

## Summary

### *Group Rights and Collective Aspects of Individual Human Rights*

1. International law discussion concerning group rights focusses on international minority rights' protection and on self-determination of peoples (SD) as a group right of "peoples". Three modes of protection may be distinguished: (a) protection of the group as such, (b) protection of persons belonging to groups as individuals, and (c) protection of the group via its members.
2. Since World War I four phases of international law group protection can be made out:
  - a) the minority rights' protection system of the League of Nations as a primarily territorial group protection scheme;
  - b) the retraction of the autonomous minority rights' protection system after the second world war and integration of the group rights' protection scheme within the human rights system with an essentially individualistic orientation;
  - c) the conjunction of minority rights' protection with self-determination of peoples since 1960;
  - d) the rediscovery of minority rights' protection as an independent topic of international human rights' protection since the middle of the seventies.
3. The shift of emphasis of group rights co-varies with the changing understanding of sovereignty and international law. The sovereign state more and more relativates and functionalizes its phenomenology. Moreover, the international community has increasingly become aware that the basis of international law is formed by human beings, not by states.
4. After the second world war the changeover from a primarily territorial approach to a more personality-based approach of group protection was effected by the international human rights régime. The decolonized states, out of fear of secessionist movements and of internal conflicts, reinforced these developments. At the same time the personality-based human rights approach opened up the possibility for the community of states of overcoming the hurdle of non-intervention under Article 2 (7) of the UN Charter by means of human rights.
5. Self-determination has internal and external components. International group protection focusses primarily on differentiating the internal aspects of self-determination, via possibilities for autonomy, federalism, regionalism or other models of participation. Thus state-splitting and state-

destructive tendencies inherent in the external dimension of self-determination may be avoided, albeit not entirely.

6. It is not the lack of a clear-cut definition of the terms “peoples” and “minorities”, but fundamental dissent about the treatment of aliens amongst states that has prevented the evolution of new international law rules of group protection. The attitude of states concerning group rights depends largely on whether they intend to foster segregation, assimilation, acculturation or integration of their respective minorities.
7. The corpus of generally accepted rules and principles of international law as regards minority questions is slender, indeed. The jurisprudence of the UN-Human Rights Committee and of the Strasbourg human rights institutions has, however, lent greater weight to these few binding norms by way of dynamic interpretation. Although group rights as such are not recognized, particularly when they rely on Article 1 of the Civil and Political Rights Covenant, they do find recognition not merely as individual rights, but increasingly also in their group-relatedness. The collective approach to group rights thus is upgraded indirectly.
8. As a result of an extensive discussion in the literature the following objective and subjective components of a group rights definition emerge:
  - a) The group as such must be easily recognizable, and its feeling of identity, as conveyed by traditions, ethnicity, language or religion, should be manifest.
  - b) The group needs a territorial link. If it resides in stray settlements or is dispersed, it predominately needs individual protection of group members.
  - c) The group’s size is less relevant, but it should be assessed.
  - d) The awareness of the uniqueness of the group and the will to maintain the group identity, in particular not to be assimilated, count as subjective group criteria.
  - e) It is a matter of controversy whether group rights’ protection is accorded only to one’s own nationals. However, Article 27 of the Civil and Political Rights Covenant can be interpreted in such a way that even aliens enjoy human rights minority protection. The international human rights protection system remains open for “new” minorities, such as aliens of the second generation, migrant workers and “guest workers”. State practice views this, however, with much reserve.
9. For group rights as such a “group rights decalogue” has recently been proposed:
  - (1) the right to physical existence;
  - (2) the right to effective equal treatment;

- (3) the right to cultural identity;
  - (4) the right freely to communicate with the group;
  - (5) the right to participate in decision-making bodies;
  - (6) the right to positive discrimination or claim rights to state subsidies or to other promotional measures;
  - (7) the right to (self-)determination of one's own group identity;
  - (8) the right to set up and maintain one's own institutions;
  - (9) the right to impose duties on group members;  
and
  - (10) the claim right to be recognized as a legal person and the power to institute legal proceedings before judicial and quasi-judicial bodies.
10. From a doctrinal point of view group rights' protection and collective aspects of individual rights may be realized as follows:
- a) As "hard law" there is group member protection as long as they invoke rights of the individual group members.
  - b) As far as rights are claimed by group members affecting their specific group membership, an original claim right is established procedurally which exists side by side with the personal right of the individuals concerned. Such a group-oriented right of individuals covers part of the "decalogue" of group rights [thesis 9, (1) – (5)]. These may be considered as part of generally accepted rules of international law.
  - c) Component parts of the "decalogue" concerning exclusively group rights as such may be qualified as rights *in statu nascendi*. Such legal standards as enunciated in the Copenhagen CSCE-Document on the Human Dimension of 1990 may serve as aids to interpretation to elicit the meaning of valid norms of minority protection. As standards they canalize future developments of law and they muster consent, as they mainly formulate "soft" and "promotional obligations" of states.
11. While there is a general tendency strengthening the international minority rights' protection system via group rights of individuals, the territorial self-determination aspect of group rights' protection tends to remain valid but with less prominence than before, and largely restricted to models of internal autonomy, federalism and regionalism. The territorial aspect remains fully operative, though, as regards collective group rights' protection for indigenous peoples. The change of orientation from a predominantly territorial to a primarily personal group rights approach, however, has not led to a general acceptance of group rights as such. Seen in perspective, group rights' protection is enhanced increasingly via the collective aspects of human rights of individuals and thus indirectly via group members. And this certainly is not a disadvantage for effectively safeguarding group rights.