

The Recognition of the Universal Fate of Minorities

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Abstract

This article examines the international protection of national minorities in the first decade after World War II, challenging the notion that it was believed to be no longer a subject of concern during that time. The author reviews the work of the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities, highlighting the intensive efforts made from 1947 to 1955 on the issue of the rights and definition of national minorities. The article argues that the adoption of Resolution 217 C (III), 'The Fate of Minorities', marked a new start in the development of the protection of national minorities and emphasizes that the protection of national minorities must be treated as an integral part of human rights.

Keywords: national minorities, minority protection, minority rights, Capotorti report, definition of minorities.

1. Introduction

After World War II, the UN took over certain functions of the League of Nations, which had been dissolved. However, the UN did not become its legal successor and was initially reluctant to take on the issue of minority rights. A study on the scope of the minority protection system established after World War I was prepared by the Secretary General of the UN in 1950 at the request of the Economic and Social Council.¹ According to the conclusions of the study, only two of the 17 separate

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1 Study on the Legal Validity of the Undertakings Concerning Minorities, UN Doc E/CN.4/367.

minority protection agreements² remained in force after World War II: the 1921 agreement between Sweden and Finland regarding the Åland Islands,³ and the 1923 Lausanne Peace Treaty between Turkey and Greece.⁴ The study declares that World War II abolished the world order that had emerged after World War I, which included the minority protection agreements, and a new order based on the philosophy of universal human rights and fundamental freedoms was established in its place.⁵ As a result, not only certain minorities in certain states but all human beings are entitled to international legal protection – according to the study's conclusions.⁶

If we were to judge the intentions of the experts and politicians working within the UN solely based on the conventions adopted by the organization concerning minority rights, we could easily conclude, based on the first two decades of the organization's work, that the issue of minority rights largely escaped the attention of the architects of the new world order, or that they deliberately avoided the question of the rights of these communities. This is reinforced by the Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities prepared by Francesco Capotorti, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in 1977. The first paragraph of the study states that after World War II, for at least 20 years, it was believed and asserted, that the international protection of minorities was no longer a subject of

- 2 Minority protection treaties were considered a fundamental prerequisite for the sustainability of international peace. The major powers made territorial expansion dependent on the acceptance of minority commitments. "A clear proof of this is that on 15 November 1919, the major powers sent an ultimatum-like note to the Romanian government, calling on it to announce its acceptance of the minority treaty by 5 December 1919, because if this did not happen, they would not support Romania's territorial claims at the peace conference." (translation is from the author) – as written by Artur Balogh, a minority rights lawyer from Transylvania. See Artur Balogh, *A kisebbségek nemzetközi védelme*, Berlin, Ludwig Voggenreiter Verlag, 1928, p. 57. Erzsébet Szalayné Sándor categorizes the minority rights sources established with the involvement of the League of Nations into three categories, consisting of a total of 17 treaties and 5 declarations: (i) General treaties for the protection of minorities: a) so-called minority treaties (5 treaties); b) chapters in peace treaties regarding minority protection (4 peace treaties). (ii) Special treaties for the protection of minorities (8 treaties). (iii) Minority declarations (5 declarations). See Erzsébet Szalayné Sándor, *A kisebbségvédelem nemzetközi jogi intézményrendszere a 20. században*, Gondolat Kiadói Kör – MTA Kisebbségkutató Intézet, 2003, pp. 80-86.
- 3 The international legal basis for the Swedish autonomy of the Åland Islands was established by a bilateral agreement between Sweden and Finland, which was approved by the Council of the League of Nations on 27 June 1921. For the history of the acceptance of the treaty and the nature of the autonomy, see e.g. Péter Kovács, *Nemzetközi jog és kisebbségvédelem*, Osiris, Budapest, 1996, pp. 211-224.
- 4 Study on the Legal Validity of the Undertakings Concerning Minorities, UN Doc E/CN.4/367, pp. 59-57, 65-66, 69.
- 5 At the same time, Kovács points out that the constitutional practice of certain European countries, as well as the opinions of several experts, differ from the conclusions of the study. See Péter Kovács, 'A rodopi mufti esete a nemzetközi joggal: Kisebbségi autonómiabarát ítélet az Emberi Jogok Európai Bíróságán: magányos fecske vagy új tendencia? – Széljegyzet a Szerif c. Görögország ítélet margójára', *Magyar Kisebbség*, Vol. 6, Issue 1, 2000, pp. 213-225.
- 6 UN Doc E/CN.4/367, p. 70.

concern.⁷ The imperative of respect for human rights seemed to make unnecessary the special protection of minority groups and their members.⁸

According to the UN Charter, signed in San Francisco on 26 June 1945, the promotion and respect for human rights and fundamental freedoms for everyone, regardless of race, gender, language or religion, were declared a priority.⁹ Although the UN Charter does not specifically mention minorities and their rights, the inclusive list mentioned earlier appears three more times in the document,¹⁰ extending the goals of equal treatment to both linguistic, religious, and ethnic minorities.

The Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the UN General Assembly on 9 December 1948,¹¹ was the first human rights treaty.¹² Although the convention does not explicitly mention minorities, through its enumeration of national, ethnic, racial, or religious groups, it unequivocally applies to minority groups and their members. The Convention formulates one of the basic pillars of minority rights, the right to exist. This is not surprising given that the convention was born out of the experience of the Holocaust perpetrated against the European Jewry, which formed a minority in European countries.

On 10 December 1948, the UN General Assembly adopted the Universal Declaration of Human Rights (UDHR). Despite proposals made during the preparation of the UDHR, provisions for the protection of minorities could not be included in the final text. However, the prohibition of discrimination, which also

7 Francesco Capotorti, *Study on The Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*. United Nations, New York, 1979, UN Doc E/CN4/Sub.2/384/Rev.1, UN, New York, 1979, p. iii.

8 Patrick Thornberry, *International Law and the Rights of Minorities*. Clarendon Press, Oxford, 1991, pp. 118-123.

9 See Article 1: "The Purposes of the United Nations are: [...] 3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;".

10 Articles 13(1)(b), 55(c), and 76(c).

11 The Convention entered into force on 9 December 1951.

12 It is noteworthy that in the US, there was a significant professional and political debate on whether to join an international convention with legal force. As a result, a proposed constitutional amendment was discussed that would have limited the federal government's right to accede to international treaties. Eventually, this amendment proposal failed by one vote, and as a result, the US later played a significant role in the development of international law. See Beth A. Simmons, *Mobilizing for Human Rights. International Law in Domestic Politics*, Cambridge University Press, Cambridge, 2009, pp. 45-46.

significantly affects minorities, appears in the UDHR.¹³ It was significant that at the time of the adoption of the UDHR, the UN General Assembly explicitly expressed concern for the situation of minorities through Resolution 217 C (III). This part of the resolution was entitled ‘Fate of Minorities’. The resolution stated that the UN could not remain indifferent to the fate of minorities. However, due to the delicacy and complexity of the minority question, and its country-specific aspects, it is difficult to adopt a uniform solution to the issue. Given the universal character of the UDHR, the General Assembly decided that the UDHR should not deal separately with the issue of minorities.¹⁴ The resolution concluded by calling on the Economic and Social Council to request the UN Commission on Human Rights and its sub-commission, the Sub-Commission on the Prevention of Discrimination and Protection of Minorities,¹⁵ to prepare a comprehensive study on the problem of minorities, so that the UN can take the necessary steps to protect ethnic, national, religious, and linguistic minorities.

This article examines the work of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities in the preparation of the UDHR and in search of an internationally acceptable definition of minorities.¹⁶

2. The Missing Minority Article of the UDHR

The establishment of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities resulted from Article 68 of the UN Charter, which

- 13 See Article 2: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”; Article 7: “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.” Article 23.2: “Everyone, without any discrimination, has the right to equal pay for equal work.”
- 14 Part C of General Assembly Resolution 217 (III). International Bill of Human Rights: 217 C (III) ‘Fate of Minorities’. UN Doc. A/Res/3/217C: “The General Assembly, Considering that the United Nations cannot remain indifferent to the fate of minorities / Considering that it is difficult to adopt a uniform solution of this complex and delicate question, which has special aspects in each State in which it arises / Considering the universal character of the Declaration of Human Rights / Decides not to deal in a specific provision with the question of minorities in the text of this Declaration; [...]”
- 15 The Sub-Commission on the Promotion and Protection of Human Rights replaced the former Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1995. At the same time, the Working Group on Minorities was established under the new Sub-Commission. Both expert bodies were abolished in 2006. The Commission on Human Rights was replaced by the Human Rights Council, which established the UN Forum on Minority Issues on 28 September 2007, by Resolution 6/15.
- 16 This article is based on Chapter 3 of the author’s doctoral dissertation. It largely overlaps with certain parts of the dissertation. See András Bethlendi, *The Missing Criteria of Homeliness of the Home in the European National Minority Protection: The Legal Dimension of the Issue of Homeliness of National Minorities* (Doctoral Thesis – written in Hungarian).

allowed the Economic and Social Council to establish committees to promote human rights and other issues. In this spirit, the Human Rights Committee and the Women's Status Inquiry Committee, originally intended to be a subcommittee, were established directly under the Council.¹⁷ Upon the proposal of the Human Rights Committee, the opportunity to create further subcommittees was opened. At the Committee's session held from April 29 to May 20, 1946, the US proposed the creation of a single subcommittee, the Sub-Commission on Freedom of Information and of the Press. When the matter came before the Council, Nikolai I. Feonov, the representative of the Soviet Union, stated that the prevention of discrimination and the protection of minorities are just as important as the issue of freedom of information. Mr. Feonov argued that the situation of minorities is often not fully resolved even in the most developed countries. As a result, at its second session held from 25 May to 21 June 1946, the Council authorized the creation of three subcommittees: (i) one on the issue of freedom of information and the press, (ii) one on the prevention of discrimination, and (iii) one on the protection of minorities.¹⁸ The Council Resolution 2/9 of 21 June 1946, designated as the primary task of the separate subcommittee specializing in minority issues to define the principles underlying the protection of minorities and to make recommendations to the Council on the most pressing problems faced by minorities. The Economic and Social Council also listed the responsibilities of the Human Rights Committee in its resolution of 21 June 1946. Among these explicitly mentioned was the need for the Committee's work to result in proposals, advice, and reports for the Council on issues related to the protection of minorities¹⁹ and the prevention of discrimination based on race, gender, language, or religion, as well as other human rights issues.²⁰

Despite the Council's provision for the creation of three sub-commission, during the very first session of the Human Rights Commission held from 27 January to 10 February 1947, only two sub-commissions were established by merging the issues of discrimination prevention and protection of minorities into the Sub-Commission on Prevention of Discrimination and Protection of Minorities.²¹ This step could be seen as an ominous sign, projecting the difficult question of minority rights as a challenging issue for the UN. However, if we dig deeper and examine the work of the sub-commission more closely, as well as the minutes of the working group behind the UDHR, we can see that the issue of minorities remained present behind the scenes as a hidden stream, even if it only occasionally became visible to external observers.

17 The Council established the Commission on Human Rights with Resolution 1/5 on February 16, 1946. See Resolution adopted by ECOSOC on the establishment of a Commission on Human Rights with a Sub-Commission on the Status of Women: E/RES/5(I), 16 February 1946. See John P. Humphrey, 'The United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities', *The American Journal of International Law*, Vol. 62, Issue 4, 1968, p. 869.

18 Id. p. 870.

19 "(c) the protection of minorities".

20 *Yearbook on Human Rights for 1947*, UN, New York, 1949, pp. 422-423.

21 Id. p. 425.

The drafting of the UN document dedicated to human rights proved to be a novel task for everyone involved. At the very first session of the Drafting Committee of the Commission on Human Rights,²² there was not even a concrete idea of what form the document should take. Two main concepts emerged, one being a manifesto with less legal force and the other being a more legally binding declaration.²³ The novelty, intellectual and political challenges of the task are illustrated by the fact that the Commission members²⁴ often discussed the applicability of Eastern and Western philosophical teachings. The Preliminary Draft of an International Bill of Human Rights prepared by the Secretariat served as a starting point, with member states responding to each article, and the articles being compared to other international agreements and relevant constitutional provisions of member states.²⁵ Of particular relevance to our investigation is the fact that the preliminary draft consisted of 48 articles, with Article 46 specifically intended to ensure the rights of ethnic, linguistic, and religious minorities:

“In States inhabited by a substantial number of persons of a race, language or religion other than those of the majority of the population, persons belonging to such ethnic, linguistic or religious minorities shall have the right to establish and maintain, out of an equitable proportion of any public funds available for the purpose, their schools and cultural and religious institutions, and to use their own language before the courts and other authorities and organs of the State and in the press and in public assembly.”²⁶

It should be noted that although this document would have imposed restrained and unenforceable commitments on states, given that the drafters chose the soft wording of “shall have”, the ideals expressed on paper go well beyond the international minority rights standards of the third decade of the 21st century, both in terms of the official and judicial use of minority languages and the proportionate provision of public funds for minority institutions. It is also worth mentioning that it provides a practically implicit definition of ethnic, linguistic or religious minorities, according to which the fact of being racially, linguistically or religiously distinct from the majority is one of the characteristics of these minorities.

At the first session of the Drafting Committee of the Commission on Human Rights, the committee entrusted Professor Cassin, the French member of the committee, with the task of revising the Draft Declaration based on the discussions

22 The first session of the Drafting Committee was held from 9 to 25 June 1947.

23 Report of The Drafting Committee to The Commission on Human Rights, Commission on Human Rights. Drafting Committee on an International Bill of Human Rights, 1 July 1947, 3. UN Doc. E/CN.4/21.

24 H. Santa Cruz (Chile), P. C. Chang (China), René Cassin (France), Charles Malik (Libanon), V. Koretsky (Soviet Union), Geoffrey Wilson (UK), Eleanor Roosevelt (US).

25 International Bill of Rights, Commission on Human Rights. Drafting Committee, 11 June 1947, UN Doc. E/CN.4/AC.1/3/Add.1.

26 E/CN.4/AC.1/3/Add.1.

held during the meetings, taking into account the differing opinions.²⁷ The resulting revised version of the Declaration now consisted of only 36 articles, with the last article dealing with the rights of minorities. This article largely repeated the initial version but was supplemented with a section aimed at protecting public order, moderating minority demands, and reducing state commitments:

“In States inhabited by a substantial number of persons of a race, language or religion other than those of the majority of the population, persons belonging to such ethnic, linguistic or religious minorities shall have the right *as far as compatible with public order* to establish and maintain, ~~out of an equitable proportion of any public funds available for the purpose~~, their schools and cultural or religious institutions, and to use their own language in the press, in public assembly and before the courts and other authorities of the State.”²⁸

It is apparent from this version of the text that the use of minority languages and the operation of minority institutions are considered potential threats to public order. Additionally, the new text proposal eliminated the state's active obligation to provide fair and proportionate funding for the establishment and operation of minority institutions with public funds. Regarding this article, the draft documents stated that, given the importance of this article to many countries, the Drafting Committee felt unable to prepare a draft article on the prevention of discrimination and protection of minorities without a thorough preliminary investigation by the Sub-Committee on the Prevention of Discrimination and Protection of Minorities. Similar reservations were expressed regarding draft articles 6, 15, 16, and 28, with requests for expert opinions from the Human Rights Commission and its sub-commission. For Article 36, the Sub-Commission proposed the following text:

“In States inhabited by well defined ethnic, linguistic or religious groups which are clearly distinguished from the rest of the population and which want to be accorded differential treatment, persons belonging to such groups shall have the rights as far as compatible with public order and security to establish, and to use their own language and script in the press, in public assembly and before the courts and other authorities of the State, if they so choose.”²⁹

The proposed changes in the text can be considered positive from the perspective of minority rights insofar as it makes possible differential treatment depending on the decision of the minority community concerned. This successfully eliminated the possibility of involuntary differentiated treatment of the Afro-American population in the US. However, in other respects, we can observe a significant step backwards. The use of minority languages and the existence of minority educational,

27 Report of The Drafting Committee to The Commission on Human Rights, Commission on Human Rights. Drafting Committee on an International Bill of Human Rights, 1 July 1947, para. 14. UN Doc. E/CN.4/21.

28 Id. p. 81. The emphasis and strikethrough are from the author.

29 Report Submitted to The Commission on Human Rights, Sub-Commission on The Prevention of Discrimination and the Protection of Minorities, 6 December 1947, p. 9. UN Doc. E/CN.4/52.

cultural, and religious institutions are not only considered questionable in terms of public order but are also treated as potentially endangering public security. Moreover, the establishment of educational, cultural, and religious institutions for minorities is no longer guaranteed; the text merely allows for the maintenance of existing institutions without providing a fair share of public funds for these purposes. One might say that it is unexpected for the Sub-Commission on Minority Protection to witness the further deterioration of the human rights article that serves to protect minority rights. As John P. Humphrey, a Canadian professor, former director of the Human Rights Division of the UN Secretariat, and an active participant in the work of the Drafting Committee, notes 20 years later,³⁰ this caution may be attributed to the political cunning of the Sub-Commission, given that at the end the UN General Assembly rejected the inclusion of a minority rights article in the UDHR in 1948.³¹ The rejection was not unanimous, as the Soviet Union, Yugoslavia, and Denmark separately proposed incorporating minority rights into the UDHR. The Soviet Union proposed to supplement the list of human rights with the following article:

“All persons, irrespective of whether they belong to the racial, national or religious majority of the population, have the right to their own ethnic or national culture, to establish their own schools and receive teaching in their native tongue, and to use that tongue in the press, at public meetings, in the Courts and in other official premises.”³²

This proposal makes a passive reference to minorities as those who differ from the racial, national, or religious majority of the population. Yugoslavia, on the other hand, proposed the inclusion of three articles regarding minority rights, which are the following:

A: “Any person has the right to the recognition and protection of his nationality and to the free development of the nation to which he belongs. National communities which are in a state community with other nations are equal in national, political and social rights.”

B: “Any national minority, as an ethical community, has the right to the full development of its ethnical culture and to the free use of its language. It is entitled to have these rights protected by the State.”

C: “The rights proclaimed in this Declaration also apply to any person belonging to the population of Trust and Non-Self-Governing Territories.”³³

30 Humphrey 1968, p. 873.

31 *Yearbook of the United Nations* 1948-49, 1949, p. 544.

32 Additional articles proposed for the draft Declaration (E/800), 27 November 1948, UN Doc. A/C.3/307/Rev.2/Corr.2.

33 Additional articles proposed for the draft Declaration (E/800), 6 November 1948, UN Doc. A/C.3/307/Rev.1 Add.1.

The most interesting element of the Yugoslav proposal in terms of minority rights may be the collective rights approach outlined in Article B, which would have granted national minorities, as communities, legal personality in the sense of human rights. This proposal was certainly the farthest from the system of human rights and the minority protection regimes that eventually developed over the next 50 years.

Denmark's proposal³⁴ was close to the Soviet proposal and the content of the minority rights article of the draft declaration: "All persons belonging to a racial, national, religious or linguistic minority have the right to establish their own schools and receive teaching in the language of their own choice."³⁵

The proposed solutions caused strong opposition from Latin American countries and France, who argued that it was impossible to create universally acceptable rules for the complicated problem of minorities, as it could lead to the fragmentation of a nation's unity in certain cases. Representatives from the UK and the US argued that it was impossible to find a compromise solution in one article that would satisfy both the New World, which wanted to assimilate immigrants, and the Old World, which already had national minorities.³⁶

In light of all this, it is easy to see that the issue of ethnic, national, linguistic, and religious minorities was of paramount importance at the time of the adoption of the UDHR. However, the necessary consensus among the creators of the new world order was not reached regarding the inclusion of minority protection in the human rights system, beyond the prohibition of discrimination against them. However, the lack of consensus was not due to the inability of signatory states to recognize the potential beneficiaries of minority rights within their own countries. Based on the proposed article drafts and the objections raised against them, it can be confidently stated that the obstacle to enshrining minority rights in international law was not just a terminological one.

3. The Missing Definition of Minorities

As previously mentioned, along with the adoption of the UDHR on 10 December 1948, the General Assembly called on the Economic and Social Council in its resolution 'Fate of Minorities'³⁷ to request the UN Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities to prepare a comprehensive study on the problem of minorities, so that the UN could take the necessary steps to promote the interests

34 Denmark's commitment to the protection of minorities cannot be considered principled. However, the Schleswig Danish community, which belongs to Germany, has made Denmark significantly interested in the issue of national minorities. The name of Danish diplomat Hermod Lannung appears several times in the records of the UN and the Council of Europe's minority rights codification work as a progressive proposer.

35 Draft International Declaration of Human Rights, 19 November 1948, UN Doc. A/C.3/307/Rev.1 Add.2, A/C.3/307/Rev.1 Add.2

36 *Yearbook of the United Nations* 1948-49, 1949, pp. 543-544.

37 Part C of General Assembly Resolution 217 (III). International Bill of Human Rights: 217 C (III) 'Fate of Minorities', UN Doc. A/Res/3/217C.

of racial, national, religious, and linguistic minorities.³⁸ The Sub-Commission prepared two separate studies, one entitled 'Definition and Classification of Minorities'³⁹ and the other entitled 'The Main Types and Causes of Discrimination'.⁴⁰

The table of contents of the study on defining and categorizing minorities suggests a comprehensive investigation. The study examined the relationships between community-society, nation-community, state-society, nation-state, the concept of the national state and multi-national state the meaning of the term 'minority', the aspirations of minorities, their sociological, political, and constitutional aspects, the problem of individual and collective rights, and categorized minorities according to eight criteria. The authors of the study noted that in modern times, the term 'minority' mainly refers to a largely separate group that is dominated by other groups within a country. Furthermore, the authors distinguished between (i) those minorities who seek equality with the dominant group through the application of the general prohibition of discrimination, and (ii) those communities who, in addition to the prohibition of discrimination, also claim special rights and positive services "[...] in order to attain real equality, to preserve their distinct characteristics, and to develop their own culture."⁴¹ The study aimed to describe the problem of the latter minorities, given that the demands of the former category are met by the anti-discrimination provisions of the UDHR. The study attributes a minority group's particular characteristics to a common origin, language, culture, religion, or a combination of these factors.

The study concludes that as a basic and general principle, regardless of definition and classification, members of minority groups are entitled to the prohibition of discrimination, particularly concerning the rights and freedoms set out in the UDHR. In addition to the general prohibition of discrimination, minority groups (including those examined in the study) require special rights and positive services to achieve true equality, while preserving their distinctive characteristics and developing their own cultures. The assessment of these special rights and positive services must be based on a case-by-case examination of past and present circumstances, taking into account human rights. The latter, however, does not preclude the possibility of developing a general protection for minority groups.⁴²

38 "Refers to the Economic and Social Council the texts submitted by the delegations of the Union of Soviet Socialist Republics, Yugoslavia and Denmark on this subject contained in document A/C.3/307/Rev.2, and 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."

39 Definition and Classification of Minorities, UN Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 27 December 1949, UN Doc. E/CN.4/Sub. 2/85.

40 The Main Types and Causes of Discrimination, UN Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Lake Success, New York, 7 June 1949, UN Doc. E/CN.4/Sub.2/40/Rev.1.

41 Definition and Classification of Minorities, UN Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 27 December 1949, 27. UN Doc. E/CN.4/Sub. 2/85.

42 Id. para. 27.

Similarly, a previous study examining the main types and causes of discrimination also identified the connection between minority rights and the prohibition of discrimination.⁴³

The study that was conducted on the definition and classification of minorities remained cautious throughout when it comes to defining the concept of minorities. It found that a purely linguistic interpretation is practically unfit for the protection of minorities because any criterion can be used to establish minority categories.⁴⁴ Furthermore, it stated that at the moment of drafting, the term minority carries a much more restrictive meaning, mainly referring to a national or similar community that differs from the state's dominant population. The study identified three characteristic cases as the source of the formation of these minorities: (i) they previously formed an independent nation with their own country or a more or less independent tribal organization; (ii) they were previously parts of a nation that had its own country, but later broke away and were attached to a new state; (iii) they are still a regional or scattered group that, despite feeling some solidarity with the majority society, has not reached even the minimal level of assimilation into the dominant group.⁴⁵

The study, while acknowledging the challenges of defining the concept of minority, emphasizes that: (i) In the field of political science, it is safe to say that the term minority is most commonly used to refer to communities with ethnic, linguistic, cultural, religious, *etc.* characteristics, almost always of a national type. (ii) Members of these minorities form a national group or subgroup that differs from the dominant group. (iii) However, this difference does not necessarily mean that the minority group and the dominant group cannot form a larger national group together.⁴⁶

In summary, the authors of the study concluded that beyond discrimination, the citizens entitled to positive services and special rights are those groups that are bound together by common ancestry, language, culture, religious beliefs, *etc.*, and differ in these characteristics from the rest of the population, and who want to preserve and develop their unique features.⁴⁷

The UN, when it committed itself to the solution of the minority question in Resolution 217 C (III), caused unexpected difficulties for itself by failing to define

43 The Main Types and Causes of Discrimination, UN Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Lake Success, New York, 7 June 1949, pp. 2-3. UN Doc. E/CN.4/Sub.2/40/Rev.1.

44 See para. 37: "It follows from the analysis of the community, the nation and the State outlined above that the term 'minority' cannot for practical purposes be defined simply by interpreting the word in its literal sense. If this were the case, pearly all the communities existing within a State would be styled minorities, including families, social classes, cultural groups, speakers of dialects, *etc.* Such a definition would be useless."

45 UN Doc. E/CN.4/Sub.2/85, para. 38.

46 Id. para. 39.

47 UN Doc. E/CN.4/Sub.2/85, para. 58: "It would seem that minorities entitled, to special positive services and, special rights are restricted to groups of citizens held together by ties of common descent, language, culture, of religious faith, *etc.*, who feel that they differ in these respects from the rest of the population, and who desire to preserve their special characteristics and to develop them further."

minorities. By the 1950s, the definition of minorities had become a neurotic problem within the human rights system, which led to the Sub-Commission specializing in minority issues effectively abandoning further investigation of this issue. While it was clear from the outset in the UN that the issue of minorities had to be addressed, the full legal resolution of the minority issue was not conceivable without an appropriate definition.

The Sub-Commission on Prevention of Discrimination and Protection of Minorities requested the Human Rights Commission on three consecutive sessions to adopt a definition of minorities. In their proposed resolutions on the definition of minorities, presented during their 3rd session from 9 to 27 January 1950,⁴⁸ the 4th session from 1 to 16 October 1951,⁴⁹ and the 5th session from 22 September to 20 October 1952,⁵⁰ they articulated several principles that should frame the definition underlying the protection of minorities under the auspices of the UN. According to their resolutions, the definition should take into account the following: (i) there are distinct groups that do not wish to receive differential treatment from the rest of society. In these cases, the imposition of such treatment is undesirable. (ii) It is undesirable to interfere in spontaneous, rapid processes of racial, social, cultural, and linguistic change brought about by new environments or modern communication technologies. (iii) It is risky to take measures that may disturb the satisfaction and tranquility of minority members, and that may serve the interests of parties interested in fostering disloyalty towards the state. (iv) Protection should not be afforded to practices that are incompatible with the rights proclaimed in the UDHR. (v) In the case of very small groups, recognition of minority status may place disproportionate burdens on the state's resources to ensure specific treatment.

Taking these considerations into account, the Sub-Commission on Prevention of Discrimination and Protection of Minorities recommended the following definition of minorities to the Human Rights Commission for adoption: (i) The concept of minorities includes only those non-dominant groups that seek to preserve their distinct ethnic, religious or linguistic traditions and characteristics that separate them from the rest of the population. (ii) Such minorities must include a sufficient number of individuals to enable the development of these characteristics on their own. (iii) Members of such minorities must be loyal to the state of which they are citizens.

48 Report of the 3rd session of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities to the Commission on Human Rights, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Lake Success, New York, 9 to 27 January 1950, Para. 32. UN Doc. E/CN.4/Sub.2/119.

49 Report of the 4th session of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities to the Commission on Human Rights, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, New York, 1 to 16 October 1951, Annex I, draft resolution II. Definition of minorities for the purpose of protection by the United Nations, 43. UN Doc. E/CN.4/Sub.2/140.

50 Report of the 5th session of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities to the Commission on Human Rights, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, New York, 22 September to 10 October 1952, Para. 26. UN Doc. E/CN.4/Sub.2/149.

In all three cases, the Human Rights Commission referred the definitions back to the Sub-Commission for further work. At its 6th session, the Sub-Commission decided that, given that the Commission had consistently referred the minority question back for further study, it was necessary to conduct a comprehensive study of the situation of minorities worldwide.⁵¹ This study was not completed due to the Human Rights Commission's delays, and the ensuing frustration became evident in the report from the 7th session. The Sub-Commission decided to suspend its work on the protection of minorities – including the definition of the term 'minority' – and to focus its attention on the prohibition of discrimination.⁵²

4. Conclusion

Reviewing the work of the Sub-Commission, we may safely reject the view – shared by, and spread through the study of Capotorti – that following World War II, in the first two decades the international protection of minorities was no longer a subject of concern. The minutes of meetings, the draft conventions and the different studies testify that intensive work has been carried out from 1947 to 1955 on the issue of the rights and definition of national minorities.

Resolution 217 C (III), 'The Fate of Minorities' is a benchmark and a new start in the development of the protection of national minorities. On one hand, it marks the absence of the recognition of the special needs of minorities under the UDHR. On the other hand, it represents the first post-war international recognition of the unsatisfactory situation of national minorities. This recognition proved to be a resilient incentive for the General Assembly and the Human Rights Commission not to drop the protection of national minorities from the agenda.

This article tried to emphasize that it is highly relevant that the issue of national minorities was one of the main questions of the first decade of the UN after World War II. This shows that the new world order based on universal human rights was intended to deal with the special situation of national minorities from the very beginning. Therefore, the protection of national minorities must be treated as an integral part of human rights, not only when it comes to the general prohibition of discrimination against minorities, but also when it protects their special needs, identities, and ways of living.

51 Report of the 6th session of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities to the Commission on Human Rights, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, New York, 4 to 29 January 1954, Resolution F, paras. 71-75. UN Doc. E/CN.4/Sub.2/157.

52 "Decides, therefore, to concentrate its attention on the various aspects of the problem of discrimination and defer work on a further study of the whole problem of the special protection of minorities including the definition of the term 'minority' pending the issue by the Commission on Human Rights of a specific directive on the subject." Report of the 7th session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to the Commission on Human Rights, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, New York, 4 to 28 January 1955, Resolution F. paras. 67-68. UN Doc. E/CN.4/Sub.2/170.