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Sixth session

STUDY OF THE LEGAL VALIDITY OF THE UNDERTAKINGS CONCERNING MINORITIES

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INTRODUCTION

A. The question raised by the Economic and Social Council

The Economic and Social Council requested the Secretary-General to initiate a study of the present legal validity of the undertakings relating to the protection of minorities placed under the guarantee of the League of Nations.

The Economic and Social Council's resolution (116 C (VI)) reads as follows:

> "The Economic and Social Council,
>
> "Taking note of chapter VIII, paragraph 37, of the report of the Commission on Human Rights,*
>
> "Requests the Secretary-General to study the question whether and to what extent the treaties and declarations relating to international obligations undertaken to combat discrimination and to protect minorities, the texts of which are contained in League of Nations document C.L. 110. 1927.I Annex, should be regarded as being still in force, at least in so far as they would entail between contracting States rights and obligations the existence of which would be independent of their guarantee by the League of Nations; and to report on the results of this study to a later session of the Commission on Human Rights the recommendations, if required, for any further action to elucidate this question."1/
>
> *see Official Records of the Economic and Social Council, Third Year: Sixth Session, Supplement No. 1, pages 10 and 11.

B. List of the relevant undertakings concerning the protection of minorities

It will be noted that the resolution refers to obligations "the texts of which are contained in League of Nations document C.L. 110. 1927. I Annex".

However, a later League of Nations document, the "List of Conventions with indication of the Relevant Articles conferring Powers on the Organs of the League of Nations" (C.100.M.100.1945.V) gives a list of undertakings concerning the protection of minorities as of September 1945. This list differs

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1/ See Resolutions adopted by the Economic and Social Council during its sixth session; resolutions of 1 and 2 March 1948, page 18.

/to some

to some extent from the 1927 document, as follows:

It includes an undertaking of a date later than 1927, namely, the resolution of the Council of the League of Nations of 11 May 1932 concerning the protection of minorities in Iraq.

It omits one undertaking dated before 1927, relating to Upper Silesia. The German-Polish Convention relating to Upper Silesia of 15 May 1922 established a regime of protection of minorities in the German part of Upper Silesia for a duration of fifteen years. This regime ended with the expiry of the Convention.

It would therefore appear that the 1945 list, which is merely the 1927 list brought up to date, should be accepted. It reads as follows:

1. Minorities in Poland:
   Treaty between the Principal Allied and Associated Powers and Poland, Versailles, 28 June 1919.
2. Minorities in Austria:
   Treaty of Peace between the Allied and Associated Powers and Austria, Saint-Germain-en-Laye, 10 September 1919.
3. Minorities in the Serb-Croat-Slovene State:
   Treaty between the Principal Allied and Associated Powers and the Serb-Croat-Slovene State, Saint-Germain-en-Laye, 10 September 1919.
4. Minorities in Czechoslovakia:
   Treaty between the Principal Allied and Associated Powers and Czechoslovakia, Saint-Germain-en-Laye, 10 September 1919.
5. Minorities in Bulgaria:
   Treaty between the Allied and Associated Powers and Bulgaria, Neuilly-sur-Seine, 27 November 1919.
6. Minorities in Romania:
   Treaty between the Principal Allied and Associated Powers and Romania, Paris, 9 December 1919.
7. Minorities in Hungary:
   Treaty of Peace between the Allied and Associated Powers and Hungary, Trianon, 4 June 1920.
8. Minorities in Greece:
   Treaty concerning the Protection of Minorities in Greece, Sèvres, 10 August 1920.

/9. Minorities in

9. Minorities in the Free City of Danzig:
Convention between Poland and the Free City of Danzig, Paris, 9 November 1920.

10. Preservation of the Language, Culture and Local Swedish Traditions of the Population of the Aaland Islands:
Resolution of the Council of the League of Nations dated 27 June 1921, approving an Agreement between the Representatives of Finland and Sweden.

11. Minorities in Albania:
Declaration made before the Council of the League of Nations by the Representative of Albania, 2 October 1921.

12. Minorities in Lithuania:
Declaration concerning the Protection of Minorities in Lithuania, Geneva, 12 May 1922.

13. Minorities in Latvia:
Declaration made by the Representative of Latvia regarding the Protection of Minorities in Latvia, and Resolution of the Council, Geneva, 7 July 1923.

14. Minorities in Turkey and in Greece:
Treaty of Peace, Lausanne, 24 July 1923.

15. Minorities in Estonia:
Resolution of the Council of the League of Nations and Declaration by the Representative of Estonia, 17 September 1923.

16. Minorities in the Territory of Memel:
Convention concerning the Territory of Memel, Paris, 8 May 1934.

17. Minorities in Iraq:
Resolution of the Council of the League of Nations of 11 May 1932, approving the Text of a Declaration to be signed by Iraq.

C. Method adopted in this study

An international obligation remains valid so long as there is no cause for its extinction. It follows that the extinction of the obligation cannot be presumed; it is essential to establish the fact which caused its extinction, such as the expiry of its period of validity or the disappearance of the object of the obligation.

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This study is divided into two parts. Part I will inquire what facts may have caused the extinction of the obligations concerning the protection of minorities. In part II the principles which have emerged from the part I will be applied to each of the relevant undertakings concerning the protection of minorities, and an endeavour will be made to decide how far the resulting obligations remain valid.

D. The present legal validity of the undertakings concerning the protection of minorities and the political aspects of the question of protection of minorities

In accordance with the request of the Council, this study is limited to the strictly legal question whether the obligations concerning the protection of minorities are still in force or not.

The question of the past and present political value of the system of international protection of minorities is outside the scope of this study.

But in order to determine whether the obligations concerning the protection of minorities are still in force or not, it is occasionally necessary to take various political factors into consideration as factual elements. Nevertheless, these factors are considered solely in regard to their possible legal consequences.

PART I

CONSIDERATION OF THE CIRCUMSTANCES WHICH MAY HAVE CAUSED THE EXTINCTION OF THE OBLIGATIONS CONCERNING MINORITIES

This problem has two aspects.

It is necessary in the first place to ascertain whether certain events do not constitute normal causes of the extinction of international obligations, and whether the undertakings relating to minorities have not thereby been terminated. The normal causes of extinction of a contractual international obligation include the expiration of the time-limit, the disappearance of the beneficiary of the obligation, the disappearance of the object of the obligation, an agreement between the parties to end the obligation etc.

Secondly, one should consider whether, on the basis of the clause rebus sic stantibus, those who undertook the obligation may not justifiably claim to be discharged therefrom on the ground of a radical change of circumstances.

In Title 1 we shall consider whether or not the obligations relating to minorities have been affected by a normal cause of extinction of an international obligation.

In Title 2 we shall consider whether there has been any general change of circumstances of such a kind as to bring into operation the clause rebus sic stantibus.

It may be noted that certain facts may be considered in turn from several different points of view. This applies, for example, to the dissolution of the League of Nations. It may be asked whether the dissolution of the League of Nations, which involved the removal of the guarantee constituted by League of Nations control over the fulfilment of the obligations, does not constitute a normal cause of extinction of the obligations. Whether this question is answered in the affirmative or the negative, it may next be asked whether the disappearance of the League of Nations guarantee does not constitute, either alone or in conjunction with other facts, a change of circumstances of such a kind as to bring into operation the clause rebus sic stantibus.

Title 1

CIRCUMSTANCES WHICH MAY HAVE CONSTITUTED ORDINARY CAUSES OF EXTINCTION OF THE OBLIGATIONS CONCERNING MINORITIES

The only circumstances likely to raise the question of the extinction of the obligations concerning the protection of minorities are the following:

1. The effects of the war,
2. The dissolution of the League of Nations,
3. The United Nations Charter and the treaties concluded after the war,
4. The territorial transfers and population movements which took place after the war.

CHAPTER I

EFFECTS OF THE WAR ON OBLIGATIONS RELATING TO THE PROTECTION OF MINORITIES

This chapter deals solely with the possible effects of the war on these obligations, disregarding the effects of the international agreements and treaties concluded after the war (see chapter III below).

With the exception if Iraq and Turkey, all the countries or territories in respect of which undertakings concerning the protection of minorities were concluded were in various ways involved in the Second World War.

Some took part in the war, or were involved therein, on the side of the Axis Powers. Bulgaria, Finland[1/], Hungary and Romania took part in the war as States. Albania, which had been absorbed into the Italian Empire, and Austria, incorporated in the German Reich in 1938, did not take part as States, but were involved as territories[2/]

Other States - Poland, Czechoslovakia and Yugoslavia - participated in the war as members of the anti-Fascist and anti-Hitlerite coalition.

What are the possible effects of the war as such on these treaty obligations?

1/ Finland is mentioned in this list merely pro memoria. This country had assumed certain minority obligations respecting the Aaland Islands in virtue of an agreement with Sweden, which remained neutral. It is universally admitted that war does not affect bilateral treaties between a belligerent and a neutral. The question dealt with in this section therefore does not arise in connexion with this agreement.

2/ In connexion with Austria it should be noted that the Austrian State, which had ceased to exist in March 1938, did not take part in the war, but the population of Austria, which became an administrative unit of the Reich, was obliged to do so. It may therefore be incorrect to speak of the treaty of peace with Austria; it is merely a question of dealing with the consequences of the war insofar as they affect Austria.

Albania was restored as an independent country, and this was confirmed by the Treaty of Peace with Italy of 10 February 1947 (See Section VI, Albania, particularly Article 31).

/Generally speaking,

Generally speaking, war suspends the application of treaties between belligerents[1]. But what becomes of such treaties after the war? The traditional doctrine was that war put an end to treaties between belligerents. This was the doctrine of an epoch when wars were more or less localized and treaties generally bilateral. In practice, the treaties of peace decided what was to become of treaties whose operation was suspended by the war. It may be noted that in accordance with this practice the treaties of peace concluded on 10 February 1947 with Italy, Romania, Bulgaria, Hungary and Finland contained a clause providing that each Allied or Associated Power was to notify the defeated Power within a period of six months from the coming into force of the Treaty which of its pre-war bilateral treaties it desired to keep in force or revive.[2]

In any case, it would seem that there are now two categories of treaties which war does not automatically terminate. In the first place, there are the multilateral treaties to which belligerents and neutral countries are parties. These would re-enter into force on the conclusion of peace, unless it is

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1/ With the exception, of course, of treaties concluded in anticipation of the state of war; e.g., the Hague Conventions of 1899 and 1907 or the Convention of 27 July 1949 relative to the Treatment of Prisoners of War.

2/ See Bulgaria (Article 8), Hungary (Article 10), Finland (Article 12), Italy (Article 44), Romania (Article 10).

Article 44 of the Treaty with Italy reads as follows:

"1. Each Allied or Associated Power will notify Italy, within a period of six months from the coming into force of the present Treaty, which of its pre-war bilateral treaties with Italy it desires to keep in force or revive. Any provisions not in conformity with the present Treaty shall, however, be deleted from the above-mentioned Treaties.

"2. All such treaties so notified shall be registered with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations.

"3. All such treaties not so notified shall be regarded as abrogated."

otherwise decided in the treaty of peace[1]. In the second place, there are the treaties relating to permanent situations of general interest[2]. This category includes for example all the collective treaties relating to subjects of general interest concluded under the auspices of the League of Nations.

Obligations undertaken for the protection of minorities would seem to fall more or less into the two above-mentioned categories. In the first place, these obligations arise either out of multilateral agreements (with two exceptions)[3], to which, in some cases, States which were neutral in the Second World War were parties[4], or out of Declarations made before the Council of the League of Nations, which represented an international community.

In the second place, international undertakings relating to minorities may be regarded as undertakings of general interest. These obligations were not undertaken in the specific interests of the other parties, but in the interest of good understanding, international order and peace.

Statements made at the Paris Peace Conference by the representatives of the Union of Soviet Socialist Republics and the United Kingdom, make it clear that the Council of Foreign Ministers were agreed that it was not essential to insert a special clause for the re-establishment of multilateral conventions, since they are only suspended by war[5].

In conclusion, it may be said that the war in itself has not caused the extinction of the obligations relating to minorities. The question of the effects of the decisions taken by the victorious Powers after the Second World War is reserved for separate consideration (see chapters III and IV).

1/ See Draft Convention of the Law of Treaties, Comments, pages 1197-98, (Harvard Research in International law, part III).
Oppenheim's International Law, 6th Edition, vol. II, 1944, page 246, by H. Lauterpacht.
Arnold D. McNair, Les effets de la guerre sur les traités - Recueil des cours de La Haye, vol. 59, 1937, I, pages 573 to 580.
Ch. Rousseau, Principes généraux du Droit international public, T.I., 1944, page 573.

2/ See authors previously cited.

3/ The first exception is the Convention between Poland and the Free City of Danzig of 9 November 1920. The second exception concerns the Aaland Islands, on which an agreement was concluded between Finland and Sweden.

4/ This applies to the treaties of peace concluded after the First World War.

5/ Doc. S(CP) J. R., 6th meeting, and (CP) Plen Doc. 24.

CHAPTER II

THE DISSOLUTION OF THE LEAGUE OF NATIONS

The dissolution of the League of Nations may have affected the undertakings concerning the protection of minorities in two ways.

In the first place, a certain number of the undertakings took the form of Declarations made before the Council of the League of Nations. Should these obligations be considered as having been undertaken towards the League of Nations and as having therefore been terminated by the dissolution of that body?

In the second place, the League of Nations guaranteed all the undertakings concerning the protection of minorities, whether these were assumed by treaty or by Declaration. Has the dissolution of the League of Nations since it involved the disappearance of the guarantee, resulted in the extinction of the obligation?

We shall not deal for the time being with the question whether the disappearance of the guarantee of the League of Nations and, more generally, the dissolution of the League of Nations, constitutes a change of circumstances capable of bringing into play the rebus sic stantibus clause (this question will be dealt with in Title 2).

A. The effect of the dissolution of the League of Nations on the Declarations made before the Council of the League of Nations

In five cases out of seventeen, the undertakings regarding the protection of minorities were the result of a Declaration made before the Council of the League of Nations, which adopted a resolution taking note of the said Declarations.[1/]

There are two conflicting theories concerning the effect of the dissolution of the League of Nations upon the obligations undertaken by means of Declarations:

1/ These five cases are as follows:

1. Minorities of Albania - Declaration of 2 October 1921;
2. Minorities of Lithuania - Declaration of 12 May 1922;
3. Minorities of Latvia - Declaration of 7 July 1923;
4. Minorities of Estonia - Declaration of 17 September 1923;
5. Minorities of Iraq - Declaration of 30 May 1932.

/1. The

1. The theory that the Declarations should be deemed to have lapsed.

The following arguments are adduced in support of this theory:

(a) The obligation was incurred towards the League of Nations.

The members of the protected minorities were the beneficiaries of the obligations undertaken, but were not themselves the persons to whom these obligations were owed, since they were not parties to the acts establishing the said obligations.1/

The obligation was owed to the League of Nations, an international legal entity, with which the States had entered into agreement. Thus, although the undertakings were made in the form of Declarations, these Declarations in fact had the character of an agreement between the State making the Declaration and the League of Nations, represented by its Council, which received the Declaration.

(b) The dissolution of the League of Nations involved the extinction of the obligation.

The disappearance of the person to whom an obligation is owed involves the extinction of the obligation, unless another legal person succeeds him.

(i) Although the United Nations has taken the place of the League of Nations, in the sense that it carries out the general functions which were exercised by the former institution, juridically speaking the United Nations is not the "successor" of the League of Nations because, for various reasons, it did not wish to assume that status.

When the United Nations wished to take over certain assets of the League of Nations, of which the Ariana Palace at Geneva was the principal element, it concluded an agreement on this subject with the League of Nations2/, as it would have done if it had been dealing with any State.

1/ At the League of Nations, great stress was laid on this point, on which there were several agreements.

This fact in itself makes it unnecessary to consider whether international law as it now stands recognizes holders of international rights and obligations other than States and inter-State international institutions. But in any case, the Secretary-General is not called upon to consider this question, under the terms of the Council's resolution.

2/ This transfer (with the exception of certain items such as the Archives) was carried out for valuable consideration.

/(ii) In virtue of

(ii) In virtue of the General Assembly resolution of 12 February 1946[1], the United Nations decided, under certain conditions, to take over certain functions and activities previously exercised by the League of Nations under treaties, conventions, and other international agreements.

Hence, it would seem that the United Nations, which did not assume de plano any of the functions exercised by the League of Nations under treaties, conventions, agreements or other instruments, can decide to assume any of these functions it wishes. It may be said that, in these specific cases, it would succeed to the obligations of the League of Nations, but this can only be done by an express decision of the General Assembly, taken at the request of the parties.

Thus, the United Nations has assumed amongst others certain functions conferred by treaties on the League of Nations in respect of narcotic drugs. But it has not decided to assume the functions conferred upon the League of Nations by the Declarations on the protection of minorities, and therefore it has not succeeded the League of Nations as the guarantor of the obligations undertaken by certain States. Such is the argument based upon the General Assembly resolution of 12 February 1946. It does not seem to be decisive (see pages 14-15 for a study of the scope of that resolution).

2. The theory that the Declarations remain valid.

Several arguments, of somewhat unequal value, it is true, have been adduced in favour of this theory.

First argument: The Declarations were in the nature of unilateral undertakings.

From a purely formal point of view, it has been said that the Declarations had the legal character of unilateral obligations assumed by the States by which they were made. Hence, the obligations contained in those Declarations could only be terminated by contrary Declarations made by the same States. Their validity would, therefore be independent of the existence of the League of Nations and, in the absence of express denunciation by the States bound by them, they should be regarded as still in force.

This argument does not seem to be valid, in view of what has been said above concerning the nature of the Declarations. They were signed by States which were applying for admission to the League of Nations. The obligations undertaken

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1/ See Resolutions adopted by the General Assembly during the first part of its first session from 10 January to 14 February 1946, page 35.

/were in the

were in the nature of a condition of their admission[1]. In the particular case of Iraq, the Declaration was signed on the occasion of the termination of the mandate conferred by the League of Nations on Great Britain, of the recognition of Iraq's independence and of its admission to the League of Nations.

Before the Declarations were made, negotiations had taken place between the Governments concerned and a representative of the Council of the League, and it was only after agreement had been reached, that the Declarations, of which the Council took note by a resolution, were made by the States concerned.

Finally, at least two of the Declarations (those of Albania and Lithuania) were registered by the Secretariat of the League of Nations and were published in the Treaty Series[2].

Second argument: The States contracted obligations towards all the individual Members of the League of Nations.

This argument seems to be unfounded. The Declarations made before the Council were addressed to the League of Nations as an association, an international entity, and not to the individual Members. Hence, an obligation contracted towards a League is absolutely different from an individual obligation towards the Members of that League.

The composition of the League of Nations during its existence varied. States which ceased to be Members of the League could no longer discuss problems of the protection of minorities as members of the Assembly, nor participate, as members of the Council, in the organized control exercised by that body over the application of obligations regarding minorities. Generally speaking, they lost any right to invoke these obligations. On the other hand, new States Members of the League of Nations acquired this right as soon as they were admitted.

When the League of Nations was dissolved, all the States Members of the League of Nations lost their status of membership. Thus, even if the obligations

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1/ The Assembly of the League of Nations, at its meeting on 15 December 1920, adopted the following resolution:

> "In the event of Albania, the Baltic and Caucasian States being admitted to the League, the Assembly requests that they shall 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."

2/ Declaration made by Albania on 2 October 1921: League of Nations Treaty Series, Vol. IX; Declaration made by Lithuania on 12 May 1922, ibid., Vol. XXII.

could be interpreted as individual obligations towards the Members of the League as such, they would have lapsed upon the dissolution of the League of Nations. Third argument: The States contracted an obligation towards the international community.

The obligations were undertaken, not towards the League of Nations as a legal entity or towards the Members of the League of Nations individually, but towards the international community of which the League of Nations was then the organ. The League of Nations has disappeared, but the international community remains and has set up a new organ, which is the United Nations.

It is true, as has been stated above (page 11) that the United Nations is not legally the successor of the League of Nations and does not exercise the functions of the former international organization as the successor of the League of Nations properly so-called. Nevertheless, the United Nations, like the League of Nations, is the representative organ of the international community, and in this capacity is naturally called upon to assume the functions exercised by the League of Nations and to take the place held by the League of Nations vis-à-vis States which had entered into obligations towards organs of the League of Nations.

This concept is corroborated by the decisions taken on the subject by the United Nations:

In the first place it should be noted that the "Interim Arrangements concluded by the Governments represented at the United Nations Conference on International Organization", signed at San Francisco on 26 June 1945 at the same time as the Charter, made the following stipulation (paragraph 4 c):

"4. The Commission[1] shall:

.....

(c) formulate recommendations concerning the possible transfer of certain functions, activities and assets of the League of Nations which it may be considered desirable for the new Organization to take over on terms to be arranged;"

In the second place, it should be noted that, in accordance with the recommendations of the Preparatory Commission, the General Assembly adopted on 12 February 1946, during the first part of its first session, resolution 24 (I) on the transfer of certain functions, activities and assets of the League of Nations, in which it is specifically stated that:

1/ The Preparatory Commission of the United Nations.

/"1. The General

"1. The General Assembly reserves the right to decide, after due examination, not to assume any particular function or power, and to determine which organ of the United Nations or which specialized agency brought into relationship with the United Nations should exercise each particular function or power assumed."

The same resolution also contains the following passage:

"C. Functions and Powers under Treaties, International Conventions, Agreements and Other Instruments Having a Political Character

The General Assembly will itself examine, or will submit to the appropriate organ of the United Nations, any request from the parties that the United Nations should assume the exercise of functions or powers entrusted to the League of Nations by treaties, international conventions, agreements and other instruments having a political character."

It is true that the General Assembly has not yet decided that the United Nations should assume the functions exercised by the League of Nations with regard to the protection of minorities, but as section C of the resolution provides for the possibility of the transfer to the United Nations of the functions and powers entrusted to the League of Nations under treaties, international conventions, agreements and other instruments having a political character, it may be concluded that the General Assembly has assumed that the dissolution of the League of Nations has not resulted in the ipso facto termination of the obligations arising out of these various instruments.

It will be noted that the General Assembly resolution refers to "powers and functions" to be assumed by the United Nations. In the case of obligations relating to the protection of minorities, the "functions" to be exercised by the international organization would have involved the guarantee of these obligations. In order that the obligations should be guaranteed however, it is essential that they should be still in force.

It is interesting to compare the case of the international mandates, which is to a great extent analogous to that of the protection of minorities. The "mandatory" Powers were bound by an agreement with the League of Nations. The United Nations Charter (Article 77) expressly stated that the Trusteeship System would apply to "territories now held under mandate".

In conclusion, it may be said that the obligations entered into by certain States by means of Declarations before the Council of the League of Nations

constituted obligations towards the League of Nations, which at that time represented the international community. Although the United Nations is not the legal successor to the League of Nations it could, as the present embodiment of the international community, take an express decision to succeed the League of Nations, as the promisee in respect of the obligations entered into by the States which made Declarations.

In these circumstances, the dissolution of the League of Nations suspended this obligation, but did not ipso facto abolish it. An express decision of the United Nations would, however, be required to put the obligation once more into force. The question arises whether, in the absence of a decision taken in that connexion by the General Assembly under resolution 24 (I) of 12 February 1946, the obligation will remain suspended indefinitely, or whether, after a certain period, which it is not for us to fix, the obligation will be regarded as having lapsed. The latter solution would seem to be a reasonable one.

B. Consequences of the disappearance of the guarantee by the League of Nations of the obligations in respect of minorities

Obligations in respect of the protection of minorities were placed under the guarantee of the League of Nations. The Council of the League exercised that guarantee in accordance with a special procedure. As the United Nations has not decided to exercise the functions conferred upon the League of Nations in the matter of the protection of minorities, the dissolution of the League has led to the lapse of the guarantee.

That being so, the question arises whether the lapse of a guarantee regarding an obligation affects the existence of the guaranteed obligation itself.

It may be replied that the existence of an obligation does not in principle depend on the existence of the guarantee attached to it. Most international obligations are not accompanied by any special guarantee. The lapse of the guarantee regarding an obligation may reduce the practical value of the latter by lessening the chances of its strict observance. The party to which the obligation is owed suffers from the lapse of the guarantee; but that is no reason to place him under a further disadvantage by considering the obligation contracted for his benefit to have been extinguished.

However, the guarantee of the League of Nations regarding obligations in respect of the protection of minorities was of a special character: while representing an advantage for the protected minorities and for the international

community the stability of which it was designed to ensure, it was also a safeguard for the States bound by the obligations. The latter were not exposed to pressure or intervention on the part of States parties to the treaties, which, as history has shown, have often given rise to abuses. The League of Nations alone had the duty of controlling and guaranteeing the observance of the obligation, and that was of considerable benefit to the States liable to it. It may therefore be said that the lapse of the League of Nations guarantee has destroyed the balance between the advantages and drawbacks derived by the contracting States from their obligations in respect of the protection of minorities.

This consideration is certainly important, but it is not decisive. It should not be forgotten that the United Nations has taken the place of the League of Nations and has assumed the general functions formerly performed by the League. Consequently, if a State were subject to abusive intervention on the part of another State, and were accused by the latter of failing to observe its obligations in respect of minorities, it would be justified in placing the matter before United Nations organs, and would benefit from the protection of the Charter.

The conclusion therefore seems warranted that so far as the ordinary causes of the lapse of international obligations are concerned, the suppression of the guarantee formerly accompanying the obligations in respect of minorities has not extinguished those obligations themselves.

The lapse of the guarantee of the League of Nations will be examined below in Title 2, dealing with the rebus sic stantibus clause.[1/]

1/ It should be noted in this connexion that under the League of Nations system for the protection of minorities, the obligations of States could be modified with "the assent of the majority of the Council of the League". That provision was of considerable importance.

CHAPTER III

THE UNITED NATIONS CHARTER AND THE TREATIES CONCLUDED AFTER THE WAR

A. The United Nations Charter

1. Absence of any reference in the Charter to the protection of minorities

Like the Covenant of the League of Nations, the United Nations Charter contains no mention of the protection of minorities.[1/] The absence of such a reference in the Charter cannot be interpreted to mean that the protection of minorities does not come within its scope. Indeed, no one would contend that any juridical situation which was not explicitly mentioned in the Charter was ipso facto outside its scope. If any confirmation of that view was necessary, it would be found in the existence of the Sub-Commission for the Prevention of Discrimination and the Protection of Minorities, a subsidiary body of the Commission on Human Rights which the Council, by its resolution 2/9 of 21 June 1946, authorized the Commission on Human Rights to set up.[2/]

For its part, the General Assembly, in its resolution 217 (III) of 10 December 1948, stated that "the United Nations cannot remain indifferent to the fate of minorities".[3/] Moreover, it has itself provided for the establishment of

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1/ The Covenant of the League of Nations contained no mention of the protection of minorities, but it appeared at the beginning of peace treaties, other parts of which contained provisions concerning the protection of minorities in the defeated countries.

2/ Official Records of the Economic and Social Council, Second Session, page 402.

"(a) The Commission on Human Rights is empowered to establish a sub-commission on the protection of minorities."

See also Report of the First Session of the Commission on Human Rights, document E/259, paragraph 8.

3/ Resolutions adopted by the General Assembly, Third Session, Part I, page 77.

In the same resolution, the General Assembly "requests the Council to ask the Commission on Human Rights and the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities to make a thorough study of the problem of minorities, in order that the United Nations may be able to take effective measures for the protection of racial, national, religious or linguistic minorities."

/a system for

a system for the protection of minorities in a specific case in its resolution 181 (II) of 29 November 1947 on "the future government of Palestine".[1]

2. The concept of human rights embodied in the United Nations Charter

(a) The United Nations Charter recognized a new concept which did not appear in the Covenant of the League of Nations, the concept of human rights and non-discrimination.[2]

The protection of human rights is a substantial element in the protection of minorities. The obligations regarding the protection of minorities provided that minority groups should enjoy personal and civil liberties, in fact what has been termed human rights, and that they should not be subjected to discriminatory measures as compared with other elements of the population.

Consequently, might it not be said that the United Nations Charter, by adopting the concept of human rights, which to a large extent coincides with the idea of the protection of minorities, intended to substitute the former concept for the latter and thus implicitly abrogated the special obligations regarding the protection of minorities?

(b) The question might be answered in the negative for the following reasons:

In the first place, respect for human rights and non-discrimination on the one hand, and the protection of minorities on the other, are concepts which do not entirely coincide. The protection of minorities is a broader concept; it includes a particular element, namely the right to enjoy special privileges (for example, the right to use the minority language in the courts and in official documents) and to maintain special institutions (schools etc.), sometimes with State aid, in order to enable the minority group to retain its individual characteristics[3].

1/ Resolution adopted by the General Assembly at its second session, page 131.

2/ See Preamble and Articles 1, 13, 55, 62, 68 and 76 of the Charter.

3/ See next page for footnote.

/Footnote

Footnote from preceding page:

3/ The Sub-Commission on the Prevention of Discrimination and Protection of Minorities proposed to the Commission on Human Rights the following definitions in connexion with the prevention of discrimination and the protection of minorities:

"1. Prevention of discrimination is the prevention of any action which denies to individuals or groups of people equality of treatment which they may wish.

"2. Protection of minorities is the protection of non-dominant groups which, while wishing in general for equality of treatment with the majority, wish for a measure of differential treatment in order to preserve basic characteristics which they possess and which distinguish them from the majority of the population. The protection applies equally to individuals belonging to such groups and wishing the same protection. It follows that differential treatment of such groups or of individuals belonging to such groups is justified when it is exercised in the interest of their contentment and the welfare of the community as a whole. The characteristics meriting such protection are race, religion and language. In order to qualify for protection, a minority must owe undivided allegiance to the Government of the State in which it lives. Its members must also be nationals of that State.

"If a minority wishes for assimilation and is debarred, the question is one of discrimination and should be treated as such." (See document E/CN.4/52, page 13, Section V)

It is true that at its second session the Commission on Human Rights approved only the first of the two texts, that relating to the prevention of discrimination (see document E/600, paragraph 39) and that it deferred consideration of the second text which defined the protection of minorities to its third session (see document E/600, paragraph 40) and then to the following session (see document E/800, paragraph 18). It is none the less true that the Commission also considered that there was a difference between the two ideas.

During its third session the Sub-Commission adopted another resolution on the definition of minorities for the purpose of the measures to be taken for protection by the United Nations (document E/CN.4/358/E/CN.4/Sub.2/119 of 30 January 1950, page 15).

In this connexion, reference should be made to the following two studies prepared by the Secretary-General: "The Main Types and Causes of Discrimination" (E/CN.4/Sub.2/40/Rev.1 of 7 June 1949) and "Definition and Classification of Minorities" (E/CN.4/Sub.2/85 of 27 December 1949).

/In the second

In the second place, it frequently happens that different instruments regulate the same situation to a varying extent. If those instruments are not contradictory, there is no reason to consider that one abrogates the other.

It may therefore be concluded that there is no reason to consider that the United Nations Charter implicitly abrogates the undertakings in the field of the protection of minorities.

No doubt the fact that the idea of the protection of human rights and of non-discrimination has been adopted by the United Nations Charter is of considerable interest to the general question which we are considering, but that interest exists only if other points of view are considered, for example that of the application of the clause rebus sic stantibus.

B. Treaties of Peace Following the Second World War

Treaties of peace were concluded in Paris on 10 February 1947 with Bulgaria, Finland, Hungary, Italy and Romania which had taken part in the war on the side of Germany. A treaty with Austria is under discussion. The case of Albania is a separate one.[1/]

All those treaties of peace contain provisions regarding the protection of human rights[2/] and do not contain provisions regarding the protection of minorities.

1/ Albania, which was bound by a Declaration made before the Council at the time of its admission to the League of Nations, was absorbed in 1939 by the Italian Empire. The Treaty of Peace of 10 February 1947 with Italy recognizes the re-establishment of the State of Albania without requiring the signature of a treaty of peace.

2/ Treaty of Peace with Bulgaria signed in Paris on 10 February 1947:

Article 2: "Bulgaria shall take all measures necessary to secure to all persons under Bulgarian jurisdiction, without distinction as to race, sex, language or religion, the enjoyment of human rights and of the fundamental freedoms, including freedom of expression, of press and publication, of religious worship, of political opinion and of public meeting."

Treaty of Peace with Finland signed in Paris on 10 February 1947:

Article 6: "Finland shall take all measures necessary to secure to all persons under Finnish jurisdiction, without distinction as to race, sex, language or religion, the enjoyment of human rights and of the fundamental freedoms, including freedom of expression, of press and publication, of religious worship, of political opinion and of public meeting."

(Footnote continued on following page)

/Footnote

2/ (Footnote continued from preceding page):

Article 7. "Finland, which in accordance with the Armistice Agreement has taken measures to set free, irrespective of citizenship and nationality, all persons held in confinement on account of their activities in favour of, or because of their sympathies with, the United Nations or because of their racial origin, and to repeal discriminatory legislation and restrictions imposed thereunder, shall complete these measures and shall in future not take any measures or enact any laws which would be incompatible with the purposes set forth in this Article."

Treaty of Peace with Hungary, signed in Paris on 10 February 1947:
Article 2. "1. Hungary shall take all measures necessary to secure to all persons under Hungarian jurisdiction, without distinction as to race, sex, language or religion, the enjoyment of human rights and of the fundamental freedoms, including freedom of expression, of press and publication, of religious worship, of political opinion and of public meeting.

"2. Hungary further undertakes that the laws in force in Hungary shall not, either in their content or in their application, discriminate or entail any discrimination between persons of Hungarian nationality on the ground of their race, sex, language or religion, whether in reference to their persons, property, business, professional or financial interests, status, political or civil rights or any other matter."

Treaty of Peace with Italy, signed in Paris on 10 February 1947:
Article 15. "Italy shall take all measures necessary to secure to all persons under Italian jurisdiction, without distinction as to race, sex, language or religion, the enjoyment of human rights and of the fundamental freedoms, including freedom of expression, of press and publication, of religious worship, of political opinion and of public meeting."

Treaty of Peace with Romania, signed in Paris on 10 February 1947:

Article 3. "1. Romania shall take all measures necessary to secure to all persons under Romanian jurisdiction, without distinction as to race, sex, language or religion, the enjoyment of human rights and of the fundamental freedoms, including freedom of expression, of press and publication, of religious worship, of political opinion and of public meeting.

"2. Romania further undertakes that the laws in force in Romania shall not, either in their content or in their application, discriminate or entail any discrimination between persons of Romanian nationality on the ground of their race, sex, language or religion, whether in reference to their persons, property, business, professional or financial interests, status, political or civil rights or any other matter."

/In the case

In the case of Bulgaria, Hungary and Romania the question arises whether the new treaties of peace implicitly abrogated, or considered as abrogated, the provisions of previous treaties[1/] (treaties of peace concluded after the First World War in the case of Bulgaria and Hungary, and minorities treaty in the case of Romania) which established a regime for the protection of minorities.

In the case of Austria, which is bound by the Treaty of Peace of 1919 embodying provisions relating to the protection of minorities,[2/] the "State treaty" which is to take the place of a treaty of peace has not yet been concluded, but it is in preparation and the draft provisions have been of great benefit to us in our study.

As regards Finland, the minorities protection regime previously established concerns only the Aaland Islands, which are in a very special category, and not the whole of Finnish territory. The case of Finland is therefore of no particular interest.

As Italy had not entered into any obligations regarding its minorities its case is not of any interest.

Two questions should be studied in succession: (1) Could the authors of the new treaties of peace abrogate the provisions relating to the protection of minorities contained in previous treaties, and (2) did they wish to abrogate them?

1/ Treaty of Peace signed at Neuilly on 27 November 1919 with Bulgaria (Articles 49 to 57)

Treaty of Peace signed at Trianon on 4 June 1920 with Hungary (Articles 54 to 60)

Minority Treaty signed at Paris on 9 December 1949 between the principal Allied and Associated Powers and Romania (treaty of twelve articles).

2/ Treaty of Peace between the Allied and Associated Powers signed at St.-Germain-en-Laye on 10 September 1919 (Articles 62 to 69).

1. Did the authors of the new peace treaties have the power to abrogate the provisions regarding the protection of minorities contained in previous treaties?[1]

The reason why this question must be asked is that the list of States parties to the new treaties of peace is not identical with the list of States parties to the earlier treaties setting up a minorities protection regime.

Some of the States parties to the previous treaties, such as Italy, fought on the side of Germany; that is sufficient to explain their non-participation in the new treaties. But others were neutrals during the Second World War, and others again were reckoned as being among the United Nations, but were not at war with Bulgaria, Hungary or Romania or did not take part in the war in Europe.[2] Could the new peace treaties concluded without the participation of these two categories of States abrogate the clauses affecting the protection of minorities contained in the previous treaties to which they

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1/ It had been stipulated in the instruments setting up a minorities protection regime that that regime could be modified only with the assent of the majority of the Council of the League of Nations. The dissolution of the League of Nations has rendered this procedure for amendment or abrogation inapplicable.

2/ The preamble to the Treaty of Peace with Bulgaria opens with an enumeration of the States parties to the treaty and states the reasons for which these States are parties to it: "The Union of Soviet Socialist Republics ... and the People's Federal Republic of Yugoslavia, as the States which are at war with Bulgaria and actively waged war against the European enemy States with substantial military forces, hereinafter referred to as 'the Allied and Associated Powers', of the one part, and Bulgaria, of the other part..."

/had been parties?

had been parties?[1/]

It is a principle of international law that, for a treaty to be properly amended, the assent of all the States parties thereto must be obtained.

1/ Case of Bulgaria

The Treaty of Peace of Paris, 1947, was signed by the following twelve Powers:

Australia, Byelorussian SSR, Czechoslovakia, Greece, India, New Zealand, Ukrainian SSR, Union of South Africa, Union of Soviet Socialist Republics, United Kingdom, United States of America, People's Federal Republic of Yugoslavia.

The Treaty of Peace of Neuilly, 1919, bore the signatures of the following ten Powers which do not appear in the 1947 Treaty: Belgium, Canada, China, France, Hedjaz, Italy, Japan, Poland, Portugal, Romania.

Case of Hungary

The Treaty of Peace of Paris, 1947, was signed by the following twelve Powers:

Australia, Byelorussian SSR, Canada, Czechoslovakia, India, New Zealand, Ukrainian SSR, Union of South Africa, Union of Soviet Socialist Republics, United Kingdom, United States of America, People's Federal Republic of Yugoslavia.

The Treaty of Peace of Trianon, 1920, bore the signatures of the following thirteen Powers which do not appear in the 1947 Treaty:

Belgium, China, Cuba, France, Greece, Italy, Japan, Nicaragua, Panama, Poland, Portugal, Romania, Siam.

Case of Romania

The Treaty of Peace of Paris, 1947, was signed by the following ten Powers:

Australia, Byelorussian SSR, Canada, Czechoslovakia, India, New Zealand, Ukrainian SSR, Union of South Africa, Union of Soviet Socialist Republics, United States of America.

The minorities treaty with Romania of 1919 bore the signatures of the five principal Allied and Associated Powers of that time, namely, France, Great Britain, Italy, Japan and the United States of America. Consequently, three Powers, France, Italy and Japan, do not appear among the signatories of the 1947 Treaty although they were signatories of the 1919 Treaty.

With regard to Italy, Article 18 of the Treaty of Peace of 10 February 1947 embodies that country's undertaking "to recognize the full force of the Treaties of Peace with Romania, Bulgaria, Hungary and Finland and other agreements or arrangements which have been or will be reached by the Allied and Associated Powers in respect of Austria, Germany and Japan for the restoration of peace".

The treaty of peace with Japan, another State defeated in the Second World War, will certainly include a similar provision.

/It is to be

It is to be noted, however, that it is the regular practice for a peace conference or congress after a war or an international crisis to abrogate the territorial or political clauses of former treaties, even when the list of the parties to the new treaty does not coincide with that of the previous ones. In such an event, the assent of the States directly concerned by the change is obtained, and it is believed that the assent of the other States not directly concerned by the change in question can be dispensed with.

As it happens, however, the provisions for the protection of minorities were not stipulated in the particular interest of the States towards whom an obligation was undertaken, and they do not, strictly speaking, confer any benefits upon them.

The fact that the obligations with regard to the protection of minorities are of general concern is shown by the fact that the Powers which adopted systems for the protection of minorities after the First World War gave the Council of the League of Nations the power to modify those stipulations by majority decisions.1/

1/ In the minorities treaties with Greece (Article 16), Poland (Article 12), Romania (Article 12), the Kingdom of Serbs, Croats and Slovenes (Article 11) and Czechoslovakia (Article 14) the following clause appears:

> "They (the stipulations in favour of minorities) 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."

The text of the peace treaties was slightly different:

> "They shall not be modified without the assent of a majority of the Council of the League of Nations. The Allied and Associated Powers represented on the Council severally 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."

(Footnote continued on following page)

2. Did the authors of the new peace treaties intend to abrogate the provisions of the treaties relating to the protection of minorities or did they consider those provisions to be already devoid of validity?

As has been said, the new treaties, while they secure to all persons under Bulgarian, Hungarian and Romanian jurisdiction (i.e., to minority elements as well as to other elements of the population) the enjoyment of human rights and non-discrimination, do not reproduce the provisions affording special rights to minorities included in the earlier treaties.

It would probably not be correct to say that the authors of the new peace treaties intended to abrogate by implication the provisions of earlier treaties relating to the protection of minorities. The truth seems to be that they considered that events had already deprived these provisions of validity and that they remedied the resulting omission by inserting in the new treaties other provisions which in part reproduced the provisions of the earlier treaties. The following observations support that interpretation:

(a) The fact that the new treaties took care to provide for the general recognition of human rights and non-discrimination.

It would of course be possible to take the view that the authors of the new treaties, while regarding the obligation laid down in the earlier treaties as still in force, nevertheless wished to restate that obligation in the new treaties and thus to give it greater force. They would thereby have imposed

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1/ (Footnote continued from preceding page):

See the Treaty of Peace of St.-Germain with Austria (Article 69); the Treaty of Peace of Neuilly with Bulgaria (Article 57), the Treaty of Peace of Trianon with Hungary (Article 60).

The Treaty of Peace with Turkey signed at Lausanne reproduces the wording of the minorities treaties.

Similar provisions are to be found in the Declarations made by Albania (Article 7) and Lithuania (Article 9) at the time of their admission to the League of Nations and in the Declaration made by Iraq (Article 10).

on a State on which an obligation already rested, an obligation towards States other than those which were parties to the earlier treaties and would have given the obligation set forth in the new treaties a more systematic and comprehensive form.1/

1/ The obligation relating to human rights and to the absence of discrimination was set forth in the earlier treaties in the following terms:

Treaty of Peace of Neuilly with Bulgaria:

Article 50: "Bulgaria undertakes to assure full and complete protection of life and liberty to all inhabitants of Bulgaria without distinction of birth, nationality, language, race or religion.

"All inhabitants of Bulgaria 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 or public morals."

Article 53: "All Bulgarian nationals shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language or religion.

Difference of religion, creed or profession shall not prejudice any Bulgarian 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...."

Article 54: "Bulgarian nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Bulgarian nationals."

Treaty of Peace of Trianon with Hungary:

Article 55: "Hungary undertakes to assure full and complete protection of life and liberty to all inhabitants of Hungary without distinction of birth, nationality, language, race or religion.

"All inhabitants of Hungary 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 or public morals."

Article 58: "All Hungarian 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 or confession shall not prejudice any Hungarian 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...."

"Hungarian nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Hungarian nationals..."

(Footnote continued on following page)

/(b) The fact

(b) The fact that the new treaties contain no provision conferring particular rights on minorities.

(i) If the authors of the new treaties had wished minorities to retain special rights to enable them to maintain their individuality, there is no reason why they should not have used the same method as for human rights and non-discrimination and should not have inserted provisions to that effect

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1/ (Footnote continued from preceding page):

Minorities Treaty with Romania:

Article 2: "Romania undertakes to assure full and complete protection of life and liberty to all inhabitants of Romania without distinction of birth, nationality, language, race or religion.

"All inhabitants of Romania 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."

Article 8: "All Romanian 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 or confession shall not prejudice any Romanian 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..."

Article 9: "Romanian nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Romanian nationals..."

/in the peace

in the peace treaties.[1/] That would have appeared the logical course since these provisions granting special rights to minorities are of an exceptional nature; since it was these provisions which had, in practice, given rise to the greatest number of difficulties; and since this system appeared to have a particular connexion with the guarantee of the League of Nations.

1/ See the Treaty of Peace of Neuilly with Bulgaria.

Article 53: ". . . No restriction shall be imposed on the free use by any Bulgarian national of any language in private intercourse, in commerce, in religion, in the press or in publications of any kind, or at public meetings."

Article 54: "Bulgarian nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Bulgarian 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 language and to exercise their religion freely therein."

Article 55: Bulgaria will provide in the public educational system in towns and districts in which a considerable proportion of Bulgarian nationals of other than Bulgarian speech are resident adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such Bulgarian nationals through the medium of their own language. This provision shall not prevent the Bulgarian Government from making the teaching of the Bulgarian language obligatory in the said schools.

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

Treaty of Peace of Trianon with Hungary.

See the corresponding provisions of Articles 58 and 59.

Minorities Treaty with Romania.

See the corresponding provisions of Articles 8, 9 and 10.

/(ii) It should

(ii) It should be noted that the old system of protection of minorities was referred to by various delegations at the Peace Conference. The remarks made were very significant. The speakers only spoke of the old system to condemn or reject it, either expressly or by implication.

Mr. Tatarescu, representing Romania, stated on 2 September 1946:-

> "Romania declares that she accepts not only all the international guarantees provided for in this field by the Charter but also any non-discriminatory procedure which would supplement where necessary such guarantees. She could not, however, agree to any system reminiscent of the old minorities statute, which was introduced after the First World War and did not have very happy consequences." 1/

On 14 August 1946, the representative of Hungary, after referring to the minorities protection system and asserting that the misuse of the system could not justify the abandonment of all guarantees, added:

> "It is known to the Hungarian Government that the United Nations Organization intends to prepare a charter on human rights. This will take time. ..... It would then seem necessary, until the entry into force of the code to be issued by the United Nations Organization, to come to an agreement whereby the States with a mixed central and eastern European population should pledge themselves to respect the exercise of these liberties." 2/

The representative of Australia stated on 21 September 1946, before the Political and Territorial Commission for Italy, that "the origin of the United States proposal goes back to the minority treaties at the termination of the last war ... but the minority treaties went further because they contained the fundamental law clause which was in practically the same terms as the Australian amendment,3/ and to this extent you must agree that these treaties are a retrogression compared with those of Versailles."

1/ Statement by Mr. Tatarescu before a joint meeting of the Political and Territorial Commissions for Hungary and Romania.

The Romanian representative also stated: "After the unfortunate experiments made between the two wars with the treaties concluded in 1919-1920 which imposed minority obligations on one class of States only, to the detriment of the principle of the legal equality of all States, the United Nations Charter adopted the broader conception of the international protection of human rights. As compared with the old minorities protection system this innovation had the advantage of establishing a uniform system for all parties, whether majorities or minorities, and protected the individual as such, irrespective of race, sex, language or religion." (Doc. CP(ROU/P) Doc. 8, p. 13)

2/ Document C.P. (PLEN) 17, p. 5.

3/ The amendment concerned a proposal for the creation of a court of human rights.

/It is true

It is true that Romania and Hungary were interested parties, as they had obligations regarding the protection of minorities.

Australia, on the other hand, was entirely disinterested.

(c) Case of the treaty with Austria:

It should be noted that it has been decided to insert in the "State treaty" being negotiated with Austria clauses relating to the protection of the Croatian and Slovenian minorities. Nevertheless, the Treaty of Peace with Austria signed at St.-German-en-Laye on 10 September 1919 contained provisions regarding the protection of minorities[1/] which were similar to those included in the other peace treaties of the same period.

1/ Treaty of Peace of St.-Germain-en-Laye with Austria:

Article 66: "... No restriction shall be imposed on the free use by any Austrian 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 Austrian Government of an official language, adequate facilities shall be given to Austrian nationals of non-German speech for the use of their language, either orally or in writing, before the courts."

Article 67: "Austrian nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Austrian 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 language and to exercise their religion freely therein."

Article 68: "Austria will provide in the public educational system in towns and districts in which a considerable proportion of Austrian nationals of other than German speech are resident adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such Austrian nationals through the medium of their own language. This provision shall not prevent the Austrian Government from making the teaching of the German language obligatory in the said schools.

"In towns and districts where there is a considerable proportion of Austrian 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 budgets for educational, religious or charitable purposes."

CHAPTER IV

TERRITORIAL TRANSFERS AND POPULATION MOVEMENTS UNDERTAKEN AS A RESULT OF THE WAR

Both during and after the last war considerable changes took place with respect to the status or territorial composition of certain States or territories subject to obligations in regard to the protection of minorities; furthermore, considerable movements of population occurred, primarily involving elements which had previously constituted minorities.

Obviously, wherever minority populations have disappeared from a territory either as a result of annihilation - which was unfortunately the case for the Jews - or compulsory transfer to the territory of another State - as was the case for the bulk of the German minorities in Poland, Czechoslovakia and Hungary - or because they had fled without hope of returning, their protection is no longer necessary. It is no less obvious that wherever a territorial change led to the incorporation of elements previously constituting minority groups into the State to which they were related by their national characteristics, they have ceased to constitute a minority and are no longer in need of protection.

Yet however interesting these considerations may be, they do not exhaust the topic, and, except in cases where all the minority elements have completely disappeared, certain questions still arise.

(Observation: It is assumed that the decisions involving territorial changes or population transfers were valid in all cases from the point of view of international law.)

A. Effects of territorial changes

There are many types of changes. In cases such as that of the Free City of Danzig and of the Memel Territory, it is the territory subject to the minorities protection regime which has disappeared as a political entity.[1/]

In other cases, part of the territory of a State subject to obligations with respect to the protection of minorities has been transferred to another

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1/ No account is taken of the temporary annexation by Hitlerite Germany of the Free City of Danzig and of the Memel Territory. The former has become part of Poland, the latter part of the USSR.

State which was not subject to those obligations. Instances are the eastern portion of Poland and Sub-Carpathian Russia, both now part of the USSR.

Finally, a State subject to obligations with respect to the protection of minorities has been able to annex new territories. Poland, for instance, has annexed territories which, prior to 1939, were part of Germany.

One principle appears to provide the key to all these situations. The obligations with respect to the protection of minorities are the "personal" obligations of the State or territories subject to such obligations. They were entered into by a particular State or territory on the basis of its special situation at a given period. A change in territorial sovereignty very often means that the problem takes on an entirely different aspect for the territory concerned. A protected minority may cease to be a minority, whereas the group previously constituting the majority may become a minority. Consequently, the "successor" State which absorbs an autonomous territory or which annexes an area detached from another State does not inherit the obligations of that area or State with respect to the protection of minorities.

Once the territorial change has taken place, a new system for the protection of minorities may be established to replace the former system if this is considered necessary.

B. Effects of population movements

As previously stated, a minority group which for various reasons has ceased to exist no longer needs protection; moreover, if all minority elements in any State have disappeared, the minorities protection regime comes to an end since it serves no further purpose.

Questions arise however, if some minority groups still exist.

1. Case of minority elements which, by reason of an exception made in their favour, have escaped compulsory transfer

On 2 August 1945, at Potsdam, the United States of America, the United Kingdom of Great Britain and Northern Ireland and the Union of Soviet Socialist Republics decided that the transfer to Germany of German populations remaining in Poland, Czechoslovakia and Hungary should be undertaken.[1/]

1/ Report of the Berlin Conference, Berlin, 2 August 1945.
"The three Governments, having considered the question in all its aspects, recognize that the transfer to Germany of German populations, or elements thereof, remaining in Poland, Czechoslovakia, and Hungary, will have to be undertaken. They agree that any transfers that take place should be effected in an orderly and humane manner...".

/The result

The result of that decision was that the minorities protection regime ceased to serve any useful purpose with regard to the German populations transferred to Germany.

Also to be considered, however, is the case of Germans whom the Polish, Czech and Hungarian Governments allowed to remain in their territories, although legally in a position to force them to leave. Can it be claimed that in this case the minorities protection regime should continue to be applied in favour of such persons?

A negative reply would appear to be justified. If the aforementioned Governments were entitled to remove the German populations compulsorily from their territories, and if, as a favour, they allowed some of those concerned to remain, they were entitled to stipulate that such persons should no longer benefit from an exceptional regime, according to the maxim that the greater power includes the lesser. Otherwise, the minorities protection regime introduced for the benefit of minorities might turn out to their disadvantage, since a State legally empowered to expel minorities would be unable to allow them to remain without granting them exceptional treatment and it would thus be encouraged to expel groups which it might have allowed to remain if it could have applied to them the ordinary law.

Can this decision taken by the three Great Powers parties to the Potsdam Agreement be invoked in the case of the other States parties to the minorities Treaty of 28 June 1919 concerning Poland?[1/]

Reference should be made to what was said earlier with respect to the right of the authors of new peace treaties to undo or contradict the terms of previous peace treaties.

2. Case of other minorities not subject to compulsory transfer

In the three countries previously mentioned, however, the Germans were not the only minority to benefit from the minorities protection regime. The Potsdam decision does not affect the other racial, religious or linguistic minorities which also had the benefit of that regime.

1/ With Italy and Japan out of the picture, there remain France, the British Dominions and India, who signed the Treaty of 28 June 1919 but are not at present bound by the signature of the United Kingdom.

Title 2

CHANGE OF CIRCUMSTANCES

(Rebus sic stantibus clause)

General Considerations

1. International law recognizes that in some cases an important change of the factual circumstances from those under which a treaty was concluded may cause that treaty to lapse. In such cases the clause rebus sic stantibus applies if invoked by the Governments.[1/]

But if international law recognizes the clause "rebus sic stantibus", it only gives it a very limited scope and surrounds it with restrictive conditions, so much so that the application of the clause acquires an exceptional character. Political circumstances are changing continuously but without thereby affecting the existence of treaties. The interest which a treaty has for a State at the time of its conclusion may subsequently diminish or disappear without enabling that State legitimately to invoke that fact in order to divest itself of its obligations.

1/ Legal doctrine recognizes the clause rebus sic stantibus. Governments have often invoked it. (See Charles Rousseau, Principes généraux de droit international public, vol. I, 1944, pages 594-605). The clause has been invoked twice before the Permanent Court of International Justice by the French Government. The first occasion was in connexion with the case of the nationality decrees issued by the French Government concerning Tunisia and Morocco. The Court did not pronounce upon the applicability of the clause, (see Advisory Opinion of 7 February 1923, Series B, No. 4).

The second time was in connexion with the case of the free zones of Upper Savoie and of the Pays de Gex. The Court was of the opinion that no change of circumstances had occurred entailing the lapse of the treaty. It stated on this point:

"The French argument that the institution of the Swiss Federal Customs in 1849 justifies a claim that, by reason of the change in the circumstances in view of which the zones were set up, the old stipulations by virtue of which the zones were created have lapsed, therefore fails from lack of proof that the zones were in fact established in view of the existence of circumstances which ceased to exist when the Federal Customs were instituted in 1849.

"As the French argument fails on the facts, it becomes unnecessary for the Court to consider any of the questions of principle which arise in connexion with the theory of the lapse of treaties by reason of change of circumstances, such as the extent to which theory can be regarded as constituting a rule of international law, the occasions on which and the method by which effect can be given to the theory if recognized..." (See Judgment of 7 June 1932, Series AB, No. 46).

/The

The Secretary-General is not required to define in this study the conditions that must be fulfilled in order to bring into operation the clause rebus sic stantibus which in legal doctrine has led to differences of opinion and of which the international Courts have not so far had occasion to give a detailed definition. The Secretary-General thinks that if it were necessary for a statement to be made on this point, it would be preferable to leave that task to a high international authority such as the International Court of Justice. Furthermore, it should be noted that the question of treaties is on the agenda of the second session of the International Law Commission and that the clause rebus sic stantibus forms part of this question.

The Secretary-General thinks, however, that for the purpose of the present study he should be guided by a restrictive definition of the clause[1/] without wishing to affirm thereby that this definition should be adopted by the Courts or other international authorities which may be called upon to pronounce upon the scope of the clause. He will set out from the assumption that the following conditions must be fulfilled if the clause rebus sic stantibus is to apply. In the first place it is necessary that certain factual conditions which existed at the moment of the conclusion of the treaty and in the absence of which the parties would not have concluded that treaty, should have disappeared. In the second place, the new circumstances should differ substantially from those which existed at the time when the treaty was concluded, so as to render its application morally and politically impossible.

2. If a change in circumstances has occurred such as to justify the clause rebus sic stantibus being invoked, what procedure should be followed by the State invoking the clause in order to divest itself of its obligations?

The State invoking the said clause may not, it would seem, divest itself on its own authority alone. It should obtain the consent of the other Contracting Parties[2/].

1/ In "Research in International Law under the Auspices of the Faculty of the Harvard Law School, Part III", will be found a list of opinions expressed by authors on the clause rebus sic stantibus: (cf. pages 1111 et seq.)

2/ The Protocol signed on 17 January 1871 at the London Conference states: "The Powers recognize that it is an essential principle of the law of nations that they may divest themselves of the obligations of a treaty, or modify its stipulations, only with the consent of the Contracting Parties by virtue of an amicable understanding."

Without such consent, it should secure recognition of the validity of its claim by a competent international organ[1] such as one of the executive organs of the United Nations or the International Court of Justice.

The Secretary-General confines himself to these comments, in the belief that he need not concern himself with this question in all its aspects. It will be enough to indicate the principle changes in circumstances which might be taken into consideration.

3. It should be examined whether, as regards the protection of minorities, both the general political conditions of the international world and the special conditions of the States having incurred obligations have changed so radically that the clause rebus sic stantibus is applicable.

Four important factors may be mentioned which have become operative since the obligations concerning the protection of minorities were incurred, viz:

(1) The dissolution of the League of Nations;

(2) The operation of the minorities protection regime between the two wars;

(3) The considerable changes in the position of the States bound by, or particularly interested in, the obligations concerning the protection of minorities;

(4) The recognition of human rights and of the principle of non-discrimination by the United Nations Charter.

1/ This solution was adopted in Articles 2 and 7 of the Protocol of Friendship and Co-operation between the Republic of Colombia and the Republic of Peru, signed at Rio de Janeiro on 24 May 1934 (see League of Nations Treaty Series, Vol. CLXIV page 31)

CHAPTER V

THE DISSOLUTION OF THE LEAGUE OF NATIONS

Historically and politically the protection of minorities was bound up with the League of Nations system which disappeared with the Second World War. The general and frequently stated opinion of Governments is that the League of Nations system and everything connected with it no longer has any legal existence. As has already been stated, the authors of the recent peace treaties apparently considered that the obligations in respect of minorities had not been either abrogated or confirmed since they no longer existed.

The dissolution of the League of Nations, however, had two particular consequences of great importance from the point of view of a change of circumstances namely, the disappearance of the League of Nations guarantee and the possibility of the modification of the minorities protection regime by the Council of the League of Nations.

A. Dissolution of the League of Nations guarantee

We have already examined that dissolution (pages 28-30) with a view to determining whether it could not constitute a normal cause of extinction of the obligations and we concluded that it could not.

In practice, however, the League of Nations guarantee formed a very important part of the system of protection of minorities, and it was regarded as such at the time the obligations were assumed. The disappearance of that guarantee, while largely detracting from the value of the system, constitutes a new factor of considerable importance.

B. The possibility of a modification of obligations by the Council of the League of Nations no longer exists

The Treaties and Declarations concerning the protection of minorities provided that the obligations assumed by States could be modified with "the assent of the majority of the Council of the League".

That clause made it possible to reduce or even to terminate completely the obligation assumed by a State. The dissolution of the League of Nations put an end to that procedure which presented certain advantages from the point of view of the States which had assumed obligations. Thenceforward those obligations could only be modified with the consent of all the other contracting Parties. The whole balance of the system was thereby upset.

/CHAPTER VI

CHAPTER VI

THE RECOGNITION OF HUMAN RIGHTS AND OF THE PRINCIPLE OF NON-DISCRIMINATION BY THE UNITED NATIONS CHARTER

As we have already stated, the United Nations Charter embodied the principles of respect of human rights and of non-discrimination on grounds of race, sex, language or religion. On 10 December 1948, in application of the Charter, the General Assembly enacted a Universal Declaration of Human Rights in which those rights are defined.1/

1/ Obligations concerning human rights were inserted in the peace treaties concluded with the defeated States. (Bulgaria, Article 2; Finland, Article 6; Hungary, Article 2; Italy, Article 15; Romania, Article 3)

The Trusteeship Agreements contain a reference to human rights.

Article 3 of the Trusteeship Agreement for the Territory of Togoland under British Administration, approved by the General Assembly on 13 December 1946 states: "The Administering Authority undertakes to administer the Territory in such a manner as to achieve the basic objectives of the International Trusteeship System laid down in Article 76 of the United Nations Charter".

See also: Trusteeship Agreement for the Territory of the Cameroons under British Administration, approved by the General Assembly on 13 December 1946 (Article 3);

Trusteeship Agreement for the Territory of Tanganyika under British Administration, approved by the General Assembly on 13 December 1946 (Article 3);

Trusteeship Agreement for the Territory of New Guinea under Australian Administration, approved by the General Assembly on 13 December 1946 (Article 3);

Trusteeship Agreement for the Territory of Togoland under French Administration, approved by the General Assembly on 13 December 1946 (Article 2);

Trusteeship Agreement for the Territory of Cameroons under French Administration, approved by the General Assembly on 13 December 1946 (Article 2);

Trusteeship Agreement for the Territory of Ruanda-Urundi under Belgian Administration, approved by the General Assembly on 13 December 1946 (Article 3);

Trusteeship Agreement for the Territory of Western Samoa under the Administration of New Zealand, approved by the General Assembly on 13 December 1946 (Article 4);

Trusteeship Agreement for the Territory of Nauru under the Administration of Australia, New Zealand and the United Kingdom, approved by the General Assembly on 1 November 1947 (Article 3);

Trusteeship Agreement for the former Japanese Mandated Islands, approved by the Security Council on 2 April 1947 (Article 4).

/Respect for

Respect for the rights and fundamental freedoms of man and non-discrimination are the first two elements in the minorities protection system established after the First World War. Only the third element in that system, namely, the recognition of special rights (right to use the mother tongue in public documents and proceedings, right to maintain educational and cultural institutions with State assistance) is omitted from the provisions contained in the Charter. The first two elements, however, are of considerable value and, if they were implemented by States, they would guarantee minorities against the persecutions, petty restrictions and discrimination to which they are exposed.

There are two differences between the regime for the protection of human rights and the regime for the protection of minorities which reflect contemporary trends in law and international policy. In the first place, respect for human rights and non-discrimination are principles of universal application, whereas the minorities protection regime was an exceptional regime which applied to a minority of States. In the second place, respect for human rights and non-discrimination apply within the State to all individuals, whereas the minorities protection regime was an exceptional regime established for the benefit of one section of the population.

That does not mean that the protection of minorities cannot, in certain special cases, be retained or adopted even in the world of today. But it is a system which has to a large extent been supplanted by another and which does not possess the standing that it had immediately after the First World War.

CHAPTER VII

OPERATION OF THE MINORITIES PROTECTION REGIME IN THE INTER-WAR PERIOD

Experience has shown that in most cases the minorities protection regime has not given the expected results.

A. National minorities

One of the aims of those who initiated the minorities protection regime was to consolidate peace and understanding among nations.

It was hoped that the defeated countries would reconcile themselves more readily to the loss of territory they had suffered if the minority groups detached from them were well-treated and allowed to retain their culture and national characteristics. It was also hoped that minorities which were satisfied with their lot would become loyal citizens of the States to which they had been transferred. Those hopes were rudely dashed by the facts in the case of Germany and Hungary and of the German and Hungarian minorities in the adjacent countries.

Immediately after the Second World War, the realization of the dangers which the existence of certain national minorities might entail for a State led to mass transfers of minority populations, which were sent back to the countries with which they had linguistic, cultural and sentimental affinities. The principle underlying that method was entirely different from the principle of the protection of minorities. It is logical to suppose that where that method has not been employed, minorities must content themselves with the regime of respect for human rights and non-discrimination laid down in the Charter - which is already a considerable benefit without enjoying any special rights.

The aim of those special rights was to enable minorities to retain their national characteristics indefinitely, and to hinder an assimilation which, if it were not for those special rights, could have taken place naturally without any pressure or force. States which had assumed obligations argued that protection often proved an obstacle to the achievement of their national unity.

B. Religious minorities

It may be said that the minorities protection regime produced satisfactory results in the case of religious minorities, both from the point of view of the minorities themselves and from that of the States which assumed obligations in respect of those minorities.

/CHAPTER VIII

CHAPTER VIII

THE POSITION OF STATES EITHER BOUND BY OR HAVING A PARTICULAR INTEREST IN OBLIGATIONS CONCERNING THE PROTECTION OF MINORITIES HAS UNDERGONE CONSIDERABLE CHANGES

The States mainly affected by obligations in respect of the protection of minorities were first the States which had assumed certain obligations concerning the treatment of their minorities. Sometimes they also included the neighbouring States with which the minorities in question had racial, linguistic and cultural affinities. The establishment of a system of protection for minorities represented to some extent a compensation to the latter States which would have preferred either to recover or to annex the territories inhabited by the minorities in question.

1. Most of the States which assumed obligations concerning the protection of minorities were States newly reconstituted or considerably enlarged after the First World War. That was the case with Poland, Czechoslovakia and Yugoslavia.

The principal Allied and Associated Powers by whose efforts and sacrifices victory had been won obliged the newly reconstituted or enlarged States to assume undertakings concerning the treatment of the numerous minority elements placed under their jurisdiction in return for the considerable territorial advantages accorded to them.

The position of the States bound by these minorities treaties was not the same after the Second World War as it had been thirty years previously. The untold sufferings and losses they experienced during the Second World War were caused mainly by the neighbouring States with which minority elements were in sympathy. Furthermore, their second liberation was achieved in part by Great Powers other than the principal Allied and Associated Powers of the First World War which were the signatories of the minorities treaties, for of course the Union of Soviet Socialist Republics was not a party to the peace and minorities treaties which followed the First World War.

In the case of Austria, Hungary and Bulgaria, which were among the countries defeated in the First World War, they had to assume obligations concerning the protection of their relatively small minorities mainly because their neighbours, as mentioned above, had had to assume similar obligations.

/2. The international

2. The international position of the neighbouring States with which the national minorities had linguistic or cultural affinities has also changed considerably, though in different ways.

Germany, being responsible for the Second World War, was obliged, as has been said, to receive minority elements of German character transferred from Poland, Czechoslovakia and Hungary. As regards the Union of Soviet Socialist Republics, this country has annexed the eastern part of Poland, which contained a large number of Ukrainians, Sub-Carpathian Russia, formerly part of Czechoslovakia and Bessarabia and the Bukovina, formerly part of Romania. There are now few Russian or Ukrainian elements outside the Union of Soviet Socialist Republics, and should it become necessary to settle their position, States will do so by means of direct negotiations rather than by referring to old treaties for the protection of minorities to which the Union of Soviet Socialist Republics is not a party. The position of the Union of Soviet Socialist Republics and of the neighbouring People's Republics may be said to have undergone a radical change.

The above-mentioned considerations, however, do not apply to all the States subject to obligations concerning minorities. The position of some of them, such as Turkey and Iraq has undergone no such radical change.

CHAPTER IX

THE NON-APPLICATION OF THE MINORITIES PROTECTION REGIME IN OTHER COUNTRIES

1. Juridically speaking, the undertakings relating to the protection of minorities were assumed either towards the League of Nations (in the case of Declarations) or towards a specified number of Powers in the case of treaties.

Thus, the position of a State bound by undertakings relating to minorities is not affected, for example, by the fact that a neighbouring country, also bound by the same undertakings, ceases to enforce them. The parties towards which the State has obligations are the League of Nations, representing the international community, or the States parties to the treaty considered as a whole.

2. Nevertheless, when the system of minorities protection was established, it was intended that it should be binding upon all States belonging to certain geographical areas. Minorities in State A, for example, whose national characteristics linked them to State B were thus protected, while minorities in State B whose national characteristics linked them to State A, were also protected.[1/]

If therefore minorities protection ceases to exist in State A, State B would appear to have grounds for considering that an important change of circumstances has taken place. The equality of treatment established among the various States bound by agreements regarding the protection of minorities no longer exists, and State B would be obliged to give privileged treatment to national minorities having linguistic and cultural affinities with State A, while State A no longer granted privileged treatment to minorities having linguistic and cultural affinities with State B. Such a situation would be particularly abnormal if State A had taken part in the war on the side of the Axis powers, while State B had done so on the side of the United Nations.

1/ Only Germany (with the exception of the German part of Upper Silesia), Italy, and the Union of Soviet Socialist Republics had no international obligations relating to the protection of minorities, while German minorities outside Germany, Italian minorities in Yugoslavia and Russian, Ukrainian and Byelorussian minorities outside the Union of Soviet Socialist Republics enjoyed protection in Poland, Romania and Czechoslovakia.

PART II

EXAMINATION OF EACH OF THE UNDERTAKINGS CONCERNED

1. It now remains to apply the principles brought out in part I to each of the undertakings concerned. These undertakings, of which there are seventeen, have been classified with reference to a number of similarities they present.

2. Each undertaking will be considered in relation firstly to the ordinary causes of extinction of obligations and secondly to any change of circumstances.

3. The circumstances liable to change are of two kinds. There are firstly changes of general circumstances, such as the dissolution of the League of Nations on the one hand and the recognition of human rights and of the principle of non-discrimination by the United Nations Charter on the other. In principle, these changes of general circumstances affect all undertakings equally. It will be sufficient to mention them in connexion with each undertaking without repetition of the comments.

There are secondly changes of circumstances which have arisen in some cases but not in others or which have not arisen everywhere in the same degree. Only changes in this category need be indicated.

CHAPTER X

UNDERTAKINGS ARISING OUT OF DECLARATIONS MADE BEFORE THE COUNCIL OF THE LEAGUE OF NATIONS

These undertakings, of which there are five, affect Albania, Lithuania, Latvia, Estonia and Iraq.

A. Minorities in Albania

Declaration made by the representative of Albania on 2 October 1921 on the occasion of Albania's admission to the League of Nations.[1/]

1. Ordinary causes of extinction of obligations

(a) Dissolution of the League of Nations

As already stated, the Declarations made by States before the Council of the League of Nations bound those States towards the League.

But the United Nations, although it does not possess the juridical status of "successor" to the League of Nations, could, as the organ of the international community, take the place of the League of Nations by means of an express decision adopted in pursuance of General Assembly resolution 24 (I) of 12 February 1946. Inasmuch as the United Nations has taken no such decision, the obligation may be regarded as suspended.

(b) Albania was linked to Italy by a personal union which was brought to an end by the Armistice Convention signed with Italy at Syracuse on 3 September 1943. A peace treaty signed with Italy on 10 February 1947 recognised the re-establishment of the Albanian State.

No provision of this treaty and no other treaty concluded by Albania dealt directly or indirectly with the position of minorities in that country.

(c) Albania has not suffered any territorial change and its minorities have not been the object of transfers.

2. Change of circumstances

(a) General circumstances liable to affect all undertakings concerning minorities

(i) The dissolution of the League of Nations.

(ii) The recognition of human rights and of the principle of non-discrimination by the United Nations Charter.

1/ See League of Nations document C.L. 110. I., annex, page 3.

/(b) Circumstances

(b) Circumstances more or less exclusively affecting the particular undertaking concerned

The operation of the minorities protection regime in Albania does not call for any special observation. The national minorities were Greek and Slav.

Conclusion

As regards the ordinary cases of extinction of obligations, Albania was bound by a Declaration made before the Council of the League of Nations; the dissolution of the League has suspended that obligation and it will not become valid again unless the United Nations decides to take the place of the League of Nations.

B. Lithuania

Declaration made before the Council on 12 May 1922.1/

C. Latvia

Declaration made before the Council on 7 July 1923.2/

D. Estonia

Declaration made before the Council on 17 September 1923.3/

1. Ordinary causes of extinction of obligations

(a) Dissolution of the League of Nations

What has been said above with respect to Albania applies to the cases of Lithuania, Latvia and Estonia.

The obligation has lapsed because of the dissolution of the League of Nations, towards which it was undertaken. It would again become valid if the United Nations decided to take the place of the League of Nations in that respect.

(b) Incorporation of Lithuania, Latvia and Estonia in the Union of Soviet Socialist Republics

Lithuania, Latvia and Estonia were incorporated in the USSR with the status of federated republics by decree of the Supreme Soviet of the Union of Soviet

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1/ See League of Nations Document C.L. 110. 1927 I, annex, page 33.

2/ Ibid., page 31.

3/ Ibid., page 13.

Socialist Republics in August, 1940.[1]

Leaving aside the question of the effect of the change of circumstances, which will be discussed later, the point at issue is whether incorporation of those three Baltic countries in the USSR has put an end to those countries' obligations with regard to the protection of minorities.[2]

Did the three Baltic States conserve their legal personality after becoming members of the USSR?

Article 14 of the Constitution of 1936 provides:

"The jurisdiction of the Union of Soviet Socialist Republics covers:

"(a) Representation of the Union in international relations, conclusion and ratification of treaties with other States;

"(b) Questions of war and peace;

"(c) ...."

In 1946, Article 18A was added to the Constitution. It reads as follows:

"Each Republic forming part of the Union has the right to enter into direct relations with foreign States, to conclude agreements with them and to exchange diplomatic and consular representatives."

The Soviet Government's view is that the three Baltic States retain some but not all of the rights acquired and obligations contracted before their incorporation into the USSR.

In consideration of the above, the Secretary-General is of the opinion that the incorporation of the three Baltic States in the USSR has terminated the obligations of those States with regard to the protection of minorities.

It should be noted that this incorporation has not been recognized by certain States.

(c) Change in the composition of minorities

The national minorities were composed of different elements. The German elements have disappeared. In view of the fact that the Baltic States have become part of the USSR, the Russians no longer represent a foreign national minority. The same is true of Lithuanians, Latvians and Estonians outside that one

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1/ Lithuania, - decree of 3 August 1940. Latvia, - decree of 6 August 1940. Estonia, - decree of 3 August 1940.

2/ Whether or not that incorporation was regular - in other words whether or not it was recognized by the other Powers - is a separate question which need not concern us here.

of the three countries, Lithuania, Latvia and Estonia, of which they possess the national characteristics.

It may be said that most of the previously existing minorities have either disappeared or changed their character.

2. Change of circumstances

(a) General circumstances

(i) Dissolution of the League of Nations.

(ii) Recognition of human rights and of the principle of non-discrimination by the United Nations Charter.

(b) Circumstances more or less exclusively affecting the particular undertakings concerned

(i) The three Baltic States have become members of the USSR, and this event represents a radical change of circumstances.

(ii) The fact that most of the former minority elements which were not transferred have changed their character represents another radical change of circumstances.

Conclusion

1. As regards ordinary causes of extinction of obligations:

(a) Since the three Baltic States were bound by a Declaration made before the Council of the League of Nations, the dissolution of the latter has suspended the obligation, which would become valid again only if the United Nations decided to take the place of the League of Nations in this connexion.

(b) The incorporation of the three Baltic States into the USSR appears to have terminated the international obligations of these States.

2. The incorporation of the three Baltic States in the USSR constitutes a radical change of circumstances.

E. Iraq

On 28 January 1932, the Council of the League of Nations adopted a resolution under which Iraq was to make before the Council a Declaration concerning the protection of minorities, this Declaration being considered as a condition for the termination of the British mandate over that country. On 19 May 1932, the Council approved the text of that Declaration and at the same time recommended the various countries to renounce the benefit of the capitulations which they enjoyed in that country.1/

1/ League of Nations, Official Journal, July 1932, 67th Session of the Council, page 1212, ff.

The Declaration of the Kingdom of Iraq is dated 30 May 1932; on 29 June of the following year, Iraq deposited with the Secretariat of the League of Nations its ratification of the Declaration. Iraq was admitted to membership of the League of Nations on 3 August 1932. It is one of the original Members of the United Nations.

1. Ordinary causes of extinction of obligations

(a) Dissolution of the League of Nations

What has been said above with respect to Albania and the three Baltic States - Lithuania, Latvia and Estonia - applies in this case.

The obligation is suspended because of the dissolution of the League of Nations, to which it was owed. It would return into force if the United Nations decided to take the place of the League of Nations in that connexion.

(b) Iraq has not undergone any territorial change.

No treaty has been concluded making a fresh settlement of the position of minorities in Iraq.

2. Change of circumstances

(a) General circumstances

(i) Dissolution of the League of Nations.

(ii) Recognition of human rights and of the principle of non-discrimination by the United Nations Charter.

(b) Circumstances more or less exclusively affecting the particular undertaking concerned

(i) The operation of the minorities protection regime in Iraq does not call for any special observations.

(ii) During the Second World War, Iraq severed diplomatic relations with Italy on 8 June 1941, and on 16 June 1943 declared that it considered itself in a state of war with Germany, Italy and Japan.

Conclusion

1. As regards ordinary causes of extinction of obligations, since Iraq was bound by a Declaration made before the Council of the League of Nations, the dissolution of the latter suspended the obligation, which would return into force only if the United Nations decided to take the place of the League of Nations.

2. As regards change of circumstances, there seems to be no special circumstance affecting the position of Iraq.

CHAPTER XI

TREATIES OF PEACE CONCLUDED AFTER THE FIRST WORLD WAR IMPOSING OBLIGATIONS WITH REGARD TO MINORITIES UPON THE DEFEATED STATES

These States may be divided into two groups: countries which took part in the Second World War on the side of the Axis Powers: Bulgaria, Hungary and Austria; and countries which did not take part in the Second World War on the side of the Axis Powers: Turkey.[1/]

A. Countries which took part in the Second World War on the side of the Axis Powers

The cases of Bulgaria, Hungary and Austria are similar in many ways. These countries were defeated in the First and Second World War, and the comments made on Bulgaria apply, to a great extent, to the other two States.

1. Bulgaria

The Treaty of Peace signed at Neuilly on 27 November 1919 imposed upon Bulgaria certain obligations with regard to the protection of minorities. The Treaty of Peace signed at Paris on 10 February 1947 contains no provisions on the protection of minorities, but contains stipulations concerning respect for human rights and non-discrimination.

(a) Ordinary causes of extinction of obligations

What was the effect of the Treaty of Peace of 10 February 1947? Did it abolish the former minorities protection regime?

The following remarks also apply to the Treaty with Hungary signed on the same date and to the Treaty with Austria which is in the process of negotiation.

(i) The authors of the Treaties of Peace of 1947, who were not all parties to the Treaty of Peace of 1919, had it in their power, in accordance with the practice followed in the case of treaties of peace, to abolish the minorities protection regime established by the Treaty of 1919, since that regime was applicable in Bulgaria and conferred no special rights on the other contracting powers.

1/ Turkey declared war on Germany and Japan on 1 March 1945.

/(ii) It does

(ii) It does not seem that the authors of the 1947 Treaty intended to abolish the former minorities protection regime, but that they considered that the regime had already ceased to exist. This is shown in the first place by the fact that the new treaties include provisions concerning respect for human rights and non-discrimination, which already existed in a slightly different form in the earlier treaties of peace and that, on the other hand, they do not reproduce the provisions of the former treaties relating to the special rights of minorities.

This is shown in the second place by the discussions at the Paris Conference, when the minorities protection regime was spoken of as a dead letter and was compared to a new regime which was being established (see pages 30 et seq.).

(b) Change of circumstances

(i) General circumstances liable to affect all undertakings concerning minorities

(1) The dissolution of the League of Nations.

(2) The recognition of human rights and of the principle of non-discrimination in the United Nations Charter.

(ii) Circumstances more or less exclusively affecting the particular undertaking concerned

The operation of the minorities protection regime in Bulgaria does not call for any special observations.

Conclusion

With regard to the ordinary causes of extinction of obligations, it would seem that the decisions and statements of the authors of the Treaty of Peace of 10 February 1947 imply that the former minorities protection regime had already ceased to exist.

The provisions of the Treaty of Neuilly concerning the protection of minorities should be considered as no longer in force.

2. Hungary

The Treaty of Peace signed at Trianon on 4 June 1920 imposed upon Hungary certain obligations with regard to the protection of minorities. The Treaty of Peace signed at Paris on 10 February 1947 contains no provisions on the protection of minorities, but contains certain stipulations concerning respect for human rights and non-discrimination.

(a) Ordinary causes of extinction of obligations

(i) What was the effect of the Treaty of Peace of 10 February 1947? Did it abolish the former minorities protection regime?

All the considerations put forward in connexion with Bulgaria are applicable in this case also (see pages 52-53).

(ii) What was the effect of the Potsdam Agreement of 2 August 1945?

The United States of America, the United Kingdom and the Union of Soviet Socialist Republics decided on 2 August 1945 that the transfer to Germany of German populations or elements thereof remaining in Poland, Czechoslovakia and Hungary would have to be undertaken.

As we have already said (page 35), the decision to remove a minority population from a country's territory should be interpreted as rendering the minorities protection regime inapplicable to that population, that is to say, both to the elements transferred and to those who were allowed to remain in the country as a favour.

(b) Change of circumstances

(i) General circumstances affecting all undertakings concerning minorities

(1) The dissolution of the League of Nations.

(2) The recognition of human rights and of the principle of non-discrimination in the United Nations Charter.

(ii) Circumstances more or less exclusively affecting the particular undertaking concerned

The operation of the minorities protection regime in Hungary does not call for any special observations, except with regard to the German minority, which contributed to bringing Hungary into the Second World War.

Conclusion

1. With regard to the ordinary causes of the extinction of obligations, it would seem that the decisions and statements of opinion of the authors of the Treaty of Peace of 10 February 1947 imply that the former minorities protection regime had already ceased to exist.

2. In any case, the transfer of the German minority decided upon at Potsdam implies that, even if the previous obligations had not lapsed, they had ceased to apply to the German minority. The provisions of the Treaty of Trianon on the protection of minorities should be considered as no longer in force.

3. Austria

Austria as a State was not involved in the war, although the inhabitants of that country, which had been annexed to the German Reich, took part in it.[1/] Nevertheless, a "State treaty" to settle the position of Austria, as the treaties of peace already concluded have settled the positions of Bulgaria and Hungary, is in process of negotiation. Those provisions of the future treaty which are already known enable an idea to be formed of the effects it is likely to have on the minorities protection regime which was set up by the Treaty of Peace of St-Germain-en-Laye on 10 September 1919.

(a) Ordinary causes of extinction of obligations

What will be the effect of the treaty which is in the process of negotiation? Will it abolish the former minorities protection regime?[2/]

The considerations cited in the case of Bulgaria are also applicable in this case, since the treaty which is being negotiated contains clauses on respect for human rights and non-discrimination.

In addition, however, as has been stated above (page 32) it has been decided to include provisions for the protection of Slovene and Croat minorities similar to those contained in the Treaty of St-Germain-en-Laye. This fact constitutes an argument in support of the view that the authors of the new treaties consider that the minorities protection regime provided by the treaties of peace which followed the First World War no longer exist.

(b) Change of circumstances

(i) General circumstances liable to affect all undertakings concerning minorities

(1) The dissolution of the League of Nations.

(2) The recognition of human rights and of the principle of non-discrimination in the United Nations Charter.

(ii) Circumstances more or less exclusively affecting the particular undertaking concerned

1/ Austria, which had been annexed to the German Reich on 13 March 1938, was reconstituted as an independent State in 1945. It is considered that Austria thus reconstituted is, from a legal point of view, the continuation of the Austrian State which existed before the Anschluss (see the Declaration on Austria made at Moscow by the four Powers, 19-30 October 1943). Thus, the treaties concluded before March 1938 by Austria are regarded as still being in force.

2/ Certain Austrian authors have expressed the view that the obligations with regard to the protection of minorities laid down by the Treaty of St-Germain-en-Laye are still in force.

/The operation

The operation of the minorities protection regime in Austria does not call for any special observations. The national minorities did not endanger the security of the State.

Conclusion

With regard to the ordinary causes of extinction of obligations, it would seem, according to what is known of the treaty that is being prepared, that the authors of the new treaty consider that the minorities protection regime has already ceased to exist.

B. Countries which did not participate in the Second World War on the side of the Axis Powers

1. Turkey

Turkey, which was involved in the First World War, is bound by the Treaty of Peace of Lausanne of 14 July 1923.1/

Part I, section III of this Treaty is entitled "Protection of Minorities".

It guarantees certain fundamental rights to all the inhabitants of Turkey, and further, recognizes certain special rights for non-Moslem minorities.

It should lastly be noted that Article 45 of the Treaty provides that "the rights conferred on the non-Moslem minorities of Turkey will be similarly conferred by Greece on the Moslem minority in her territory".

(a) Ordinary causes of extinction of obligations

The minority questions settled by the Treaty of Lausanne have not been dealt with by any subsequent international treaty or agreement. It may be asked what is the present force of the provisions concerning the protection of minorities contained in the Treaty of Lausanne.

Is it true to say that while the Treaty of Lausanne has retained its validity, an exception must be made in regard to part I, section III of the Treaty, which deals with the protection of minorities? In favour of this point of view, it may be argued that since the authors of the treaty of peace with the defeated States considered that the minorities protection regime ceased to exist for States defeated in the Second World War as soon as the new treaties of peace were concluded, the same should apply to Turkey, which was not among the States defeated in the Second World War.

1/ The signatories of the Treaty of Lausanne were eight in number, namely, the British Empire, France, Italy, Japan, Greece, Romania and the Serb-Croat-Slovene State of the one part, and Turkey of the other part.

/This

This argument, while cogent, is perhaps not conclusive.

(b) Change of circumstances

(i) General circumstances liable to affect all undertakings

(1) The dissolution of the League of Nations.

(2) The recognition of human rights and of the principle of non-discrimination by the United Nations Charter.

(ii) Circumstances more or less exclusively affecting the particular undertaking concerned

(1) The operation of the minorities protection regime in Turkey does not call for any special observations. Turkey's national and other minorities did not endanger the security of the State.

(2) The minorities protection provisions of the Treaty of Lausanne placed the Greek minorities in Turkey and the Turkish minorities in Greece under the same regime of protection. As is known, the Greek and Turkish minorities constituted the largest minority groups in both countries. But relations between Greece and Turkey have remained as they were before the war.

(3) Lastly, the political regime and international situation of Turkey have remained as they were before the war.

Conclusion

1. There has been no new treaty since the Treaty of Lausanne affecting the minorities and related questions dealt with in that Treaty.

2. Circumstances have not materially altered as far as Turkey is concerned.

Unless it is considered that all obligations concerning the treatment of minorities are now no longer valid, the obligations undertaken by Turkey have retained their validity.

CHAPTER XII

MINORITIES TREATIES CONCLUDED BETWEEN THE PRINCIPAL ALLIED AND ASSOCIATED POWERS AND CERTAIN STATES CREATED OR ENLARGED AS A RESULT OF THE FIRST WORLD WAR

Such treaties were concluded with Poland, the Serb-Croat-Slovene State, Czechoslovakia, Romania and Greece.

A. State which took part in the Second World War on the side of the Axis Powers

1. Romania

Fundamentally, the case of Romania is somewhat similar to those of Bulgaria and Hungary, which were dealt with above.

The difference is that Romania was one of the victorious Powers in the First World War, and Romania's obligations concerning the protection of minorities were undertaken pursuant to a Minorities Treaty signed in Paris on 9 December 1919, and not a treaty of peace. Inasmuch as Romania had taken part in the Second World War on the side of the Axis Powers, its new situation was settled by a treaty of peace signed in Paris on 10 February 1947.

a. Ordinary causes of extinction of obligations

What was the effect of the Treaty of Peace of 10 February 1947? Did it abrogate the previous minorities protection regime?

All the observations made above in the case of Bulgaria are equally valid in this case (see pages 52-53).

(b) Change of circumstances

(i) General circumstances liable to affect all undertakings

(1) The dissolution of the League of Nations.

(2) The recognition of human rights and of the principle of non-discrimination by the United Nations Charter.

(ii) Circumstances more or less exclusively affecting the particular undertaking concerned

(1) The operation of the regime of protection of minorities in Romania was marked by a state of tension between the Hungarian minority and Romania.

/(2) The Dobrudja

(2) The Dobrudja was detached from Romania and transferred to Bulgaria. Bessarabia and the Bukovina were detached from Romania and transferred to the USSR. These territorial changes considerably reduced the numbers of the Slav minority in Romania, but the Hungarian minority, which is numbered in millions, has varied little.

Conclusion

As far as the ordinary causes of extinction of obligations are concerned, it would appear that the decisions taken and the opinion expressed by the authors of the Treaties of Peace of 10 February 1947 imply that the former minorities protection regime had already ceased to exist.

The provisions of the Treaty of Paris concerning the protection of minorities must be considered as no longer in force.

B. States which participated in the war as members of the United Nations

These States are Poland, Czechoslovakia, Yugoslavia and Greece.

Apart from the fact that these four States fought against the Axis Powers in the Second World War, their situation has a number of points in common.

These four States signed treaties concerning the protection of minorities with the Principal Allied and Associated Powers after the First World War.[1/] There has been no subsequent treaty affecting these countries which deals with the general question of the protection of minorities.

These four States suffered very severely during the Second World War.

1. Poland

(a) Ordinary causes of extinction of obligations

International agreements have been concluded affecting the various categories of minorities in Poland.

1/ These treaties are:

(a) Treaty between the Principal Allied and Associated Powers and Poland, signed at Versailles, 28 June 1919;

(b) Treaty between the Principal Allied and Associated Powers and the Serb-Croat-Slovene State, signed at St.-Germain-en-Laye, 10 September 1919;

(c) Treaty between the Principal Allied and Associated Powers and Czechoslovakia, signed at St.-Germain-en-Laye, 10 September 1919;

(d) Treaty between the Principal Allied and Associated Powers and Greece, signed at Sèvres, 10 August 1920.

(i) German minorities

By the Potsdam Declaration of 2 August 1945, the United States of America, the United Kingdom and the Union of Soviet Socialist Republics decided that the German minorities in Poland, Czechoslovakia and Hungary should be transferred to Germany.

As has been said above (page 35) the decision to remove a minority group from the national territory must be interpreted as rendering the minorities protection regime inapplicable to that population, including both those persons transferred and those allowed as a favour to remain.

(ii) Russian, Ukrainian, Byelorussian and Lithuanian minorities

Under the Treaty of 16 August 1945 concluded between the USSR and Poland, it was decided to transfer to the USSR the former Polish territories containing the bulk of the Russian, Byelorussian and Ukrainian minorities.

In addition, an Agreement of 6 July 1945 concluded between Poland and the USSR laid down rules to govern the transfer to the USSR of members of Russian, Ukrainian, Byelorussian and Lithuanian ethnic groups on Polish territory and possessing Polish nationality prior to 17 September 1939.

The effect of these treaties has been to reduce the numbers of these minorities to a very small figure.

The common intention of Poland and the USSR in concluding these two treaties was to settle the position of the minorities with which they were concerned. Could this action amount to an implicit abrogation of the Treaty of 1919 in so far as it concerned minorities?

(iii) Czech and Slovak minorities

An Additional Protocol to the Treaty of Friendship and Mutual Aid between Poland and Czechoslovakia, signed at Warsaw on 10 March 1947, reads as follows:

> "The High Contracting Parties ... agree ... To guarantee to Poles in Czechoslovakia and to Czechs and Slovaks in Poland, within the limits of law and on the basis of reciprocity, the possibility of national, political, cultural and economic development (schools, societies and co-operatives, on the basis of the unity of co-operative organizations in Poland and in Czechoslovakia)."

/This Protocol,

This Protocol, which is designed to settle the question of the Czech and Slovak minority in Poland otherwise than by a transfer of populations, raises the same question. Can it amount to an implicit abrogation of the Treaty of 1919?

(iv) Jewish minority

A large part of this minority was annihilated under the German occupation. Other Jews have left the country since the war, but there still remains a fairly large Jewish element in Poland. The provisions of the Treaty of 28 June 1919 include an Article 11[1/] which provides certain special rights for the Jewish minority.

There has been no subsequent decision having the effect of placing the Jewish minority under a new regime.

The same observation applies equally to the other religious minorities.

(b) Change of circumstances

(i) General circumstances liable to affect all obligations

(1) The disappearance of the League of Nations

(2) The recognition of human rights and of the principle of non-discrimination by the United Nations Charter.

(ii) Circumstances more or less exclusively affecting the particular undertaking concerned

(1) The operation of the minorities protection regime in Poland, which was marked by a state of tension between certain minorities, particularly the German minority, and the State.

(2) Changes in the territorial composition of Poland and transfers of population.

1/ Article 11 of the Treaty of 28 June 1919 reads as follows:

"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 perform any legal business on their Sabbath. This provision however shall not exempt Jews from such obligations as shall be imposed upon all other Polish citizens for the necessary purposes of military service, national defence or the preservation of public order.

"Poland declares her intention to refrain from ordering or permitting elections, whether general or local, to be held on a Saturday, nor will registration for electoral or other purposes be compelled to be performed on a Saturday."

/Before the

Before the Second World War, Poland contained very large minority groups. The Polish population has become much more homogeneous, as a result of both territorial changes and the transfer to Germany of the German elements of the population. Poland is tending to become a "national" State.

Conclusion

1. As far as the ordinary causes of extinction of obligations are concerned, it would appear that the obligations concerning the German minorities have been affected by the Potsdam Agreement.

2. The change of circumstances has been profound and general, and it may therefore be reasonably concluded that the regime established by the 1919 Treaty is no longer in force.

2. Czechoslovakia

(a) Ordinary causes of extinction of obligations

International agreements have been concluded which affect the position of the various categories of minorities which existed in Czechoslovakia.

(i) German minorities

The position is the same as in the case of the German minorities in Poland covered by the Potsdam Agreement.

(ii) Hungarian minorities

Article 5 of the Treaty of Peace with Hungary dated 10 February 1947 reads as follows:

> "Hungary shall enter into negotiations with Czechoslovakia in order to solve the problem of those inhabitants of Magyar ethnic origin, residing in Czechoslovakia, who will not be settled in Hungary in accordance with the provisions of the Agreement of February 27, 1946, on exchange of populations. Should no agreement be reached within a period of six months from the coming into force of the present treaty, Czechoslovakia shall have the right to bring this question before the Council of Foreign Ministers and to request the assistance of the Council in effecting a final solution."

This provision of the Treaty of Peace with Hungary justifies the belief that the authors of the treaty considered that the minorities protection regime in Czechoslovakia no longer remained in force, at least as regards the Hungarian minority.

(iii) Ukrainian minority

Under the treaty signed at Moscow on 29 June 1945, Czechoslovakia ceded the territory of Transcarpathian Ukraine to the Union of Soviet Socialist Republics. That fact alone led to a considerable decrease in the minority in Czechoslovakia. Furthermore, a protocol signed on the same date gave members of the Ukrainian and

/Russian

Russian ethnic groups in Czechoslovak territory the right to choose USSR citizenship before 1 January 1946. This option was made subject to the approval of a Soviet authority.

The common purpose of Czechoslovakia and the USSR in concluding the above-mentioned two treaties was to settle the position of the minorities with which they were concerned. Did they thereby abrogate the Treaty of 1919 on minorities?

(iv) Polish minority

Mention has been made above of the additional Protocol to the Treaty of Friendship and Mutual Aid between Poland and Czechoslovakia signed at Warsaw on 10 March 1947.

Did this Protocol implicitly abrogate the Treaty of 1919?

(v) Jewish minority

The Jewish minority was largely destroyed during the Second World War but certain elements still remain. No decision has been taken regarding a new regime for this minority. The same observation applies to the other religious minorities.

(b) Change of circumstances

(i) General circumstances liable to affect all obligations

(1) The dissolution of the League of Nations.

(2) The recognition, in the United Nations Charter, of human rights and of the principle of non-discrimination.

(ii) Circumstances more or less exclusively affecting the particular undertaking concerned.

(1) The operation of the minorities protection regime in Czechoslovakia, which was characterized by a state of tension which existed between certain minorities, particularly the German minority, and the State.

(2) Changes in the territorial composition of Czechoslovakia and transfers of population.

The minority population has been considerably reduced by the transfer of the German population and the incorporation of Sub-Carpathian Russia in the USSR.

(3) New agreements which have been concluded in respect of the Hungarian and Polish minorities.

/Conclusion

Conclusion

1. As regards the ordinary causes of extinction of obligations, it would seem that the obligations concerning the German minorities were extinguished by the Potsdam Agreement.

2. There has been a far-reaching change of circumstances, and it may be considered that the regime laid down by the Treaty of 1919 is no longer applicable.

3. Yugoslavia

(a) Ordinary causes of extinction of obligations

Under the Treaty of Peace with Italy of 10 February 1947, Yugoslavia annexed former Italian territory. This treaty contains no clauses relating to the protection of minorities but it contains a provision concerning respect for human rights and non-discrimination.1/

This provision is applicable only to the territory ceded by Italy to Yugoslavia and does not affect the minorities protection regime introduced in 1929 for the rest of Yugoslavia.

(b) Change of circumstances

(i) General circumstances liable to affect all undertakings

(1) The dissolution of the League of Nations.

(2) The recognition of human rights and of the principle of non-discrimination in the United Nations Charter.

(ii) Circumstances more or less exclusively affecting the particular undertaking concerned

(1) During the Second World War the national minorities, with the exception of the Greek and Turkish minorities, gave assistance to the Axis Powers and their allies.

(2) Yugoslavia has become a People's Republic.

Conclusion

1. As regards the ordinary causes of extinction of obligations, there do not appear to be any which would have the effect of extinguishing Yugoslavia's obligations concerning the protection of minorities.

1/ Article 19, paragraph 4, of the Treaty with Italy stipulates that

"The State to which the territory is transferred shall, in accordance with its fundamental laws, secure to all persons within the territory, without distinction as to race, sex, language or religion, the enjoyment of human rights and of the fundamental freedoms, including freedom of expression, of press and publication, of religious worship, of political opinion and of public meeting."

/2. There has been

2. There has been a considerable change of circumstances which justifies the view that, at least as regards the minorities which assisted Yugoslavia's enemies, the regime laid down by the Treaty of 1919 is no longer applicable.

4. Greece

A distinction should be made between the general minorities protection regime established by the treaty signed between the Principal Allied and Associated Powers at Sèvres on 10 August 1920 and the special regime established in favour of the Moslem minority in Greece by the Peace Treaty with Turkey signed at Lausanne on 24 July 1923.[1/]

General regime for the protection of minorities established by the Treaty of Sèvres

(a) Ordinary causes of extinction of obligations

No ordinary cause of the extinction of obligations appears to have arisen.

(b) Change of circumstances

(i) General circumstances liable to affect all undertakings

(1) The dissolution of the League of Nations

(2) The recognition of human rights and of the principle of non-discrimination by the United Nations Charter.

(ii) Circumstances more or less exclusively affecting the particular undertaking concerned

If in a neighbouring country to which national minorities in Greece are attached by their special characteristics the minorities protection regime is no longer considered to be in force, this fact constitutes a change of circumstances which justifies the abolition of the minorities protection regime in Greece in respect of those minorities.

Conclusion

With regard to the ordinary causes of extinction of obligations, there appear to have been none which would extinguish Greece's obligations in connexion with the protection of minorities.

1/ For the Sèvres Treaty, see British Foreign and State Papers, vol. 113, page page 471; and for the Lausanne Treaty, League of Nations Treaty Series, vol. XXVIII, page 31.

Minorities protection regime established by the Treaty of Lausanne

The respective situations of Greece and Turkey have remained as they were. Accordingly, no ordinary cause of extinction of obligations and no particular change of circumstances is to be noted.

CHAPTER XIII

CONVENTIONS AND AGREEMENTS ESTABLISHING A REGIME FOR THE PROTECTION OF MINORITIES IN CERTAIN TERRITORIES

The territories concerned are the Free City of Danzig, the Memel territory and the Aaland Islands.

A. Free City of Danzig

Under Article 33 of a Convention between Poland and the Free City of Danzig signed at Paris on 9 November 1920[1], the Free City of Danzig undertook to apply to racial, religious and linguistic minorities provisions similar to those applied by Poland on Polish territory. The main purpose of this Convention was to protect the Polish minority at Danzig.

The Free City of Danzig has ceased to exist as such, and its territory has been transferred to Poland.[2]

1. Ordinary causes of extinction of obligations

The disappearance of the Free City of Danzig, a Party to the Convention of 9 November 1920, has involved the extinction of the obligation.

Furthermore, if the obligation had not been extinguished, the successor to the Free City of Danzig would be Poland, and thus the bearer and the beneficiary of the obligation would be identical.

2. Change of circumstances

The change of circumstances has been complete.

The minorities protection regime in the Free City of Danzig was established for the benefit of the Polish minority. The city has, however, become Polish, and the German population has been transferred to Germany in application of the Potsdam decision.

1/ See League of Nations Treaty Series, vol. VI, page 189.

2/ The new frontiers of Poland, which comprise the former Free City of Danzig, have not yet been fixed by a peace treaty, but according to the Potsdam decisions, "the three heads of government agree that, pending the final determination of Poland's western frontier, the former German territories east of a line running from the Baltic Sea immediately west of Swinemünde, and thence along the Oder River ... including ... the area of the former Free City of Danzig, shall be under the administration of the Polish State and for such purposes should not be considered as part of the Soviet zone of occupation in Germany."

/Conclusion

Conclusion

The minorities protection regime established by the Convention of 9 November 1920 has ceased to exist.

B. Memel Territory

A Convention signed at Paris on 8 May 1924 between the British Empire, France, Italy and Japan of the one part and Lithuania of the other part transferred the Memel Territory to the latter, upon whom at the same time it imposed certain obligations.[1/] The Memel Territory was to enjoy a certain measure of autonomy defined in the Convention, and Lithuania was to apply to the minorities in the Memel Territory the Declaration relating to protection of minorities in Lithuania made by the Lithuanian Government before the Council of the League of Nations on 12 May 1922. The largest "minority" in the Memel Territory was composed of German elements. This "minority" constituted the majority of the inhabitants.

On 22 March 1939, the German Government addressed an ultimatum to Lithuania demanding the return of Memel to the Reich. Lithuania accepted the ultimatum, the Memel Territory became an integral part of the German Reich and nothing was left of the special regime established by the Convention of 8 May 1924.

Under the Potsdam Agreement of 2 August 1945, the Memel Territory passed under the jurisdiction of the USSR together with other territories that had formed part of Germany.

1. Ordinary cause of extinction of obligations

The annexation of Memel to Germany in March 1939 put an end to the Treaty of 8 May 1924 which in fact established a minorities protection regime in favour of the German population of Memel.

2. Change of circumstances

The change of circumstances has been complete. After the Second World War, the Memel Territory was transferred to the USSR. As regards the German population, a large proportion if not the whole of it has left the Territory.

Conclusion

The minorities protection regime established by the Convention of 8 May 1924 has ceased to exist.

1/ League of Nations document C.L.110. 1927 I annex, page 37.

C. Aaland Islands (Finland)

The Aaland Islands, whose population is Swedish in character, are placed under the jurisdiction of Finland.

On 27 June 1921, the Council of the League of Nations approved an agreement between Finland and Sweden the purpose of which was "to ensure and guarantee to the population of the Aaland Islands the preservation of their language, culture and local Swedish traditions" (Article 1 of the Agreement). This Agreement provided in fine that: "The Council of the League of Nations will see that the guarantees provided above are duly observed..." (Article 7).

An obligation was entered into by Finland in this matter before the Council of the League of Nations on 27 June 1921.[1/]

1. Ordinary causes of extinction of obligations

(a) The dissolution of the League of Nations has suspended the obligation contracted towards the League of Nations until such time as the United Nations, by an express decision, takes the place of the League of Nations in this respect.

(b) The agreement between Finland and Sweden on which the obligation undertaken towards the League of Nations was based is still in force.

2. Change of circumstances

(a) General circumstances liable to affect all obligations

(i) The dissolution of the League of Nations.

(ii) The recognition of human rights and of the principle of non-discrimination by the United Nations Charter.

(b) Circumstances more or less exclusively affecting the particular undertaking concerned

No change of circumstances has occurred. The special regime for the Aaland Islands concerns particularly Sweden, Finland and the population of the Aaland Islands. Sweden and Finland have not been at war.

Conclusion

Finland's obligation towards Sweden still exists.

The obligation undertaken by Finland towards the Council of the League of Nations as representative of the international community is suspended until such time as an express decision has been taken by the United Nations to put it back into force.

1/ League of Nations document: C.L. 110. 1927 I annex, page 16.

CHAPTER XIV

FINAL OBSERVATIONS

Such are the conclusions reached for each country separately if the ordinary causes of extinction of international obligations are considered from the strictly legal point of view, and if the narrowest interpretation is given to the expression rebus sic stantibus.

It should, however, be added that if the problem is regarded as a whole, there can be no doubt that the whole minorities protection regime was in 1919 an integral part of the system established to regulate the outcome of the First World War and create an international organization, the League of Nations. One principle of that system was that certain States and certain States only (chiefly States that had been newly reconstituted or considerably enlarged) should be subject to obligations and international control in the matter of minorities.

But this whole system was overthrown by the Second World War. All the international decisions reached since 1944 have been inspired by a different philosophy. The idea of a general and universal protection of human rights and fundamental freedoms is emerging. It is therefore no longer only the minorities in certain countries which receive protection, but all human beings in all countries who receive a certain measure of international protection. Within this system special provisions in favour of certain minorities are still conceivable, but the point of view from which the problem is approached is essentially different from that of 1919. This new conception is clearly apparent in the San Francisco Charter, the Potsdam decisions, and the treaties of peace already concluded or in course of preparation. From the strictly legal point of view, the result seems clear in the cases in which the formal liquidation of the war has been completed by the conclusion of peace treaties: the provisions of the treaties and the opinions expressed by the authors of the treaties imply that the former minorities protection regime has ceased to exist so far as concerns the ex-enemy countries with which those treaties have been concluded. It would be difficult to maintain that the authors of the peace treaties would have adopted that attitude if they had supposed that the engagements assumed in 1919 respecting the treatment of minorities would remain in force for the States which do not fall within the category of ex-enemy States.

/Reviewing

Reviewing the situation as a whole, therefore, one is led to conclude that between 1939 and 1947 circumstances as a whole changed to such an extent that generally speaking, the system should be considered as having ceased to exist.
