

**THE LEGALITY OF THE TREATY CONCERNING THE
PROTECTION OF MINORITIES IN GREECE SIGNED AT SEVRES
ON 10 AUGUST 1920**

**YUNANİSTAN'DA AZINLIKLARIN KORUNMASINA İLİŞKİN 10
AĞUSTOS 1920 TARİHLİ SEVRES ANTLAŞMASININ HUKUKİ
GEÇERLİLİĞİ**

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Abstract

The legality of the Treaty Concerning the Protection of Minorities between Greece and the Principal Allied Powers signed the Treaty at Sèvres, on 10 August 1920 is the key issue for the validity of the Ex-Article 19 of the Greek Nationality Code. Greece had arbitrarily deprived nationality of 60,004 Greek citizens “of different descent” of its minorities, mainly the Turkish minority in Western Thrace by the Ex-Article 19 of the Greek Nationality Code till 1998. The claim of Greece for the legality of Ex-Article 19 is originated from the report of the Secretary-General of the United Nations in 1950 with the title “Study of the Legal Validity of the Undertakings Concerning Minorities” which claimed that not only the Minority Protection Regime of the League of the Nations ceased to exist but as well the Treaty Concerning the Protection of Minorities in Greece signed at Sèvres, on 10 August 1920.

Keywords: UN, *Ultra Vire*, Minority, Western Thrace, Minority Protection Regime of the League of the Nations,

Özet

10 Ağustos 1920'de Sevr' de imzalanan Yunanistan ve İtilaf Devletleri arasındaki Azınlıkların Korunmasına İlişkin Antlaşmanın bugün için hukuken geçerliliği, Yunan Vatandaşlık Kanununun eski 19. maddesinin geçerliliğinin esas noktasıdır. Yunanistan, 1998 yılına kadar Yunan Vatandaşlık Kanununun eski 19. maddesine istinaden, çoğunluğu Batı Trakya da ki Türk azınlık olmak üzere 60,004 farklı soydan gelen azınlık mensubunu Yunan vatandaşlığından atmıştır. Yunanistan'ın eski 19. maddenin yasallığı ile ilgili iddiasının kökeni Birleşmiş Milletler Genel Sekreterinin 1950 yılında hazırlamış olduğu “Azınlıklara İlişkin Teşebbüslerin Yasal Geçerliliğinin İncelenmesi” başlıklı raporuna dayanmaktadır. Bu raporda sadece Milletler Cemiyeti Azınlıkların Korunması Rejiminin değil, aynı zamanda Yunanistan'daki Azınlıkların Korunmasına İlişkin 10 Ağustos 1920 tarihli Antlaşma'nın da sona erdiği iddia edilmiştir.

Anahtar Kelimeler: BM, *Ultra Vire*, Azınlıklar, Batı Trakya, Milletler Cemiyeti Azınlıkların Korunması Rejimi

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INTRODUCTION

Legibus solutus is a contested legal doctrine, going back to the Eastern Roman Empire that represents the emperor as “unbound by the law.”¹ In the history of sovereignty of states, as a matter of domestic law, public authorities enjoyed the use of power without any responsibility for their citizens as individuals. The maxim “The king can do no wrong,” the foundation for this irresponsibility of the state, long reflected the domestic law of the states of Western Europe during the time of their emergence and consolidation.² “Responsibility is accepted to be at the heart of international law ... It constitutes an essential part of what may be considered the Constitution of the international community.”³ No responsibility, no international law.”

The internal law of an international organization cannot be sharply differentiated from international law. The United Nations (UN) Charter, in its preamble, includes this objective: “to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.” The development of, and respect for, international law has been a key part of the work of the UN.⁴

By the Ex-Article 19 of the Greek Nationality Code, from 1955 until 1998, more than 60,004 Greeks “of different descent” were had arbitrary deprived nationality. The main target group of the denationalisation scheme of ex Article 19 Greek Nationality Code was the Turkish minority in Western Thrace. Greece claimed that the minority protection regime of Greece, codified by an international treaty of the Treaty Concerning the Protection of Minorities in Greece, signed at Sèvres on 10 August 1920 ceased to exist by the establishment of the UN and verified the extinction by the report of the Secretary-General of the UN with the title “Study of the Legal Validity of the Undertakings Concerning Minorities”. The Secretary-General claimed the minority protection regime in Greece for the Turkish minority ceased to exist as the Treaty Concerning the Protection of Minorities in Greece, signed at Sèvres on 10 August 1920 was replaced with the Peace Treaty with Turkey signed at Lausanne on 24 July 1923.

¹ Abi-Saab, Georges. “Is the Security Council *Legibus Solutus*? On the Legislative Forays of the Council.” In *International Law and the Quest for Its Implementation*, edited by Laurence Boisson de Chazournes and Marcelo Kohen. Leiden, Netherlands: Martinus Nijhoff, 2010, p. 24.

² Pellet, Alain. “The Definition of Responsibility in International Law.” In *The Law of International Responsibility*, edited by James Crawford, Alain Pellet, and Simon Olleson. Oxford: Oxford University Press, 2010, p 4.

³ Pellet, Alain. “The Definition of Responsibility in International Law.” In *The Law of International Responsibility*, edited by James Crawford, Alain Pellet, and Simon Olleson. Oxford: Oxford University Press, 2010, p.9

⁴ UN, “Uphold International Law,” <http://www.un.org/en/sections/whatwe-do/uphold-international-law/>, 18.07.2020.

This article examines the origin of the minority protection regime in Greece established by the Peace treaty Bulgaria, Treaty of Neuilly-sur-Seine of and the Minority Protection Regime (MPR) of the League of Nations, established mainly by the peace treaties after the First World War. The dissolution of the MPR of the League of Nations is different than the minority protection regime of Greece. The author of this article aimed to prove that the minority protection regime of Greece established by the Treaty Concerning the Protection of Minorities in Greece is still in force and Ex-Article 19 of the Greek Nationality Code is under the definition of an international wrongful act of an international organization as well the report of the Secretary-General is under the definition of an international wrongful act of an international organization.

1. HISTORY OF WESTERN THRACE

Western Thrace (or Thrace as simply referred to in Greek) is a historical and geographic region in Greece bordering Turkey and Bulgaria. Western Thrace Turks have inhabited the region for centuries. Following successive periods under Greek, Roman and Byzantine rule, it was conquered by the Ottomans in the 14th century and remained under their control until the First Balkan War of 1912-13, when four Balkan states - Montenegro, Greece, Serbia, and Bulgaria - defeated the Ottoman Empire, resulting in the loss of almost all its European possessions. The entire region of Western Thrace was subsequently occupied by Bulgaria. However, disagreements between the victors on how to divide the newly conquered lands soon led to the Second Balkan War. In August 1913 Bulgaria was defeated but gained Western Thrace under the terms of the peace treaty ending the conflict, and the Greek army withdrew from the region. Bulgaria governed the region until the end of World War I. From 1919-20, Allied powers administered the territory by the Treaty of Neuilly-sur-Seine on 27 November 1919 and in 1920, Western Thrace was granted to Greece by the Treaty of Sèvres. It has been part of Greece ever since.⁵

2. DEFINATION OF MINORITY

There are 8,000 languages accompanied spoken by a similar number of distinct ethnic groups worldwide, while at the same time the Organization of the United Nations (UN) comprises approximately 200 states. A discrepancy between a number of ethnic communities and sovereign political agents in the international arena implies that many ethnic, language, or religious minority groups seek recognition and protection within states they inhabit.⁶ In the

⁵ https://minorityrights.org/wp-content/uploads/2019/10/MRG_Rep_WThrace_EN_Sept19.pdf p.3.

⁶ Antonija Petričušić, *The Rights of Minorities in International Law: Tracing Developments in Normative Arrangements of International Organizations*, Croatian International Relations Review, Vol. XI No.38/39 2005, pp.1-23, p.1.

discussions on the definition of the term “minorities” two sorts of criteria have in fact been proposed: criteria described as objective and a criterion described as subjective. The first of the criteria described as objective to which general reference is made is the existence, within a State’s population, of distinct groups possessing stable ethnic, religious or linguistic characteristics that differ sharply from those of the rest of the population. The inclusion of such a component in the definition of the term “minority” is not controversial; as the Permanent Court of Justice (PCIJ) pointed out, the existence of such groups is a question of fact. It is therefore essential that it should be regarded as a basic. As to subjective creation, it has generally been defined as a will on the part of the members of the groups in question to preserve their own characteristics. If the existence of such a will had to be formally established.⁷

The minorities protection regime of the League of Nations which resulted took four different forms and was embodied in a series of international instruments, as the five Minorities Treaties concluded in 1919-1920 in conformity with the provisions of the peace treaties⁸, four special chapters of the peace treaties of 1919-1923 imposed on the vanquished States⁹; four subsequent treaties¹⁰ and five unilateral declarations, signed by various States between 1921 and 1932 Albania, Latvia, Lithuania and Estonia undertook minority protection obligations as a condition for their membership in the League. These were unilateral declarations and not multilateral treaties such as those above, but they included the same basic provisions. Later, Germany (with regard to Upper Silesia) and Finland (with regard to the Aaland Islands) also undertook limited obligations to minority protection

⁷ 19 OHCHR, Fact Sheet No.18 (Rev.1), Minority Rights, p.7.

⁸ These Treaties were the following: Poland (Treaty between the Principal Allied and Associated Powers and Poland, Versailles, 28 June 1919); Czechoslovakia (Treaty between the Principal Allied and Associated Powers and Czechoslovakia, Saint-Germain-en-Laye, 10 September 1919); the Serb-Croat-Slovene State (Treaty between the Principal Allied and Associated Powers and the Serb-Croat-Slovene State, Saint-Germain-en-Laye, 10 September 1919); Romania (Treaty between the Principal Allied and Associated Powers and Romania, Paris, 9 December 1919); Greece (Treaty concerning the Protection of Minorities in Greece, Sevres, 10 August 1920).

⁹ Austria (Treaty of Peace between the Allied and Associated Powers and Austria, Saint-Germain-en-Laye, 10 September 1919); Bulgaria (Treaty between the Allied and Associated Powers and Bulgaria, Neuilly-sur-Seine, 27 November 1919); Hungary (Treaty of Peace between the Allied and Associated Powers and Hungary, Trianon, 4 June 1920); Turkey (Treaty of Peace between the British Empire, France, Italy, Japan, Greece, Romania, the Serb-Croat-Slovene State and Turkey, Lausanne, 24 July 1923).

¹⁰ The Polish-Danzig Convention of 9 November 1920; agreement between Sweden and Finland concerning the population of the Aland Islands placed on record and approved by a resolution of the Council of the League of Nations on 27 June 1921; German Polish Convention relating to Upper Silesia of 15 May 1922; Convention of 8 May 1924 concerning the Territory of Memel, between the Allied and Associated Powers and Lithuania. ” Albania (2 October 1921); Lithuania (12 May 1922).Iraq (30 May 1932).

under the League of Nations system. upon their admission to the League of Nations, based on the protection of racial, religious, and linguistic minorities.

The 1992 UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious, and Linguistic Minorities contains a list of rights in favor of persons belonging to ethnic, national, religious or linguistic minority, and obliges State parties “to protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and encourage conditions for the promotion of that identity.” Despite the title of the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities would imply the definition of the national minority, the UN has failed to agree on a definition of what constitutes a minority.¹¹

In his report to the UN General Assembly in October 2019, the UN Special Rapporteur on minority issues Dr. Fernand de Varennes clarified that when considered in its historical context, the term minority, as defined by article 27 of the International Covenant on Civil and Political Rights, is expansive and clear: the provision guarantees certain rights to all those in a State who are members of a linguistic, religious or ethnic minority, with no other requirement or precondition.¹²

3. NATIONALITY AS A HUMAN RIGHT

“Nationality” is a term of art used to denote the primary legal connection between an individual and a State.¹³ “Nationality” is a young word. Its matrix, the French “nationalite”, appeared for the first time in the 1835 edition of the Dictionnaire de l’Académie Française.¹⁴ As a legal relationship, nationality connotes the relationship between a State and its nationals, consisting of material rights and obligations.¹⁵ As a legal relationship, nationality connotes the relationship between a State and its nationals, consisting of material rights and obligations.¹⁶ In principle, questions of nationality fall within the domestic jurisdiction of each State. However, the applicability of a State’s internal decisions can be limited by the similar

¹¹ The OHCHR, Concept of a Minority: Mandate Definition, <https://www.ohchr.org/Documents/Publications/GuideMinorities4en.pdf>, (Date of Accession 01.06.2020).

¹² The OHCHR, Concept of a Minority: Mandate Definition, <https://www.ohchr.org/Documents/Publications/GuideMinorities4en.pdf>, (Date of Accession 01.06.2020).

¹³ Daniel Patrick O’Connell, *The Law of State Succession*, Cambridge University Press, Cambridge, 1956, p. 245.

¹⁴ Maximilian Koessler, “Subject, Citizen, National, Permanent Allegiance”, *Yale Law Journal*, 1947, vol. 56, p. 61.

¹⁵ “Evolution of Concept of Nationality and Development of the Law Relating to Nationality”, Shodhganga http://shodhganga.inflibnet.ac.in/bitstream/10603/166346/9/09_chapter_2.pdf, (Date of Accession: 21.07.2018).

¹⁶ Evolution of Concept of Nationality and Development of the Law Relating to Nationality, Shodhganga, http://shodhganga.inflibnet.ac.in/bitstream/10603/166346/9/09_chapter_2.pdf, (Date of Accession: 21.07.2018).

actions of other States and by international law. In its Advisory Opinion on the Tunis and Morocco Nationality Decrees of 1923, the PCIJ stated that:

“The question whether a certain matter is or is not solely within the domestic jurisdiction of a State is an essentially relative question; it depends on the development of international relations”

In effect, the PCJ said that while nationality issues were, in principle, within their domestic jurisdiction, States must, nonetheless, honor their obligations to other States as governed by the rules of international law.¹⁷ Following the 1948 Universal Declaration of Human Rights (Article 15) the right to a nationality has been expressly recognised and established as a human right in international law.¹⁸

4. WORLD WAR I PEACE TREATIES AND WESTERN THRACE

In the Peace Treaties of the past hundred years, a combination of the two principles of Domicile and Descent would appear to be the most- usual basis on which the problems of nationality were to be solved, and more especially during the course of the fifty years preceding the World War I. At least seven Treaties of note apply these two principles, such as a Franco-German regarding Savoie, March 1860; Vienna, 1864; Russo American regarding Alaska, 1867; Franco-Prussian (for Germany both principles, for France Descent only), 1875 Cession of Thessaly, 1881; Constantinople, 1897; Russo Japanese, 1905; Constantinople, 1913.¹⁹

After the World War I, in the Peace Treaties, nationality clause was added for the change of territories. According to the Treaty of Versailles of 1919, habitual residence on the ceded territory on a certain date was stipulated as the criterion from which acquisition of the nationality of the cessionary State was to follow. The Treaties of St. Germain with Austria (1919), of Trianon with Hungary (1919), and the Minorities Treaties of 1919 with Czechoslovakia and Yugoslavia established the possession of Heimatrecht in a community within the territory of the State concerned as the principal link for the acquisition of the nationality; this criterion, the right of citizenship in

¹⁷ “Inter-Parliamentary Union Nationality and Statelessness, A Handbook for Parliamentarians”, Inter-Parliamentary Union, http://archive.ipu.org/PDF/publications/nationality_en.pdf, (Date of Accession: 21.07.2018).

¹⁸ https://www.researchgate.net/publication/249572418_Freedom_of_Movement_and_the_Right_to_a_Nationality_v_Ethnic_Minorities_The_Case_of_ex_Article_19_of_the_Greek_Nationality_Code/link/5aa658af0f7e9badd9ab9faf/download

¹⁹ William O'Sullivan Molony, *Nationality and the Peace Treaties*, Unwin Brothers Ltd, London, 1934, p.43.

a particular community, constituted a condition for the possession of nationality of the Austro Hungary monarchy peculiar to the law of that State.²⁰

The nationality clause was applied under the Treaty of Neuilly-sur-Seine between Bulgaria and four Principal Allied Powers (the British Empire, France, Italy and Japan) in the following areas-Yugoslavia: Bulgarians becoming Yugoslavia *ipso facto* if resident there prior to January 1, 1913 by Article 39. For Greece, by Article 42, Bulgaria renounced in favour of Greece all rights and title over the territories of the Bulgarian Monarchy situated outside the frontiers of Bulgaria as laid down in Article 27, Part 11 (Frontiers of Bulgaria), and recognised by the Treaty, or by any Treaties concluded for the purpose of completing the present settlement, as forming part of Greece. By Article 44, Bulgarian nationals habitually resident in the territories assigned to Greece obtained Greek nationality *ipso facto* and lost their Bulgarian nationality. By Article 46, Greece accepted and agreed to embody in a Treaty with the Principal Allied and Associated Powers such provisions as may be deemed necessary by these Powers to protect the interests of inhabitants of that State who differ from the majority of the population in race, language or religion. In Article 48, Bulgaria renounced in favour of the Principal Allied and Associated Powers all rights and title over the territories in Thrace which belonged to the Bulgarian Monarchy and which, being situated outside the new frontiers of Bulgaria as described in Article 27 (3), had not been assigned to any State. Bulgaria undertook to accept the settlement made by the Principal Allied and Associated Powers in regard to these territories, particularly in so far as concerned the nationality of the inhabitants.

5. TREATY BETWEEN THE PRINCIPAL ALLIED AND ASSOCIATED POWERS, AND GREECE, CONCERNING THRACE

Subject to the Article 48 of the Treaty of Neuilly-sur-Seine, Greece and the Principal Allied Powers signed the Treaty at Sèvres, on 10 August 1920 and which was ratified by Greece and entered in force on 30 August 1924.

Chapter I, Article 1 of the Treaty, it is written that:

“In The Principal Allied and Associated Powers hereby transfer to Greece, who accepts the said transfer, all rights and titles which they hold, under Article 48 of the Treaty of Peace with Bulgaria signed at Neuilly-sur-Seine on 27 November 1919, over the territories in Thrace which belonged to the Bulgarian Monarchy and are dealt with in the said Article.”

In Article 3, paragraph 2, it is written that:

²⁰ Manley O. Hudson, Report on Nationality, Including Statelessness, UN Document A/CN.4/50, http://legal.un.org/ilc/documentation/english/a_cn4_50.pdf, (Date of Accession: 01.07.2020)

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“The provisions of Article 46, relating to the protection of minorities, Greece will have to assume on account of the territory placed under her sovereignty, will similarly apply to the territories referred to in Article 1 of the present Treaty.”

6. TREATY CONCERNING THE PROTECTION OF MINORITIES IN GREECE AT SEVRES

Subject to the Article 46 of the Treaty of Neuilly-sur-Seine, Greece and the Principal Allied Powers signed the Treaty at Sèvres, on 10 August 1920 and which was ratified by Greece entered in force on 30 August 1924.

In Chapter I, Article 1 of the Treaty, it is written that:

“Greece undertakes that the stipulations contained in Articles 2 to 8 of this Chapter shall be recognized as fundamental laws, and that no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action prevail over them.”

In Article 7, paragraph 1, it is written that:

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

By Article 16 of the treaty, the minority protection regime of the League of the Nations was established as:

“Greece agrees that the stipulations of the foregoing Articles, so far as they affect persons belonging to racial, religious or linguistic minorities, constitute obligations of international concern and shall be placed under the guarantee of the League of Nations. They shall not be modified without the assent of a majority of the Council of the League of Nations. The United States, the British Empire, France, Italy and Japan hereby agree not to withhold their assent from any modification in these Articles which is in due form assented to by a majority of the Council of the League of Nations.

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

Greece further agrees that any difference of opinion as to questions of law or fact arising out of these Articles between the Greek Government and any one of the Principal Allied and Associated Powers or any other Power, a Member of the Council of the League of Nations, shall be held to be a dispute of an international character under Article 14 of the Covenant of the League

of Nations. The Greek Government hereby consents that any such dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant.”

7. THE MINORITY PROTECTION REGIME OF THE LEAGUE OF THE NATIONS

The oldest roots of the European concept of the minority protection can be traced in the seventeenth-century reforms regarding the protection of religious minorities. Treaty of Westphalia, which in 1648 granted religious right to the Protestant German population, or the Treaty of Oliva in 1660 in favor of the Roman Catholics in Livonia, ceded by Sweden and Poland, or the Treaty of Paris in 1763, signed between France, Spain and Britain, in favor of Roman Catholics in Canadian territories ceded by France. Jay A. Sigler conversely argues that “the contemporary minority issues with which we have familiarity are largely rooted in the nineteenth century” since the nineteenth century was “concerned less with religious or racial groups than with linguistic and ethnic groups.” The three great congresses of the nineteenth century, Vienna (1814-15), Paris (1856), and Berlin (1878), encompassed minority protection provisions in treaties establishing rights and security of populations that were to be transferred to a foreign sovereignty. Nevertheless, more reasonable is to claim that modern international minority protection was for the first time in the history systematically prescribed in the Treaty of Versailles, after World War I. The League of Nations system for the international protection of minorities originates from the Paris Peace Conference.²¹

This Minority Protection Regime (MPR) of the League of Nations was not universal; it governed only certain states and not others within Europe and surrounding areas. Although the Peace Conference of 1919 had rejected efforts to include in the Covenant general clauses concerning the protection of minorities, it had nevertheless felt that the maintenance of a lasting peace required the adoption of certain measures relating to that subject. As a result of the territorial changes which had taken place-in particular the establishment-of the States of Poland and Czechoslovakia and the

²¹ Antonija Petričušić, *The Rights of Minorities in International Law: Tracing Developments in Normative Arrangements of International Organizations*, https://bib.irb.hr/datoteka/421246.CIRR_Petricusic_MR_IL.pdf, (Date of Accession 01.07.2020).

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enlargement of the Serbian, Romanian and Greek Kingdoms²²-the inhabitants of the territories of several States included large numbers who differed ethnically or linguistically from the people with whom they had been joined. The Paris Peace Conference decided to set up and to place under the guarantee of the League of Nations a system of protection of minorities taking the form of five special treaties, called Minorities Treaties, concluded between the Allied and Associated Powers on the one hand and the newly established or enlarged States mentioned in the preceding paragraph on the other. Concurrently, and with a view to ensuring a certain degree of reciprocity, similar obligations were imposed by the peace treaties on four of the vanquished States (Austria, Bulgaria, Hungary, and Turkey).²³ The legal foundation of this system of protection of minorities is found in identical clauses in the Treaties of Versailles, Saint-Germain, Neuilly, and Trianon, in which Czechoslovakia, Poland, the Serb-Croat-Slovene State, Romania and Greece declare that they accept “and agree to embody in a Treaty with the Principal Allied and Associated Powers such provisions as may be deemed necessary by the said Powers to protect [in each of the above-mentioned countries] the interests of the inhabitants who differ from the majority of the population in race, language or religion”.²⁴ Greece signed Treaty concerning the Protection of Minorities in Greece, Sevres, 10 August 1920) with the Principal Allied and Associated Powers. ”

Apart from the provisions defining the rights accorded to minorities-described in subsection above the various instruments contained a twofold guarantee: a guarantee under municipal law and an international guarantee. Under the terms of the guarantee under municipal law, the State concerned undertook that the provisions relating to minorities “shall be recognized as fundamental laws, and that no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action prevail over them”.²⁵

²² Those reconstituted by the inclusion of additional territory and a minority population — with the exceptions of Belgium, Denmark, France, and Italy — were required to sign separate treaties providing for minority protection. States defeated in the war, with the exception of Germany, had been compelled to agree to special provisions regarding minorities.

²³ Francesco Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, UN, New York, 1979, p.17.

²⁴ Francesco Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, UN, New York, 1979, p.18.

²⁵ Protection of Linguistic, Racial or Religious Minorities by the League of Nations: Provisions contained in the Various International Instruments at present in Force, Series of League of Nations Publications, LB. Minorities, 1927, LB.2 (CL.1 10.1927.1, annex), p.42.

The introduction of jurisdictional supervision has been considered one of the important innovations in the system for the protection of minorities established after World War I. Under the terms of the international guarantee, Article 12 of the Treaty with Poland served as the basis for the corresponding articles in the other instruments. any difference of opinion as to questions of law or fact arising out of these Articles between the Polish Government and any one of the Principal Allied and Associated Powers and any other Power, a Member of the Council of the League of Nations, shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. The . . . Government (of the State concerned) hereby consents that any such dispute shall, if the other party thereto demands, be referred to the PCIJ. The decision of the PCIJ shall be final and shall have the same force and effect as an award under Article 13 of the Covenant. Articles 13 and 14 of the Covenant of the League of Nations read as follows:²⁶

“To summarize the three aspects of the international guarantee which have just been described, it may be said that:

- (a) The Council of the League of Nations assumed exclusive power to agree to any changes in the regulatory provisions established for the benefit of minorities. The States preparing such provisions were thus precluded from curtailing, by means of subsequent legislation, the protection afforded to minorities;
- (b) The Council further assumed the power to intervene in the event of any infraction, or any danger of infraction, of any of the rules established, taking such action as was appropriate to each case. Although this power was conditioned by the fact that any infraction was to be brought to the attention of the Council by one of its members, it was the essential feature of the supervisory function, which was later developed by the Council;
- (c) In the settlement of differences between a State in which there was a minority and a State Member of the Council, the way was open for the exercise of the judicial function of the PCIJ, which had compulsory jurisdiction in matters relating to the protection of minorities.”

In a resolution adopted on 21 September 1922, the Assembly of the League of Nations had recommended that:

“In cases of difference of opinion as to questions of law or fact arising out of the provisions of the Minorities Treaties, between the Government concerned and one of the States Members of the

²⁶ Ibid, p.44-45.

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Council of the League of Nations, .., the Members of the Council appeal without unnecessary delay to the Permanent Court of International Justice for a decision in accordance with the Minorities Treaties, it being understood that the other methods of conciliation provided for by the Covenant may always be employed.”

In addition to jurisdictional supervision, the PCIJ was empowered to perform an advisory function with regard to minorities’ questions. It will be recalled that the general basis for the advisory competence of the Court was contained in Article 14 of the Covenant of the League of Nations and that moreover the Council, having the power to take any appropriate measure on the basis of the instruments concerning minorities, could in a given case consider it an appropriate step to request an advisory opinion of the Court.²⁷

8. DISSOLUTION OF THE MINORITY PROTECTION REGIME OF THE LEAGUE OF THE NATIONS

The UN found itself obliged to examine the question of whether the League of Nations’ minority’s treaties were technically still in existence or not. In its resolution 217 C (III) of 10 December 1948, entitled “Fate of Minorities”, the General Assembly stated that the UN could not remain indifferent to the fate of minorities, but added that it was difficult to adopt a uniform solution of this complex and delicate question, which has special aspects in each State in which it arises, It seems that this difficulty was one of the principal reasons for the decision not to mention the problem of minorities in the Universal Declaration of Human Rights.²⁸

The UN Commission on Human Rights, drew the attention of the UN Economic and Social Council (ECOSOC) to the League of Nations’ treaties and declarations relating to international obligations undertaken to combat discrimination and to protect minorities. The Commission requested the ECOSOC to consider the question of whether, and to what extent, those treaties should be regarded as being still in force and suggested that an advisory opinion in the question might be sought from the ICJ. The ECOSOC discussed the question on February 5 and 2 March 1948. On the proposal of the UK representative, it was decided to request the Secretary-General to study the question and report to the Commission, as it was thought it would then be clearer if a reference to the ICJ was necessary. The USSR at the time representative thought that the proposed study was unnecessary, as the treaties and declarations referred to were all part of the system established by the

²⁷ Francesco Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, UN, New York, 1979, p.24.

²⁸ General Assembly Resolution 217 C (III) entitled “Fate of minorities”, 10.12.1948.

Treaty of Versailles and related to conditions that no longer existed. The ECOSOC adopted resolution 116 (VI) requesting the Secretary-General to:²⁹

"Study the question whether and to what extent the treaties and declarations relating to international obligations undertaken to combat discrimination and to protect minorities, the texts of which are contained in League of Nations document C.L.110.1927.1 Annex, should be regarded as being still in force, at least in so far as they would entail between contracting States rights and obligations the existence of which would be independent of their guarantee by the League of Nations; and to report on the results of this study to a later session of the Commission on Human Rights with recommendations, if required, for any further action to elucidate this question."

The report of the Secretary-General prepared its report and was distributed on 7 April 1950 with the title "Study of the Legal Validity of the Undertakings Concerning Minorities". The report was divided into two parts. In accordance with the request of the ECOSOC, the report was limited to the strictly legal question of whether the obligations concerning the protection of minorities are still in force or not.

In the first part of the report, the Secretary-General considered the circumstances which may have caused the extinction of the obligation concerning minorities. The Secretary-General analyzed according to two aspects. In the first place, the Secretary-General stated that to ascertain whether certain events do not constitute normal causes of the extinction of international obligations and whether the undertakings relating to minorities have not thereby been terminated. The normal causes of extinction of a contractual international obligation include the expiration of the time-limit, the disappearance of the beneficiary of the obligation, the disappearance of the object of the obligation, an agreement between the parties to end the obligation, etc. According to the Secretary-General, there is a need to consider whether or not the obligations relating to minorities have been affected by a normal cause of extinction of an international obligation. The only circumstances likely to raise the question of the extinction of the obligations concerning the protection of minorities for the reporters are 1. the effects of the war, 2. The dissolution of the League of Nations, 3. The UN Charter and the treaties concluded after the war, 4. The territorial transfers and population movements took place, after the war. In the second place, the Secretary-General mentioned that one should consider whether, on the basis of the clause

²⁹ UN Yearbook 1947-1948, UN, New York, 1948, p.582.

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rebus sic stantibus, those who undertook the obligation may not justifiably claim to be discharged therefrom on the ground.³⁰

In the final observations of the Secretary-General concluded his report as:

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

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

Reviewing the situation as a whole, therefore, one is led to conclude that between 1939 and 1947 circumstances as a whole changed to such

³⁰ UN ECOSOC, Study of the Legal Validity of the Undertakings Concerning Minorities, E/CN.4/367, p.4.

an extent that generally speaking, the system should be considered as having ceased to exist.³¹”

For Greece, the Secretary-General in his report specified the extinction of the minority protection regime in his report as:

“A distinction should be made between the general minorities protection regime established by the treaty signed between the Principal Allied and Associated Powers at Sevres on. 10 August 1920 and the special regime established in favour of the Moslem minority in Greece by the Peace Treaty with Turkey signed at Lausanne on 24 July 1923.³²”

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

- (a) Ordinary causes of extinction of obligations No ordinary cause of the extinction of obligations appears to have arisen.
- (b) Change of circumstances
 - (i) General circumstances liable to affect all undertakings
 - (1) The dissolution of the League of Nations
 - (2) The recognition of human rights and of the principle of nondiscrimination by the United Nations Charter.
 - (ii) Circumstances more or less exclusively affecting the particular undertaking concerned.

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

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

9. SELF-CONTAINED REGIMES

The PCIJ used the notion of self-containedness in its very first case, the S.S. Wimbledon in 1923 as follows:³³

³¹ UN ECOSOC, Study of the Legal Validity of the Undertakings Concerning Minorities, E/CN.4/367, p.70-71.

³² UN ECOSOC, Study of the Legal Validity of the Undertakings Concerning Minorities, E/CN.4/367,p.65.

³³ PCIJ, Case of the SS Wimbledon, Ser. A. No. 1 (1923) p. 23-4, <https://www.icj-cij.org/en/pcij-series-a> , (Date of Accession 01.07.2020).

"Although the Kiel Canal, having been constructed by Germany in German territory, was, until 1919, an internal waterway of the State holding both banks, the Treaty (of Versailles) has taken care not to assimilate it to the other internal navigable waterways of the German Empire. A special section has been created at the end of the Part XII...and in this section rules exclusively designed for the Kiel Canal have been inserted; these rules differ on more than one point from those to which other internal navigable waterways of the Empire are subjected...The difference appears more specifically from the fact that the Kiel Canal is open to the war vessels and transit traffic of all nations at peace with Germany, whereas free access to the other German navigable waterways...is limited to the Allied and Associated Powers alone...The provisions of the Kiel Canal are therefore self-contained. The idea which underlies [them] is not to be sought by drawing an analogy from [provisions on other waterways] but rather by arguing a *contrario*, a method of argument which excludes them."

In other words, the PCIJ already in that early case recognised that a special set of rules and institutions may be created to deviate from the general law on a matter such as the uses of internal navigable waterways.³⁴ In the Wimbledon case, the Court applied the concept of self-containment to resolve a question of treaty interpretation concerning the relationship between two sets of primary international obligations.³⁵

The origin of the term "self-contained regimes" was mentioned by the International Court of Justice (ICJ), in the judgment of the Hostage Case in 1980. This case was brought about during the Islamic Revolution; namely, approximately 3000 militant students (called "Muslim Student Followers of the Imam's Policy") seized US diplomatic and consular personnel as hostage in Teheran. This was flagrant violation of diplomatic relations law. So, the US unilaterally filed an application instituting proceedings against the Islamic Republic of Iran. The ICJ unanimously decided that Iran was responsible in this case. The point here is what the ICJ said in its judgment concerning the characteristics of diplomatic relations law.³⁶

³⁴ International Law Commission Study Group on Fragmentation of International Law: Topic (a): The function and scope of the *lex specialis* rule and the question of "self-contained regimes", https://legal.un.org/ilc/sessions/55/pdfs/fragmentation_outline.pdf, (Date of Accession 01.06.2020).

³⁵ Bruno Simma and Dirk Pulkowski, "Of Planets and the Universe: Self-contained Regimes in International Law", *The European Journal of International Law*, Vol. 17 No.3, 2006, pp.483-529, p.491.

³⁶ Ryo Yamamoto, "What are "Self-Contained Regimes"? And How Do they Work?", <http://www.curri.miyakyo-u.ac.jp/curri-ex/pub/maca/rep99/yamamoto.html>, (Date of Accession 01.07.2020).

"The rules of diplomatic law, in short, constitute a self-contained regime which, on the one hand, lays down the receiving State's obligations regarding the facilities, privileges, and immunities to be accorded to diplomatic missions and, on the other, foresees possible abuse by members of the mission and specifies the means at the disposal of the receiving State to counter any such abuse."

This was substantially for the first time that "self-contained regimes" was highlighted in the vocabulary of international law. It meant that even if the members of the US mission in Teheran abuse their privileges and immunities, Iran cannot seize them as hostage; she should have asked them to leave Iran as *persona non grata* (this is Latin, and it means "unwelcomed person"); otherwise, she should have broken off the diplomatic relations with the US (and actually no diplomatic relations exist between two States since this case).

The International Law Commission (ILC) Draft Articles on State Responsibility recognise the eventuality of self-contained regimes in Article 55.³⁷ When defining the primary obligations that apply between them, States often make special provision for the legal consequences of breaches of those obligations, and even for determining whether there has been such a breach. The question then is whether those provisions are exclusive, i.e. whether the consequences which would otherwise apply under general international law or the rules that might otherwise have applied for determining a breach, are thereby excluded. A treaty may expressly provide for its relationship with other rules. Often, however, it will not do so and the question will then arise whether the specific provision is to coexist with or exclude the general rule that would otherwise apply.

Article 55 provides that the articles do not apply where and to the extent that the conditions for the existence of an internationally wrongful act or its legal consequences are determined by special rules of international law. It reflects the maxim *lex specialis derogat legi generali*. Although it may provide an important indication, this is only one of a number of possible approaches towards determining which of several rules potentially applicable is to prevail or whether the rules simply coexist. Another gives priority, as between the parties, to the rule which is later in time. In certain cases the consequences that follow from a breach of some overriding rule may themselves have a peremptory character. For example, States cannot, even as between themselves, provide for legal consequences of a breach of their mutual obligations which would authorize acts contrary to peremptory norms of general international law. Thus, the assumption of Article 55 is that the

³⁷ Article 55: These articles do not apply where and to the extent that the conditions for the existence of an internationally wrongful act or the content or implementation of the international responsibility of a State are governed by special rules of international law.

special rules in question have at least the same legal rank as those expressed in the articles. On that basis, Article 55 makes it clear that the present articles operate in a residual way.³⁸

10. ULTRA VIRE ACTS OF THE INTERNATIONAL ORGANIZATIONS

In its purest meaning, the notion of an *ultra vires* act refers to acts or actions of international organizations, which are taken outside the scope of their competence. This notion is therefore intimately connected with the idea of entities possessing only some (limited) powers of action. By their nature, international organizations are (only) endowed with those powers conferred to them by their member states through the founding treaty. It is precisely when international organizations act beyond their competences, stated expressly or implicitly in their constituent instrument, that they are deemed to act *ultra vires*. By contrast, it is uncommon to apply the notion of an *ultra vires* act to measures or actions taken by states. To be sure, single organs of states can act beyond the scope of their competence. However, compliance by states' organs with internal rules determining the scope of their competence is relevant internationally only in those limited cases in which international law refers to these domestic rules, and attaches consequences to their breach. The idea that states themselves can act *ultra vires*, although not logically impossible, is much more controversial and it seems basically to be confined to those situations in which states act on the basis of a competence conferred by an international instrument. The existence of limits to the powers of international organizations, drawn by the founding treaty, has the consequence that acts overstepping these limits are normally invalid. Since invalidity seems to be the consequence normally attached to the action of international organizations acts wandering beyond the scope of their competence, the notion of *ultra vires* acts seems to derive plainly from the combination of these two notions.³⁹

The legal nature of the rules of international organizations is a forgotten issue. Since the UN Conference on the Representation of States in their Relations with International Organizations of 1975, the rules of international organizations have been defined as including “the constituent instruments, relevant decisions, and resolutions, and established practice of the Organization”. This definition reproduced with minor changes in the 1986

³⁸ The ILC, “Draft articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries 2001”, https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf, (Date of Accession 01.06.2020).

³⁹ Enzo Cannizzaro & Paolo Palchetti, “Ultra vires acts of international organizations”, *Research Handbook on the Law of International Organizations*, Edited by Jan Klabbers and Åsa Wallendahl, Edward Elgar Pub; Cheltenham , 2012 , p.365.

Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (1986 Vienna Convention) and in the 2011 Articles on the Responsibility of International Organization (ARIO), reflects the need for a broad notion of the rules—discussed, but not included, in the 1971 Draft Articles by the ILC and the discussion on the nature of international organizations in the context of the law of treaties. While its works have served as a basis for the development of a definition of the rules, the ILC has so far refrained from assuming a clear stance on their legal nature. As the commentary to the Draft Article 3 adopted in the 2002 ILC session explicitly states, “the internal law of an international organization cannot be sharply differentiated from international law. At least the constituent instrument of the international organization is a treaty or another instrument governed by international law; some further parts of the internal law of the organization may be viewed as belonging to international law ... Thus, the relations between international law and the internal law of an international organization appear too complex to be expressed in a general principle”. This complexity is the common root of a number of fundamental dichotomies that affect the nature of international organizations: the theory of attribution of competences or the theory of implied powers; legal personality coming from the will of member states or from general international law; the institutional instrument seen as a treaty or as a constitution; “open structures that are vehicle for states” or “closed structures that are independent legal actors”; and functionalism or constitutionalism. Indeed, the unclear nature of the rules is the main cause of the unclear relationship between the organization and its member states, which remains the unresolved problem of the institutional architecture of international organizations. To introduce a leitmotiv that will be developed further, when a rule is perceived as purely international, member states are considered as third parties; when the same rule is perceived as purely internal, member states are considered as organs. The development of a theoretical discourse on the dual legality of the rules of international organizations is an attempt to fully recognize the flaws of functionalism and the unrealism of constitutionalism. The dual nature is a direct consequence of the peculiar legal system created by international organizations and the cause of their transparent institutional veil.⁴⁰

The rules of international organizations have internal and international criteria of validity, allowing reconciliation between *lex specialis* and *lex generalis*. Their parallel application is the possible outcome of the dual legality of the rules. The *lex specialis* character of the Charter of the UN may allow derogation from general international law. Thus, every Security Council resolution may derogate from customary law, imposing its nature of

⁴⁰ Lorenzo Gasbarri, The Dual Legality of the Rules of International Organizations, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3082368 (Date of Accession 01.07.2020)

international law. Indeed, resolutions are not only international law and they derive their legality from the Charter of the UN. It is the Charter of the UN that may derogate from general international law, not the resolution. Recognizing the absence of a provision in the Charter of the UN that consents to derogations from human rights obligations, the dual legality of Security Council resolutions may support their invalidity in case of violations.⁴¹

The ICJ famously stated in the Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt Advisory Opinion, “International organizations are subjects of international law and, as such, are bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties”.⁴²

One should never forget that UN organs are intergovernmental organs deriving the powers from the Charter and thus abided by its terms which ‘impose substantive limits on its actions’. In that regard, one must think of its provisions which expressly provide legal limitations. The most important one is contained in Article 24 which states that the “Security Council shall act in accordance with the Purposes and Principles of the UN” and those are proclaimed in Articles 1 and 2. Although there is certain weight in claims that Articles 1 and 2 laid down provisions which are too general and vague in its nature and thus inappropriate for deriving limitations to the Security Council’s activities, the argument cannot be accepted. Even the same author in the same article claims that “imprecision and vagueness are general features of law” and that “constant and renewed attempts to clarify the meaning” should be made. For many scholars, the obligation to act in accordance with the purposes and principles of the Charter is thus regarded as a substantive limitation of the powers of the Security Council. Above all mentioned, Article 25 of the Charter expressly pronounces that decisions of the Security Council which member states agreed to accept and carry out should be “in accordance with the present Charter”.⁴³

Ultra vires conduct of an international organization could be either conduct beyond the powers conferred on the organization or conduct exceeding the powers of a specific organ. In its advisory opinion on Legality of the Use of Nuclear Weapons in Armed Conflict, ICJ stated that:

“International organizations ... do not, unlike States, possess a general competence. International organizations are governed by the

⁴¹ Ibid.

⁴² Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt (Advisory Opinion) [1980], ICJ Rep 73, 89-90.

⁴³ Ivana Rajčić, Legal Control over Decisions Taken by the United Nations Organs and Judicial Review of the Security Council Decisions, *Pravnik*, 48, 1 (96), 2014, pp.109-122, p.111.

“principle of specialty”, that is to say, they are invested by the States which create them with powers, the limits of which are a function of the common interests whose promotion those States entrust to them.”⁴⁴

An act which is *ultra vires* for an organization is also *ultra vires* for any of its organs. An organ may also exceed its powers because it impinges on those that are exclusively given to another organ or because it uses powers that have not been given to any organ. The possibility of attributing to an international organization acts that an organ takes *ultra vires* has been admitted by ICJ in its advisory opinion on Certain Expenses of the UN, in which the ICJ said:

“If it is agreed that the action in question is within the scope of the functions of the Organization but it is alleged that it has been initiated or carried out in a manner not in conformity with the division of functions among the several organs which the Charter prescribes, one moves to the internal plane, to the internal structure of the Organization. If the action was taken by the wrong organ, it was irregular as a matter of that internal structure, but this would not necessarily mean that the expense incurred was not an expense of the Organization. Both national and international law contemplate cases in which the body corporate or politic may be bound, as to third parties, by an *ultra vires* act of an agent.”⁴⁵

11. EX ARTICLE 19 OF THE GREEK NATIONALITY CODE AND DENATIONALISATION OF THE WESTERN THRACE TURKS

Ex-Article 19 of the Greek Nationality Code (, Legislative Decree (Law) 3370/1955) was a provision applied from 1955 until 1998. It provided for the denationalisation of “citizens of different [non-Greek] descent” (“alloyenis”, as opposed to “omoyenis”, that is, “of the same [Greek] descent”) who left Greece “with no intent to return”. It was a provision that followed a long relevant historico-legal tradition in Greece by which this relatively young (1832–) state attempted to rid itself of a host of members of ethnic or “politico-ideological” groups viewed by the state as dangerous to the country’s wished-for homogeneity, or even its territorial integrity. The end result of ex Article 19 Greek Nationality Code was the denationalisation from 1955 to 1998 of 60,004 Greeks “of different descent” (“alloyenis”) and the consequent creation of a significant number of stateless persons. The overwhelming majority of these persons were Greeks of Turkish origin

⁴⁴ ICJ Reports 1996, p. 78, para. 25.

⁴⁵ ICJ, Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, Reports 1962, New York, p. 168.

(officially recognised by the Greek state as belonging to the “Muslim minority”) who used to live, or still live as stateless persons, in the region of western Thrace (north-eastern Greece) ex Article 19 Greek Nationality Code was an overtly racially/ethnically discriminatory provision and the relevant state practice violated the peremptory rule of international law regarding ethnic/racial equality, thus entailing Greece’s international responsibility. At the same time, it gave rise to a number of serious violations of international and European human rights and nationality law. The denationalisation practice based on ex Article 19 Greek Nationality Code is not to be viewed as ‘a matter of the past’ since it actually ended as late as 1998. It has had complex, long-lasting negative effects on, inter alia, the ethnic (traditional) minority populations and the relevant local societies.⁴⁶

According to Ex-Article 19 Greek Nationality Code ‘a citizen of non-Greek descent [“alloyenis”] who leaves the Greek territory with no intent to return may be declared to be a person who has lost the Greek nationality’. In the framework of Article 19 Greek Nationality Code, a Greek citizen of non-Greek descent (“alloyenis”), meant an individual with Greek nationality who did not “originate from Greeks, had no Greek consciousness and did not behave as a Greek [and consequently] it may be concluded that their bond with the Greek nation is completely loose and fragile”. The Greek Supreme Administrative Court (Council of State) gave a similar definition of an “alloyenis” in the context of Article 19 Greek Nationality Code: “a person whose descent is of a different [non-Greek] ethnicity and who through their actions has demonstrated feelings showing lack of Greek national consciousness, in a manner that they may not be considered as integrated into the ethnic Greek body that consists of persons connected by common historical traditions desires and ideals”.⁴⁷

The main target group of the denationalisation scheme of Ex-Article 19 Greek Nationality Code was the Turkish minority in Western Thrace.

12. CONCLUSION

By the Ex-Article 19 of the Greek Nationality Code, from 1955 until 1998, more than 60,004 Greeks “of different descent” were had arbitrarily deprived nationality. The main target group of the denationalisation scheme of ex Article 19 Greek Nationality Code was the Turkish minority in Western Thrace.

⁴⁶ NICHOLAS SITAROPOULOS, Freedom of Movement and the Right to a Nationality v. Ethnic Minorities: The Case of ex Article 19 of the Greek Nationality Code, *European Journal of Migration and Law* 6, 2004, 205–223, p.205-206.

⁴⁷ *Ibid.*, 212.

Ex-Article 19 of the Greek Nationality Code was null and void from the beginning. By the Ex Article 19, denationalization was made only for the “of different descent” of the Greek citizens whereas, by the Treaty Concerning the Protection of Minorities in Greece, Greece had accepted that all Greek nationals are equal before the law and enjoy the same civil and political rights without distinction as to race, language or religion. Greece signed the Treaty Concerning the Protection of Minorities in Greece and undertook the equality of all its nationals as its fundamental laws, and that no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action prevail over them that is the articles between 2 and 8 of the treaty. In Article 16, the MPR of League of Nations was codified by the Treaty Concerning the Protection of Minorities in Greece. The MPR of the League of Nations was the only major League of Nations process that was not continued under the UN. The dissolution of the League of Nations had suspended the MPR of the League of Nations.

The suspension of the MPR of the League of the Nations was codified in Article 16 of the Treaty Concerning the Protection of Minorities in Greece, as the MPR of the League of Nations was a self-contained regime. The fundamental laws of a State are different which were codified by an international treaty and the UN has no authority to decide the validity of an international treaty unless the treaty contradicts a *jus cogens* norm.

Greece claim on the validity of the Ex Article 19 of the Greek Nationality Code was based on the report of the Secretary-General in which it is specified that:

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

As written in the ICJ’s WHO and Egypt Advisory Opinion, “International organizations are subjects of international law and, as such, are bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties”. The UN organs are intergovernmental organs deriving the powers from the Charter and thus abided by its terms which “impose substantive limits on its actions”.

The ECOSOC had no authority, originating from the Charter of the UN to “study the question whether and to what extent the treaties and declarations relating to international obligations undertaken to combat discrimination and to protect minorities, the texts of which are contained in League of Nations document C.L.110.1927.1 Annex, should be regarded as

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being still in force, at least in so far as they would entail between contracting States rights and obligations the existence of which would be independent of their guarantee by the League of Nations; and to report on the results of this study to a later session of the Commission on Human Rights with recommendations, if required, for any further action to elucidate this question" for Greece. The ECOSOC could only ask the validity of the MPR of the League of Nations with the relation to the UN system of human rights for Greece.

The question of the ECOSOC to the Secretary-General constitutes an internationally wrongful act of an international organization as codified by the ARIO and under the definition of an *ultra vires* action of the UN.

The Secretary-General had no authority as well to decide on the validity of the minority protection regime, established by the Treaty Concerning the Protection of Minorities in Greece and nullify the fundamental laws of Greece concerning some minorities even if these minorities were attached by their special characteristics to a neighboring country with another treaty that the special regime established in favour of the Moslem minority in Greece by the Peace Treaty with Turkey signed at Lausanne on 24 July 1923.. The origin of the minority protection regime in Greece by the Treaty Concerning the Protection of Minorities in Greece is originated from Articles 46 and 48 of the Treaty of Neuilly-sur-Seine. The Turkish minorities in Greece, even if they are Turkish origin, they are the ex-citizens of Bulgaria and the treaty signed at Laussane cannot be replace Treaty of Neuilly-sur-Seine and the Secretary-General had no authority to replace a treaty with another treaty.

The Greece part of the report of the Secretary-General constitutes an international wrongful act of an international organization as codified by the ARIO and under the definition of an *ultra vires* action of the UN.

Neither the ECOSOC nor the Secretary-General are *Legibus solutus* from the international law and the Charter of the UN.

The Ex-Article 19 of the Greek Nationality Code was null and void from the day of being codified and is under the definition of an international wrongful act of a State as codified on the Draft Articles of the State Responsibility by the ICJ. The Treaty Concerning the Protection of Minorities in Greece signed on 10 August 1920 is still legally in force.