Minority as inferiority: minority rights in historical perspective

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Abstract. This article argues that minority rights developed as an indemnity offered to defeated parties. As a grudging and begrudged calculus of compensation, considered inadequate by the vanquished and offensive by the victors, minority rights have been unable to compete in terms of legitimacy with either an increasingly robust international human rights regime or with the right of national self-determination. After reviewing some explanations for the weakness of the existing minority rights regime, this article traces the rationale of what may be described anachronistically as minority rights provisions in international treaties from the Peace of Westphalia to the Versailles settlement, concluding with a consideration of present-day implications of the argument elaborated here.

Within four years of its foundation the United Nations adopted a ringing Universal Declaration of Human Rights that is considered a cornerstone of international norms and governance. It took the UN General Assembly over forty more years to adopt a Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.1 Whereas the Universal Declaration of Human Rights is monitored and enforced by an important specialised agency very much in the public limelight, the Declaration on Minorities lingers in relative obscurity.

As it is generally acknowledged that minorities are present among virtually all members of the United Nations, the Declaration's dismal reception may appear puzzling. In this article I suggest that the reasons customarily invoked to explain neglect of the issue of minority rights, valid though these reasons may be, fail to identify the historical logic of minority rights. My argument is that what we now define as minority rights have developed primarily as an indemnity offered to defeated parties; as such, minority rights and their historical precedents have been considered inadequate by the vanquished and offensive by the victors. As a grudging and begrudged calculus of compensation, minority rights have been unable to

1 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities Adopted by General Assembly Resolution 47/135 of 18 December 1992. The UN had earlier also adopted a Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief, on 25 November 1981. The Indian National Commission for Minorities (not the General Assembly or any other universal body) has declared 18 December as 'Minorities Rights Day'. 'The existence of a United Nations Declaration on the Rights of Minorities is not a very well known fact', writes, with some understatement, the Indian Commission's Chairman, Prof Mahmod Tahir, author of Minor Role in Major Affairs (New Delhi: Pharas, 2001).
compete in terms of legitimacy with either an increasingly robust international human rights regime or with the right of national self-determination.²

This argument, which may be loosely described as 'realist', differs from what could be equally loosely described as the 'liberal internationalist' position that prevails in most studies of minority issues. C. A. Macartney's classic work that still stands as a model of scholarship more than seventy years after its publication, explains the seventeenth century origins of international minority protection in terms of a denial of absolute state sovereignty and the assumption of the 'existence of a higher law'.³ Other authors, concerned with more recent history, wring their hands at the misfit or incompatibility between national states and national minorities.⁴ They avoid any explanation of bilateral or multilateral provisions for minority protection that would draw on considerations of raison d'État or competitive and punitive relations among states. A characteristic recent statement of this liberal internationalist position sees minority protection provisions as part of a grand Westphalian bargain that has lasted 350 years, according to which 'states are recognized as independent entities with power over their people to the extent that they do not violate certain rights of minorities. If norms are violated, the international community has the collective right to intervene.' The purpose of this bargain is (paradoxically?) to decrease intervention and increase international stability.⁵

In this article I propose to look, briefly, at the most frequently invoked explanations of the weakness of the existing minority rights regime. I shall then attempt to trace, in some historical detail, the rationale of what may be described anachronistically as minority rights provisions in a series of international treaties, distinguishing between religious rights, on the one hand, and nationality rights, on the other. I shall not consider the question of claims to a right of international intervention on behalf of religious or national minorities, although this is obviously a closely related problem. I shall concentrate rather on the issue of international provisions for the state protection of religious and national rights within established borders. The time span of my article extends from the two treaties of the Peace of Westphalia (1648), through the Final Act and related documents of the Congress of Vienna (1815), the Treaty of Paris (1856) and the Treaty of Berlin (1878) to the Paris Peace Treaties of 1919.

² My thinking along these lines has been prompted by Martin Wight's characteristically brilliant essay, 'Compensation', in Martin Wight, Power Politics, edited by Hedley Bull and Carsten Holbraad (New York: Holmes & Meier, 1978), pp. 186–91. I follow Wight in connecting compensation to balance of power politics, but Wight does not consider minority protection as a form of compensation, and his examples stress equivalent exchanges or compensation to victors rather than to the vanquished, in contrast to what I propose in this article.
Why are minority rights neglected?

The first explanation one hears about the fragile status of minority rights in the international sphere is that there is no internationally accepted definition of a minority. Indeed, the term ‘minority’ in the sense that concerns us here is a relative neologism. The term does not appear in international legal documents before the so-called ‘Minorities Treaties’ that accompany the post-World War I Peace Settlement although the notion of ‘minorities’ as applied to this problem was in general or colloquial use earlier. Note that the ‘Minorities Treaties’ mention only ‘racial, linguistic or religious minorities’, coyly avoiding the category of ‘national minorities’. Moreover, since the formal introduction of the term, the customary locution has been ‘individuals belonging to . . .’ or individuals ‘who differ from . . .’, thus circumventing direct reference to the collective designation, ‘minorities’.

Nevertheless, if we are lacking an accepted definition of the term it is not for want of trying. The United Nations, through its Sub-Committee on the Prevention of Discrimination and Protection of Minorities, has undertaken on several occasions to define a ‘minority’ in a satisfactory international legal sense. The most thorough such effort has given rise to the Capotorti Report, now almost three decades old. The report has received both praise and criticism, but ultimately, has not led to an accepted definition.

Although there is no common definition of a ‘minority’ one may legitimately doubt that the problem is a lexical one. Regardless of such suspicions, one might well question whether a hard-and-fast, all-embracing definition is required before introducing a robust international minority rights regime. For example there may be some debate about the definition of a ‘person’ – indeed there is moral disagreement about the precise moment at which personhood begins – and there is considerable conceptual ambiguity about what constitutes a ‘people’. Nonetheless, both persons and peoples are universally accepted as categories deserving protection.

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6 Macartney refers to ‘the principle of attaching a Minorities Guarantee to any extension of frontiers in the Balkans by any state . . .’ with reference to the period 1878 to 1909. In fact, the term ‘minorities’ does not appear in the documents to which he refers. National States and National Minorities, p. 171.

7 The Council of Europe’s Framework Convention for the Protection of National Minorities (1995), described authoritatively as ‘the first legally binding multilateral instrument devoted to the protection of national minorities in general’ continues this practice when it comes to enumerating minority rights, conventions.coe.int/treaty, accessed 2 April 2007.

8 Francesco Capotorti, Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities (New York: United Nations, 1979), p. 7: ‘for the purposes of the study, an ethnic, religious or linguistic minority is a group numerically smaller than the rest of the population of the State to which it belongs and possessing cultural, physical or historical characteristics, a religion or a language different from those of the rest of the population’.

Several state respondents to Capotorti's enquiry did, in fact, object to the term 'minority.'<sup>10</sup> Regardless of the credibility of some of those objecting – Ceausescu's Romania, for example – one may suggest that the second reason for the absence of a robust minority rights regime is a distaste for the term itself. 'If we avoid using this more common expression [national minorities] it is because the status of a minority can never be fully equal to that of the majority', explained the Yugoslavs.<sup>11</sup> This objection merely confirms the urgency of strengthening whatever elements of a minority rights regime exist today. Precisely because minority is tantamount to inequality and inferiority, not merely numerical but substantial inferiority, measures of minority protection are in order. The objection does, however, point to the reluctance of both states and those communities best described as minorities to accept this particular designation. As I propose to argue in this article, rejection of this term is inscribed within a historical logic that is constitutive of the very concept of minority.

A third reason invoked for international resistance to minority rights protection is the, allegedly, sorry record of the League of Nations during the interwar period.<sup>12</sup> The League did indeed inaugurate the first formally institutionalised minority rights regime. It can be plausibly argued, however, that its failure in this area was due to its selective and partial protection of minorities rather than to the principle of minority rights itself. In other words, the League of Nations failed because it offered too little rather than too much minority protection. It is telling that in the post-Cold War period there has been a renewal of interest in the mechanisms of minority protection that the League put into place.<sup>13</sup>

The interwar experience, with its tragic dénouement, led statesmen also to conclude that a strong rights regime founded upon and even limited to individual human rights was an adequate safeguard for minorities as well.<sup>14</sup> This constituted a fourth reason for dismissing the need for minority rights protection. Human rights, it was maintained in 1945 and for decades thereafter, encompassed minority rights. In other words, the rights of individuals covered the rights of individuals belonging to minorities. It is difficult to imagine that this thesis was genuinely believed by all the

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<sup>10</sup> Romania commented that 'The term “minority” – a category too broad and indeterminate – is no longer used to describe differences of race, sex, religion or nationality among citizens ... In the past, the term “minority” in general and the term “national minority” in particular were debased and became almost synonymous with the various forms of inequality between the “majority” and the “minority”.' Capotorti, Study on the Rights of Persons, p. 8.

<sup>11</sup> Ibid., p. 8.

<sup>12</sup> See, for example, Claude, National Minorities: An International Problem, ch. 3, 'The Failure of the League Minority System'.

<sup>13</sup> See, notably, Sebastian Bartsch, Minderheitenschutz in der Internationalen Politik: Völkerbund und KSZEIOSZE in neuer Perspektive (Opladen: Westdeutsche Verlag, 1995).

<sup>14</sup> 'The term “minority protection” has today [1950] been absorbed by the universal principle of the rights of man. Thus the motivations behind it have changed: it is now humanitarian instead of political, universal instead of particular; but its goals and its scope are still not clear. Despite the changes, the raw material of the problem is the same. The United Nations, possessed of its new international concept of human rights has thus unloaded onto its minorities organ a vague and general concept, with both old and new aspects, and the three years of effort of that organ to crystallise it have, consequently, been marked by confusion and hesitancy. It is as if one had picked up the piece of a broken vase, but had found the room decorations changed, and couldn't decide if the vase still went well in the room, and moreover couldn't find all the pieces. So the vase lies unrepaiired, still on its old table, awaiting patching.' Tennent Harrington Bagley, General Principles and Problems in the International Protection of Minorities: A Political Study (Geneva: Imprimeries Populaires, 1950), p. 7.
founders of the United Nations. Freedom from the obligation to differentiate among their citizens in terms of specific minority rights was a convenient stratagem for a number of states, including such permanent members of the Security Council as the United States which practiced racial segregation, France and the United Kingdom which possessed huge colonial empires, and the Soviet Union which was pleased to remain at the level of general and universal declarations. In the following decades, the decolonisation movement pushed to the forefront the rights of colonised peoples to self-determination. In this context as well, specific attention to minority rights was a distraction or perhaps even an obstacle to the attainment of political objectives, otherwise unhindered by an avowed commitment to individual human rights.

Finally, it is argued that states have shunned commitment to an international minority rights regime because it might limit their power of action, oblige them to justify themselves in front of international bodies, and possibly even force them to change policies. This is, of course, true of any international commitments and yet no recognised state refuses to acknowledge all international undertakings. States lend at least verbal adherence to the terms of the Universal Declaration on Human Rights. Whatever their interpretations of this document and whatever their practices, states do not quibble over terms or issue frivolous and abundant reservations in regard to this Declaration as they do with regard to declarations and other non-binding international documents on minority rights. It is striking that the two countries which may be considered the cradles of modern conceptions of human rights, Greece and France, refuse to acknowledge the existence of minorities within their borders.

In short, the weakness of the contemporary international minority rights regime requires a more satisfactory explanation than the ones we are customarily offered. I suggest that such an explanation might begin with a thicker historical account of the development of minority rights. This is what I propose to undertake in the body of this article.

The Westphalian paradigm

Analyses of the creation of an international minority rights regime customarily concentrate on the founding of the League of Nations in 1919, even though they do

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15 Article 1 paragraph 2 of the United Nations Charter states the aim of the UN ‘To develop friendly relations among nations based on respect for the principles of equal rights and self determination of peoples. . . .’

make a perfunctory bow to historical precedents. In the search for such precedents, the two treaties of Osnabrück and Münster and some other contemporaneous documents, known collectively as the Peace of Westphalia (1648), serve as a notional point of departure for the process that led to the modern understanding of minority rights. The Westphalian gathering of belligerents exhausted by the Thirty Years’ War, the final chapter in Europe’s wars of religion, is also often considered the canonical birth of the modern state system. However, the connection between terminating wars of religion, defining relations among states, and protecting minorities, deserves closer attention. Paradoxically, the Peace of Westphalia, which is reputed to have established the modern concept of sovereignty or unlimited state authority, is also the moment when that authority was to find itself restricted by provisions on behalf of religious minorities.

‘Christendom’ constitutes the terms of reference of the Peace of Westphalia, even though the pope refused to participate in the proceedings and protested against their outcome. With their pious invocations ‘of the most holy and individual Trinity’ and their commitment to a ‘Christian and Universal Peace’, the diplomats gathered in Westphalia cultivated a nostalgic evocation of the foregone religious unity of medieval Western Europe. In fact, Christendom had never been as completely homogeneous as it liked to recall after the schism caused by the Protestant Reformation. In the Middle Ages, Christian rulers had hosted Jewish communities and they had patronised dissident sects for political reasons. The difference between that earlier age and the innovations introduced at Westphalia was that, in previous times, it was rulers who had decided whom they would tolerate within their jurisdiction. This was the principle confirmed, against a rising tide of religious heterogeneity, in the Peace of Augsburg (1555) with its formula of cujus region eius


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The terms of the Peace of Augsburg authorised suzerains of the numerous imperial estates or statelets to determine (through the so-called *ius reformandi*) whether the inhabitants of their domain were to be Catholic or Lutheran. There were certain allowances and exceptions: religious dissidents could emigrate freely during a stipulated period; ecclesiastical principalities were to remain Catholic which meant that a prince-bishop who converted to Lutheranism had to relinquish his lordship.23 Barring such specific reservations, the rights of rulers over their subjects were not constrained by the requirement that they respect the faith of a religious minority among their subjects.

The treaties signed in Westphalia follow what was to become a ritualised succession of provisions – invocation, peace clauses, amnesty, guarantees, territorial arrangements.24 All in all, however, these treaties resemble an array of notarised documents concluded by landowners disposing of their estates or by businessmen making a property deal. Of course, some provisions are of more obvious historical significance; such might be the recognition of the independence of the United Provinces of the Netherlands in a separate treaty with Spain.25 However, most stipulations of the treaties may be described as of a ‘‘house-keeping’’ variety inasmuch as they provide in minute detail for the disposal of land and chattel. The property affairs of the Landgravine of Hesse alone, for instance, occupy half a dozen articles in the Treaty of Munster.26

Next to such clauses one finds passages that explicitly connect cession of territory with restrictions expressed in terms of religious minority concerns. For example, in the Treaty of Munster between the Holy Roman Emperor and His Most Christian Majesty, that is, the King of France, the former cedes various titles:

First, That the chief Dominion, Right of Sovereignty, and all other Rights upon the Bishopricks of Metz, Toul, and Verdun, and on the Cities of that Name and their Dioceses, particularly on Mayenvick, in the same manner they formerly belong’d to the Emperor, shall for the future appertain to the Crown of France, and shall be irrevocably incorporated therewith for ever, saving the Right of the Metropolitan, which belongs to the Archbishop of Treves (Article LXXI).

And after a list of such transfers one reads:

The most Christian King shall, nevertheless, be oblig’d to preserve in all and every one of these Countrys the Catholick Religion, as maintain’d under the Princes of Austria, and to abolish all Innovations crept in during the War (Article LXXVII).

It may be noted that His Most Christian Majesty was also a Catholic monarch ruling a kingdom where Catholicism was the established religion of the land. The stipulation regarding the preservation of Catholicism might therefore be regarded as superfluous in terms of protecting Catholics. Arguably, it may be interpreted as a

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23 Thomas Klein, ‘Minorities in Central Europe in the Sixteenth and Early Seventeenth Centuries’, in A. C. Hepburn (ed.), *Minorities in History* (London: Edward Arnold, 1978), pp. 51-69. For example, imperial cities had a distinct *ius reformandi* that allowed them to order their own affairs, but if a city was mixed, it had to remain mixed.


warning against extension of the terms of the Edict of Nantes (1598) that had instituted limited toleration of Protestants in France and that authorised them to set up places of worship in some designated localities. If this is so, one must conclude that the treaty provision is, somewhat perversely, not about extending minority rights but about limiting them. Whatever the case, the thrust of the provision is clear: although the emperor is ceding territory, he is not ceding it unconditionally; and although France is acquiring territory, it is acknowledging the residual interest of the emperor in his former lands.

The Thirty Years War strengthened France and Sweden and weakened the Empire. However, inasmuch as the Peace of Westphalia reflected a military standstill brought on by exhaustion, it avoided explicit overall attribution of victor or vanquished status. The underlying principle behind the Westphalian treaties was a return to a territorial and religious status quo. It was not entirely a status quo ante bellum but, for some purposes, it was a status quo ante set, after long disputes that prolonged the hostilities, at a time point chosen in the course of the War. This was made explicit in the Treaty of Osnabrück’s general principle that members of the minority confession should be ‘patiently suffered and tolerated’. It even specified that these minority subjects should not be excluded from guilds, hospitals or alms-houses, nor should they be made to pay more for burial than the majority subjects.27

The meticulously enumerated terms of the peace provisions meant that the belligerent parties had to restitute some lands, towns, fortresses and other property to their previous owners even as they had their titles confirmed to other acquisitions. Whatever the new status of the territory, it also meant that pre-existing religious configurations were to be respected. Thus, we read in the Treaty of Munster:

That it shall not for the future, or at present, prove to the damage and prejudice of any Town, that has been taken and kept by the one or other Party; but that all and every one of them, with their Citizens and Inhabitants, shall enjoy as well the general Benefit of the Amnesty, as the rest of this Pacification. And for the Remainder of their Rights and Privileges, Ecclesiastical and Secular, which they enjoy’d before these Troubles, they shall be maintain’d therein; save, nevertheless the Rights of Sovereignty, and what depends thereon, for the Lords to whom they belong (Article CXVII).

With respect to the newly-created Electorate of the Palatinate conceded by the emperor, we read:

That those of the Confession of Augsburg, and particularly the inhabitants of Oppenheim, shall be put in possession again of their Churches, and Ecclesiastical Estates, as they were in the year 1624, as also that all others of the said Confession of Augsburg, who shall demand it, shall have the free Exercise of their Religion, as well in publick Churches at the appointed Hours, as in private in their own Houses, or in others chosen for this purpose by their Ministers, or by those of their neighbours, preaching the Word of God (Article XXVIII).

Here, the Catholic emperor is enjoining another Catholic sovereign to respect Protestant minority rights. This can be understood in the context of an overall religious aggiornamento that puts Catholicism and Protestantism, now in its two variants of Lutheranism and Calvinism, on a more or less equal footing. From the

point of view of our concern, however, it is another indication of the use of what we would now call religious minority rights to temper territorial losses and rein in territorial gains.

We may take a final confirmation of our argument from provisions concerning Bohemia, the province where the Thirty Years War began and where the Emperor emerged as victor after having vanquished the Bohemian Protestant Estates. Here it was the turn of the Emperor to make concessions to his defeated opponents.

As for the rest, Law and Justice shall be administer’d in Bohemia, and in all the other Hereditary Provinces of the Emperor, without any respect; as to the Catholicks, so also to the Subjects, Creditors, Heirs, or private Persons, who shall be of the Confession of Augsburg, if they have any Pretensions, and enter or prosecute any Actions to obtain Justice (Article XLVI).

The Peace of Westphalia, a monumental multilateral gathering with no precedents and only few successors on this scale, established a paradigm for the insertion of religious minority clauses into international agreements. In future treaties, state parties would assert the right to claim an interest in the status of religious minorities in a co-signatory state. Such assertions would frequently imply a unilateral right of intervention on behalf of a religious minority.28 Future treaties granting territorial concessions often limited provisions concerning religious minorities to the area ceded, a feature deriving from the emergence of modern boundaries in the immediate aftermath of Westphalia.29 Generally speaking, these treaties enshrined a religious status quo ante that reduced the losses of those who were ceding territory and the gains of those who were acquiring it.

Within a few years, the Westphalian paradigm was reproduced in the Treaty of Oliva (1660) by which Sweden acquired Prussian Pomerania and Livonia.30 In this treaty, Poland stipulated that Livonian Catholics would continue to practice their faith while the clauses concerning Pomerania confirmed the freedom of religion that had existed previously in the ceded Baltic cities. With the Treaty of Nijmengen (1678) Louis XIV returned the city of Maastricht to the United Provinces of the Netherlands while obtaining that Catholicism should re-acquire the rights that it had enjoyed there under a convention of 1632 and that it had since lost. He insisted that a similar clause in the Treaty of Ryswick (1697) cover even the religious rights of Catholics newly converted under the recent French occupation.31 With the Peace of Paris (1763) that ceded French Canada to Great Britain, the principle of religious rights as compensation moved beyond Europe with concessions to the Catholic inhabitants of

28 The right to intervention, however, was not territorially limited as were minority rights: ‘En opposition avec l’intervention de religion dont l’objet s’étend à tous les coreligionnaires de l’Etat intervenant, les garanties qui se trouvent dans les traités de cession ne concernent que les habitants des territoires cédés’, Duparc, p. 75.
30 Treaty between Poland, the Empire and Brandenburg and Sweden, signed at Oliva, 23 April/3 May 1660, ch. IV, Article 2 and ch. II, Article 3, Consolidated Treaty Series, vol. 6, pp. 68 and 64; discussed in Duparc, p. 75-6.
New France. In tacit acknowledgement of the depreciating implications of such provisions, the treaty stipulated that these concessions would only be applied insofar as they were compatible with British law.32

The principle of requiring religious guarantees in return for ceding territory was so frequently applied after Westphalia that it is easy to lose sight of its historical logic. The following extract from one of the documents adopted by the Congress of Vienna in 1815 reminds us explicitly of its underlying justification. In ceding parts of his Duchy of Savoy to the Republic of Geneva, the King of Sardinia declared:

His Majesty, unable to consent to having part of his territory united with a state where a different religion is dominant, without obtaining for the inhabitants of the country he is ceding the certitude that they will enjoy free exercise of their religion, that they will continue to have the means necessary for the expenses of worship, and that they will themselves enjoy the full rights of citizens (Article III).33

To assuage the monarch’s apparent anguish at the loss of his subjects and at their future fate under alien auspices, the clause enumerated extremely specific provisions regarding the protection of the Catholic faith in the area ceded. District boundaries, as well as the number of Catholic priests, were to remain unchanged. Only Catholic schoolteachers were to be employed and there were to be no Protestant churches in this area (with one exception). The proportion of Catholics in the municipal council and alternation between Protestant and Catholic mayors was guaranteed, regardless of future population changes. In short, though these areas had changed sovereignty, the terms of the previous sovereignty persisted in the religious sphere. Significantly, however, by 1815 religious guarantees had spilled over into the civil and political arena. In this respect, the Congress of Vienna opened a new era in the pre-history of minority rights.

The Vienna principle

‘A World Restored’ is how Henry Kissinger entitled his study of the Congress of Vienna.34 In fact, the statesmen gathered in Vienna were fully, if sometimes regretfully, aware of the significance of the changes produced by the French Revolution and the Napoleonic era. Instead of seeking to restore all former dynasties in their previous borders, they restored some rulers, abolished some states, and modified many borders. In the conceptual terms that interest us here, they reconformed the principle of retaining the religious status quo of a ceded territory. Indeed, as we have seen in the case of the King of Sardinia and his losses to Geneva, and as

32 'His Britannick Majesty, on his side, agrees to grant the liberty of the Catholic religion to the inhabitants of Canada. He will, in consequence, give the most precise and most effectual orders, that his new Roman Catholic subjects may profess the worship of their religion according to the rites of the Romish Church, as far as the laws of Great Britain permit,' Definitive Treaty of Peace between France, Great Britain and Spain, signed at Paris, 10 February 1763, Consolidated Treaty Series, vol. 42, p. 325; discussed in Preece, 'Minority Rights in Europe', p. 77.
33 Protocol of Conference between the Plenipotentiaries of the Eight Powers (Austria, France, Great Britain, Portugal, Prussia, Russia, Spain and Sweden) respecting the Cessions made by the King of Sardinia to the Canton of Geneva, signed at Vienna, 29 March 1815, Consolidated Treaty Series, vol. 64, pp. 75–6; discussed in Duparc, p. 83.
was equally the case with respect to dispositions concerning the Netherlands, religious minority rights became much more explicit than they had been previously. The most fateful innovation at Vienna, however, and one that justifies speaking of a new era in the pre-history of minority rights, was the attempt to adumbrate what may be anachronistically referred to as national minority rights.

Nationality was an unknown term at the outset of the French Revolution. When statesmen gathered in Vienna a quarter century later, the term itself had not yet acquired its later formal meaning but its relevance was widely acknowledged, not least among these statesmen themselves. They were aware that national sentiment had been both the mainspring and the undoing of the French Republic and of the Napoleonic empire and they therefore stepped carefully around this issue. As early as 1792, the Swiss writer Mallet du Pan had warned that Austria and Prussia would be defeated in their offensive against revolutionary France unless they could emblazon on their banners the slogan, 'The Charter of Peoples', for that alone could oppose the watchword of 'The Rights of Man'. Mallet du Pan's advice, unheeded at the time, found illustration in the decisive defeats inflicted upon Napoleon by Spanish and Tyrolean insurgents. It was further confirmed by the part that patriotic fervour, aroused by Napoleon's transgressions, was to play in his defeat, in Russia and Germany.

At the Congress of Vienna, it was Austrian Chancellor Metternich, host and mastermind of the gathering, who was most sensitive to the issue of nationality. He had astutely identified the revolt against Napoleon in Spain as a 'national war' adding 'no people wants a foreign master or a foreign yoke; any reform, however salutary it may be, will be odious if it comes from the outside'. He readily described Austria as a 'number of provinces separated by nationality and by history', claiming later that in no empire 'are nationalities as respected as in ours' and that respect of nationalities was the very condition of the empire's existence. Indeed, he complained that 'one of the sentiments most natural to man, that of nationality, is itself erased from the liberal catechism.'

This is the spirit in which the Congress approached one of the most difficult issues that it was called upon to resolve, namely, the status of Poland. The partitions of

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37 Mémoires documents et écrits divers laissés par le Prince de Metternich Chancelier de Cour et d'Etat publiés par son fils le Prince Richard de Metternich, classés et réunis par M. A. de Klinkowstroem, vol. III (Paris: Plon, 1880), p. 197: 'je ne suis pas de ceux, Monsieur l'ambassadeur, qui ne tiennent aucun compte du sentiment de la nationalité: je conçois non-seulement ce sentiment, mais je le respecte. Ce que je ne comprends pas, c'est qu'on n'emploie pas des choses en elles-mêmes respectables là où leur emploi serait utile.'
Poland among Russia, Prussia and Austria between 1772 and 1795, had eliminated Poland from the map. Described by Lord Acton as the crime that was to haunt Europe for a century, the partitions weighed on the minds of the assembled statesmen and inspired solutions so incompatible with the interests of individual parties that the recently victorious and still allied powers almost came to blows. Whereas Britain (and France which was making a rapid comeback at Vienna thanks to dissent among the allies) took a posture in favour of the restoration of an independent Polish state, the three partitioning powers (obviously) demurred. All the parties looked with suspicion on Russian designs for Poland which proposed a Polish kingdom of uncertain dimensions but certainly under Russian influence.

The Congress eventually came to a complex territorial compromise over ex-Polish lands that involved the transfer to Russia of parts of Prussian Poland in exchange for attaching parts of Saxony to Prussia. Most significantly from our point of view, however, the Final Act of the Congress of Vienna introduced a clause that, for the first time, extended protection to a national rather than a religious minority. The ground for this innovation was prepared by British Foreign Secretary Castlereagh who had expressed concern that anything less than integral restoration of the Polish state might create a ‘hearth of troubles and insurrections’. Castlereagh therefore circulated a note arguing:

Experience has proved that it is not by counteracting all their habits and usages as a people that either the happiness of the Poles, or the peace of that important portion of Europe, can be preserved. A fruitless attempt, too far persevered in by institutions foreign to their manners and sentiments, to make them forget their existence and even language as a people, has been sufficiently tried and failed. It has only tended to excite a sentiment of discontent and self-degradation, and can never operate otherwise then as to provoke commotion and to awaken them to a recollection of past misfortunes.

The undersigned . . . ardently desires that the illustrious monarchs, to whom the destinies of the Polish nation are confided, may be induced before they depart from Vienna to take an engagement with each other, to treat as Poles, under whatever form of political institutions they may think fit to govern them, the portions of the nation that may be placed under their respective sovereignties. The knowledge of such a determination will best tend to conciliate the general sentiment to their rule, and to do honour to the several sovereigns in the eyes of their respective governments.

This British proposition was ardently endorsed by France, the only other power who had not profited from the partition of Poland. Sanctioniously, and with obvious relish at the discomfort the prospect might cause to the partitioners, the French Foreign Minister Talleyrand stated, ‘the Poles will always form a family’, and

39 Acton argued that [the partitions of Poland] ‘awakened the theory of nationality in Europe, converting a dormant right into an aspiration and a sentiment into a political claim.’ [With the disappearance of the Polish state] ‘there was ‘a nation demanding to be united in a State – a soul, as it were, wandering in search of a body in which to begin life over again; and, for the first time, a cry was heard that the arrangement of States was unjust – that their limits were unnatural, and that a whole people was deprived of its right to constitute an independent community’. J. E. E Acton Dahlberg-Acton, ‘Nationality’, Essays on Freedom and Power, selected and with an introduction by Gertrude Himmelfarb (Boston, MA: Beacon Press, 1948), p. 171.


41 Hannah Alice Straus, The Attitude of the Congress of Vienna Toward Nationalism in Germany, Italy and Poland (New York: Columbia University Press 1949).

42 See Castlereagh’s note of 12 January 1815, reproduced in Macartney, pp. 159–60.
predicted that the day of their emancipation and reunification would come.43 In the
end, however, Castlereagh’s ‘philanthropic counsels’, as Metternich dubbed them,
were accepted guardedly by the partitioning powers. This was the price that the
partitioners had to pay to those who were not enjoying the spoils of Poland as well
as to the despoiled Poles themselves. That the price was not excessive was confirmed
by Metternich’s astute if cynical remark that Russia, having satisfied its territorial
ambitions, was content to offer the Poles ‘some phantom of so-called nationality
which would shut them up’ [emphasis in original].44

The first article of the Final Act of the Congress of Vienna signed between Austria,
France, Great Britain, Portugal, Prussia, Russia and Sweden on 9 June 1815 read:
The Poles, respectively subjects of Russia, Austria and Prussia, shall obtain a representation
of their National Institutions regulated according to the mode of political existence that
each of these Governments to which they belong will judge useful and appropriate to grant
them.45

This provision was completed in bilateral treaties among the three partitioning
powers that agreed upon:

measures most appropriate for consolidating the welfare of the Poles in the new relations in
which they found themselves placed by the changes brought about by the fate of the Duchy
of Warsaw [created under Napoleon – AL] and wishing, at the same time, to extend the
effects of these benevolent dispositions to the provinces and districts which composed the
former kingdom of Poland, by means of liberal arrangements, to the extent that
circumstances have made this possible, and by the development of the most advantageous
relations in the reciprocal commerce of the inhabitants (preamble).46

Specifically, this meant providing for the creation of a free trade and free navigation
zone over former Polish territory. These provisions as well as those of the Final Act
had no enforcement mechanisms.

At this point it bears notice that although identifying nationality in place of
religion gave a radically different meaning to the understanding of who should
constitute the subject of treaty protection, the logic of the process bore significant
similarities to that of the past. In Vienna as in Westphalia and its successors, minority
protection was extended to compensate a losing party and to limit a victor’s
enjoyment of his newly acquired possessions. In this case, however, the subjects of
compensation were only notionally or indirectly rewarded. The Polish nationality
guarantee of the Congress of Vienna compensated a state, Poland, that no longer

43 ‘En restant partagée, la Pologne ne sera point anéantie pour toujours. Les Polonais ne formant plus
une société politique formeront toujours une famille. Ils n’auront plus une même patrie, mais ils
auront une même langue. Ils resteront donc unis par le plus fort et le plus durable de tous les liens.
Ils parviendront, sous des domination étrangères, à l’âge viril auquel ils n’ont pu arriver en neuf
siècles d’indépendance, et le moment où ils l’auront atteint ne sera pas loin de celui où, émancipés,
44 Metternich, vol. II, p. 487, italics in original. A liberal such as Wilhelm von Humboldt believed that
the Poles had been given too much: ‘There was a tendency of these gentlemen [i.e., the Poles] to
make of Poland under three sovereigns a nation (which has a different meaning for them than the
straightforward human one). I had nothing to do with this thing. I was only able to strike out an
article on the rights of nationality which went much too far . . .’ Cited in Hans Henning Hahn, ‘Der
Polnische Novemberaufstand von 1830 angesichts des zeitgenössischen Völkerrechts’, Historische
45 Act of the Congress of Vienna, signed between Austria, France, Great Britain, Portugal, Prussia,
46 Treaty between Austria and Russia, signed at Vienna 21 April (3 May) 1815, Consolidated Treaty
Series, vol. 64, p. 136.
existed, as well as powers that had not been involved in any of the territorial exchanges in question, namely, Great Britain and France. The introduction of the Polish nationality clause implied recognition by the partitioning powers of the legitimacy of these outsiders' claim of compensation for an unfavourable change in the balance of power and of the legitimacy of the Polish claim to what would today be called a 'national identity'.

Above all, the provisions of Vienna failed to satisfy the principal party that they were intended to appease, the Poles. The Congress Kingdom of Poland, an autonomous entity in personal union with the Russian crown, covered only a fraction of pre-partition Poland and, in any case, was dissolved after a Polish revolt against Russia in 1830. Those Poles who had mistrusted the promises of Vienna were proven correct. Others, like Prince Adam Czartoryski, once a boon companion of Russian tsar Alexander and later leader of the anti-Russian Polish emigration, who persisted in lobbying the powers to have the terms of Vienna respected came away empty-handed. The travails of the Polish Cause – 'la grande crucifiée' – in the long nineteenth century were viewed with sympathy by liberal opinion everywhere and they confirmed the inadequacy of the Vienna provisions or, indeed, of any solution short of national independence.47 Pole were thus both the first beneficiaries of national minority rights and the first to repudiate these rights as inadequate. Because of the Polish experience, the notion of satisfying national aspirations by protecting national minority rights was discredited from the outset.

Discredit was also the fate of Metternich's attempts to cultivate 'nationality' in the Habsburg domains of Italy. 'In order to gain the trust of the Italian people, it is above all necessary to avoid worrying them with the thought that one would want either to germanise Italy or to treat it simply as an Austrian colony', wrote one of Metternich's subordinates, and the chancellor subscribed entirely to this view.48 He had the emperor proclaim a Lombardo-Venetian Kingdom, where all cabinet members were Italian, and he insisted that civil servants there be fluent in Italian. Nevertheless, Metternich's courting of Italian 'nationality', understood as a form of political or cultural regionalism or even home rule, appears to have only accelerated the Italian drive for sovereign self-determination. Italian unification took place under the banner of opposition to Austrian suppression of Italian nationality.

Indeed, what was soon to be called the 'principle of nationalities', acquired a completely different connotation from what it was intended to mean at Vienna. In 1834, with obvious reference to the Polish case, the French social theorist, P. J. Buchez, defined a nationality as not merely a nation but something in virtue of which a nation subsists even when it has lost its autonomy.49 French support for the Polish cause proved largely rhetorical but, as Buchez's definition demonstrates, French rhetoric went well beyond calls for respect of the provisions of Vienna. By mid-century, 'nationality' implied not minority status but potential statehood or

49 In a clear reference to the Polish case, the self-proclaimed inventor of the 'principle of nationality', J.-P. Buchez, writing in his Histoire parlementaire de la Révolution française (1834) defines 'nationalité' as 'non seulement la nation, mais ce quelque chose en vertu de quoi une nation subsiste lorsqu'elle a perdu son autonomie,' cited in G. Bertier de Sauvigny, 'Liberalism, Nationalism, and Socialism: The Birth of Three Words', Review of Politics, 32:2 (April 1970), p. 159.
what was soon to be called self-determination. With the coming to power of Louis Napoleon Bonaparte in 1848, the ‘principle of nationality’, in this revised understanding of the term, became the linchpin of French efforts to reverse the status quo imposed in 1815. French pursuit of the ‘principle of nationalities’ did not restore Poland but it led to the unification and statehood of Italy and Romania as well as, indirectly, of Germany. By the middle of the century, legal authorities such as Johann Caspar Bluntschli and Stanislao Pasquale Mancini had eliminated the connection between minority rights and nationality by replacing it with a new symbiosis of nationality and statehood. The national state not minority status was now the battle-cry of every nationality. As Acton put it, the ‘greatest adversary of the rights of nationality is the modern theory of nationality’.

The Eastern Question

Religious rights and nationality rights as the twin pillars of a minority rights system came together in a novel way in the course of the nineteenth century with respect to the changing status of Balkan Europe or what was to be known as the Eastern Question. Faced with the decline of the Ottoman Empire and the assertion of independence by Balkan peoples, the Great Powers reacted, almost instinctively, with the minority protection formulae that they had elaborated at Westphalia and Vienna. These halted neither the disintegration of the Ottoman Empire nor the emergence of Balkan states. They did serve, however, to further discredit the notion of minority rights.

The establishment of an independent Greek state provided the first occasion for the Great Powers to enforce their composite conception of minority rights as involving both nationality and religion. In the London Protocol of 1830, Britain, France and Russia declared:

Les Plénipotentiaires des trois Cours Alliées voulant en outre donner à la Grèce une nouvelle preuve de la sollicitude bienveillante de leurs Souverains à son égard, et préserver ce pays des malheurs que la rivalité des cultes qui y sont professées pourrait y susciter, sont convenus que tous les sujets du nouvel Etat, quel que soit leur culte, devront être admissibles à tous les emplois, fonctions et honneurs publics, et traités sur le pied d’une entière égalité, sans égard à la différence de croyance dans leurs rapports religieux, civils ou politiques.

This declaration is noteworthy in several respects. Like the previous minority rights clauses we have seen, it offers guarantees and concessions to a defeated party, in this case, the Ottoman Empire. Significantly, however, the defeated state is not a party to the agreement. Indeed, it is not a Christian state and it is not a member of the European state system. Moreover, although the subjects of the guarantees in the

51 Pasquale Stanislao Mancini, Della Nazionalità come fondamento del diritto delle genti (1851) and Johann Caspar Bluntschli, Allgemeines Staatsrecht (1852).
52 Acton, 'Nationality', p. 192.
London Protocol are identified in religious terms, the guarantees all apply to equality in the secular sphere. Certain clauses in earlier arrangements had blurred the distinction between religious freedom and civil and political rights. Here, however, religion is clearly a stand-in for what was already being called 'nationality'.

The Greek case inaugurated a pattern that was to be respected throughout the nineteenth century and, arguably, one that would be applied after World War I as well. In various treaties, the Great Powers continued to compensate defeated parties, usually the Sublime Porte, by imposing national minority guarantees disguised as religious guarantees and limited to detached areas or to newly autonomous or independent former Ottoman provinces. It may be noted too that, upon the proclamation of Greek independence, it was not only the Ottoman Empire but France as well that obtained compensation. What was France being compensated for? As the terms of the London Protocol of 1830 put it:

... depuis plusieurs siècles, la France est en possession d’exercer, en faveur des catholiques soumis au Sultan, un patronage spécial que S. M. T.-C. [Sa Majeste très chrétienne, i.e., the French king] croit devoir déposer aujourd’hui entre les mains du futur Souverain de la Grèce, quant à ce qui concerne les provinces qui doivent composer le nouvel Etat. Mais en se désaisissant de cette prérogative, S. M. T.-C. se doit à elle même et elle doit à une population qui a vécu si longtemps sous la protection de ses ancêtres, de demander que les catholiques de la terre ferme, et des îles trouvent, dans l’organisation qui va être donnée à la Grèce, des garanties capables de suppléer à l’action que la France a exercée jusqu’à ce jour en leur faveur (ibid.).

The plenipotentiaries of Russia and Great Britain accepted ‘la justice de cette demande’ (ibid.) implying that the cession not only of territory but of customary privileges justified the attribution of minority obligations to the beneficiary state. The terms of the London Protocol were explicitly reiterated in the cession of the Ionian Islands to Greece in 1863 both with respect to equality in the secular sphere and special mention of Catholics. In this case, Great Britain was the transferring power as it had exercised a protectorate over the Ionian Islands since 1815, but it was recognised that Britain had been only a tutelary agent and that the loss of sovereignty over the Ionians accrued to the Ottoman Empire. Similarly, when Thessaly passed from Ottoman to Greek rule in 1881, a matter which one might have thought to be a bilateral concern between Constantinople and Athens, the treaty negotiated and signed by the Great Power ensured that Ottoman losses would be compensated by minority guarantees in the transferred region.

The lives, property, honour, religion and customs of those of the inhabitants of the localities ceded to Greece who shall remain under the Hellenic administration will be scrupulously respected. They will enjoy exactly the same civil and political rights as subjects of Hellenic origin (Article III).

In a telling confusion of ethnic and religious categories, the treaty juxtaposes subjects of ‘Hellenic origin’ with ‘Mussulmans’.

Freedom of religion and of public worship is secured to Mussulmans in the territories ceded to Greece. No interference shall take place with the autonomy or hierarchical organisation of Mussulman religious bodies now existing, or which may hereafter be formed; nor with the management of the funds and real property belonging to them. No

54 Treaty Between Austria, France, Great Britain, Prussia and Russia relative to the Ionian Islands, signed at London, 14 November 1863, Consolidated Treaty Series, vol. 128, p. 281.
obstacles shall be placed in the way of the relations of these bodies with their spiritual heads in matters of religion. The local courts of the Cheri [Shariah] shall continue to exercise their jurisdiction in matters purely religious (Article VIII).  

The persistence of the principle of compensation comes through in novel fashion in the Treaty of Paris (1856), the peace agreement following the Crimean War. As a member of the victorious coalition, the Ottoman Empire was, for once, victor rather than vanquished whereas Russia now found itself the defeated party. To compensate Russia for losing its longstanding claims to protection of the Christian or Christian Orthodox population of the Ottoman Empire, the Sultan was made to issue a decree whose terms were incorporated into the Treaty of Paris:

His Imperial Majesty the Sultan having, in his constant solicitude for the welfare of his subjects issued a Firman, which, while ameliorating their condition without distinction of Religion or of Race, records his generous intentions towards the Christian population of his Empire, and wishing to give a further proof of his sentiments in that respect has resolved to communicate to the Contracting Parties the said Firman, emanating spontaneously from his Sovereign will (Article IX).  

In its other clauses, the Crimean settlement again confirmed the traditional pattern where minority rights compensated for territorial concessions. Although the Ottoman Empire had been on the 'right' side in the recent war, it was nevertheless obliged to concede extensive autonomy – indeed, quasi independence – to the two principalities of Moldavia and Wallachia. The Protocol of the Conference of Constantinople (1856) defining this concession reads:

Tous les cultes et ceux qui les professent jouiront d’une égale liberté et d’une égale protection dans les deux principautés (Article XIII).

Tous les Moldaves et tous les Valaques seront, sans exception, admissibles aux emplois publics (Article XVI).

Toutes les classes de la population, sans aucune distinction de naissance ni de culte, jouiront de l'égalité des droits civils, et particulièrement du droit de propriété, dans toutes les formes; mais l'exercice des droits politiques sera suspendu pour les indigènes placés sous une protection étrangère (Article XVIII).  

For historical reasons, there was no Muslim minority in the principalities. The guarantees introduced in respect to the future Romania related therefore to non-Muslims. That this was the concern of the Great Powers came out clearly in the Convention of Paris (1858) which followed the Paris Peace Treaty:

Les Moldaves et les Valaques de tous les rits [sic] Chrétiens jouiront également des droits politiques. La jouissance de ces droits pourra être étendue aux autres cultes par les dispositions législatives (Article XLVI).  

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55 Convention for the Settlement of the Frontier between Greece and Turkey, and Convention to Regulate the Evacuation of the Territories ceded by Greece between Austria-Hungary, France, Germany, Great Britain, Italy, Russia and Turkey, Constantinople, 24 May 1881, Consolidated Treaty Series, vol. 158, pp. 368-9; discussed in Temperley, p. 114.


58 Cited in Wolf, Notes, p. 23.
The Muslim Sultan was thus compensated for the reduction of his authority in the Christian Principalities by the promise that the rights of his Christian subjects there (and, by possible future enactment, his Jewish subjects) would be respected. In fact, this was not as incongruous as it might appear if one recalls the ‘constant solicitude for the welfare of his subjects’ expressed in the Imperial Firman invoked in the Treaty of Paris. Presumably, the solicitude of the Sultan applied to all his subjects of whatever faith. In the final analysis, however, it was not the protection of his erstwhile subjects that was at issue here but the symbolic compensation of territorial loss.

The Treaty of Berlin (1878) completed the process of separating Serbia, Montenegro and Romania from the Ottoman Empire. It created a Bulgarian principality with substantial autonomy but withheld the province of Eastern Rumelia granting it only special status within Ottoman jurisdiction. As we might expect from what we have already seen, the full independence of the new states and the autonomy of Bulgaria were granted upon the condition that:

The difference of religious creeds and confessions shall not be alleged against any person as a ground for exclusion or incapacity in matters relating to the enjoyment of civil and political rights, admission to public employments, functions, and honours, or the exercise of the various professions and industries in any locality whatsoever.

The freedom and outward exercise of all forms of worship are assured to all persons belonging to (Bulgaria, Montenegro, Servia, Roumania) as well as to foreigners and no hindrance shall be offered either to the hierarchical organisation of the different communions or to their relations with their spiritual chiefs (Articles V, XXVII, XXXV, XLIV).59

This identical clause was inserted for all three new states and for the new principality. Inasmuch as the Sublime Porte had long ceased to exert any effective authority in the three states, this clause represented a symbolic bow towards Constantinople. The Sultan was ceding territory that he had already lost but the Great Powers meeting in Berlin were expressing their sensitivity to his susceptibilities and to the ritual imposed by past cession of territory. In deference to the disappointment of Ottoman Christians and others who were expecting the complete disintegration of the Empire, an analogous clause, formulated as a spontaneous declaration of the Sultan, was introduced to cover the Empire as a whole (Article LXII).

From the point of view of the subjects of the treaty, however, such clauses constituted humiliating restrictions on their recently acquired and much prized sovereignty. The newly independent states had already undertaken commitments in 1856 with regard to the rights of religious minorities. In 1878, they saw no need to express these commitments again or to compensate the Sultan further for losses he had incurred in the past. The new states resented the minority guarantees because they realised that the Great Powers were, in fact, compensating themselves under the pretext of compensating the Sultan. As had happened in 1815 in Vienna where Britain and France introduced a Polish nationality rights clause as compensation for being excluded from the spoils of Poland, in Berlin in 1878 the Great Powers imposed minority guarantees as a tax, if not a price, for not being themselves the direct beneficiaries of Ottoman reversals.

We may find confirmation of the explanation we are proposing with regard to the logic of minority guarantees by looking at the reverse side of the Treaty of Berlin, namely, the stipulations concerning the Ottoman province of Eastern Rumelia. This region had been incorporated into the independent Bulgarian state proclaimed a few months earlier in the Treaty of San Stefano but it had been restored to Ottoman rule through the terms of the Treaty of Berlin. This restoration was, rightly, seen as a reversal for Christian and Slavic aspirations. Not surprisingly, therefore, the provisions of the Treaty of Berlin concerning Eastern Rumelia were careful to enumerate the various guarantees offered to the defeated Christian party. The treaty stipulated that although Eastern Rumelia would 'remain under the direct political and military authority of His Imperial Majesty' with only administrative autonomy, '[I]t shall have a Christian Governor-General.' (Article XIII). Further clauses provided for a 'native gendarmerie assisted by a local militia' in the province and obliged the Sultan to refrain from employing 'irregular troops such as Bashi-Bazouks and Circassians, in the frontier garrisons or from allowing regular troops to be billeted or even from staying in the area on their way to these garrisons.

The penultimate phase of the Eastern Question was marked by the Balkan Wars of 1912 and 1913. Peace terms were negotiated among the Balkan states themselves at Bucharest and contained no provisions for minority rights or protection (with the minor exception of the Koutzo-Vlachs).60 The negotiators took this decision in spite of an American note suggesting that they guarantee civil and religious liberties throughout their territories and, in particular, in any newly acquired areas. The Balkan states proudly rejected the American note, as they would have earlier liked to reject the restraining clauses of the Treaty of Berlin, claiming that the note was superfluous.61 The victorious Serbs even turned down a proposal by the defeated Bulgarians that called for protecting the rights of minority schools in the newly acquired Serbian provinces. At the same time, the Serbs provided the Ottoman Empire with multiple guarantees for Muslims transferred under the Serbian flag.62 Apparently, the Bulgarians did not qualify for the courtesies usually extended to a defeated enemy.63

Conclusion

Less than a decade after the end of the Balkan Wars, the Allied and Associated Powers, as the victors of World War I called themselves, came together in Paris to define a postwar settlement. Among the many issues on their agenda was that of the protection of 'racial, linguistic or religious minorities' – one quarter of the entire

61 Text of the American note, Protocol no. 6 of the Conference of Bucharest, 23 July/5 August 1913, in Wolf, Notes, p. 47.
62 Treaty of Peace between Servia and Turkey, signed at Constantinople, 14 March 1914, Consolidated Treaty Series, vol. 219, pp. 320–6. The treaty protected tombs, waqfs, imperial and dynastic property and promised to subsidize tekki [dervish prayer spots] mosques, madrassahs and other Muslim institutions according to need.
63 Temperley, pp. 118–19.
population—in the new or enlarged states of East Central Europe. When the statesmen finally addressed this question in the course of clearing up ‘small matters’, they were utterly unprepared for the complexity of the issue. Wilson with his rhetoric of self-determination had not foreseen the problem of minorities and the other victors had not devised new ways of dealing with it. The decision-makers in Paris therefore fell back on the established patterns that had developed in the course of the preceding two and a half centuries and in particular those applied with respect to the Eastern Question. They included in the peace settlements a set of identical ‘Minority Treaties’ that defined an extensive minority rights régime in each of the countries concerned. Wilsonians considered these ‘Minority Treaties’ a corrective corollary to the admittedly partial and necessarily messy application of the principle of self-determination. Realists saw them as acknowledgement by the new and enlarged states of the debt they owed to the Great Powers. In fact, the statesmen of 1919 simply acted as their predecessors had done.

Ironically, it was the lot of the newly recreated Poland to be the first state called upon to respect minority rights. Clemenceau went to some pains to:

1. . . point out that this Treaty does not constitute any fresh departure. It has for long been the established procedure of the public law of Europe that when a state is created or even when large accessions of territory are made to an established state, the joint and formal recognition of the Great Powers should be accompanied by the requirement that such state should, in the form of a binding international convention, undertake to comply with certain principles of government.

Clemenceau invoked the precedents we have seen in the course of this article—the Netherlands in 1815, Greece in 1830, the Balkan states at the Congress of Berlin. He added, lest there be any mistake about the nature of the transaction:

2. . . I must also recall to your consideration the fact that it is to the endeavours and sacrifice of the Powers in whose name I am addressing you that the Polish nation owes the recovery of its independence.64

The Great Powers were offering compensation to the defeated states at the cost of imposing constraints upon their minor allies. As we know, neither side was to be pleased with this solution. Germany and Hungary and, to a lesser extent, Bulgaria, made revision of the Peace Treaties the leitmotiv of their foreign policy. Poland was no more pleased as a protector of minorities than it had been as a protected minority. It repudiated the Treaty in 1934.

International sensibilities have changed considerably since the Paris Peace Settlement of 1919 and the Vienna Congress of 1815. International civil society can be relied upon to raise what Carole Fink has called, with regard to the Balkan events of the 1870s, a ‘clamor over abuses to religious and national minorities’.65 Indeed, it has done so recently in the face of the Balkan events of the 1990s. However, when it comes to devising international settlements rather than expressing indignation, statesmen still find themselves resorting to the formulae of the past. As we have seen,


these formulae balance the victory of one party with concessions to the defeated party and these concessions are expressed in terms of minority rights. The most recent example of this formula is the solution recently proposed to put an end to the Kosovo crisis. The Ahtisaari Plan promised independence to Kosovo and minority protection to the Serbs of the nascent state. Not surprisingly, the formula was resented by some Kosovars who saw it as an intolerable infringement of the sovereignty they expected, an unjustified concession to a culpable minority, and an arrogant great-power dictate. The Serbs, in turn, considered it derisory compensation for the loss of their own sovereignty over the province and an inadequate guarantee of the welfare of the remaining Kosovo Serbs.

The great powers, now known as the ‘international community’, brandish protection of minority rights, today, in the same way they did in this region in the nineteenth century. Minority rights are the price of statehood and of the satisfaction of national claims, on the one hand, and the indemnification offered for the loss of sovereignty over part of one’s state, on the other hand. The price paid to those ceding land and people, in this case, the Serbs, is to be offset by the price paid by those who gain territory and status, the Kosovars. Whatever the accommodations of the past, today neither party is interested in this bargain. Both have learned to deal in the currencies that carry weight in the international system. They both speak in the name of national rights and they both affirm unconditional commitment to human rights. Minority rights, alas, find no buyers on either side.