States being admitted to the League, the Assembly requests that they should take the necessary measures to enforce the principles of the Minorities Treaties, and that they should arrange with the Council the details required to carry this object into effect."
(Op. cit. - I.B. Minorities 1927 - I.B. 2 - page 34)

(2) In the case of the Aaland Islands the League of Nations Council resolution of 27 June 1921 followed an agreement between the representatives of Finland and Sweden.

(3) Albania: League Council resolution of 20 October 1921

(4) Lithuania: League Council resolution of 12 May 1922

(5) Latvia: League Council resolution of 7 July 1923

(6) Esthonia: League Council resolution of 17 September 1923

(7) Iraq: League Council resolution of 11 May 1932 and 19 May 1932 - Declaration of 30 May 1932 by the Kingdom of Iraq

(8) Albania, Germany (for Upper Silesia), Austria, Bulgaria, Free City of Danzig, Esthonia, Finland (for the Aaland Islands), Greece, Hungary, Iraq, Latvia, Lithuania, Poland, Roumania, Czechoslovakia, Turkey, Yugoslavia

/a chain of

a chain of areas stretching from the Aaland Islands (Finland) to Iraq.

The establishment of a system for the protection of minorities in these countries was due to various causes. In the first place it was a result of the extensive territorial readjustments in Eastern Europe. New States such as Poland and Czechoslovakia were created, others such as Roumania and the former Serbia were considerably enlarged. (1) And the territories allocated to the States in question contained very large minority groups. The obligations with regard to the treatment of minorities were the corollary of the considerable territorial advantages granted to these States. The purpose of minority protection was to ensure fair treatment of the minorities and thereby promote peace and prevent the minorities from becoming a cause of tension and enmity between the States.

In addition, the makers of the peace treaties, invoking democratic principles, did their utmost to guarantee respect for the freedom of peoples and individuals. Whilst attempting, by means of territorial readjustments, to satisfy the peoples' right to self-determination, they guaranteed to individuals who, as the result of the overlapping of various ethnic, national or religious groups, could not be subjects of the State to which they considered themselves more or less attached (e.g. Germans in Poland and Czechoslovakia, Hungarians in Roumania), the means to preserve, if they so desired, their national characteristics and to avoid forced assimilation. General human rights were also guaranteed.

The same minorities protection system which the States benefiting from the peace treaties by the acquisition of large national minorities had been required to accept, was imposed upon the defeated States - Austria, Bulgaria, Hungary, Turkey, - whose territories, in spite of the amputations effected still contained certain minority groups.

Finally, the minorities protection system, which was considered to constitute a condition of peace and understanding between nations, was imposed upon Iraq, which had been a mandated territory until it became an independent State in 1932.

4. Duration of the System and Changes in it

(a) The agreements concerning the protection of minorities were subject

(1) In a letter addressed to Paderewski, then representing Poland, the State which was to be the first to sign undertakings concerning the treatment of its minorities, Clemenceau said: "In the first place I would point out that this Treaty does not constitute any fresh departure. It has for long been the established procedure of the public law of Europe that, when a State is created, or even when large accessions of territory are made to an established State, the joint and formal recognition by the Great Powers should be accompanied by the requirement that such State should, in the form of a binding international convention, undertake to comply with certain principles of government."
(See document I.B. 1 Minorities 1931, I.B. 1, page 156 (C.8M.5. 1931 I).)

/in principle

in principle to the general rules for international agreements.

In one case, Upper Silesia, the duration of the system was fixed at 15 years. It came to an end in 1935.

In the other cases, no indication of duration being given, the period was indefinite. In principle the mutual consent of the parties (1) was necessary to terminate the minorities protection system.

(b) The treaties and resolutions instituting minorities protection systems did however contain a provision to the effect that the system could be modified by a decision of the Council of the League of Nations adopted by the majority of its Members. (2)

We shall not examine here whether the power conferred upon the Council to introduce changes in the minorities protection system would have enabled it, in law, to go so far as to abolish the system. It should be noted that the texts only mention "modifications" and the idea of modification seems to be different from that of abrogation. (3)

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(1) The parties were the State bound by obligations, and the other parties to the treaty (in the case of a treaty) or the Council of the League of Nations (in the case of a system established by a resolution of the Council of the League).

(2) e.g. Treaty of 28 June 1919 with Poland - Article 12:
"Poland agrees that the stipulations in the foregoing Articles, so far as they affect persons belonging to racial, religious or linguistic minorities, constitute obligations of international concern and shall be placed under the guarantee of the League of Nations; They shall not be modified without the assent of a majority of the Council of the League of Nations; The United States, the British Empire, France, Italy and Japan hereby agree not to withhold their assent from any modification in these Articles which is in due form assented to by a majority of the Council of the League of Nations."
....."
Albanian Declaration before the Council on 2 October 1921, Article 7:
".....No modifications will be made in them (the stipulations in question) without the assent of a majority of the Council of the League of Nations."

(3) At the Council meeting on 9 December 1925 the question whether the minorities protection system was temporary or permanent was discussed. Mr. Mello Franco, arguing that it was temporary, gave his personal opinion, as follows:
"It seems to me obvious that those who conceived this system of protection did not dream of creating within certain States a group of inhabitants who would regard themselves as permanently foreign to the general organization of the country. On the contrary, they wished the elements of the population contained in such a group to enjoy a status of legal protection which might ensure respect for the inviolability of the person under all its aspects and which might gradually prepare the way for conditions necessary for the establishment of a complete national unity." (document C.8.M.5. 1931 I. - page 44). In fact, the question was approached from a general political point of view. The strictly legal question whether the Council had the power to abolish the minorities system was not raised.

/Section II.

Section II. The Protection of Minorities is Entrusted to the League of Nations

1. Before the first world war the States, generally Great Powers, which had compelled certain other States to accept obligations in respect of the treatment of minorities were the sole judges of the manner in which the latter States had discharged their obligations. Actuated by their own particular political interests, they could either shut their eyes to breaches of such undertakings or else make them a pretext for interfering in the domestic policy of a State in order to weaken that State or bring about its dismemberment. No impartial authority has any power to intervene to ensure respect of the obligations contracted and at the same time avoid excessive interference.

The establishment of the League of Nations marked a new departure in the protection of minorities. The League of Nations was given the task of supervising the discharge of obligations in respect of the treatment of minorities. What the Governments of States Members of the League of Nations could do was to call for the intervention of the League organs. The latter, by virtue of their nature and composition, offered guarantees of impartiality which were important to the State bound by obligations, to the States interested in the discharge of such obligations, to the States interested in the discharge of such obligations and to the minorities themselves. The supervision of obligations in respect of minorities, instead of being left to the discretion of special Powers, assumed a truly international nature since it was the exclusive responsibility of the League of Nations. Thus, direct intervention by any State party to a treaty imposing obligations in respect of minorities in the domestic affairs of a State bound by obligations was henceforth barred.

2. The League of Nations organs which were competent to deal in any capacity with minority questions were the League Council, the Assembly, the Permanent Court of International Justice and the Secretariat. The essential role was played by the Council of the League of Nations, as will be shown later (see Section IV).

Section III. Parties Subject to Obligations and Beneficiaries Enjoying Rights in Respect of the Protection of Minorities

1. Obligations

The obligations obviously devolved on the States which had given undertakings concerning the treatment of minorities and on them alone.

2. Rights

We have, on the one hand, the States and the international body constituted by the League of Nations, and on the other hand, the minorities themselves.

/A. States

A. States and the League of Nations

It is common knowledge that States had assumed obligations concerning the treatment of minorities either by treaty or by a declaration made to the Council of the League of Nations.

(a) In the case of a treaty, the beneficiaries of the obligations assumed were the other parties to the treaty.

It was, of course, the League of Nations, which supervised the protection of minorities, thus barring, as already mentioned, direct action by the States beneficiaries of the obligations. None the less, it was in respect of the latter that the obligations were assumed.

(b) In the case of a declaration made to the Council of the League of Nations and ratified by it, the beneficiary of the obligation was the League of Nations and no one else.

B. Minorities

The minorities were obviously the parties which enjoyed the benefits of the protection system. States or the League Council had secured for them the assumption of certain obligations, but it did not follow that they themselves had a legal claim on the State bound to grant them certain treatment.

They had not the right to bring a question before the Council. It was, of course, admitted that they had a right to petition the League of Nations. Every State Member of the League of Nations had the same right but it was certain that the mere fact of a State being a Member of the League of Nations did not of itself give that State the right to claim execution of an undertaking from the State bound by minority obligations. The right of petition was simply a way of giving the Council information; it did not have the effect of bringing the matter officially before the Council. (1)

(1) The following extract is from the Tittoni Report adopted by the Council of the League of Nations on 22 October 1920:
"The right of calling attention to any infraction or danger of infraction is reserved to the Members of the Council.
This is, in a way, a right and a duty of the Powers represented on the Council. By this right they are, in fact, asked to take a special interest in the protection of minorities.
Evidently this right does not in any way exclude the right of the minorities themselves, or even of States not represented on the Council, to call the attention of the League of Nations to any infraction or danger of infraction. But this act must retain the nature of a petition, or a report pure and simple; it cannot have the legal effect of putting the matter before the Council and calling upon it to intervene".

(See Document I.B. Minorities 1931 - I.B. 1 - C.8.M.5.1931.I.)

/As a conclusion

As a conclusion of this general survey it should be noted that the system of protection of minorities established by treaties and declarations was in broad outline the same for all the countries bound by minority obligations.

The rights granted to minorities were on the whole identical. (1)

The conditions under which League of Nations organs exercised supervision were similar except in one case where a few procedural variants arose. (2)

Section IV. In Minority Questions the Council of the League of Nations Gave No Orders or Injunctions and Exercised No Constraint

The international legal obligation laid upon certain States in respect of the treatment of minorities restricted the freedom of those States in the sphere of questions "solely within the domestic jurisdiction" of the States, to use the words of the Covenant of the League of Nations (Article 15, paragraph 8). It thus represented a definite limitation of national sovereignty.

But in exercising the supervision it assumed, the League Council used no methods other than persuasion or pressure of a purely moral or political nature, to the exclusion of compulsory measures.

Under the clauses of the treaties and of declarations could the Council give orders or injunctions to a State which was violating the obligations assumed in respect of the treatment of minorities and lay down how it should behave? It might be thought so from reading the very general provisions on the subject, (3) but in fact there was one circumstance militating against this:

> The State concerned had a seat on the Council if it were charged with having infringed its obligations. Rightly or wrongly, it was placed on the same footing as the other Council members, and the Council, which took its decisions by unanimity, could only adopt a resolution with that State's assent. (4)

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(1) There are a few exceptions. The most outstanding was that of the Sub-Carpathian Ruthenians, who were promised self-government.

(2) The case of Upper Silesia offered some considerable particularities (see the German-Polish Convention signed at Geneva on 15 May 1922) In each part of Upper Silesia a minority office was set up. Members of minorities could address petitions to this office. At a later stage the complaint could be brought before the President of the Mixed Commission acting for the territory of Upper Silesia as a whole. In addition, minorities of Upper Silesia had the right to address directly the Council of the League of Nations, a right that did not belong to any other minority.

(3) The wording was: "...the Council may thereupon take such action and give such direction as it may deem proper and effective in the circumstances."

(4) It is known that the question of excluding the party concerned from the unanimity count led to differences of opinion in the application of several articles of the Covenant. As opinions were divided, the practical solution adopted was that the parties' votes could only be excluded if this was expressly stipulated.

/The Council

The Council could consider, discuss or publicly criticize the conduct of any State (1) and note failures to comply with the obligations assumed, but in order to obtain practical rectification of the situation the agreement of the State concerned had to be secured. (This question will be dealt with again in Section IV - page...).

(1) It is known, moreover, that, every time the Council of the League of Nations had to deal with a conflict or dispute, it tried not to wound the susceptibilities of the parties concerned and showed them great courtesy. Criticisms and reproaches were couched in moderate, almost veiled, terms. Rather than give publicity to the wrongs committed, the Council tried to find a practical arrangement to redress them or prevent their repetition.

CHAPTER II

WHAT ARE MINORITIES?

In order to determine which groups are included under protected minorities, it is necessary to consider the question from various points of view.

Section I. Foreigners Do Not Come Under the System for the Protection of Minorities

The minority in favour of which a system of protection is established includes only native elements settled in the country prior to the establishment of the minorities protection system. Such elements possess the nationality of the State exercising sovereignty over the territory.

Thus, with the exception of one case,(1) foreigners residing in the territory are excluded from the minorities protection system even if they are related to the protected minority by race, language or other features. For example, a German national residing in Czechoslovakia does not enjoy the benefits of the minorities protection system.

Nevertheless, if foreigners residing in the country had been naturalized, nothing would have prevented them from taking advantage of minority status.(2)

Section II. Characteristics of a Minority

1. Racial, linguistic or religious minorities

In the treaties and declarations on the protection of minorities one finds the general formula: "racial, religious and linguistic minorities".(3)

That very general formula covers all racial, religious and linguistic minorities, regardless of their numerical size.

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(1) The case of the Polish nationals residing in Danzig (Article 33 of the Convention of Paris between Poland and the Free City of Danzig of 9 November 1920).

(2) Note that in the countries concerned, this question has not been of any practical interest, for the States subject to the minorities protection system were careful not to permit such immigration as would have strengthened the minority element.

(3) See, for example, the Treaty between the United States of America, the British Empire, France, Italy, Japan and Poland signed at Versailles on 28 June 1919 - Articles 7, 8, 9, 12. Article 12 stipulates: "Poland agrees that the stipulations in the foregoing Articles, so far as they affect persons belonging to racial, religious or linguistic minorities, constitute obligations of international concern and shall be placed under the guarantee of the League of Nations."

/As regards

As regards these three ideas, race, religion and language, accepted by the treaties and declarations on the treatment of minorities, it must be noted that in most countries in which the protection of minorities had been established, these three ideas were often more or less associated. People of a given race often spoke the same language or practiced the same religion.

2. Minorities specifically referred to

Moreover, some treaties even mention certain minority categories by name - the Jews in Greece, Lithuania, Poland and Roumania, the Moslems in Albania, Greece and Yugoslavia, the non-Greek monastic communities of Mount Athos, the Valachs of Pindus (Greece), the Siculian and Saxon communities of Transylvania (Roumania), the Sub-Carpathian Ruthenians (Czechoslovakia).

The fact of such mention does not mean that the categories indicated are not covered by the general formula of racial, religious and linguistic minorities or that they are subject to a special system. For practical reasons certain minority categories have been mentioned by name for the purpose of guaranteeing to them specifically certain traditional practices or privileges of particular interest to them. For example, the Jews have been named with regard to the assurance of respect for the Sabbath(1) and the Moslems with regard to the regulation of questions of family law and personal status.(2)

3. Political and social minorities are not protected

The only minorities to which guarantees were give were, as has been said: "the racial, religious and linguistic minorities", i.e., categories of a more or less objective and stable nature.

No other minority could claim the benefits of the minorities protection system. Thus no protection was given to political minorities whose distinctive feature was that they belonged to a specific political party or shared the same political views, or to social minorities whose distinctive feature was that they belonged to a specific social or economic class.

Section III. Test for the Minority Status of an Individual

It may be noted that no Treaty or Declaration establishing a minorities protection system has prescribed such census and registration of the individual members of the minorities as would have conferred minority status on them personally.

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(1) e.g.: Treaty of 28 June 1919, concluded with Poland, Article 11.

(2) e.g.: Treaty of 10 August 1920, concluded with Greece, Article 14.

/All nationals

All nationals residing in the country were able to claim minority status in order to obtain enjoyment of the rights attaching to such status.

The question whether a government was entitled to dispute the minority status of an individual claiming it, was debated theoretically, and the governments concerned have held divergent opinions on the matter.

It was brought before the Permanent Court of International Justice pursuant to an Application by the German Government concerning the conditions for the admission of children to German minority schools in the Polish part of Upper Silesia. The Polish Government denied children admission to German schools on the grounds that they did not know German.

The particular case in question involved the application of the German-Polish Convention concerning Upper Silesia, which lays down, in Article 74, that: "the question whether a person does or does not belong to a racial, linguistic or religious minority may not be verified or disputed by the authorities". It should be noted that this provision was not included in the other treaties or Declarations.

The Court, in its Judgment, sets forth two principles. First, that "the right freely to declare what is the language of the pupil or child, though compromising, when necessary, the exercise of some discretion in the appreciation of circumstances, does not constitute an unrestricted right to choose the language in which instruction is to be imparted or the corresponding school". Hence parents ought to give due consideration to the language spoken by the child. The Court immediately adds, however, that "the declaration contemplated by Article 131 of the Convention, and also the question whether a person does or does not belong to a racial, linguistic or religious minority, are subject to no verification, dispute, pressure or hindrance whatever on the part of the authorities".(1) Hence the individual's claim to belong to a minority may not be investigated and must be recognized even if ill-founded.

Later, with the assent of the German and Polish Governments, the Council of the League of Nations had instructed a Swiss citizen to test the knowledge of German of children whose admission to German minority schools in Polish Upper Silesia was requested. When the Polish Government insisted on excluding children who had not passed the language test, the Council, before which the question was brought, asked the Court for an advisory opinion. Confirming its previous ruling, the Court declared that children who had not passed the language test could not, by reason of this circumstance, be excluded.(2)

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(1) Publication of the Court - Judgment No. 12 - Series A - No. 15.

(2) Publication of the Court - Advisory Opinion of 15 May 1931 - Access to German Minority Schools in Upper Silesia (Series A/B No. 40).

/The implications

The implications of these two decisions by the Court are obviously limited by the fact that in both instances it was a question of interpreting the German-Polish Treaty, which had expressly regulated the question. Perhaps the ruling might have been extended to other cases governed by treaties and declarations which did not contain a clause similar or analagous to the German-Polish Treaty?

In several cases Governments have, in fact, disputed individual claims to minority status founded on name or language. In the absence of official records of the minority committees and in view of the empirical method of dealing with such questions, it is difficult to say what position the League of Nations bodies held in that regard. It would appear that the tendency was to consider that the claim to minority status was in principle sufficient.

CHAPTER III

RIGHTS RECOGNIZED TO MINORITIES

The rights recognized to minorities are approximately the same in the various countries which are subject to obligations with regard to the treatment of minorities.

There is a general régime of law established for the benefit of racial, linguistic and religious minorities.

Furthermore, various special rights are recognized to certain specified racial, linguistic or religious minorities (see page 19).

The general régime of rights recognized to minorities

This régime comprises the following four elements: 1. Principle of equality or non-discrimination. 2. Guarantee of the general rights of man. 3. Particular guarantees as regards the use of the language and the maintenance of certain special institutions of minorities. 4. Guarantee of a general or limited autonomy or of traditional rights.

Section I. Principle of equality or non-discrimination

This principle implies the following two consequences. In the first place the members of the minority have the right to the nationality of the State which exercises sovereignty over the territory where they reside. In a modern State, the possession of nationality implies equal rights for all those possessing it. Secondly discrimination de facto or de jure against minority elements is forbidden.

1. The right to nationality

The individuals forming a minority element residing at the time of transfer in territory transferred to a State subject to obligations with regard to minorities as well as individuals born in this territory became ipso facto and without the requirement of any formality nationals of that State.(1) The same applied to individuals living in the territory who were

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(1) The Treaty of 28 June 1919 concluded with Poland states: Article 3: "Poland admits and declares to be Polish nationals ipso facto and without the requirement of any formality German, Austrian, Hungarian or Russian nationals habitually resident at the date of the coming into force of the present Treaty within the territory which is or shall be recognized as part of Poland..." Article 4: "Poland admits and declares to be Polish nationals ipso facto and without the requirement of any formality persons of Austrian, German, Hungarian or Russian nationality who were born in the above-mentioned territory of parents habitually resident there, even if at the date of the coming into force of the present Treaty they are not themselves habitually resident there."

The Treaty of 9 December 1919 concluded with Roumania states: Article 4: "Roumania admits and declares to be Roumanian nationals ipso facto and without the requirement of any formality persons of Austrian or Hungarian nationality who were born in the territory transferred to Roumania by the Treaties of Peace with Austria and Hungary, or subsequently transferred to her, of parents habitually resident there, even if at the date of the coming into force of the present Treaty they are not themselves habitually

/...

not at the time of transfer nationals of another State.(1)

The League of Nations was entrusted with the protection of minorities, and was therefore competent to enquire whether a State had wrongly refused nationality to minority elements.(2)

Of course, the acquisition of the nationality of the sovereign territorial State was, for the minorities, a right and not an obligation. According to the traditional practice, they were given the option to renounce the nationality conferred on them on condition that they left the territory within a comparatively short time.(3)

2. Non-discrimination

The treaties and declarations recognized in formal terms the principle of strict equality between individuals belonging to the minority element and others: equality of all persons before the law, equal treatment de facto and de jure.

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(1) The Treaty of 28 June 1919 concluded with Poland states: Article 6: "All persons born in Polish territory who are not born nationals of another State shall ipso facto become Polish nationals.

The Treaty of 9 December 1919 concluded with Roumania states: Article 7: "Roumania undertakes to recognize as Roumanian nationals ipso facto and without the requirements of any formality Jews inhabiting in Roumanian territory, who do not possess another nationality."

Roumania signed an agreement concerning the Jews in Roumanian territory who had not previously received Roumanian nationality.

(2) See Permanent Court of International Justice - Advisory opinion of 15 September 1923 - Acquisition of Polish nationality. (Series B--No. 17).

(3) Treaty of 28 June 1919 concluded with Poland: Article 3: "Nevertheless, the persons referred to above who are over eighteen years of age will be entitled under the conditions contained in the said Treaties to opt for any other nationality which may be open to them. Option by a husband will cover his wife and option by parents will cover their children under eighteen years of age.

Persons who have exercised the above right to opt must, within the succeeding twelve months, transfer their place of residence to the State for which they have opted, unless the Peace Treaty with Germany makes different provisions. They will be entitled to retain their immovable property in Polish territory. They may carry with them their movable property of every description. No export duties may be imposed upon them in connection with the removal of such property."

(See also Article 4, paragraph 2.)

Article 7 of the Treaty of 28 June 1919 concluded with Poland states the principle in its first paragraph, and sets out the main applications in paragraph 2.

The terms of this clause, which is found in substance in all the other treaties and declarations concerning minorities, are as follows:

"All Polish nationals shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language or religion."

"Differences of religion, creed of confession shall prejudice any Polish national in matters relating to the enjoyment of civil or political rights, as for instance admission to public employments, functions and honours, or the exercise of professions and industries."

Section II. Guarantee of the General Rights of Man

The respect of the essential rights of men, that is to say the right to life and liberty, freedom of religion and conscience, was not established by the treaties and declarations concerning the treatment of minorities solely for the benefit of minority elements, but also for the benefit of all the inhabitants of the country.

For example, Article 2 of the Treaty of 28 June 1919 concluded with Poland states:

"Poland undertakes to assure full and complete protection of life and liberty to all inhabitants of Poland without distinction of birth, nationality, language, race or religion.

"All inhabitants of Poland shall be entitled to the free exercise, whether public or private, of any creed, religion or belief, whose practices are not inconsistent with public order and public morals."

The obligation entered into concerned all the inhabitants of the country. However, it was only in respect of the members of racial, religious or linguistic minorities that there was a League of Nations guarantee.

Article 12 of the Treaty concluded with Poland, and the corresponding articles in the other agreements stated:

"Poland agrees, that the stipulations in the foregoing Articles, so far as they affect persons belonging to racial, religious or linguistic minorities, constitute obligations of international concern and shall be placed under the guarantee of the League of Nations."

Section III. Particular Guarantees as Regards the Use of the Language and the Setting up and Maintenance of Special Institutions of Minorities

1. What were these guarantees?

There were guarantees provided for the racial, linguistic, or religious

/minorities

minorities in general, and guarantees provided for certain minorities designated by name - Jews, Moslems.

A. Guarantees Provided for a Country's Racial, Linguistic or Religious Minorities in General

These guarantees concerned the use of languages other than that of the majority of the inhabitants, and the setting up and maintenance of cultural, religious or charitable institutions belonging to the minority.

(a) The use of the minority's language.

Article 7 (paragraphs 3 and 4) of the Treaty of 28 June 1919 concluded with Poland states:

"No restriction shall be imposed on the free use by any Polish national of any language in private intercourse, in commerce, in religion, in the press or in publications of any kind, or at public meetings. Notwithstanding any establishment by the Polish Government of an official language, adequate facilities shall be given to Polish nationals of non-Polish speech for the use of their language, either orally or in writing before the Courts."(1)

(b) Educational, Cultural, Religious and Charitable Institutions.

(i) Educational institutions are specifically provided for.

In the first place, the treaties and certain declarations give the minority the right to establish and maintain at their own expense schools and other educational establishments in all circumstances.

Article 8 of the Treaty of 28 June 1919 concluded with Poland provided 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. In particular they shall have an equal right to establish, manage and control at their own expense charitable, religious and social institutions, schools and other educational establishments, with the right to use their own langauge and to exercise their religion freely therein."(1)

But the treaties and certain declarations go still further. They place upon the State the obligation of assuring to the

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(1) See the corresponding articles of the other treaties.

minorities, in certain cases, the teaching of their native language in schools and educational establishments.(1)

Article 9, paragraph 1, of the Treaty of 28 June 1919 concluded with Poland provided that:

"Poland will provide in the public educational systems in towns and districts in which a considerable proportion of Polish nationals of other than Polish speech are residents adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such Polish nationals through the medium of their own language. This provision shall not prevent the Polish Government from making the teaching of the Polish language obligatory in the said schools.

"In towns and districts where there is a considerable proportion of Polish nationals belonging to racial, religious or linguistic minorities, these minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the State, municipal or other budget, for educational, religious or charitable purposes.

"....."

Two things should be noted; first, instruction was to be given in the minority language only if the minority represented "a considerable proportion" of the population. The proportion required was fixed by the laws and regulations of the countries upon which minority obligations were imposed. But the League of Nations could exercise control in that respect.

Secondly, it was stipulated that teaching of the official language of the minority could be made obligatory.

(ii) Religious, Charitable and Social Institutions

These institutions are governed by rules similar to those laid down for educational institutions.

In the first place, the treaties and certain declarations give the minority the right to establish and maintain cultural, religious and social institutions at its own expense.

Article 8 of the Treaty of 28 June 1919 concluded with Poland provided that:

"Polish nationals who belong to racial, religious

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(1) The State could either establish its own public minority schools or subsidize private minority schools.

/or linguistic

or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Polish nationals. In particular they shall have an equal right to establish, manage and control at their own expense charitable, religious and social institutions..... with the right to use their own language and to exercise their religion freely therein."

Article 9, paragraph 2, of the same Treaty also provided that:

"In towns and districts where there is a considerable proportion of Polish nationals belonging to racial, religious or linguistic minorities, these minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the State, municipal or other budget, for educational, religious or charitable purposes."

B. Guarantees Provided for Certain Specific Religious Minorities

These consist mainly of Moslems and Jews.

(a) Moslems

In the treaties and declarations relating to Albania, Greece and Yugoslavia(1) it was provided firstly that "all necessary arrangements for regulating family law and personal status in accordance with Moslem usage" will be made. As is known, Moslem family law and personal status derive from religious law. In the second place, provision was made for complete protection of mosques and cemeteries and the recognition of Moslem religious and charitable establishments.(2)

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(1) Albania: Declaration of 2 October 1921, Article 2, paragraph 3:

"Suitable provision will be made in the case of Moslems for regulating family law and personal status in accordance with Moslem usage."

Greece: Treaty of 27 November 1919, Article 14.

Yugoslavia: Treaty of 10 September 1919, Article 10.

(2) Article 14, paragraph 2, of the Treaty relating to Greece provided that:

"Greece undertakes to afford protection to the mosques, cemeteries and other Moslem religious establishments. Full recognition and all facilities shall be assured to pious foundations (wakfs) and Moslem religious and charitable establishments now existing, and Greece shall not refuse to the creation of new religious and charitable establishments any of the necessary facilities guaranteed to other private establishments of this nature."

(See also Article 10, paragraph 3, of the Treaty relating to Yugoslavia).

/(b) Jews

(b) Jews

By Article 10 of the Treaty of 27 November 1919 concerning Greece, Article 8 of the Declaration of 12 May 1922 concerning Lithuania, Article 11 of the Treaty of 28 June 1919 concerning Poland, the respective Governments undertake to see to it that "Jews shall not be compelled to perform any act which constitutes a violation of their Sabbath, nor shall they be placed under any disability by reason of their refusal to attend courts of law or to perfom any legal business on their Sabbath".

2. Nature of the particular guarantees.

The nature of these particular guarantees has been variously described. Some people have seen in them privileges granted to minorities to enable them to perpetuate their existence and individuality. A State normally has in fact, it has been said, the right to prohibit or restrict the establishment of schools giving instruction in a language other than the national language. If it permits the establishment of such schools, it has the right to leave the whole responsibility for them in the hands of those who make use of these schools in preference to schools open to all and giving instruction in the national language.

Others have denied that these particular guarantees constitute privileges. They say that these guarantees had no other purpose than to maintain genuine equality between the minority and the majority by giving the minority the equivalent of what was given to the majority. The schools of the majority gave instruction in the language of the majority, the schools of the minority gave instruction under the same conditions in the language of the minority. The same applied to the minority's own religious, charitable or social establishments, which, while retaining their distinctive character, were entitled to the same assistance as the similar establishments of the majority.

In its advisory opinion of 18 January 1935 on minority schools in Albania(1) the Permanent Court of International Justice, affirming the right of minorities to possess special schools,(2) says: "It is easy to imagine cases in which equality of treatment of the majority and minority, whose situation and requirements are different, would result in inequality....in fact the equality between members of the majority and of the minority must be an effective, genuine equality ....."(3)

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(1) Publication of the Court, Series A.B. No. 64.

(2) The Albanian Government had established a monopoly of education and justified this measure with regard to the schools of the minority by declaring that the abolition of private schools was a general measure applicable equally to the majority and the minority.

(3) Op. cit. page 19.

/Speaking

Speaking of the provision which establishes the right of the minority to maintain schools and other educational establishments, the Court goes on to say: "Far from creating a privilege in favour of the minority, as the Albanian Government avers, this stipulation ensures that the majority shall not be given a privileged situation as compared with the minority".(1)

Be that as it may, this controversy proves that in the absence of explicit provisions regarding the points indicated, it is very doubtful whether the principle of equality, which is capable of various interpretations, in conjunction with the principle of general respect for the rights of man, would have been sufficient to elicit the guarantees referred to.

Section IV. Guarantee of General or Limited Autonomy or of Traditional Rights

1. Such a guarantee was given to some specified minorities.

The Treaty of 10 September 1919 with Czechoslovakia promised autonomy to the Ruthenes of Sub-Carpathia.(2)

The Treaty of 9 December 1919 with Roumania (Article 11) promised "local autonomy in regard to scholastic and religious matters" to the Czecklers and Saxons.

The Treaty of 10 August 1920 with Greece promised "local autonomy in regard to religious, charitable or scholastic matters" to the Valachs of the Pindus (Article 12). It included moreover the undertaking to "recognize and maintain the traditional rights and liberties enjoyed by the non-Greek monastic communities of Mount Athos under Article 62 of the Treaty of Berlin of 13 July 1878".

2. The régime of general or partial autonomy or of the maintenance of traditional rights provided for in the cases quoted above was undoubtedly a privileged regime granted to certain minorities, the rights recognized not having any equivalent in the treatment of the majority.

Final Observation. In conclusion it should be observed that the only obligations in favour of minorities were those formulated in the treaties and declarations. Like all conventional obligations they had to be strictly interpreted, and nothing more than what had been expressly stipulated could be claimed on the basis of the undertakings entered into.

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(1) Op. cit. page 20.

(2) Article 10 of this treaty reads as follows:

"Czechoslovakia undertakes to constitute the Ruthene territory south of the Carpathians within frontiers delimited by the Principal Allied and Associated Powers as an autonomous unit within the Czechoslovak State, and to accord to it the fullest degree of self-government compatible with the unity of the Czechoslovak State."

CHAPTER IV

ORGANS AND PROCEDURE

Section I. Respective Competences of the Various Organs of the League of Nations

The treaties and declarations provided in general that the stipulations with regard to the treatment of minorities constituted "obligations of international concern.....placed under the guarantee of the League of Nations."(1)

Moreover the treaties and declarations mentioned only two organs of the League of Nations, namely the Council of the League of Nations and the Permanent Court of International Justice.

The Council of the League of Nations was so to speak the pivot of the system of control. It performed the essential function defined in the following terms by the last article of the treaties relative to the protection of minorities:

> "(Poland)(2) agrees that any Member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction or any danger of infraction, of any of these obligations, and that the Council may thereupon take such action and give such direction as it may deem proper and effective in the circumstances."(3)

With regard to the Permanent Court of International Justice, its intervention was provided for in cases of "differences of opinion on questions of law or fact" and if a member of the Council demanded that the dispute be referred to the Court.

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(1) Treaty of 28 June 1919 with Poland, Article 12, first paragraph.

(2) Treaty of 28 June 1919 with Poland, Article 12, paragraph 3.

(3) Article 12 of the Treaty of 28 June 1919 with Poland provided in its last paragraph as follows:

> "Poland further agrees that any difference of opinion as to questions of law or fact arising out of these Articles between the Polish Government and any one of the Principal Powers.....shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. The Polish Government hereby consents that any such dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant."

/As regards

As regards the Secretary-General of the League of Nations, who was not mentioned in the treaties, he had in the initial stage of prccedure, in virtue of Council decisions, to do more than merely transmit documents. (See, in particular, the Council's Resolution of 5 September 1923.)(1)

As regards the Assembly, it took no part in the course followed by any procedure instituted in the Council, but it could, under the general powers conferred on it by Article III, Paragraph 3, of the Covenant,(2) discuss the general organization of the system for the protection of minorities.

Section II. Procedure - General Outline

1. Fundamental Provisions

The procedure followed in minority matters brought before the League Council was laid down in detail in a series of reports and resolutions adopted by the Council between 1920 and 1929, which are listed as follows:

(a) Tittoni Report adopted by the Council on 22 October 1920;(3)

This report, the first in point of time, is the basic document on this question. It was in virtue of this Report that the Council accepted the powers conferred on it by the treaties.

(b) Council Resolution of 25 October 1920;(4)

This resolution provides for setting up Minorities Committees consisting of three members, including the President of the Council.

(c) Council Resolution of 27 June 1921;(5)

This resolution provided that the petitions would be communicated for their observations to the Governments of States subject to minority obligations which were involved in the petitions.

(d) Resolution of 5 September 1923;(6)

This resolution stated on what conditions minority petitions could be received and on what conditions they could be examined.

(e) Council Resolution of 10 June 1925;(7)

This resolution dealt with the composition of the Minorities Committees.

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(1) See document C.8.M.5.1931 - I - page 9

(2) Article 3, paragraph 3 of the Covenant of the League of Nations:
"The Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world."

(3) See document C.8.M.5.1931 - 1 - page 7

(4) See document C.8.M.5.1931 - 1 - page 8

(5) See document C.8.M.5.1931 - 1 - page 8

(6) See document C.8.M.5.1931 - 1 - page 9

(7) See document C.8.M.5.1931 - I - page 10

/(f) Resolution

(f) Resolution of 13 July 1929;(1)

This extremely important resolution commented at length on various provisions, favourable to the minorities, in the procedure for the examination of petitions.

2. General Course of Procedure

The procedure comprised the following five stages:

First Stage - Commencement - Despatch of a Petition

A distinction must be made here between legal theory and actual practice.

According to the provisions of the treaties and declarations, any of its members could bring up a minority question before the League Council.(2) Actually, the procedure was never initiated in this manner.

In every instance, a petition received from minority elements or from a Government not represented on the Council was the starting point of the procedure.

Second stage - Examination of the receivability of petitions by the Secretary-General of the League of Nations

The Secretary-General verified whether the petitions fulfilled the required conditions for receivability.

If the petition was deemed receivable, it was communicated by the Secretary-General to the Government concerned in order that the latter might submit its observations.

Third stage - Examination of the petition by a Committee of the Council, known as a Minorities Committee.

The petitions were examined by a Minorities Committee which decided whether or no to bring the matter before the Council.

Fourth stage - Examination of the question by the Council of the League of Nations

The Council, having had the matter referred to it by the Minorities Committee, examined the question as a whole. It tried to settle it by agreement with the State concerned.

Possibility of Action by the Permanent Court of International Justice

While the Council was examining the cases, the Permanent Court of International Justice could be asked to take action in conformity with the

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(1) See document C.8.M.5.1931 - I - page 10

(2) See Treaty concluded with Poland 28 June 1919, Article 12, paragraph 2.

(Poland agrees that any member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction, or any danger of infraction, of any of these obligations, and that the Council may thereupon, take such action and give such direction as it may deem proper and effective in the circumstances.)

/provisions

provisions of treaties or declarations, in order to elucidate points of law or fact.

Section III. The Various Stages of Procedure

First Stage - Commencement - Despatch of Petition

1. How did petitions formulated by minority elements become in practice the starting point of the procedure?

As has been rightly said, the starting point of the procedure could legally have been action by a Member of the League Council who had "the right of calling the attention of the Council to any infraction, or danger of infraction" of any of the minorities obligations without it being necessary to have a petition presented in advance.

In fact, however, a petition was in every case the starting point of the procedure. Mr. de Azcarate(1) explains how practice thus grew up quite independent of the texts. He recalls the remark made by Lord (then Mr.) Balfour to the Council on 22 October 1920: "If it is necessary to protect a minority, one of the Members of the Council will have to take upon itself the duty of accusing a State which has not fulfilled its undertakings." This would have been a very unpleasant task, and Governments would probably have been extremely hesitant to assume it. Accordingly, another way was found for initiating the procedure. When minority elements had complaints to make, they would present a petition and a Committee of the Council, that is to say, several Members of the Council, would decide to put the matter before the Council after having examined the petition.

2. Who could originate petitions?

Petitions could originate from minority elements, that is, from one or more persons expressing the same grievances or from a community or group.

They could also originate from the Governments of League of Nations Members not represented on the Council.

Members of the Council were not called upon to formulate petitions. If they had wanted to place the matter before the Council, they could approach it directly. As is known, of course, this was never done.

3. To whom were petitions addressed?

The Petitions were actually addressed to the League of Nations, to the Council, to the President of the Council and to the Secretary-General. It mattered little how they were addressed, provided that the petitioner intended to put the matter before the League of Nations.

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(1) P. de Azcarate, ex-Director of the Minorities Section of the League of Nations - "League of Nations and National Minorities - An experiment", 1945, page 98.

4. Scope of petitions

The ultimate object of petitions was to bring certain facts to the attention of the Council but they did not have the effect of putting the matter before the Council. It was stated in the Tittoni Report that a petition "cannot have the legal effect of putting the matter before the Council and calling upon it to intervene." All petitions, however, had to be examined. As we shall see, the first examination concerned the receivability of the petition, and the second examination dealt with the substance of the matter in question.

Second Stage - Examination by the Secretary-General of the receivability of a petition

The Secretary-General had to examine each petition in order to determine whether it complied with the following formal conditions laid down in a Council resolution of 5 September 1923:

".....petitions addressed to the League of Nations in connection with the protection of minorities:

(a) Must have in view the protection of minorities in accordance with the Treaties;

(b) In particular, must not be submitted in the form of a request for the severance of political relations between the minority in question and the State of which it forms a part;

(c) Must not emanate from an anonymous or unreliable source;

(d) Must abstain from violent language;

(e) Must contain information or refer to facts which have not recently been the subject of a petition submitted to the ordinary procedure."

If the Secretary-General decided that a petition was not receivable because it did not satisfy the prescribed conditions, he so informed the petitioner by, "if necessary, communicating to him the Council resolution of 5 September 1923, laying down the conditions of receivability....."(1) The petitioner was thus given the opportunity of preparing a fresh petition free of the flaws which had rendered his original petition unreceivable.

If the Secretary-General decided a petition was receivable, he had to communicate it to the State concerned in the petition.

That State could dispute the receivability of the petition, and in anticipation of such a contingency the resolution above-mentioned provided that: "the Secretary-General shall submit the question of acceptance to

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(1) This was laid down in the Council resolution of 13 June 1929 (see document C.8.M.5.1931 - page 11).

the President of the Council, who may invite two other members of the Council to assist him in the consideration of this question. If the State concerned so requests, this question of procedure shall be included in the agenda of the Council".(1)

Third Stage - Consideration of the Petition by a Council Committee, Known as the Minorities Committee

It accepted the substance of the petition thus examined by a Council committee known as the "Minorities Committee".

1. Preliminary Procedure

To enable the substance of the petition to be considered the Secretary-General had to communicate to the State concerned the text of the petition so that it could be informed of the contents of the petition and be able to submit its observations in the case.

The State concerned was given three weeks to inform the Secretary-General whether or not it wished to submit any observations. If it did so wish, such observations had to be submitted within a period of two months. If the State concerned so requested and if the circumstances appeared to make such a procedure necessary, an extension of the period of two months might be authorized by the President of the Council.(2)

Subsequently the text of the petition, together with any observations by the Government concerned, was communicated to Members of the Council and, in principle, to them only.(3) Nevertheless, at the request of the State concerned, or by virtue of a special resolution to that effect, the petition might be communicated to all the Members of the League "or to the general public".(4)

The Council resolutions providing for "exceptional and extremely urgent cases"(5) stipulated that the Secretary-General should simultaneously inform the State concerned and the Members of the Council.

2. Establishment of a Minorities Committee for each case

Each case was brought before a Minorities Committee specially set up to consider that particular case and in principle that alone.

In practice, however, application of this rule was fairly elastic. Thus

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(1) See document C.8.M.5.1931 - page 9.

(2) These provisions are those enunciated in the Council resolution of 5 September 1923.

(3) In application of the Tittoni report, such communications were originally addressed to all Members of the League. The resolution of 5 September 1923 restricted them to Members of the Council.

(4) Council resolution of 5 September 1923 - document C.8.M.5.1931 - I - top of page 10.

(5) Council resolution of 27 June 1921

/when several

when several petitions from various sources arising out of the same circumstances and relating to the same subject (for instance the closing of a village school) were submitted, they were treated as a single case and a single Committee was set up to consider them all.

3. Composition of Minorities Committees

The committees consisted exclusively of Members of the Council of the League.

By a council resolution of 25 October 1920, the number of members of each committee was fixed at three. Subsequently a resolution of 13 June 1929 provided that "in exceptional cases" this number might be increased to five. The decision to increase the number of members of a committee in any particular case was taken by the President of the Council.

Each committee was presided over by the President of the Council. The remaining two (or four) members were appointed by the President of the Council.

When a State whose representative had been appointed to a Minorities Committee ceased to be a Member of the Council, its representative ceased to be a member of the Committee and the President of the Council appointed the representative of another Member in his stead.

The President of the Council, however, continued as Chairman of the Committee even when he ceased to be President of the Council, provided, of course, that his country was still a Member of the Council.

In order to ensure as far as possible that Minority Committees should be completely impartial, the Council laid down certain rules regarding the choice of Committee members.

This was the work of the resolution of 10 June 1925, which provides:

The Council of the League of Nations:

"Decides:

I. If the acting president of the Council is:

the representative of the State of which the persons belonging to the minority in question are subjects, or

the representative of a neighbouring State of the State to which the persons belonging to the minority in question are subjects, or

the representative of a State the majority of whose population belongs from the ethnical point of view to the same people as the persons belonging to the minority in question,

that the duty which falls on the president of the Council in accordance with the terms of the resolution of October 25th, 1920, shall be performed by the member of the

/Council

Council who exercised the duties of president immediately before the acting president and who is in the same position.

II. The president of the Council, in appointing two of his colleagues, in conformity with the resolution of October 25th, 1920, shall not appoint either the representative of the State to which the persons belonging to the minority in question are subject or the representative of a State, neighbouring the State to which these persons are subject, or the representative of a State a majority of whose population belongs from the ethnical point of view to the same people as the persons in question."

4. Function of the Minorities Committee

The Minorities Committee entrusted with examining the petition had a dual function.

The Committee had to consider the case in order to decide whether it was of sufficient importance to be referred to the Council. But if the Committee found in the course of its examination any possibility of settling the question by arranging for the State concerned to give a suitable measure of satisfaction to the petitioner, it tried to conclude the matter by means of a friendly agreement.

A. Consideration of the Case by the Minorities Committee

(a) Sources of information available to the Committee

To enable it to deal with the question the Committee had before it the petitions and any remarks by the Government concerned. Actually the Minorities Section usually prepared a short analytical report on the question using for this purpose various elements of information collected by them.

If the Committee had any doubts on points of fact it requested the Government concerned to provide supplementary information. The request was usually made through the Director of the Minorities Section, who passed the information on to the Committee. In some cases representatives of a Government concerned gave verbal explanations to the Committee.

No petitioners were ever permitted to make verbal statements to the Committee. Nor did any Committee ever proceed to carry out an inquiry on the spot or delegate a representative to do so.

(b) Absence of publicity

It should be noted that the proceedings of the Minorities Committees were confidential and non-judicial. The Committee held its discussions in private. Only members of the Committees and Secretariat officials who had to deal with the questions were present at the meetings.

/(c) Conclusion

(c) Conclusion of the Committee's examination

When the Committee decided to conclude its examination of a question having failed to reach a friendly settlement (see below), two courses of action were open to it: either to refer the question to the Council or to do nothing further.

1. If the Committee decided to refer the question to the Council, it implied by so doing that it appeared to him that a breach had occurred and that the intervention of the Council was necessary.

2. If the Committee decided not to refer the question to the Council, it implied by so doing that in its opinion the question should be shelved, either because the petition seemed to have no foundation, or because the Committee considered that the subject of the petition was so unimportant that no more time should be spent on it, or because the Committee had reached a solution which it considered satisfactory.

If the Committee thought that the question should be shelved, it informed the members of the Council by letter of the result of its examination and the reasons for its decision.(1)

However, the resolution adopted by the Council on 13 June 1929 provided that "the Minorities Committees should consider carefully the possibility of publishing, with the consent of the Government concerned, the result of the examination of the questions submitted to them."(2) So that in regard to decisions to shelve questions, non-publication ceased to be the rule.

Even when the Minorities Committee decided to shelve a question it was always possible for any member of the Council, that is to say, even a member of the Minorities Committee in disagreement with his colleagues, (3) to refer the matter to the Council in accordance with the provisions of the treaties. But in practice the members of the Council did not use their individual right to refer matters to the Council.

(d) How did the Committee reach its conclusions?

In reaching its final decision the Committee, which was not a court of law and was composed of politicians, was not swayed by legal considerations only. It took into account the importance of the question, since there was

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(1) Resolution of 13 June 1929, document C.8.M.5.1931-I-page 11.

(2) ibid., page 11.

(3) The following sentences appear in the report of the Committee instituted by the resolution of 7 March 1929:

"Generally speaking, the object of the examination of a petition by the three members of the Council appointed for the purpose is to consider whether one or more members of the Council should exercise their right to bring the question to the Council's notice. This right may also be exercised by any individual member of the Committee, whatever view his colleagues may take." (document C.8.M.5.1931-I-page 176)

/no occasion

no occasion to refer unimportant cases to the Council. The Committee took into consideration the degree of tolerance of the attitude of the Government concerned, the degree of loyalty of the minority's conduct, and the like.

B. Attempts to Reach a Friendly Agreement

After taking cognizance of the matter submitted for their consideration, Minorities Committees made it their practice to try to settle the question by means of informal negotiations with the State concerned. Thus, the report of the Committee instituted by the Council Resolution of 7 March 1929 reveals that in the majority of cases the information at the disposal of the Committee did not allow it to reach a clear-cut decision either to refer the matter to the Council or simply to shelve it. The Committee then endeavoured:

> "to obtain favourable consideration of the minorities' wishes by approaching the Government concerned in informal and friendly manner. The Committee then, acting through the Minorities Section, enters into informal negotiations with that Government with a view either to obtaining further information or to securing a satisfactory settlement of the matter. The elasticity of this system enables the various Committees to adapt their methods to the special circumstances of each case. A system of genuine and friendly co-operation has thus grown up between the League, acting through the Committees of three, and the Governments concerned, with a view to the equitable and satisfactory settlement of such cases. This explains, too, why far fewer questions are submitted to the Council by the Minorities Committees than are the object of informal negotiations between these Committees and the Governments concerned."

5. Frequency of committee meetings and length of time taken by this phase of the procedure

Until 1929 the meetings of minorities committees were usually held during the sessions of the Council, and exceptionally between sessions.

In order to expedite the procedure, it was decided in 1929 that meetings should be held in the interval between Council sessions whenever the committees deemed it advisable.(1)

The time which elapsed between the beginning of the committee's consideration of a question and its decision varied greatly. It depended on the importance and complexity of the question, on whether or not additional information was required and on whether or not the question gave rise to

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(1) Council Resolution of 13 June 1929.

negotiations with the Government concerned. The consideration of some questions was concluded in one session, while other questions remained on the agenda for years.

Fourth Stage - Consideration of a Question by the League of Nations Council

As has been noted above, a minorities question could be brought before the Council only by one or more of its members.(1) But in practice, it was the minorities committees responsible for considering petitions which decided to bring a case to the Council's attention i.e., to place it on the agenda of the Council's next session.

The propriety of this practice was challenged, particularly by the Polish Government which, in a statement made before the Permanent Court of International Justice, said that under the Treaty provisions it was for members of the Council individually and not for a committee to bring questions before the Council. This argument was rejected by the Court in its advisory opinion of 10 September 1923.(2)

The procedure regarding minorities questions followed in the Council of course obeyed the Council's general rules of procedure. We only wish to draw attention to the importance in this connection of the application of these general rules particularly those regarding publicity and the hearing of the defence and we shall show the results of this procedure as well as the special features of the procedure employed in minority questions.

1. Proceedings in public and hearing of defence

Consideration of a question by the League of Nations Council was different in character from its consideration by the Minorities Committee.

The proceedings of the Council were public. This means that the Council's meetings were public, and that documents submitted to the Council were also public, so that at this stage of the proceedings petitioners were able to follow the course of events.

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(1) There was nevertheless an exception. The minorities of Upper Silecia, which had been partitioned between Germany and Poland, had the right to address themselves to the Council by way of petitions.

(2) The advisory opinion of the Court stated:

"So far as concerns the procedure of the Council in minority matters, it is for the Council to regulate it. On the other hand, it is impossible to say that the present matter has not been brought to the attention of the Council by any of its members in accordance with the provisions of Article 12. The report of M. da Gama, opens with the statement that the matter had been brought to the attention of the Council by a report presented by three of its members, and it does not matter that these members were members of a committee formed under the Resolution of the Council of 25 October 1920, to facilitate the performance by the Council of its duties in minorities matters."

(P.C.I.J., Series B, No. 6, page 22)

/At the same

At the same time the procedure provided for the hearing of the defence. The State concerned was invited to sit as a member of the Council under Article 4 of the Covenant of the League of Nations(1) with the same rights as those of other members of the Council.

The petitioner was not invited to take part in the discussions of the Council.

There was a general reason for this exclusion and also a special reason. The general reason was that the Council never allowed anyone except its mandatories, or international officials or experts to speak, even to supply information. The special reason was that petitioners were not regarded as parties to the case; only the State concerned was a party.

2. Subsequent course of the Procedure

The procedure consisted of general debates, action by Rapporteurs, if necessary, a request to the Permanent Court of International Justice for an advisory opinion and the taking of decisions by the Council.

(a) General debates

The discussion was opened by an outline of the question by the Rapporteur (see below). A general debate followed in which those members of the Council who wished to do so took part.

Particular interest was taken in this debate by the State concerned and sometimes by certain Powers who were specially interested in the treatment of minorities, as for example Germany in the case of the German minorities in Poland or Czechoslovakia.

After a first general debate, the question was usually referred to a Rapporteur.

(b) The Rapporteur

Whatever the subject of a question the Council undertook to examine, it was usual for the Council to appoint a Rapporteur from among its members. In questions relating to minorities the Council, instead of appointing a Rapporteur for each case, appointed one Rapporteur for all the minority questions submitted to it. This Rapporteur was appointed for one year. A member of the Council who had once been appointed Rapporteur could obviously be kept in office for several years. Such cases were not rare.

Further, the Council often decided to appoint two other members to assist the Rapporteur in examining minority questions which seemed important or

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(1) Article 4, paragraph 5:

"Any Member of the League not represented on the Council shall be invited to send a Representative to sit as a member of any meeting of the Council during consideration of matters especially affecting the interests of that Member of the League."

/delicate,

delicate, thus forming what was called a committee of the Council.

The Rapporteur's function was to study the question before referring it back to the Council. But the essence of his task in practice was to contact the representative of the State concerned and induce him to accept a satisfactory solution of the question. When the Rapporteur had obtained such a result, his task had been successful.

(c) Request for an advisory opinion to the Permanent Court of International Justice

A request for an advisory opinion on a point of law or fact could be submitted to the Permanent Court of International Justice; this involved a suspension of procedure until the opinion had been given. Intervention by the Court was a matter of great importance. It will be dealt with in detail below (see No. IV).

(d) Close of the procedure

The procedure was normally closed by a resolution of the Council submitted by the Rapporteur.(1)

The Council's resolution had to be unanimous, and therefore necessitated the general agreement of the members of the Council and of the State concerned.

(e) Execution of the decision

The State concerned was called upon to execute the decision it had accepted. If the State failed to comply with the decision, or if it was alleged that it had not complied therewith, the question could be re-opened.

The procedure for re-opening the question was the same as that adopted for its original introduction. A petition could be drawn up claiming non-execution of the undertaking. Similarly, a member of the Council could refer the matter to the Council by drawing its attention to the question.

3. The Council's role

As has already been stated, the treaties and declarations contained a formula undertaking to accept the Council's supervision and ending as follows:

".....the Council may thereupon take such action and give such direction as it may deem proper and effective in the circumstances."

This formula might give a false idea of the system to the uninitiated. It might give rise to the belief that the Council had the power to issue injunctions and impose a solution. In fact this was not so, and the essential reason was that, as already stated, the Council's final decision was taken by a unanimous vote of its members and of the State which had incurred obligations towards minorities and had been accused of not having fulfilled its obligations.

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(1) Often the Council's decision consisted simply in approving the Rapporteur's report.

/Hence,

Hence, only methods of conciliation and compromise could be applied. The Rapporteur to the Council, as Mr. de Azcárate(1) observes, sought, like the Minority Committee which had previously dealt with the question, to come to an arrangement. He was, however, in a better position to achieve this result. In the first place, the reference of the question to the Council indicated in itself that the complaint seemed to have a certain value, and in the second place, the case was dealt with in public, and the Council's political and moral authority militated in favour of the acceptance of the solutions it recommended to the State concerned. The strength of the League of Nations which in this sphere was exclusively political and moral(2) came into full play when the case came before the council itself. A favourable circumstance which should be borne in mind is that the States which had incurred minority obligations were small or medium-sized Powers for whom the Council's authority had special weight once the Great Powers had agreed.

Section IV. The Permanent Court of International Justice

The Permanent Court of International Justice had a very important place in the League of Nations system for the protection of minorities.

In fact "any difference of opinion on questions of law or fact" in respect of the application of provisions regarding the treatment of minorities could be brought before the International Court on the demand of a single member of the Council of the League of Nations, and the State concerned could not object. Thus the highest international judicial authority was called upon to supervise the application of minority treaties.

It should be noted at the same time that intervention by the Court was part of the procedure before the Council of the League of Nations when the latter, during examination of a minority question, requested an advisory opinion from the Court. But a question could be referred directly to the Court by a member of the Council, quite apart from any procedure before the Council, and in this case the procedure, at the close of which the Court pronounced a judgment, was independent of proceedings before the Council and did not in principle postulate the Council's intervention judgment by the Court closing the dispute referred to the Court.

1. The option of reference to the Court was provided for in all the treaties and declarations

Nevertheless, all the treaties and declarations did not contain identical provisions in this respect. They can be divided into two categories:

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(1) De Azcárate - League of Nations and National Minorities - An experiment 1945 - (page 118).

(2) Ibidem page 100

/A. First

A. First Category - Formula Employed by Treaties and Certain Declarations

The typical clause is to be found in the Treaty relating to Poland of 28 June 1919 (Article 12, paragraph 3).

"Poland further agrees that any difference of opinion as to questions of law or fact arising out of these Articles between the Polish Government and any one of the Principal Allied and Associated Powers or any other Power, a Member of the Council of the League of Nations, shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. The Polish Government hereby consents that any such dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant."

Relying on this Article the German Government, by a direct Application to the Court, brought before it the case concerning the Polish Agrarian Reform and German minorities.(1)

Recourse to litigation did not rule out the method of resorting to advisory opinions. The Council by virtue of Article 14 of the Covenant could apply to the Court for an advisory opinion in questions concerning minorities as in any other question.

B. Second Category - Formula Used in Some Declarations

Three declarations (2) provided that the Council might ask the Court

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(1) Publications of the Permanent Court of International Justice - Serie A/B No. 58

(2) The Declaration of 27 June 1921 concerning Finland (The Aaland Islands) states:

".....the Council may, in case the question shall be of a legal nature, consult the International Court of Justice."

The Declaration of 7 July 1933 concerning Latvia, states:

"In case of a difference of opinion on questions of law or of fact concerning the present declaration, the Latvian Government reserves the right to ask that that difference of opinion be referred to the Permanent Court of International Justice for an advisory opinion. It should be clearly understood that the Council will also have the right to ask for the question to be referred to the Court."

The Declaration of 17 September 1923 concerning Esthonia states:

"In the event of any difference of opinion on questions of law or of fact in regard to this resolution, such difference of opinion may be referred to the Permanent Court of International Justice for an advisory opinion."

/for an advisory

for an advisory opinion and hence did not provide for contentious proceedings.

2. Who could bring cases before the Court?

A distinction must be drawn between contentious cases and requests for advisory opinions.

A. Contentious Cases

Cases where the contentious procedure was possible, which it was in the majority of cases, could be referred to the Court by any member of the Council of the League of Nations,(1) in other words, by any permanent or non-permanent member. The object of granting this right to Members of the Council, and in principle to them exclusively (as we shall see below) was that the initiative should be taken not by those with a possible direct interest in the case, but by Governments which, as members of the Council, were responsible for watching over the general interests of the international community.

Members of the League of Nations not members of the Council had not the right to refer cases to the Court.

(a) Was a State with obligations under a minority treaty entitled to refer cases to the Court?

The text of the Treaties and declarations ruled out such a possibility: , ".....the Polish Government hereby consents that any such dispute shall, if the other party thereto demands, be referred to the Court.....".

(b) Could the other signatories to the Treaties refer cases to the Court?

The only case to be considered in practice is that where there were other signatories, apart from the Principal Allied or Associated Powers, (which were at the same time permanent members of the Council of the League of Nations), and apart from the particular country owing obligations towards

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(1) The Treaty of 28 June 1919 concerning Poland, employs the formula:

".....any difference of opinion.....between the Polish Government and any one of the Principal Allied and Associated Powers or any other Power, a Member of the Council of the League of Nations....."

It was thought that the Principal Allied and Associated Powers were likely to be permanent members of the Council of the League of Nations. But, in fact, the United States did not become a Member of the League of Nations, while Japan and Italy left it. Apparently these two latter countries, which had ratified the Minorities Treaty, continued to be entitled to refer matters to the Court even after they had ceased to be Members of the League of Nations.

/minorities,

minorities, (as in the case of the peace treaties). These signatories had not the power to refer cases to the Court, except in the case of the Treaty of Lausanne of 24 July 1923 with Turkey.(1)

(c) Could minorities bring cases before the Court?

Owing to the principles underlying the establishment of the Permanent Court of International Justice, which was open to States only, the answer must be in the negative. This reason was sufficient, and there is no need to mention the other reasons which, had this main reason not existed, would undoubtedly have precluded minorities from bringing cases before the Court.

B. Requests for Advisory Opinions

The League of Nations Council was the only body entitled to ask the Court for an advisory opinion on a minority question submitted to it (the Council).(2)

3. Procedure for the adoption by the Council of resolutions asking the Court for an advisory opinion

It will be remembered that a general question arose in connection with the voting procedure on the Council's requests for advisory opinions. Was a majority or a unanimous vote required? Was the consent of the interested parties essential? In view of the differences of opinion regarding this point, the Council, in fact, never asked for an advisory opinion in a contentious matter, without the consent of the parties concerned.

In the case of minority questions, the problem was in practice of less interest. As any member of the Council had the right to bring a matter before the Court as a contentious case, opposition by the country concerned to a request for an advisory opinion, would ultimately have been futile because one Member of the Council could refer the matter to the Court as a contentious case.

It may be supposed, furthermore, that since a matter could be referred to the Court by any Member of the Council as a contentious case without the consent of the country concerned, it followed that the Council could, at its discretion, refer a matter to the Court without the consent of the State concerned.

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(1) The signatories of the Treaty of Lausanne, besides the Great Powers (the British Empire, France, Italy and Japan) and Turkey were: Greece, Roumania and the Serb-Croat-Slovene State.

(2) In the specific case of Latvia (Declaration of 7 July 1923), it is stated:

"In case of a difference of opinion on questions of law or of fact concerning the present declaration, the Latvian Government reserves the right to ask that that difference of opinion be referred to the Permanent Court of International Justice for an advisory opinion.....".

This may amount to an undertaking to Latvia that, at its request, the Council would ask the Court for an opinion.

/The Council

The Council did in fact request one advisory opinion in spite of the formal opposition of the Polish Government.(1)

4. What matters fell to be considered by the Court?

According to Article 12 of the Treaty of 28 June 1919 concerning Poland, "differences of opinion on questions of law or of fact" could be brought before the Court.(2)

What might be questions of law are well-known: the correct interpretation of a provision of a treaty; or whether a given legislative or administrative measure, ruling of a Court, or action was in breach of the obligations undertaken by the state concerned.

Questions of fact might involve verification of alleged facts constituting violation of agreements.

The control which the Court could exercise was therefore extremely wide.

5. What was the scope of the Court's decision?

It is only necessary to refer to the general principles governing the effects of the Court's decisions.

Judgments and opinions were given by the Court as a judicial body after hearing both sides fully in public, and its decisions had the authority of judgments.

The difference between judgment and opinions was as follows. Judgments were binding on parties under obligation to conform to them. On the other hand, opinions given to the Council of the League of Nations (just as opinions given to the Assembly), although the Council could not throw doubt on their validity, did not legally impose a line of conduct on the Council. The decision, in fact, remained with the Council, which could take into account political as well as legal factors. Nevertheless, whenever the Council requested the Court's opinion it did so because it considered that the question of law raised in the particular case had an essential bearing on the solution of the problem, and in all cases in which it had requested the Court's opinion the Council followed it.

Judgments given by the Court were binding on the parties, but sometimes in practice a party might not conform to the judgment. Here arose the question of forcible execution of the judgment. Judgments given in minority

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(1) Publications of the PCIJ, Series B No. 7 of 15 September 1923: Acquisition of Polish Nationality.

(2) This wording is generally found in treaties and declarations. It noted, however, that the Declaration of 27 June 1921 concerning the Aaland Islands is somewhat differently worded: ".....The Council may, in case the question shall be of a legal nature, consult the International Court of Justice."

matters were subject to the same guarantees as others. In the event of non-compliance Article 13, paragraph 4, was applicable.(1)

6. What use was made of the right of recourse to the Court?

The Permanent Court of International Justice, by reason of its procedure, its powers as a tribunal, and the weight carried by its decisions, as judgments, was in a position to play a very important part in the system of protection of minorities. This indeed gave every Member of the Council of the League of Nations the opportunity to bring any matter before the Permanent Court of International Justice in litigious form.

Little use was in fact made of the power to move the Court.

Only three matters were submitted to the Court by way of litigation. In these three cases, which concerned the German minority in Poland, it was the German Government which moved the Court in its capacity of a Member of the Council. The Court had to give judgment in one case only,(2) the other cases being withdrawn.(3)

Five cases were brought before the Court for advisory opinion. Three concerned German minorities in Poland,(4) one the Polish minority in Danzig,(5) and one the Greek minority in Albania.(6)

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(1) Article 13, paragraph 4, provided: "The Members of the League agree that they will carry out in full good faith any award that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award, the Council shall propose what steps should be taken to give effect thereto."

(2) Rights of minorities in Upper Silesia (Minority Schools) Judgment of 26 April 1928 - No. 12 - PCIJ Publication - Series A - No. 15.

(3) Case concerning the administration of the Prince Von Pless - Orders of 4 February 1933 - 11 May 1933 and 2 December 1933 - PCIJ Publication - Series A-B - No. 52-54-59.

Case concerning the Polish Agrarian Reform and the German minority - Orders of 29 July 1933 and 2 December 1933 - PCIJ Publication 58 and 60.

(4) Advisory opinion of 10 September 1923 - Settlers of German origin in territory ceded by Germany to Poland (PCIJ) Publication - Series B - No. 6).
Advisory opinion of 15 September 1933 - Acquisition of Polish nationality (PCIJ publication - Series B - No. 7).
Advisory opinion of 15 May 1931 - Access to German minority schools in Upper Silesia (PCIJ publication - Series A-B - No. 40).

(5) Advisory opinion of 15 May 1932 - Treatment of Polish nationals and other persons of Polish origin or speech in the Danzig territory (PCIJ publication - Series A-B - No. 44).

(6) Advisory opinion of 16 April 1935 - Minority schools in Albania (PCIJ publication - Series A-B - No. 64).

/There are

There are various reasons why the Court was not called upon more often to intervene in minority questions.

The Court was not open to the minorities themselves. It was necessary for a State Member of the Council to seize the Court of a dispute, and this was done by the German Government only, acting in the interest of the German minorities.

Moreover, many held the opinion that the handling of minority questions was more a political than a legal matter and that the main object in a given case was not to state the law but to induce the State under obligations to give proof of good-will and moderation. As international control over their internal affairs was regarded by States as a grievous infringement of their sovereignty, it was desired somewhat to discourage legal proceedings, associated as they were with publicity, with strict and rigid supervision and with severe expressions of condemnation which could be used by irredentists as propaganda. It was thought rather that discreet advice and diplomatic negotiations which would treat the national pride of States tenderly, would be less likely to embitter international relations and would better achieve the general objective of appeasement and good understanding between a State under obligations and its minorities or neighbours.

Section V. The League of Nations Assembly

1. The role of the Assembly

The treaties and declarations relating to the protection of minorities nowhere mentioned the Assembly, which did not, therefore, intervene in particular questions involving infractions of the clauses of these treaties and declarations. Such infractions were referred either to the Council of the League of Nations or to the Permanent Court of International Justice, as we have shown above.

Nevertheless, in virtue of the general powers which it derived from Article 3, paragraph 3 of the Covenant of the League of Nations,(1) the Assembly was competent to consider the system for the protection of

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(1) Article 3

"....

3. The Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world."

minorities in its general aspects, just as it could consider all questions within the sphere of action of the League of Nations.(1)

Minority questions were discussed by the Assembly in 1921, 1922, 1923, 1925, 1930, 1931, 1932, 1933 and 1934.

These discussions are of great interest, for they reveal the preoccupations of the governments concerned, their differences and the compromises by which agreement was finally achieved. In 1934 the Polish Government declared that pending the introduction of a general system for the protection of minorities Poland would refuse "all co-operation with the international organizations in the matter of the supervision of the application by Poland of the system of minority protection."(2)

2. Opinions on the Protection of Minorities Expressed by the Assembly

The protection of minorities gave rise to discussions involving on the one hand the organization of procedures and the mutual obligations and duties of States and their minorities, and on the other hand the general evolution or transformation of the system.

We shall confine ourselves to a few general remarks:

A. The Development of the Procedure Before the Council

This subject was fairly frequently discussed. Proposals were made, and some of them were adopted in practice. More often they were rejected.(3)

B. The General Conditions Conducive to the Proper Functioning of the System

On several occasions the Assembly set forth the conditions which in its opinion needed to be fulfilled to enable the system for the protection of minorities to give satisfactory results.

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(1) In 1930 the competence of the Assembly in minority questions was discussed at the Sixth Committee. The report adopted by the Assembly on 3 September 1930 says in this connection:

"One of these differences concerns the general question whether the Assembly - and consequently the Sixth Committee - is competent to discuss the guarantee that the League has assumed on behalf of the minorities in the so-called minority treaties. Some members maintained that the Assembly is competent because it is the supreme organ of the League, while others observed that the minority treaties have entrusted the question exclusively to the Council. All the delegates agree, however, that the question of minorities could be discussed by the Assembly in virtue of Article 3, paragraph 3, of the Covenant of the League."

(2) League of Nations Official Journal - Special Supplement No. 125, page 43.

(3) For example that of Gilbert Murray (Union of South Africa) in 1921, with a view to the holding of inquiries on the spot (document C-8.M.5. 1931 I.I.B. Minorities - 1931 - I.B.1 - page 239).

The Assembly emphasized the duty of persons belonging to protected minorities "to co-operate as loyal fellow citizens with the nation to which they now belong."(1)

The Assembly stressed the value of the maintenance by the League of Nations of "benevolent and informal communications" with governments bound by obligations with respect to the treatment of minorities.(2)

Further, the Assembly recommended members of the Council, "in case of difference of opinion as to questions of law or fact", to "appeal without unnecessary delay to the Permanent Court of International Justice."(3)

The reports adopted by the Assembly thus make due allowance for the different or conflicting points of view of the Members of the League of Nations.

C. Generalization of the System for the Protection of Minorities

The states bound by obligations with respect to the treatment of minorities complained that they had been subjected to an exceptional régime. and demanded the generalization of that régime.

(a) Proposals for the introduction of a uniform system for the protection of minorities.

As early as 1922 Latvia submitted a proposal to study, "the main lines for the general protection of minorities in the States Members of the League of Nations."(4) In 1925 Lithuania proposed that the Assembly "should set up

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(1) Report adopted by the Assembly on 21 September 1922 (op. Cit. page 241). The same report says in a similar connection:

"The Secretary-General, which has the duty to collect information concerning the manner in which the Minorities Treaties are carried out, should not only assist the Council in the study of complaints concerning infractions of these Treaties, but should also assist the Council in ascertaining in what manner the persons belonging to racial, linguistic or religious minorities fulfil their duties towards their States. The information thus collected might be placed at the disposal of the States Members of the League of Nations if they so desire."

(2) Report adopted by the Assembly on 21 September 1922 (Op. cit. page 240). The report includes the following passage:

"While in case of grave infractions of the Treaties it is necessary that the Council should retain its full power of direct action, the Committee recognizes that in ordinary circumstances the League can best promote good relations between the various signatory governments and persons belonging to racial, religious or linguistic minorities placed under their sovereignty by benevolent and informal communications with those governments. For this purpose, the Committee suggests that the Council might require to have a larger secretarial staff at its disposal."

(3) Op. cit. page 241.

(4) See document C.8.M.5 1931. I-I.B. Minorities 1931, I.B. 1 page 240.

/a Special

a Special Committee to prepare a draft general convention to include all the States Members of the League of Nations and setting forth their common rights and duties in regard to minorities.(1) In 1930 the idea of the generalization of the system for the protection of minorities frequently came up during the debates. (2) In 1932 the representative of Poland declared that the system for the protection of minorities could only give "complete satisfaction to the moral conscience of the world" if the essential condition was fulfilled that "all minorities should be protected".(3)

In 1933, a Polish proposal was put before the Assembly, requesting the appointment of a committee of enquiry "to study the problem of the general application of the system of minorities protection, and submit to the next session of the Assembly a draft general convention on the Protection of Minorities involving the same obligations for all States Members of the League".(4)

In 1934, Poland put forward a new proposal, requesting that "an international conference be summoned, consisting of all the Members of the League of Nations, in order to draw up a general convention on the international protection of minorities."(5)

(b) All proposals for the general application of the system of minorities protection were, in fact, rejected.

While these proposals were unsuccessful, they gave rise to discussion which made clear the respective positions of the parties.

The States bound by obligations with respect to the treatment of minorities protested against the inequality created by this system. They added that such inequality was unjustifiable because the countries bound by treaties were not inferior to other countries either in culture, development

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(1) Ibidem - page 244.

(2) Ibidem - page 246.

(3) League of Nations Official Journal, Special Supplement No. 104, 1932 - page 142.

(4) League of Nations Official Journal -- Special Supplement, No. 120 -- 1933 -- page 70.

(5) League of Nations Official Journal -- Special Supplement, No. 130 -- page 109.

/or international

or international position.(1)

The States not bound by obligations opposed the general extension of the system of minorities protection, stating that the clauses relating to minorities had "their foundation and their raison d'etre in special circumstances obtaining at the time when the treaties were concluded",(2) and that any extension of the application of the system "to countries, the territories of which are not inhabited by peoples of different race, language or religion, or which in the course of their history have successfully settled the mutual relations of such peoples, would in effect create an artificial problem in the countries concerned".(3)

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(1) The Report of the Sixth Committee to the Assembly of 1934 contains the following passage:

> The countries which are bound by treaties embodying minority obligation -- as Count Raczynski, the Polish delegate, has in substance informed you -- are not alone in possessing racial, linguistic, or religious minorities. If the system of protection for minorities as instituted by the treaties is a good one, it should be extended. To refuse to do this would be equivalent to making this system the expression, as it were, of the legal inequality of States -- an inequality bearing no relationship to their state of development and their importance in international life. Such is the main argument of the advocates of the institution of a general, uniform charter, which would henceforward guarantee to all minorities the protection which at present is enjoyed by certain of them only.
>
> (League of Nations Official Journal -- Special Supplement, No. 130 -- page 110)

(2) (See the report of the Sixth Committee, 1934 -- League of Nations Official Journal -- Special Supplement, No. 130 -- 1934 -- page 110)

This report says: "The present system of protection of minorities -- according to the opponents of generalisation -- must be regarded as being bound up with the treaties, and does not in any way embody principles of government having the character of universal obligations. The clauses relating to minorities have their foundation and their raison d'etre in special circumstances obtaining at the time when the treaties were concluded".

In 1923 the same idea had been expressed in the report of the Sixth Committee on a Lithuanian proposal:

"Several delegates pointed out that this way of looking at the question (namely that a system of obligations binding only upon certain States was contrary to the principle of the equality of States) was not correct, since the special position of States bound by certain Treaties or Declarations was the result of special circumstances prevailing in those States".

(Document C.8.M.5 1931. I -- I.B. -- Minorities 1931 -- I.B. 1 -- page 244)

(3) League of Nations Official Journal -- Special Supplement, No. 130 - 1934 -- page 110

(c) Recommendation addressed to States not bound by obligations with respect to the treatment of minorities.

It should be noted that the 1922 Assembly, as a kind of concession to the advocates of the generalization of minority obligations, declared in a resolution in respect of States not bound by the system of protection for minorities:

> "The Committee expressess the hope that the States which are not bound by any legal obligations to the League with respect to minorities will nevertheless observe in the treatment of their own racial, religious or linguistic minorities at least as high a standard of justice and toleration as is required by any of the Treaties and by the regular action of the Council."(1)

In this connection the report submitted by the Sixth Committee to the Assembly in 1930 states:

> "The view that the system of protection shculd be generalized and extended to all minorities, whether protected by special treaties or not, was emphasized by a number of speakers. It is not for me, as Rapporteur, to express an opinion, because on this point the views and feelings of different members of the Committee are clearly divided. There did, however, appear to be unanimity on one point - namely, that the existence of the Minority Treaties, and the fact that the League has to ensure, and does ensure, their application, are contributing to the development of a new spirit. This spirit, despite the absence of any legal engagement, has permeated, in a moral sense, both States which have undertaken treaty obligations and those which have not."(2)

In 1933 a proposal by the French delegation that the 1922 recommendation quoted above should be re-affirmed, was brought before the Assembly which adopted the following resolution:

> "The Assembly,
>
> Reiterating the recommendation which it passed on September 21, 1922:
>
> > "Expresses the hope that the States which are not bound by legal obligations to the League with respect to minorities will nevertheless observe in the treatment of their own racial, religious or linguistic minorities at least as high a standard of justice and toleration as is required by any of the treaties and by the regular action of the Council."(3)

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(1) Document C.8.M.5 - 1931 - I - IB Minorities 1931 - I.B.1 - page 241

(2) Document C.8.M.5 - 1931 - I - IB Minorities 1931 - I.B.1 - page 246

(3) League of Nations Official Journal - Special Supplement No. 120 - 1933 - page 72.

/(d) Proposal

(d) Proposal for the establishment of a general system for the protection of human rights.

It is interesting to note that in connection with the protection of minorities, the delegate of Haiti to the Sixth Committee submitted a proposal in 1933 for the conclusion of a general convention ensuring the protection and respect of human rights.(1) No action was taken on this proposal.(2)

In 1934 the delegate of Haiti to the Sixth Committee again took the matter up. The report of the Sixth Committee contains the following passage on this subject:

"The delegate of Haiti, believing that the problem should be considered as a whole from the standpoint of the jurisdictional guarantee of the rights possessed by men as such, whether they belonged to a minority or a majority, and that a solution should be sought on this basis, submitted the following motion:

"The Fifteenth Assembly requests the Council to summon a conference to consider the reforms to be introduced into the system set up by the treaties with regard to the protection of minorities and to submit its findings to the Council."(3)

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(1) The proposal was drafted in the following terms:
"The Fourteenth Assembly of the League of Nations,
"Considering:

"That the minorities treaties concluded in 1919 and 1920 by the Principal Allied and Associated Powers bind a certain number of States to respect the rights of men and of citizens;

"That the international protection of the rights of men and of citizens solemnly affirmed in the minority treaties is in harmony with the juridical sentiments of the contemporary world;

"That, therefore, the generalization of the protection of the rights of men and of citizens is highly desirable;

"Considering that, at the present moment, these rights might be so formulated as to ensure that every inhabitant of a State should have the right to the full and entire protection of his life and liberty, and that all the citizens of a State should be equal before the law and should enjoy the same civil and political rights, without distinction of race, language or religion;

"Expresses the hope that a world convention may be drawn up under the auspices of the League of Nations, ensuring the protection and respect of such rights."

(League of Nations Official Journal, Special Supplement No. 115 - 1933, page 51)

(2) League of Nations Official Journal, Special Supplement No. 120 - 1933 - page 71 - No. IV.

(3) League of Nations Official Journal, Special Supplement No. 130 - 1934 - page 111.

/The delegate of

The delegate of Haiti said that he would not press for a vote on the draft resolution which he merely asked should be included in the report.(1)

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(1) Ibidem - page 111.

CHAPTER V

RESULTS OF THE MINORITY PROTECTION SYSTEM

There is no question of assessing here the value of the principle of minority protection, but it may be asked if the system, as it was applied achieved the ends which its authors had assigned to it.

Opinions on this subject differ considerably. There is the point of view of the minorities, the point of view of States subjected to obligations as regards the treatment of minorities, and the point of view of countries to which the minorities were linked by bonds of race, language, culture and sentiment. Lastly, there is the viewpoint of the countries which were not particularly concerned themselves but which hoped that the minority protection system would encourage good relations between nations and the maintenance of world peace.

The protection of minorities had indeed an immediate aim, and a more distant and general aim. The immediate aim was to ensure respect for the rights of minorities as defined by treaties and declarations; the more distant and general aim was that the minority elements, satisfied with their lot, should become loyal nationals of the State to which they had been attached, and that irredentist feeling should accordingly die out and good relations and peace should reign between those States which had benefited from the territorial changes carried out immediately after the first World War, and their neighbours who had suffered dismemberment.(1)

Question 1: Was the protection of minorities effective?

Did the minorities escape the persecutions or annoyances from which it had been hoped to safeguard them? Were the rights granted them by the treaties and declarations respected?

It appears that nowhere were the minorities subjected to a regime of persecution and oppression, and that on the whole their rights were protected. That is not to say that there were no abuses and injustices here and there; but never has law been completely respected, and to demand perfection in the

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(1) The Report adopted by the League of Nations Assembly on 30 September 1930 contains the following passage:

> "The discussion in the Sixth Committee touched also upon the objects for which the Minority Treaties were intended. It would be unwise to dwell too much at present on this aspect of the question. These objects are many, but it will suffice to observe - and this is a point on which there can be no serious divergence of opinion - that one of the chief aims was undoubtedly to remove the obstacles raised during the course of history and as a result of the world war, which prevent majorities and minorities from working together. Such co-operation is one of the conditions of prosperity for individual countries, and of lasting peace for the world as a whole." (Document C.8.M.5.1931 - I - I.B - Minorities 1931 I.B.1 - page 246)

case in point would have been an impossibility in the circumstances, particularly in view of the fact that present-day minorities had often been yesterday's oppressors of nations now liberated.

It is true that it was believed in certain countries such as Germany that the protection of minorities was more or less a sham, and that States subjected to obligations regarding the treatment of minorities did not respect them. But in point of fact nationalist Germany's method of judgment is well known. She despised the Slav populations which she was accustomed to dominate, and thought it a scandal that German populations living outside the Reich should be subject to alien authority. Moreover, as Germany cherished the hope of reconquering her lost territories, she had no desire to see the minorities satisfied, and often sought to keep alive and fan their discontent.

To what is the generally satisfactory treatment of minorities to be ascribed? Did the international procedure prove effective?

There can be no doubt that the general political conditions prevailing after the First World War were primarily responsible for the relatively satisfactory treatment of minorities.

Certain liberated countries, such as Czechoslovakia, where minority elements were numerous, had a democratic and liberal regime which respected human rights. Moreover, the Great Powers who were Allies during the First World War and dominated the proceedings at Geneva were, despite their differences and their greater or less friendliness towards the newly created or enlarged States, fundamentally in agreement that the rights of minorities should be respected; and they used their influence, which was considerable, in that direction.

The proceedings before the Council of the League of Nations and the Permanent Court of International Justice had a certain usefulness but did not play the leading part. They served to redress wrongs; but the problem was to prevent wrongs, and here it was the general conditions mentioned above which were decisive. The Minority Committees and the Council rejected many petitions because they dealt with insignificant matters, or because verification of the facts would have been extremely difficult, or because it appeared that insistence on the matter would have done more harm than good. The proceedings before the Council retained an essentially political character. The Council sought, not to obtain the strict observance of the obligations of States in every case submitted to it, but to remind States that their conduct was being observed, thus preventing serious or general abuses.

Question 2: <u>How did the minorities judge their situation and what was their attitude?</u>

Amongst the minorities there were irredentist elements which always hoped that they would be returned to their former countries. Ill-disposed

/towards the

towards the State to which they were attached, these elements considered the protection of minorities as a "pis aller" and a means of combating the State whose loyal nationals it was desired that they should become. These elements were therefore disappointed by the conciliatory and prudent policy of the Council of the League of Nations which did not suit their designs.

Nevertheless, the greater part of the minority elements displayed a relative calm and loyalty until the day when the Hitlerite and Fascist propaganda concentrated on them and held out hopes of a coming territorial redistribution. Thus, in Czechoslovakia German parties participated in the Government until April 1938. The prospect of a new German expansion was calculated to revive irredentist aspirations and to discourage moderate elements who were accommodating themselves to the new state of affairs, and who sometimes even preferred freedom in their new State to despotism in the country which claimed them.

Question 3: What was the opinion of States subject to obligations concerning the treatment of minorities?

While in general carrying out their duties more or less correctly, the States subject to the system for the protection of minorities regarded it as a very heavy burden.

They made three complaints about it: first, that they were subject to an exceptional regime, second, that it placed obstacles in the way of their achieving national unity, and third, that it encouraged hostile propaganda.

(a) The system for the protection of minorities was an exceptional system. In other States there were national, linguistic or religious minorities for whom no rights had been stipulated and with whom the international community, represented by the League of Nations, had nothing to do. Why this inequality of treatment?

The reasons are well known. The States subject to obligations were medium-sized and small Powers which owed either their existence or considerable extensions of territory to the Peace Treaties and which contained numerous minority elements within their frontier. The Great Powers which had redrawn the map of Europe at the Paris Conference had imposed obligations on the States in question with regard to their minorities. These States had had to accept them, the protection of minorities being the condition of the very considerable advantages which had been granted them.

Nevertheless the States liable to these obligations regarded them as a violation of their sovereignty, a violation which they found more and more difficult to bear. They laid claim to equality of treatment, that is to say to the generalization of the system for the protection of minorities or, failing that, to its abolition.

/(b) The system

(b) The system for the protection of minorities was an obstacle to the realization of national unity.

The international protection of minorities such as it was conceived placed an obstacle in the way of the natural assimilation of the minorities and the achievement of national unity by the countries subject to these obligations, in that it assigned to the minorities special institutions, and particularly scholastic establishments. These States pointed out that the most homogeneous national States had been formed by the fusion of elements originally differing more or less in race, language and culture; and that if the principle of the protection of minorities had then been applied, the perfect unity which is admired today would not have been achieved.

(c) The system for the protection of minorities encouraged hostile propaganda.

The behaviour of governments was criticized in an international forum. Elements hostile to the State under criticism took advantage of this to attempt to discredit it by organizing against it systematic campaigns of disparagement.

The representative of Poland stated in 1939 that "because of the fact that the system has too often been abused and applied in a manner foreign to the spirit of the treaties, it has come to be freely used as a medium for defamatory propaganda against States which were bound by it, and also as a means of political pressure exerted by States which, without themselves being bound by it, took advantage of the privilege of taking part in the control procedure."(1)

Question 4: Did the protection of minorities serve the cause of peace and good understanding between peoples?

To answer this question is a matter of some embarrassment.

There is no doubt that the desired result, that is to say the maintenance of peace, was not obtained. The neighbouring States, to which the minorities were related by race, language and culture, did not accept separation from the minorities; they incited these not to accept loyally their new territorial status. But the protection of minorities was clearly not the cause of the desir for revenge and the will to conquer displayed by Germany which placed herself at the head of the discontented countries.

Was the protection of minorities a pacific factor which in more propitious circumstances might have contributed to the maintenance of peace? In favour of an affirmative answer it may be said that, during the period before Hitler's accession to power, the way in which the protected minorities were treated had an appeasing effect, as is proved by the participation in the Governments of certain countries of more or less considerable minority elements.

(1) Official Journal of the League of Nations - Special Supplement - No. 125, page 43.

/ANNEX

ANNEX

STATISTICS OF MINORITY PETITIONS

Two periods have to be distinguished:

1. From 1921, when the first petitions were received, to June 1929. During this period no statistics were published.

2. From June 1929 to 1939, when the last petitions came in. Official statistics were published according to the Council's resolution of 13 June 1929, paragraph 6, which lays down:

"'The Secretary-General will publish annually in the Official Journal of the League statistics of: (1) the number of petitions received by the Secretariat during the year; (2) the number of petitions declared to be non-receivable; (3) the number of petitions declared to be receivable and referred to Committees of Three; (4) the number of Committees and the number of meetings held by them to consider these petitions; (5) the number of petitions whose examination by a Committee of Three has been finished in the course of the year....'"

/FIRST PERIOD

FIRST PERIOD

(From September 1921 to June 1929)

The report [1] of the Committee which the Council set up by its resolution of 7 March 1929 states:

"It is difficult to lay down a precise line of demarcation between petitions of minorities in the strict sense of the term and communications of other kinds sent to the League on the subject of the protection of minorities: nevertheless it is estimated that the total number of petitions received by the League Secretariat since September 1921 is about three hundred.[2] Of these petitions, some hundred and fifty have been declared unacceptable, and the rest have been submitted to the procedure of examination laid down by the Council."

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(1) See Document C.8.M.5. 1931 - I - I.B. Minorities 1931 - I.B. 1, pages 153 et. seq.

(2) Excluding petitions addressed to the Council in accordance with the procedure laid down in the Convention concerning Upper Silesia.

/SECOND PERIOD

SECOND PERIOD

(From June 1929 to June 1939)

STATISTICS COMPILED IN ACCORDANCE WITH THE RESOLUTION OF 13 JUNE 1929 OF THE COUNCIL OF THE LEAGUE OF NATIONS

	I	II	III	IV				V
YEARS The year under review runs from 1 June to 30 May)	Number of petitions received during the year	Number of petitions declared to be non-receivable	Number of petitions declared to be receivable and referred to a minorities Committee	Number of Committees and number of meetings held by them to consider these petitions				Number of petitions whose examination by the committees has been concluded in the course of the year
				(a) Committees set up during the the year	(b) Meetings held by the Committees referred to under (a)	(c) Committees previously set up which have continued the examination of petitions received during previous Years	(d) Meetings held by the Committees referred to under (c)	
1929-30	57	26	31	14	19	14	50	29
1930-31	204	131	73	45	111	21	38	32
1931-32	101	21	80	49	58	45	90	48
1932-33	57	20(x)	37	14	12	53	103	37
1933-34	68	18(x)	50	15	22	42	72	46
1934-35	46	9	35	9	8	35	48	37
1935-36	19	6	13	3	3	31	42	51
1936-37	15	7	8	2	4	12	20	11
1937-38	14	4	10	5	4	9	20	2
1938-39	4	3	1	1	2	10	14	5
TOTAL	585	245(2)	338	157	243	272	497	298

x) Two petitions, received in the years 1932-33 and 1933-34 respectively, were first declared receivable by the Secretary-General of the League of Nations but afterwards adjudged non-receivable after the States concerned had submitted objections. (Council Resolution of 5 September 1925, Paragraph 1, Sub-paragraph 2).

/OBSERVATIONS

OBSERVATIONS ON THE STATISTICAL TABLE

1. A certain number of petitions were corollaries to an earlier petition. They were classed as petitions supplementary to the original petition. If they were declared receivable, they were submitted to the committee which had the original petition under consideration.

2. A certain number of petitions were declared non-receivable because under the Council's resolution of 5 September 1925 (10-e) they duplicated other petitions.

3. One or two petitions were withdrawn on the petitioners informing the Secretary-General that they had become superfluos.

4. Some petitions which had been declared receivable in one year were referred for consideration to a Minorities Committee in a subsequent year owing to delay by Governments in submitting observations.

5. When several petitions dealt with the same question, one committee only was set up to consider them.
