Christian Tomushat

Rights of peoples, human rights and their relationship within the context of Western Europe

Rights of peoples and human rights. Stocktaking

1. It is easier to identify *human rights* as they are defined in existing universal international instruments than peoples' rights. The movement towards the creation of an International Bill of Rights began in 1945 at the founding conference of the United Nations in San Francisco where the representatives of Cuba, Mexico and Panama proposed that a Declaration of the Essential Rights of Man be drawn up [1]. As these suggestions were not formalized because of lack of available time, it became one of the first tasks of the newly established Human Rights Commission to prepare the relevant drafts for a set of rights to be applied on a worldwide scale for the benefit of every human being. The final stages of this legislative process are well known. On 10 December 1948, the General Assembly adopted the Universal Declaration of Human Rights [2]. Translating the legal substance embodied in this instrument, which constitutes neither more nor less than a "common standard of achievement" [3], into commitments designed to become legally binding, the General Assembly adopted on 19 December 1966 two International Covenants on Economic, Social and Cultural Rights on the one hand, and on Civil and Political Rights, on the other [4]. The two Covenants both entered into force in 1976, in each case after 35 States had deposited their instruments of ratification. Together with the universal instruments against discrimination: International Convention on the Elimination of All Forms of Racial Discrimination (1965) and the Convention on the Elimination of All Forms of Discrimination against Women (1976), the two Covenants constitute the core of the International Bill of Rights. The lists of rights which they contain are so extensive that almost any new development appears simply as an elaboration and concretization of those rights already consolidated. In focusing on the relationship between human rights and peoples' rights, reference is therefore made primarily to the instruments just mentioned above, with regard to human rights. It should not be forgotten, how-

[1] See UN, *United Nations Action in the Field of Human Rights*, 1983, p. 8 para. 1.
[2] Resolution 217 A (III).
[3] Preamble, last para.
[4] Resolution 2200 A (XXI).

ever, that some important contributions have also been made by specialized agencies. Among these, the International Labour Organisation (ILO) and the United Nations Educational, Scientific and Cultural Organization (Unesco) rank most prominently, particularly with regard to their continuing action against discrimination in all its aspects.

2. *Rights of peoples* are a more recent phenomenon. Today, it is universally recognized that all peoples have the *right to self-determination*. Although originally the United Nations Charter had mentioned somewhat vaguely the «principle of equal rights and self-determination of peoples» as one of the "purposes" of this international organization (article 1, para. 2), later developments strengthened and profoundly modified the legal significance of that proposition. In 1960, the General Assembly adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples [5] which stated categorically (para. 2) that «all peoples have the right to self-determination». At that time, nine states still abstained, thus expressing some reservations. Very quickly, however, official views changed. Already, in 1970, the Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations [6], which includes self-determination as one of the seven key principles of the present world order, received such overwhelming support that it was adopted "without vote". In addition, with the continuation of the decolonization process, self-determination soon fulfilled the requirements of the rule of customary law. In its advisory opinion on the Western Sahara of 1975, the International Court of Justice [7] confirmed that self-determination should henceforth be considered as a true right of peoples. Furthermore, common article 1 of the two International Covenants of 1966 expressly sets forth that "all peoples have the right to self-determination». Although the Covenants, strictly speaking, create binding obligations only for those states having expressly accepted them, it should not be overlooked that they originated from a common effort of the Members States of the United Nations, thus reflecting a consensus of the international community at large. Accordingly, at the present time, no more voices can be heard challenging the binding character of the right to self-determination which henceforth undeniably constitutes a right of peoples. Some authors even qualify self-determination as a rule of *jus cogens* [8]. Its violations has been included by the International Law Commission (ILC) in the list of international crimes established in article 19 of Part I of its Draft articles on state responsibility [9].

The legal status of other rights allegedly pertaining to peoples is still uncertain.

On 12 November 1984, the United Nations General Assembly by Resolution 39/11 adopted the «Declaration on the Right of Peoples to Peace». Paragraph 1 of this resolution asserts that «the peoples of our planet have a sacred right to

[5] Resolution 1514 (XV).
[6] Resolution 2625 (XXV).
[7] ICJ Reports 1975, p. 12, at 31-33.
[8] Gros-Espiell H., *The Right to Self-Determination. Implementation of United Nations Resolutions*, 1980, p. 13 para. 85. For a more cautious view see A. Cristescu, *The Right to Self-Determination. Historical and Current Development on the Basis of United Nations Instruments*, 1981, p. 24, para. 154.
[9] Yearbook of the ILC 1980, part II.2, p. 30.

peace». Account must be taken of the fact, however, that the vote was marked by no less than 34 abstentions [10]. When some years earlier in 1978, the General Assembly had adopted the «Declaration on the Preparation of Societies for Life in Peace»[11] which similarly proclaims (Part I, para. 1) that «every nation and every human being... has the inherent right to life in peace», only two States had distanced themselves from the draft by abstention. In any event, the voting record shows that no unanimity exists among members of the United Nations as to whether a right of peoples to peace should be recognized.

The right to a clean environment was enunciated in the concluding resolution of the United Nations Conference on the Human Environment [12] held in Stockholm in 1972, in the following terms (Part II, principle 1): «Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being...». The General Assembly approved the Stockholm Declaration generally [13], but has not yet moved on to proclaiming specifically a corresponding right of peoples on its own initiative. In 1982, however, it adopted a «World Charter for Nature» [14], which makes reference to the necessity of protecting the natural environment of man not in terms of rights, but solely in terms of duties. Indicative of this general approach is principle 1 which reads: «Nature shall be respected and its essential processes shall not be impaired». Obviously, under these circumstances doubts as to the existence and possible legal meaning of a right to a healthy environment as suggested in legal doctrine [15] carry even greater weight. On the other hand, the African Charter of Human and Peoples' Rights of 1981, which entered into force on 21 October 1986, proclaims in article 24 that «all peoples have the right to a general satisfactory environment favourable to their development».

The last one of the rights, which because of their importance deserves closer examination is the right to development. Mentioned for the first time officially by a United Nations body in Resolution 4 (XXXIII) of the Human Rights Commission of 21 February 1977, it was proclaimed by the General Assembly in 1979 [16] and strengthened in 1981 to read «that the right to development is an inalienable human right» [17]. This proposition was from then on re-affirmed every year, but failed to muster support from all regions. Thus, 22 states, mostly Western, abstained when the relevant Resolution 40/124 was adopted on 13 December 1985. Very recently, the General Assembly finalized its work on the right to development by voting a Declaration [18] which purports to specify in greater detail the contents and meaning of that right. Again, no consensus was reached, a number of states insisting on a recorded vote in order to be able to abstain. One State – the United States of America – voted against the draft resolution.

[10] For the reasons of the reserved attitude of Western countries, in particular, see C. Tomushat, *Recht auf Frieden, Ein neues Menshenrecht der dritten Generation?*, «Europa-Archiv.» 1985, pp. 271 et seq., at 272.

[11] Resolution 33/73.

[12] Reprinted in: «International Legal Materials» 1982, p. 1416.

[13] Resolution 2994 (XXVII).

[14] Resolution 37/7, annex.

[15] See, for instance, D. Uribe Vargas, *La Troisiéme génération des Droits de l'Homme et la Paix*, 1985, pp. 52 et seq.

[16] Resolution 34/46, op. para. 8.

[17] Resolution 36/133, op. para. 8.

[18] *Official symbol not yet known.*

3. Although a number of additional rights have been mentioned in legal writings, this study will be deliberately confined to the four rights mentioned above. They are not only the most important ones of the new "rights of the third generation" or "solidarity rights", but they have also received a large amount of official recognition. Consequently, they cannot be brushed aside as figments of doctrinal speculation, but deserve to be taken very seriously.

4. If one looks more closely into the reasons underlying the efforts to work out such new rights as the right to peace, the right to a healthy environment as well as the right to development, it becomes obvious that they derive essentially from a general feeling of frustration. Since peace has not been secured in a satisfactory way by the United Nations system with the prohibition of the use of force as the main substantive device and the Security Council as its primary implementing agency, it was considered necessary to re-emphasize peace as the central element of an international community based on the understanding that disputes should be settled without resort to violent methods. Similarly, the proclamation of a right to a healthy environment is due to the simple observation that in spite of all the precautionary measures taken by governments individually or collectively, the quality of the environment is still deteriorating in most parts of the globe. Finally, Third World countries, in particular, cannot be satisfied with what they have reached after independence, if they compare their status with the enviable level of well-being which industrialized countries have been able to attain. Summarizing, it may be said that in each instance the object of a suggested right of peoples describes a desirable state of affairs which under the existing legal order, or at least in practice, is not sufficiently ensured.

The importance of self-determination, peace, a healthy environment and development for human rights

There is no need to stress that human rights are designed actually to work out the conditions of life of human beings. If they were confined to constituting abstract legal entitlements lacking the potential to be translated into reality, they would just be useless juridical constructions. The law on the books and the law as the individual experiences it in his or her society must therefore accord.

Self-determination, peace, development and a healthy environment all constitute the framework which determines to what extent the entitlements legally embodied in human rights may be satisfied.

Self-determination is the basis of statehood. If a people, by virtue of the right to self-determination, has established its own state, it thereby becomes the master of its own fate. Through the requisite governmental institutions, it can then decide how best to secure the human rights of its individual members. Historical experience has shown that under foreign rule many basic needs of a people are not adequately taken care of. Belligerent occupation of a country even leads to massive violation of human rights. In some instances, though, alien occupation and domination, if maintained for short periods, may help a country to re-orientate itself following for example, a dictatorship. Thus, in the case of Germany, allied occupation was necessary and salutary for a certain time-span in order to over-

come the remaining vestiges of Nazi rule. Other present-day examples could also be cited where a people, involved in internal strife, has become unable to establish governmental structures for the safeguarding of law and order. Under such circumstances, some kind of transitory tutelage under the auspices of the United Nations could probably contribute to overcoming the existing stalemate between competing political fractions. Generally, however, self-determination based on genuine democratic participation of every citizen in the conduct of public affairs is the best guarantee for a just government which observes and ensures human rights.

Presently, Western Europe is not afflicted by any problem with regard to the right to self-determination. But the right to self-determination is by no means irrelevant to this region of the world. Self-determination is not consummated once a people has been successful in establishing its own state. To be sure, mostly no need exists to refer to self-determination as long as a people has a functioning state machinery at its disposal. The general rules of international law, in particular the prohibition of the use of force as well as the prohibition of intervention, by protecting the state at the same time and in the last analysis provide protection to the people concerned. But self-determination is an inherent, inalienable right. Any foreign aggression, resulting in the occupation of the territory of a country, would also violate the right to self-determination.

Peace is even more indispensable for real enjoyment of human rights. War, which by necessity leads to the loss of human lives, can be considered the very denial of human rights. As far as the specific situation of Western Europe is concerned, everyone knows that any outbreak of hostilities between the two superpowers could engulf the whole of Europe, whether West or East. Consequently, the relationship between peace and human rights does not need any long elaboration. That human rights can be satisfied only under conditions of peace, gains with regard to Western Europe, the quality of a conclusion firmly entrenched in historical and political realities. Conversely, enjoyment of human rights is «the foundation of freedom, justice and peace in the world» (Preamble, para 1, of the Universal Declaration of Human Rights and of the two International Covenants of 1966).

Natural environment in Western Europe, because of its high degree of industrialization, is exposed to a great variety of serious threats. Air pollution has already inflicted irreparable harm on forests. Leaks in chemical factories have poisoned many rivers. In addition, any nuclear catastrophe could render large areas uninhabitable. In the long run, the unabated continuation of contamination at the present speed would undermine the economic bases of societies in Western Europe, thereby adversely affecting the capacity to uphold present standards of economic, social and cultural rights. A sudden breakdown of the ecological balance could even put in jeopardy the prevailing conditions of freedom and democracy. Here again, the conclusion is that a healthy environment is the result of laying foundations, the stability of which largely conditions the degree to which human rights may become a real asset for their holders. What is true in general has even more importance for Western Europe.

There is a certain tendency at present to regard *development* as a process and state of affairs relevant only to Third World countries. If comparisons are made between the relevant Gross National Product figures, the discrepancies found indeed underline the need for developing countries to catch up with the

leading industrial nations. However, the right to development highlights in the first place the right of every people to engage its own efforts with a view to improving its well-being. In that respect, no state may be excluded *ratione personae* form the ambit of the right to development, even less so since the recent Declaration on the right to development proclaims "all peoples" to be endowed with that right. It is true, however, that the aspect of solidarity implied in the right to development operates mainly to the benefit of the poor countries of the Third World under the prevailing economic conditions.

Elevating self-determination, peace, a healthy environment and development at the level of rights of peoples

To state that self-determination, peace, a healthy environment and development are desirable situations constituting an essential part of the general framework within which human rights are observed and ensured, amounts only to a first step in the required legal analysis. The main question still remains to be resolved: legal effects arise or are intended to arise if such desirable situations are conceived of as the object of rights of peoples. A legal right should be capable of being defined in terms of holders, of duty-bearers as well as in terms of procedures and mechanisms to ensure its implementation. Only then does it qualify as an integral part of the international legal order.

Since the *right to self-determination* has already acquired a clear-cut profile and is undoubtedly recognized as a legal right it is relatively easy to specify how it operates and what legal consequences it entails. Self-determination, in the first place, is against a colonial power and entitles the people concerned to claim that the colonial régime be terminated. Since there are no vestiges of colonialism in Western Europe, it suffices just to mention this specific aspect.

Since self-determination, as has already been explained, is an inherent right of every people, it can be invoked, beyond the prohibition of the use of force and the duty not to intervene, as an additional legal defence against foreign aggression and interference. Indeed, it may be quite useful to express the unlawfulness of such interventionist policies carried out by other states in terms of violation of people's rights, inasmuch as behind a state there is always a people. Thus, it becomes manifest that aggression against a state constitutes not only an attack on an abstract entity, but infringes the rights of the real victim, namely the people concerned.

To date, it is still controversial whether the right to self-determination also comprises a domestic component. According to the proponents of that view [19], self-determination could also be invoked, within the framework of a state, against governmental machinery. As far as Western Europe is concerned, there is no reason to promote such an expansive construction of the right to self-determination. Government is generally predicated on the principle of genuine democracy,

[19] See, for instance, A. Cassesse, *The Self-Determination of People*, in: L. Henkin (ed.), *The International Bill of Rights*, 1982, pp. 92/113, at 97. For a different view see B. Graefrath, *A Necessary Dispute on The Contents of the Rights Peoples, Right to Self-Determination*, GDR Committee for Human Rights Bulletin 1/81, pp. 11 et seq.

which means that elections are held regularly in which all political tendencies are free to compete with one another.

Therefore, it would make little sense to "invent" a hiatus between peoples and their governments, claiming that the true wishes and aspiration of peoples were different from governmental policies. There may be instances when it becomes necessary to distinguish between the level of government and the grass-roots level of the people. Whenever in a given country the democratic process falls apart and a dictatorship assumes power, the people concerned loses its inherent right as the sole source from which governmental authority may be legitimized. The most tragic experience which Europe had ever witnessed occurred in Germany during the atrocious years from 1933 to 1945. But there exists no real reason to fear that similar events might occur again in Germany or elsewhere in Western Europe.

In addition, it should be noted that the rights granted under the International Covenant on Civil and Political Rights – right to hold opinions, article 19; right of peaceful assembly, article 21; freedom of association, article 22; right of every citizen to take part in the conduct of public affairs, article 25; prohibition of political discrimination, article 2, para. 1 – are amply sufficient to safeguard a free democratic process without any undue restriction. Consequently, from a systematic viewpoint, it would appear to be ill-advised to stretch the right to self-determination of that same instrument to cover areas which the drafters had never intended to be included in the scope of application of article 1.

With regard to the suggested right to a *healthy environment* the difficulties raised by qualifying that right as a right of peoples become even more manifest. Legal analysis cannon refrain from inquiring into the precise meaning to be attached to a postulated right. In particular, the question must be asked what real contribution the right to a healthy environment might make to enhancing the quality of life. According to traditional international law, every state has the right not to be seriously harmed through actions undertaken by other states which have a physical transboundary effect. It is certainly not easy to draw the dividing line between serious damage, which obligates the author state to make compensation, and negative effects of a kind which is necessarily tied up with the coexistence of human populations in neighbouring countries. But the problem to be dealt with here is different. It relates to the holder of the right to territorial integrity. What new dimensions would be opened up if the relevant rights, which establish a network of bilateral relationships between states, were replaced or supplemented by corresponding rights of peoples? As far as legal policy is concerned, no gaps can be perceived. Generally, states assert most actively their right not to be harmed physically by outside sources. The threat to incur liability which would then be invoked by a victim state has a most salutary preventive effect. Peoples, on the other hand, lack the capacity to act in inter-state relationships. By definition, they constitute unorganized communities as opposed to the governmental structure of the state. Thus, enforcement of existing standards is much better ensured within the existing framework of rights and duties whose holders and bearers are states.

Of course, the term "rights of peoples" could also be meant to underline what is obvious, namely, that a state constitutes an organized group of human beings. Such a change of terminology, however, would amount to a mere shift in

political emphasis. International law as a whole could also be termed "Law of peoples", in line with the French expression "droit des gens" and the German and Dutch words 'Völkerrecht' or 'Volkenrecht'. It cannot be assumed, however, that the concept of "rights of peoples" constitutes a play with words.

Following the usual pattern of human rights, which essentially establishes a legal relationship between an individual and a government, a right to a healthy environment could also be taken to mean that every people has a right against its own government to require that the environment be preserved. But here again, the analogy is fallacious. In every state, even in the most liberal and democratic policy, a single person or a group of persons may become the victim of arbitrary measures. Legislative bodies, administrative agencies and tribunals, in spite of their mandate to uphold the rule of law, may err in discharging their functions, or may even deliberately abuse their powers. But to say that a people is against its government is tantamount to saying that a dictatorship has emerged, which has suppressed the democratic rights of citizens. In Western Europe, fortunately, such prospects lack any concrete foundation.

A third interpretation would be somewhat bolder than the constructions hitherto examined. It would simply assume that at least some rights of peoples – in particular the right to a healthy environment and the right to peace – are of paramount importance for all peoples and, consequently, for mankind as a whole. Therefore, they must be given additional protection, over and beyond what classical international law is able to provide. In this perspective, to speak of "rights of people" would be a somewhat incorrect, albeit emphatic way, of recognizing in these rights the same legal status as the other rights.

Rights of peoples would thus stand in line with the concept of the common heritage of mankind, which originated within the context of the law of the sea and is slowly gaining recognition also in other fields of international law [20]. A similar concept has been termed international public order, comprising «those principles and rules of international law that may be regarded as the fundamental basis of the international legal system» [21]. Rights of peoples, understood in this sense as constituting the core of the international legal community, would give rise to a host of legal consequences not only the international level, but also within the domestic legal order of states.

Proceeding from the assumption that a right to a healthy environment designates the supreme duty to preserve the ecological balance of nature which conditions the existence of mankind, one can identify a whole series of points of intersection with the existing rules of positive international law.

Any treaty providing for actions that would seriously damage the environment should be void by virture of the *jus cogens* rule enshrined in Article 53 of the Vienna Convention on the Law of Treaties.

In addition, for instances where actual damage has already been caused to the environment, the rules on state responsibility should be strengthened in relation to their

[20] The Armand Hammer Conference which took place in 1981 at Aix-en-Provence suggested that the right to respect for the common heritage of mankind should be added as an independent right to the right to a healthy environment, see Uribe Vargas, *supra* note 15.

[21] G. Jaenicke, Entry *International Public Order*, in: *Encyclopedia of Public International Law*, Vol. 7, p. 314.

traditional substance. Rightly, the ILC has included "massive pollution of the atmosphere or of the seas» in its tentative catalogue of international crimes as set out in Article 19 Part I of its Draft Articles on state responsibility. The main consequence of this qualification should be that third states, which have not been directly affected, receive at least a right to make diplomatic representations with a view to calling on the author State to make good the damage which it has effected. It is well known that the International Court of Justice in its Barcelona Traction Judment of 1970 referred to obligations *erga omnes* [22], a concept which was implicitly touched upon again in the Tehran Judgment of 1980 [23]. Third States should even be given the right to act as guardians of the common welfare of mankind if, for the time being, a state has only harmed its own territory. Such a *"droit de regard"* would be perfectly in line with the inter-State complaint in human rights matters, which not only the regional instruments (Art. 24 of the European Convention; Art. 45 of the American Convention), but also some universal instruments (Art. 41 of the International Covenant on Civil and Political Rights; article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination) provide for.

Finally, the question arises whether and to what extent international criminal liability could be introduced for acts gravely harming the environment. It need not to be stressed that the International Law Commission is presently engaged in drafting a Code of offences against the peace and security of mankind. It would appear to be obvious that ecological offences will be included in the list of the most serious crimes susceptible of afflicting humanity in its vital interests. The present special rapporteur, Iba Der Thiam from Senegal, has made proposals in that direction [24].

All these legal developments are already discernible, but they have not yet won the final approval of the international community. In any event, it is here that the concept of rights of peoples can usefully serve as a source of inspiration by higlighting the vital character of the interests at stake.

As far as the domestic legal order is concerned, it has already been stated that rights of a people against its own government are simply inconceivable as long as the maxim «Government of the people, by the people and for the people» is applied. A people which, in order to act, necessitates representative institutions, cannot through these institutions challenge the policies framed and carried out by precisely the same institutions. But it is possible to assign to individuals or to specific organs the task of seeing to it that the environment be adequately protected. Unfortunately, little progress can be expected in this field because international law still clings to the traditional principle that, except for instances where different rules have been expressly agreed upon, implementation of international obligations is committed to the discretion of national authorities. Thus, it is well known that even in the field of human rights states have a free choice as to whether to insert the relevant international instruments into their municipal legal order or whether to discharge their commitments through parallel legal enactments of national origin. To date, therefore, states cannot be held bound to accept that individuals act as *custodians pro bono pubblico.*

A closer examination of the scope and meaning of the *right to peace* yields results which are fairly similar to the conclusions reached with respect to the right

[22] ICJ Reports 1970, p. 3, at 32.
[23] ICJ Reports 1980, p. 3, at 42/43.
[24] Draft article 12(4), see Report of the ILC on the work of its 38th session, General Assembly Official Records: Forty-first session, Supp. n. 10 (A/41/10), p. 112.

to a healthy environment. However, since peace is the main element of the Charter of the United Nations, many of the legal implications which can only be explored rather tentatively in respect of the right to a clean environment, have been spelled out in greater detail long ago.

It may well be that on the inter-state level the obligation to live in peaceful coexistence requires strengthening. To refrain from using force, as enjoined by Article 2(4) of the United Nations Charter, is not enough to secure a general climate of peace and undestanding between states. In particular, the rule that every state determines independently and thereby unilaterally the level of armaments deemed necessary for purposes of self-defence, would appear to have become rather anarchronistic. State should be duty-bound to consent to reasonable and balanced measures of disarmament [25]. But it is difficult to see how the addition of a new category of holders of rights, namely peoples, would promote this desirable aim.

Consequently, the real task is again to improve the legal framework designed to ensure international peace and security.

It has long been established that treaties whose conclusion has been procured by the threat or use of force in violation of the United Nations Charter are void (Article 52 of the Vienna Convention on the Law of Treaties).

In the case of aggression, the victim state does not have to rely solely on its own military forces. Any act of aggression is a matter of international concern and must be examined by the Security Council. In addition, the victim state may make use of the right of "collective" self-defence under Article 51 of the United Nations Charter by requesting the aid of the military forces of its allies. According to Resolution 2625 (XXV) of 1970, «no territorial acquisition resulting from the threat or use of force shall be recognized as legal». It is not possible here to list all the consequences aggression may entail, in particular with regard to third States. It is a matter of common knowledge that the International Law Commission (ILC) is presently engaged in framing rules which would determine in a comprehensive fashion all the consequences of committing an internationally wrongful act.

Since article 6 of the Statute of International Military Tribunal in Nuremberg was drafted, aggression ranks prominently in all the documents which purport to establish international criminal responsibility of persons having participated in their capacity as public servants in policies of aggression. To date, however, all these efforts have not materialized. International criminal responsibility of individuals would only become a reality if states consented to establish machinery to that effect, namely an international criminal court.

Peace, understood as a supreme value of the community of states could also have a non-negligible impact within the domestic legal order of states.

First of all, although the right to freedom of expression under Article 19 of the International Covenant on Civil and Political Rights is subject to certain limitations, it can never be justifiable to take punitive sanctions against persons advocating peace and disarmament by non-violent means.

Since aggression is deemed to constitute the most serious international crime, the international community should acknowledge that persons refusing

[25] Already suggested in resolution 2625 (XXV), principle 1 (prohibition of the use of force), para. 11.

military service under such circumstances are conscientious objectors and must, therefore, be recognized as political refugees under Article 1 A (2) of the Geneva Convention relating to the Status of Refugees (1951).

An analysis of the recent Declaration on the *Right to Development* confirms the conclusion already reached. It is highly characteristic that the Declaration, after having stated (Article 1, para. 1) that «the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in... development», ceases totally to refer to peoples. All the following provisions are mainly addressed to states. In particular, states are enjoined to «co-operate with each other in ensuring development» (Article 3 para. 3), it being understood that people will be the beneficiaries of such policies. However, on the purely legal plane peoples are not accepted as right-holders. No legal remedy is conferred upon them. Essentially, the Declaration returns to the classical pattern of international law according to which the human being is not recognized as a subject law.

The juridical technique of the Declaration, therefore, follows closely the model of interpretation suggested above. Development is enunciated as a supreme value of the international community. Having set forth this proposition, the Declaration then purports to spell out in terms of inter-state law as well as in terms of (individual) human rights how development could be brought about within the existing framework of the international legal order [26].

IV. Conclusion

The foregoing considerations show that it is difficult to come to general conclusions about the usefulness and the meaning of the concept of rights of peoples independently and in their relation to human rights. Each one of the existing or suggested rights of peoples deserves a specific examination. Nonetheless, some trends have emerged which should be briefly summarized.

1. The *right to self-determination* belongs undoubtedly to the realm of positive international law. To attribute this right to peoples and not to States is justified by its specific nature which entitles peoples lacking statehood to establish a sovereign and independent State. Nonetheless, the right to self-determination continues to exist even after a people has attained the goal of statehood.

Collective political self-determination is the natural extension of individual human rights such as freedom of expression and the right to participate in the conduct of public affairs, which all derive from the basic concept of individual self-determination. Therefore, if a people enjoys self-determination, by the same token individual human rights of the members of the national community are vindicated. At the same time, in a democratic society self-determination constitutes an essential bulwark for the defence of human rights.

2. As far as other suggested rights of peoples are concerned which are still *in status nascendi* – such as the right to a healthy environment, the right to peace

[26] See also our study *Rights of Peoples – Some Preliminary Considerations*, in: *Festchrift Hans Haug*, 1986, pp. 337 et seq., at 348/349.

and the right to development – a clear understanding of their possible scope and meaning is still subject to considerable difficulties.

The traditional inter-state level, the substance of the examined rights of peoples is generally covered by rights and duties as between states.

Apart from situations where an oppressive régime refuses to acknowledge the democratic rights of its citizens and where consequently a right of resistence might arise, it is hardly helpful and even contradictory to postulate rights of a people against its own government.

Generally, however, rights of peoples may be understood as a label for goods and interests of paramount importance for all peoples and, therefore, mankind as a whole. Imaginative methods, in particular mechanisms and procedures, must be devised which are capable of effectively contributing to uphold and protect those goods and interests.

All the goods and interests which are presently mentioned as the objects of rights of people constitute essentials of the factual and legal framework within which human rights are respected and ensured. ■