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Rights of peoples and human rights in international law

Introduction

The preparation of this study, while examining the subject matter, as far as possible, in all its aspects, undoubtedly exceeds the abilities of one author. Even a rough presentation of the problems would call for a thorough analysis and research of an interdisciplinary character. This paper should, therefore, be read keeping in mind the following limitations:

1. Limitations bearing on the merits of the matter. It is the intention here to discuss only selected detailed issues. As far as the remaining questions are concerned, only a catalogue of the problems have been presented as deserving attention from both the scientific and practical points of view. Most of these problems are within the realm of questions which are not explicitly regulated by law and in consequence account for the differing positions in doctrine. Obviously, the list of "problems open to discussion" is by no means exhaustive.

2. Methodological assumptions, to be discussed below in a detailed manner. These methodological assumptions may not be shared by all. But the objective of this paper is not to answer all queries and dismiss doubts about the subject matter. The intention is to present in an orderly and systematic way the questions that arise in relation to the subject matter.

3. Limitations related to research perspective. Problems concerning the interrelations between the rights of peoples and human rights can be approached from various angles. Because of her own training the author has favoured the legal approach.

I. Human rights and rights of peoples: scope and methodological assumptions

A. Human rights

The notion of human rights expresses various meanings. It can be understood as conveying philosophical or moral propositions, as principles of a political system or as a particular type of legal norm. There are certain ideas and principles

concerning human rights rooted in individual or national consciousness which do not always coincide with the official ideology expressed in the norms of internal law. Some claims concerning human rights have a long story behind them, while others, are formulated because of the effect of changing socio-economic relations, as the response to threats brought about by progress in civilizations, science and technology.

The notion of human rights has a strong emotional overtone. The postulate of human rights protection was advanced at various historical periods and it has been used extensively to justify very different political intents and moves. Human rights were written on the banners of those who fought for freedom of the individual and liberation of peoples as well as on those who under the cover of rights committed terrible crimes against mankind. The expression "human rights" is not only used in various meanings but is also often misused.

Neither international law as a practice nor international law as a discipline have formulated a definition of human rights. Such a definition was probably relevant at the time the first international instruments were prepared. Today such a definition is not indispensable since it has been replaced by the international list of human rights.

The list of human rights as specified internationally is adopted here as a point of departure for the analysis of the promotion and protection of those rights. This paper will therefore deal only with those human rights which are contained in universal and regional treaties, and in general and specific treaties. Only exceptionally has the paper drawn on resolutions and declarations of the General Assembly of the United Nations. The second part of this report will discuss human rights which are laid down in constitutions and laws of some States.

The International Bill of Human Rights has received various appraisals in doctrine. Some writers claim that this international agreement has an ideal character, not bearing on its merits, and international norms are interpreted and applied by the respective states according to the political and ideological concepts adopted by them. Others are of the opinion that international instruments in the field of human rights are the expression of a will to adopt and accept some common and universal values by states of various socio-economic and political systems, ideologies, and traditions in culture, civilization and religion. This paper shares the latter view. It also claims that international instruments are the expression of a certain compromise, the expression of the universal concept of the basic human rights, the *sine qua non* prerequisite to analyse those instruments.

The formation of a new separate branch of international law can be observed today: the international law of human rights, which ought to be interpreted in accordance with the general principles of international law and with the basic principles in the field of human rights which have been formulated in international fora. In consequence, this paper does not include problems of interpretation and application of the treaties in the domestic law of respective states. The interpretation of treaties should be based mainly on international materials. These consist of all the international instruments and also minutes of the discussions in various international organs and the stand international organs adopted in the process of controlling the execution of the treaties. These materials can supply us with an interpretation and the indications necessary to understand the contents of a specific regulation as well as the intentions pursued by their

authors. It would appear to be understood that such interpretation has to some extent a "supra-state" character and expresses the position of the international community and not of respective states.

This opinion might as well be considered as illusionary and shelved as wishful thinking vis-à-vis possible different interpretations of human rights in respective states. But if we consider that the international law of human rights is the expression of the universal concept of human rights, then the meaning of the rights must be established on the grounds of instruments and international materials.

B. Rights of peoples

The analysis of rights of peoples would appear to be a much more complex and difficult task than the study of human rights, for many reasons. First of all, because the notion "people" is ambiguous and used in different contexts. For instance, it can be related to a community which is organized in its own state; to "people" of a colonial state; to a community which does not have its own state and is not part of any other state. The notion can refer to minorities of various kinds. It is again very easy to identify "people" with "nation".

The second difficulty encountered in defining this notion is the very diversity of subjects or social groups which are subserved.

The third, and as it appears the main difficulty, lies in the various research perspectives which preclude the construction of one given definition. The meaning of the notion "people" is subject to the answers given to the following questions: by whom, for what purpose and under what conditions is this notion used. "People" could be identified with "nation" in a homogeneous state. "People" could also refer in a given state to one part of it; e.g. "people" as opposed to the bourgeoisie. People who have their own state would interpret the meaning of that notion differently to people who are striving to create their own state. Interests of peoples in colonial states generally correspond to interests of nations in periods of struggle for their independence. Yet, it appears that individual nations tend to create their own states in the name of the self-determination of people. One research perspective has to be adopted for peoples organized in a multinational federal state and another for a state in which the federal structure has an administrative nature and not a national one. The question of defining peoples is still not resolved: should it include ethnic, linguistic or religious minorities, etc.? Finally it has to be accepted that the notion "people" denotes different meanings. It is also worth mentioning that the notion "people" conveys different meanings in legal norms in national and international law. And it cannot always be explicitly taken from a legal context.

The notion "people" has been used in international instruments in many contexts. Yet, at the same time, no definition of that notion is provided by international law. E. Jouve is right in saying that "peuple, c'est, en quelque sorte, un mot caméléon" [1]. However lawyers cannot be released from the obligation to

[1] Jouve E., *L'émergence d'un droit des peuples dans les relations internationales*, in: *Pour un droit des peuples, Essais sur la Déclaration d'Alger*, publié sous la direction de A. Cassese et E. Jouve, Paris, Berger-Levrault, 1978, p. 105, Hereinafter quoted as "*Essais* (...)".

make attempts at stating the precise meaning or meanings of that notion. In spite of the fact that "people" is a sociological and not a legal notion, "(...) il entre dans des catégories qui ont une signification juridique" [2].

It is first and foremost the meaning and the scope of "rights of peoples" and not the very meaning of "people", which is analysed in the doctrine of international law. It is also characteristic in both international instruments and doctrine to group various "rights of people" in the sole, general "right to self-determination".

In my opinion that concept does not seem to be grounded, as will be further discussed in the present elaboration. The said concept is also of little use: the notion "self-determination" is vague, lacking precision, used in varied meanings and often misused. This paper prefers to advocate a study on contents of various "rights of peoples" instead of encompassing them all under the denomination "self-determination".

The *Dictionary of the terminology of international law* states that the "right of peoples to self-determination" has two basic meanings. In one the right is attributed to a state and is "l'intention de respecter l'indépendance de celui-ci", while in its other meaning it can be referred "à une collectivité humaine considérée comme constituant un peuple en raison de ses caractères géographiques, ethniques, religieux, linguistiques, etc., et de ses aspirations politiques". Self-determination is understood as granting those peoples "la faculté de choisir son appartenance politique par voie de rattachement plus ou moins étroit à un Etat, de changement de souveraineté ou d'accession à l'indépendance politique" [3].

The quoted definition proves that two radically different subjects are vested with the "right of peoples to self-determination". I cannot accept the concept that a State is vested with the "right of peoples to self-determination". A number of international norms can be quoted in which principles of sovereignty and independence in international relations are expressly voiced. Therefore since the right of state to independence is proved there is no need here to recall "the right of peoples to self-determination". Beside, identifying "State" with "people" brings tha danger of diminishing of the international protection of rights of peoples.

On the other hand the second meaning attributed to the notion "people" by the *Dictionnaire* deserves careful attention. Still even that denomination cannot constitute a starting point for the analysis of international instruments; criteria which are the basis for differentiating separate types of peoples have an exemplary and not exhaustive character and the right to self-determination is not precisely stated here.

It seems that the above definition ought to be understood as expressing a doctrinal view – by no means the only one – for it is not explicitly related to the contents of international instruments. Taking account of the year of publication of the said *Dictionnaire* (1959), the definition "people" is based mainly on the international instruments of the inter-war period.

It is characteristic that no unambiguous definition of the notion "people" can be found, even in the "Universal Declaration of the Rights of Peoples", also

[2] Soulier G., *Réalités du droit international contemporain*, Reims, 1977, p. 230.
[3] *Dictionnaire de la terminologie du droit international*, Paris, Sirey, 1959, p. 233.

referred to as the Algiers Declaration. It is used in the Declaration at least in three different meanings: a) «le peuple est une communauté humaine qui se signale par des différences suffisamment significatives à l'égard des autres peuples», b) «le peuple est l'ensemble ou la majorité de la population d'un Etat dont un des droits fondamentaux est de n'être pas soumis au pouvoir d'une minorité», c) «le peuple est tantôt un peuple homogène structuré en Etat, tantôt une minorité nationale dont les droits collectifs sont reconnus à l'intérieur de ce Etat» [4]. Consequently different types of peoples are vested with the rights described in the Declaration.

In my opinion no unequivocal definition of the notion "people" can be generated. One can only attempt to differentiate various types of people who are protected by international instruments. But as a result, one should be aware that different peoples are vested with various series of rights on the basis of international law.

J. Charpentier, analysing the international instruments arrives at the conclusion that the expression "right of people to self-determination" is used at least in four meanings i.e.: a) «le droit des peuples à être consulté sur toutes cessions territoriales», b) «le droit des peuples à choisir leur forme de gouvernement», c) «le droit des peuples à être protégés contre toute intervention extérieure», d) «le droit des peuples à se libérer d'une domination qui les opprime» [5]. The author does not analyse these different interpretations of the right to self-determination. It is the contents of the right to self-determination which are the starting point of J. Charpentier's deliberations. I would suggest the adoption of an other criterion, namely the types of peoples which are vested with the right to self-determination by the international instruments.

II. Right of peoples to self-determination in international law

A. Before 1945

1. The principle of self-determination of peoples gained world-wide importance during World War I. First, international instruments recognized rights of peoples re-iterating the principle of nationality.In implementing the fourteen points of President Wilson, a number of nations in Central and Eastern Europe gained independence. In the peace treaties, careful attention was given to the protection of ethnic minorities. In the Convenant of the League of Nations no express mention to self-determination was to be found. The principle however dominated history between the two World Wars. It is sufficient to mention the case of Bohemia where self-determination was denied to a large ethnic minority.

Between the Wars self-determination was understood as a political principle which applied to all "peoples" without distinction. The term was used in the following instances:

– "people" living as a minority (or even as a majority) group all in one state, ruled however by another "people";

[4] Rigaux F., *Remarques générales sur la Déclaration d'Alger*, in: *"Essais (...)"*, p. 46.
[5] Charpentier J., *Autodétermination et décolonisation*, in *Méthodes d'analyse du droit international*, Mélanges offerts à Charles Chaumont, Paris, A. Pédone, 1984, p. 117.

– "people" living as minority groups in more than one state without their own Statehood;

– "people" living as a minority group in a state but perceiving itself as part of the "people" of a neighbouring state;

– "people" or "nation" forced by external influence to live in separate states;

– "people" living as a majority (or even as a minority) group within the limits of a territory with a special status under foreign domination.

In all five cases it was required that the respective "peoples" settle in certain parts of the country where they then formed the majority of the population. The principle of self-determination of peoples relates mainly to ethnic minorities living toghether within the limits of a given territory inside a pre-existing state or empire [6].

2. During World War II, two major aspects of self-determination were emphasized in the Atlantic Charter. The authors of the Charter:

«– (...) desire to see no territorial changes that do not accord with the freely expressed wishes of the peoples concerned;

«– (...) respect the right of all peoples to choose the form of government under which they will live and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them.»

B. Relevant provisions of the United Nations Charter

The UN Charter speaks of the rights of peoples in several provisions.

1. The Preamble reads as follows: «We the peoples of the United Nations determined (...) to employ international machinery for the promotion of the economic and social advancement of all peoples (...)».

2. One of the purposes of the United Nations as set out in Article 1, para.2 is: «to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples (...)».

3. The introductory part of Article 55 which deals with international economic and social co-operation reads as follows: «With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples (...)».

4. In Chapter XI entitled "Declaration regarding Non-Self Governing Territories", Article 73 provides that «Members of the United Nations which have or assume responsibilites for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount (...) and to this end (...) to develop self-government».

5. In Chapter XII, entitled "International Trusteeship System", Article 76 provides that: «The basic objectives of the trusteeship (...) shall be: to promote the

[6] Patsch K.J., *Fundamental Principles of Human Rights: Self-Determination, Equality and Non-Discrimination*, in: *The International Dimensions of Human Rights*, Paris, Unesco, 1982, pp. 63-64.

political, economic, social and educational advancement of the inhabitants (...) and their progressive development towards self-government or independence as may be appropriate (...)».

The formulation of the United Nations Charter in this respect could give rise to various interpretations:

– Is the term "people" used in the Preamble in the same way as in the operative paragraphs? (From the minutes of the San Francisco Conference it could be inferred that the term "peoples" in the Preamble refers to the international community as legally organized in the United Nations).

– Does the notion "self-determination" have the same meaning as the notion "self-government"?

– If we assume that the authors of the United Nations Charter deliberately introduced distinctions between "self-determination" and "self-government", would the difference be conceptual or would it depend on the subject (different types of "people") to which it applies? Since the notion "self-government" is used in relation to the Non-Self Governing and Trusteeship Territories could it be inferred that the principle of "self-determination" is related to peoples in independent states?

The text of the United Nations Charter does not bring a ready answer to the above questions and doubts.

There are two principles expressly formulated in the United Nations Charter: 1. "equal rights of peoples", and 2. "self-determination of peoples". A third principle can also be inferred from Article 55 of the Charter: the relation between equal rights and self-determination of peoples on the one hand and human rights on the other. The international co-operation prescribed in the Charter must be directed towards the realization of the equal rights of individuals with due regard to the principle of equal rights of peoples. The fundamental rights of individuals appear side by side with the principle of self-determination of peoples.

Interpretations of the United Nations Charter provisions is brought about to some extent at least, in the consecutive international instruments adopted by the UN and in the practice of that Organization. The basic question in my opinion, is to find what types of peoples are vested with the right to self-determination by rule of international norms. An attempt at analysing the contents of that right can be taken up only subsequently.

It is not in my opinion essential – at least for the purposes of this paper – to answer the question as to whether self-determination has a character of principle or right. Self-determination is provided by norms of international law and this is a sufficient argument to say that it is a case of imposing legal obligations on a state. Whether they be rooted in the principle or in the right, might not have great importance. I am using the term "right to self-determination" in the further parts of the work, but I do not advocate that it has any other meaning than the "principle of self-determination".

The international instruments adopted by the United Nations Organization after 1945 can in my opinion secure the right to self-determination for two kinds of peoples; i.e.:

1. peoples of colonial and dependent states;

2. peoples understood as a community in an independent state. However, special protection is also granted to special social groups identified by the interna-

tional instruments. Different criteria are used to identify these groups. Therefore, it is not essential to know if these special social groups live in an independent or a colonial state. One must of course be aware that the above types of "peoples" have some common features and international reality is much too complex to be approached by means of terms that have been defined once for all.

C. *Self-determination of colonial and dependent peoples*

According to the widely adopted, present-day view only peoples under colonial rule have the right to self-determination, which involves accession to independent statehood. It does not matter how the population of such territory is ethnically composed. As soon as independent statehood is reached, the territorial integrity of the country is protected against any attempt to destroy national unity, even if a given ethnic group is in this way brought under alien domination. J.K. Partsch finds that it is a new concept of self-determination [7], in comparison with the already discussed concept of the interwar period. This view is based on the practice of the United Nations bodies and the practice validates it to a large extent.

The right to self-determination of colonial peoples has been recognized – in a way not to allow any further doubt – in the Declaration on the Granting of Independence to Colonial Countries and Peoples adopted by the UN General Assembly in Resolution 1514/XV on December 14, 1960. In the Preamble of the Declaration, the General Assembly referred to «the need for the creation of conditions of stability (...) based on respect for the principles of equal rights and self-determination of all peoples (...)». The General Assembly solemnly proclaimed «the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations». The operative part begins with the declaration that «the subjugation of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental rights» [Article 1].

Article 2 of the Declaration states precisely the contents of the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. At the same time, the above quoted provisions of the Preamble, together with Article 5, unambiguously define the subject of that right: Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence.

The above Declaration is supplemented by the General Assembly Resolution 1803/XVII of 14 December 1962, on «permanent sovereignty over natural resources». The first mentioned of the declarations aims at the liquidation of colonialism and other forms of dependence, while the other is directed mostly against neo-colonial practices.

The right to self-determination is expressly related to colonial peoples by numerous international instruments. Interpretation of that kind can be among others inferred from the Resolution VII of 11 May 1968 adopted by the International Conference on Human Rights entitled: «The importance of the universal

[7] Partsch K.J., *op. cit.*, p. 65.

realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights». The conference called upon the General Assembly «to draw up the specific programme for the granting of independence to territories under colonial rule» and called upon the Security Council «to resume consideration of the question of decolonization and expedite the granting of independence and self-determination to colonial peoples and countries».

General Assembly Resolution 637A/VII declared that «the right of peoples and nations to self-determination is a prerequisite to the full enjoyment of all fundamental human rights», and recommended that UN members «uphold the principle of self-determination of all peoples and nations» and called for information under Art. 73c of the Charter on «the extent to which the right of peoples and nations to self-determination is exercised by the peoples of Non Self-Governing Territories, and in particular regarding their political progress».

Resolution 2621/XXV deserves particular attention as it contains a programme of action for full implementation of the Declaration. That view has also been reflected in the reports of the Human Rights Committee related to a study of reports submitted by the states [8].

A wider interpretation of the right to self-determination – it could also be argued that it would be a different one – has recently been observed in UN practice. It increases the range of peoples which are vested with that right. The new interpretation has not always been taken into account, it seems, by the doctrine. Numerous international instruments seem to relate more and more to the realization of the Declaration of the Granting of Independence with the necessity to liquidate racial discrimination and apartheid in colonial and dependent territories. For instance, Resolution 32/42 of 7 December 1977 of the General Assembly expresses its conviction «that a total eradication of racial discrimination, apartheid and violation of the human rights of the peoples in colonial territories will be achieved most expeditiously by the faithful and complete implementation of the Declaration (...) and by the speediest possible complete elimination of the presence of the racist minority régimes therefrom». In the same resolution the General Assembly affirmed again «that continuation of colonialism in all its forms and manifestations, including racism, apartheid, the exploitation by foreign and other interests of economic and human resources (...) is incompatible with the Charter of the United Nations, the Universal Declaration of Human Rights and the Declaration of the Granting of Independence».

Numerous resolutions concerning the right to self-determination refer not only to peoples under colonial domination but also to peoples "under alien domination". One can quote as a case in point Resolution 2649/XXV which refers to South Africa and to the Palestinian People. Other resolutions refer to the right to

[8] See for instance: Report of the Human Rights Committee, General Assembly, Official Records: Thirty Seventh Session, Supplement n. 40/A/37/40: «(...) it was asked what steps the Netherlands had taken to help the peoples of South Africa, Namibia and Palestine seeking the right to exercise self-determination» (p. 21); «(...) it was asked whether, in particular cases of Namibia and Palestine, the Japanese Governmente had done all that it could have done in the international context to ensure that the peoples concerned enjoyed their right to self-determination; what steps it had taken to discourage South Africa from maintaining its domination over Namibia (...)» (p. 12); «(...) the report contained no information on the self-determination of the territory known as Western Sahara (...)» (p. 31).

self-determination of peoples within the context of "foreign domination and alien subjugation". Resolution 2787/XXVI is an example of this, while at the same time it confirms the legality of the Palestinian people's struggle for self-determination. Interpretation of the Resolution on Permanent Sovereignty over National Resources has recently evolved in the same direction. The General Assembly supported «the efforts of the developing countries and peoples of the territories under colonial and racial domination and foreign occupation in their struggle to regain effective control over their natural resources» (see for example Resolutions 2158/XX, 2386/XXIII, 2625/XXV and 3171/XXVIII).

The right to self-determination in the international instruments quoted above asserts a right for peoples to be granted independence and create their own state. Not only people under colonial rule are entitled to it but also peoples under alien and racist domination. The General Assembly considered that «the acquisition and retention of territory in contravention of the right of people of that territory to self-determination is inadmissible and a gross violation of the Charter» (Resolution 2649/XXV).

This wider concept of the right to self-determination is adopted in the provisions of the African Charter on Human and Peoples' Rights. The Preamble states that in order to achieve the total liberation of Africa, the peoples: «(...) are undertaking to eliminate colonialism, neo-colonialism, apartheid, zionism, and to dismantle aggressive foreign military bases (...)». It is also noteworthy that the African Charter provides for a right of colonized or oppressed peoples to free themselves from the bonds of domination by resorting to any means recognized by the international community (art. 20, para. 2). It states, as well, that: «All peoples shall have the right to the assistance of the states parties to the present Charter in their liberation struggle against foreign domination, be it political, economic, or cultural» (art. 20, para. 3). A right to be granted assistance from alien states in the process of realizing the right to self-determination is not prescribed in international instruments. Art. 1, para. 3 of the two International Covenants of Human Right affirms that: «The States Parties (...) including those having responsibility for the administration of NonSelf-Governing and Trust Territories, shall promote the realization of the right to self-determination, and shall respect that right». There is therefore an interesting evolution of the principle of self-determination and the relations of that principle to human rights in the African Charter. The right of peoples to self-determination was confirmed by the provision listing the principles adopted by the OAU. However there seems to emerge a dualistic conception: on the one hand, the right of peoples to self-determination and, on the other hand, human rights. This does not proceed from the single fact that the realization of the right of peoples to self-determination is a prerequisite for the protection of human rights but rather is due to the importance laid on the former.

The conception of the OAU Charter is not only dualistic in its approach but also preferential and selective: Member States are bound to respect, through specific provisions, the right of peoples to self-determnation but no such obligation exists in the case of the respect of human rights. Nevertheless, the African Charter indicates, unlike other international instruments, the inseparable link between the right of peoples to self-determination and other human rights, as well as the relationship between human rights and the rights of peoples. This can be observed not only in the very title of the Charter, but also in the Preamble and in

various specific provisions. For example, the Preamble states that "(...) the reality and respect of peoples' rights should necessarily guarantee human rights".

The right of colonial and dependant peoples to self-determination is also provided for in other international instruments beside those already discussed. Both International Covenants state the right of peoples to self-determination although neither of them introduce any new element. The provision in Art. 1 of both Covenants is however important because for the first time this right has been formulated within a universal document concerning human rights, i.e. a universal instrument which recognizes the legal obligations of the States Parties. Placing the right to self-determination at the beginning of both Covenants (and not within the list of the other human rights) is an indication that this right was considered as a prerequisite for the realization of all other human rights.

Some authors examine the right to self-determination within the context of the principle of territorial integrity of the state and with the right to secession. For exemple J. Charpentier writes that «(...) se pose la question de savoir si la pratique contemporaine de la décolonisation consacre l'application aux peuples colonisés d'un droit à la sécession (...)» and further writes that «l'impossibilité d'expliquer pourquoi un droit à la sécession est ouvert aux peuples coloniaux et interdit aux autres peuples dominés» [9]. Formulating the query in such forms implies in my opinion some misunderstanding. The principle of territorial integrity refers to relations between states, while the right to self-determination – as understood in this paper – refers to specific peoples. J. Charpentier maintains that «c'est l'obligation de décoloniser qu'a consacrée la pratique et non le droit des peuples à disposer de leur sort». On the one hand, this formulation is consistent with the view that the right to self-determination must also include the right to secession. On the other hand the author seems to ignore a certain evolution in the contents and range of application of the right to self-determination which has already been indicated in this paper, i.e. that colonial peoples are no longer the only subjects of the right to self-determination.

The right of colonial and dependent peoples to self-determination does not imply the right to secession for minority groups living in an independent state. Achieving independence for a territory which is not self-governed cannot be considered as a secession. Dependent territories, from the standpoint of international law, do not constitute an integral part of the territory of the state which is administering them.

The Declaration of the Granting of Independence triggered off a rapid process of decolonization. The colonial and trusteeship system belongs, in fact, almost to the past. That change in international relations has been reflected in the proceedings of the General Assembly. The resolutions adopted in recent years have concerned mostly the right to self-determination of peoples which have been identified by name (e.g. former Southern Rhodesia, South Africa, Palestine). Resolutions concerning the right to self-determination are adopted nowadays by the General Assembly on rare occasions. Therefore, one can legitimately wonder whether this right, as defined here, is an obsolete question. The answer is however negative because of, among other things, a certain evolution in defining this right,

[9] Charpentier J., *op. cit.*; pp. 118-119.

as already indicated. Subjects of this right are not only colonial peoples but also peoples living under foreign domination, in racist systems and under the régime of apartheid. Besides, the right to self-determination is also directed against neo-colonialism. Restricting the right to self-determination solely to colonial territories would now be obsolete because in the context of the few colonial territories left; it does not impose any obligations for most of the States Parties.

In concluding this section, the following can be stressed:

1. The principle of territorial integrity and inviolability of borders cannot bar the process of decolonisation. But at the same time, this principle sets limits to the right of colonial peoples to self-determination. When a colonial territory is granted independence, then the peoples who would compose this new state cannot claim the right to self-determination for secession purposes.

One cannot ignore that colonial states were often artificially created: they were composed of different national, ethnic and religious groups (which sometimes remained markedly different). Thus, often, having acceded to independence, internal struggles began between peoples in the name of the "right to self-determination". But such a right has already been exercised if an independent state has been created and therefore the peoples cannot refer to it in a struggle for secession. Can such an exercise of the right to self-determination of colonial and dependent peoples fully satisfy peoples?

2. For many years the UN has paid a great deal of attention to the right of colonial and dependent peoples to self-determination. The question arises whether this has not been to the detriment of the international protection of the right to self-determination of other subjects. This concern is particularly present in the statement of A. Cassese who writes: «(...) l'ONU tend à ne protéger, en général, que certaines catégories de peuples: les peuples dépendants, c'est-à-dire les peuples soumis à une domination coloniale ou à l'occupation étrangère et, parmi les peuples souverains, seulement ceux qui vivent sous un régime raciste. Les autres peuples ou minorités au sein d'Etats souverains ne sont pas l'objet de sollicitudes de l'ONU, même s'ils sont opprimés, exploités ou tyrannisés par leurs gouvernements» [10]. But does the UN, an international organization of a universal character, offer effective means to respond to situations others than those mentioned?

3. The right to self-determination of colonial and dependent peoples relates to external self-determination. The international instruments quoted above do not explicitly indicate how one should interpret the right to self-determination of peoples under racist and apartheid regimes. Are the international instruments applicable only in situations when racism and apartheid are imposed by a foreign state, or are the said international instruments equally applicable in the case of racist and apartheid policies determined by a state within its borders?

4. All modern doctrines of human rights offer similar interpretations of the right to external self-determination of colonial and other dependent peoples as formulated in international instruments. Divergencies, if any, related only to details concerning the exercise of that right and not its principle.

[10] Cassese A., *La portée politico-juridique de la Déclaration d'Alger*, in: *"Essais* (...)", p. 63.

D. Self-determination of peoples living in independent states

In one of his important papers on the right of peoples to self-determination, A. Cassese attempted to devise a new concept of this right. Namely, he formulates the concept of the right of peoples to "political" self-determination [11].

Cassese maintains that a new and more meaningful concept of political self-determination has emerged in international law, particularly whithin the sphere of a so-called internal self-determination. He considers political self-determination to be more consonant with new demands for freedom at the present time.

Colonial and dependent peoples are the subject of external self-determination, and the exercise of that right, as already stated, relates to liberation from external dependence (from an other state). The right to internal self-determination is directed against authoritarian régimes, not only against external interference therefore, but mainly against internal interference. This is a right to struggle against all forms of arbitrary oppression of peoples. It is aimed, A. Cassese writes, «against those forms of authoritarianism which have taken root in different areas of the world where colonialism was unknown». It embraces all peoples and is not restricted to peoples under colonial domination. This concept was brought to the forefront in the International Covenant on Civil and Political Rights and in the Final Act of Helsinki. But above all, in the author's opinion, it was formulated in the Algiers Declaration.

As a matter of fact A. Cassese analyses only one aspect of the right to self-determination (internal) which is political self-determination. The yardstick against which he measures the implementation of the right to self-determination is safeguarding of the civil and political rights of the individual.

Reducing the right to internal self-determination only to political self-determination was strongly criticised by B. Graefrath [12]. His criticism is based on the grounds of the Marxist doctrine of human rights and Graefrath considers that A. Cassese's views on this subject express a bourgeois doctrine.

The socialist concept presents the right to self-determination as a comprehensive complex of internal and external self-determination. This theory does not restrict the right to self-determination to colonially-oppressed peoples and at the same time does not consider that the exercise of such a right has been exhausted after the creation of an independant state.

Graefrath indicates that the exercise of the right to self-determination in terms of a bourgeois democracy is based on the dissociation of civil and political rights from economic, social and cultural ones, on the abstraction of property relations and on the isolated treatment of the political sphere irrespective of its class contents and its functions within the framework of social development [13].

[11] Cassese A., *Political Self-Determination: Old Concept and New Developments*, in: *UN Law and Fundamental Rights*, Alphen aan den Rijn 1979, Sijthoff and Noordhoff, pp. 137 et seq.

[12] Graefrath B., *A Necessary Dispute on the Contents of the Peoples' Right to Self-Determination*, GDR Committee for Human Rights, Bulletin n. 1/1981, pp. 11 et seq.

[13] He wrote: «The extensive inter-related norms of internal and external self-determination demand especially in our time that the peoples should have the liberty: to establish a socialist order of society, to overcome the imperialist limitations of the right to self-determination in a socialist revolution, and to free themselves from the fetters of the capitalist world market".

As far as the question of scope and methods of safeguarding the right to internal self-determination is concerned, a substantial divergence of opinions can be observed between Western and Marxist states. This has been frequently expressed in international fora. It relates to the question of different understandings of democracy and, consequently, of a role prescribed to particular categories of human rights. Therefore, I have purposely presented here two extreme positions in both doctrines in order to clarify the controversial issues under consideration, although some intermediary views have been expressed in literature.

The contents of international instruments are the expression of a compromise as to the ways of understanding the right to self-determination. The compromise can be observed both in the contents of general principles and in the list of human rights.

Peoples of a given state are the subjects of the right to internal self-determination and this is exercised in relation to state authority. This is a principle of internal democracy: every people should be allowed to decide upon its own institutions. Self-determination in domestic law is safeguarded by the constitutional principle that «people are the source of authority» or the principle of «sovereignty of the people». Those principles are applied through numerous specific provisions and mostly by human rights provisions.

The Universal Declaration of Human Rights does not refer *expressis verbis* to self-determination, but it declares that «the will of the people shall be the basis of the authority of government» (Art. 21, para. 3). In the light of the preparatory work preceeding the Universal Declaration this provision can be understood as: «Le principe fondamental est que la volonté du peuple est la base de l'autorité des pouvoirs publics» [14].

Article 2 of both Covenants provides: «All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development». Animated discussions both at the Commission of Human Rights and in the General Assembly's Third Committee preceeded the adoption of that specific provision [15]. In opposing the inclusion of that article some delegates contended that the Charter of the United Nations referred to the «principle of self-determination» not to the «right to self-determination». They further argued that as a principle, it had a very strong moral force, but that it was too complex to be translated in legal terms in an instrument which aimed at legal enforcement. They added that the various terms used – "peoples", "nations", "right to self-determination" – were not defined; that the principle of self-determination was interpreted in different ways in different places; that the problem of minorities and the right to secession were involved. Finally, they argued that self-determination did not constitute an individual right; it was a collective right and, therefore, inappropriate for inclusion in a Covenant which attempted to lay the ground for individual rights; it had been placed in the Covenants before all individual rights and seemed to imply that individual rights were of a secondary importance as compared to self-determination.

[14] Verdoodt A., *Naissance et signification de la Déclaration universelle des droits de l'homme*, Louvain, Ed. Nauwelaerts, p. 209.

[15] Report of the Third Committee, UN Doc. A/3077. General Assembly Official Records, Annexes X.

The proponents of the right to self-determination, on the other hand, insisted that this right was essential for the enjoyment of all human rights and should, therefore, appear in the forefront of the Covenants. In many cases individual rights could not be exercised because peoples did not enjoy the right to self-determination. They pointed out that self-determination was proclaimed as a principle in the Charter and that it was clear that any Member State which had accepted that principle was committed to the right which derived from it. Member States were already committed through Articles 1 and 55 of the United Nations Charter, to respect the right to self-determination. Similar difficulties arose also with respect to the right of economic self-determination, the right of peoples to dispose freely of their natural wealth and resources because, as some delegations contended, it could be interpreted as justifying expropriation without just compensation. The entire article was adopted by 33 votes to 12 and 15 abstentions.

Preparatory work on both Covenants proves clearly that the notion "self-determination" was used in various meanings and numerous contexts. The minutes of the discussions at the Commission of Human Rights and at the Third Committee indicate that a common understanding was reached neither on the scope nor contents of the right to self-determination. Article 1 of both Covenants do not lead to an unambiguous reply to these questions. Faced with a layman's use or even with abuse of the notion of "self-determination" in literature, it would be most difficult to invoke the doctrine to interpret Art. 1 of both Covenants. Discussions on the interpretation of Art. 1 focus usually on the question whether self-determination is a human right or a principle and focus around the legal and political implications of the adoption of one or the other options [16]. In my opinion, the right to internal self-determination is formulated in Art. 1, para. 1 of both Covenants. The obligation of international law to safeguard rights and liberties in internal relations is imposed on states by the treaties concerning human rights. I am disregarding here the duty of international co-operation aimed at universal respect for and observance of human rights and fundamental freedoms, imposed by the United Nations Charter. The fact that the right to self-determination is proclaimed in the Preamble of the two Covenants and not in part three (in the listing of human rights) cannot be, in my opinion, a sufficient reason to consider that only the external aspect of self-determination was aimed at in this right. On the contrary, spelling out this right in an international instrument related to human rights implies, to my mind, that the «right to internal self-determination» was equally aimed at. The contents and the scope of that law are set by the list of human rights. At the same time, protecting human rights serves the purpose of the application of the right to self-determination.

Contents of both Covenants are the expression of a compromise between the Marxist doctrine and the modern liberal doctrine of human rights. The concept of self-determination of peoples is placed at the top in both doctrines. One can of course consider that the compromise provisions of the Covenants are based on different philosophical grounds and will be implemented under different political and economic systems. In relation to this, J. Maritain wrote: «(...) il est possi-

[16] Compare with Fawcett J.C., *The role of the United Nations in the protection of human rights – Is it misconceived?*, in *International Protection of Human Rights*, edited by A. Eide and A. Schou, Uppsala, Almqvist and Wiksell, 1968, pp. 95-102, and discussion on "Self-determination and Human Rights", pp. 282-288.

ble d'établir une formulation commune de telles conclusions pratiques (...) mais il serait très futile de chercher une commune justification rationelle de ces conclusions pratiques et de ces droits. La question soulevée ici est celle de l'accord pratique entre les hommes qui sont opposés les uns aux autres sur le plan théorique. Nous nous trouvons en présence du paradoxe suivant: les justifications rationelles sont indispensables et elles sont en même temps impuissantes à créer un accord entre les hommes» [17]. It seems that the quoted view is legitimate as far as the right of peoples to self-determination is concerned. Indeed, there are differences in conception of morality, justice and equally there is no unanimity on the notion of freedom and democracy. In my judgement, however, mistakes are made in several respects in emphasizing only differences of a doctrinal and philosophical nature. It is improper to consider every conflicting interpretation or application of a particular rule or principle as an expression of ideological struggle. It seems to me that it is a shortcoming in the theoretical work of lawyers, philosophers and sociologists that they concentrate their attention mainly on differences, and neglect to emphasize the common human content of some notions and ideals.

I share the opinion that the achievement of practical goals rather than a consensus on ideological matters is the function of the United Nations Organization and the substance of its activities [18]. What matters are practical conclusions: each partner to a common action is entitled to his own ideology and justification of his action.

Numerous human rights are interpreted and implemented in the same way, irrespective of socio-political systems. Yet, one must be aware that the entire list of human rights serves the purpose of the application of the right to self-determination, adopted by a given state. It would be difficult to discuss here which of the concepts of self-determination of peoples is "better", especially as we have a tendency to evaluate one of the concepts critically against the standpoint of the other. It is only on rare occasions that an evaluation proceeds on account of concrete conditions. What I have in mind, is not only socio-economic and political conditions but also conditions pertaining to civilization, culture, religion and traditions. A given conception of human rights is created out of these conditions as well as shaping the ways of interpreting and implementing international instruments. The Covenants, which are the expression of a compromise between the doctrines of the East and the West do not take into account the African and Asian conceptions which are provided in Islam, Buddhism and in the ideals held by other cultures and traditions.

Human rights formulated in the universal instruments can undergo regional or subregional interpretation. This was the case with the African Charter. The list of human riths stated in the Charter is more inconspicuous than the one in the Covenants. But the Charter is not in contradiction with the Covenants; in both instruments the same rights can be found and some of them are worded identically. But the Preamble to the African Charter reads as follows: «*Taking into consideration* the virtues of their historical tradition and the values of African

[17] Maritain J., *L'homme et l'Etat*, Paris, P.U.F., 1965, pp. 69-70.

[18] Bystricky R., *The Universality of Human Rights in a World of Conflicting Ideologies*, in *International Protection (...) op. cit.*, p. 87.

civilization which should inspire and characterize their reflection on the concept of human and people's rights (...)».

I do not intend to examine the question of «universalism vs. regionalism of human rights» or the problem of the interpretation of international instruments in particular states. These fragmentary remarks are made in order to justify my not attempting to give precise content and scope to the right of peoples to internal self-determination. Such an attempt, in my judgement would be fallacious. The right to self-determination is formulated in the international instruments in a very general way and various concepts assign different meanings to it. One should recognize that there is a lack of a universal commonly-accepted concept of internal self-determination. In concluding this section, I wish to stress the following:

1. A difficulty can be encountered, essentially of a methodological nature, in discussing the contents and scope of the right of peoples to self-determination, both in its internal and external aspects. Some international instruments relate the principle of self-determination to inter-states relations. In those instruments, the right of peoples to self-determination is worded side by side with the principle of inviolability of frontiers, the principle of territorial integrity of states, the principle of non-intervention in internal affairs. It is in that very context that the right of peoples to self-determination is declared by the *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States* and by the *Declaration on Principles Guiding Relations between Participating States* (Principle VIII) and in the Final Act of the Helsinki Conference.

Both Declarations repeat and reaffirm the right of peoples to self-determination formulated in the international instruments adopted before. But they neither enrich the contents of that right, nor introduce new elements to it that would exceed its scope. The states are obliged to respect that right in their relations. International instruments of this kind lead to relating self-determination to the principle of non-intervention or the principle of independence of states [19]. It would not be easy therefore, to ascertain in what way the term «right to self-determination» is used in the doctrine of international law.

2. The question of specific contents of the right to internal self-determination is purposely in this paper. In my opinion, the right, declared in the international instruments, adopted by the United Nations has no universal commonly-agreed meaning nowadays and no universal contents. Moreover, the perspective of reaching such a universal interpretation seems to be fading away today.

The concept of the right to internal self-determination must be analysed in close relation to the concept of human rights. The international instruments have probably led to some uniformity in interpretation and in implementation of human rights on the universal scale. The judicature of organs of international protection accounts for a lot in this respect. But such a uniform interpretation (or at least close to a uniform interpretation) is possible only in the case of certain particular rights and not in relation to all of them. It would seem that a universal concept of fundamental freedoms could be reached in a comparatively easier way. But today the odds are against a uniform interpretation of the whole body of civil and political, and economic, social and cultural rights. Indeed, the interpretation and

[19] Capotorti F., *Discussion*, in *International Protection (...)*, *op. cit.*, p. 284.

implementation of these rights have a basic implication for the definition of the contents and scope of the right to internal self-determination.

Contents of the right to internal self-determination are not stated with precision in international norms because a settlement of this aspect is not feasible and the matter is therefore left to the domestic law and practice of particular states.

III. Rights of peoples in international instruments

The notion "people" refers in the present paper to a social community within a state which has distinctive features. The criteria used to identify these specific peoples are mentioned in the relevant international instruments which accord these peoples a special international protection. The international instruments identify two types of peoples, understood in this way, namely minorities and social groups.

A. Rights of minorities

International protection of minorities is guaranteed in two ways. Firstly, by the general clause of equality and non-discrimination, secondly, by awarding particular rights to specific minorities.

The principle of non-discrimination appears three times in the operative part of the UN Charter: in Article 1, para. 3; in Article 55 (c); and, in Article 76 (c). Whereas the Charter expressly mentions only four criteria in its clauses on non-discrimination, i.e. race, sex, language and religion, these criteria have been considerably extended in the Universal Declaration of Human Rights. The Declaration states that: «Everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, sex, color, language, religion, political and other opinion, national or social origin, property, birth or other status». In the two Covenants the tradition of the Universal Declaration has been followed in Article 2, para. 1. Similar criteria of non-discrimination are mentioned in the regional conventions: Art. 14 of the European Convention on Human Rights; Article 1 of the American Convention on Human Rights; and, Article 2 of the African Charter.

The general principle of non-discrimination will not be the subject of this paper. The principle refers only to minorities. It defines the way in which everybody can enjoy all rights and freedoms formulated in the Covenants. We are interested in the specific list of rights which are or should be guaranteed to minorities.

It is interesting to note that the first treaties related to human rights aimed at the protection of minorities. At first, international treaties guaranteed religious tolerance. For example the Treaty of Westphalia of 1648 affirmed the principle of «cujus regio, ejus religio», but made allowance for a reciprocal respect by the parties in their territories of the other's religion. The protection of the Christian minority in Turkey was guaranteed by The Sublime Porte in various treaties with Christian rulers. The Vienna Congress Treaty of 1815 went further; besides religi-

ous liberty it guaranteed other political and civil rights to certain communities. The Treaty of Berlin of 1878 contained far-reaching provisions for the protection of minorities. The newly created independent states accepted wide obligations with respect to civil and political rights and freedom of religion and of worship.

At the end of the First World War there were about 25 million members of minorities in the countries of Central and Eastern Europe. President Wilson's statement: «Nothing (...) is more likely to disturb the peace of the world, than the treatment which might in certain circumstances be meted out to the minorities» can perfectly characterize the tendencies of the day. It was suggested that the principle of religious tolerance and racial equality should be included in the Covenant of the League of Nations. This suggestion was rejected and it was decided instead that obligations with respect to the protection of minorities would be imposed by separate treaties on the new and enlarged states.

The Minorities Treaties were signed during the Peace Conference between the Principal Allied and Associated Powers on the one hand and Poland, the Kingdom of the Serbs, Croats and Slovens, Czechoslovakia, Rumania, Greece on the other. The rights of minorities recognized in these treaties had, on the whole, the following features in common: general protection of fundamental rights, equality of treatment, the rule of non-discrimination, free use of language, the right to create charitable, religious, social and educational institutions, the right to acquiting public funds for charitable, religious, social and educational institutions [20]. Similar provisions were contained in bilateral treaties, e.g. the German-Polish Convention on Upper Silesia.

Only some treaties concluded after the World War Two contained provisions concerning protection of minorities. The general concept of an international protection and promotion of human rights replaced the system of protection of minorites.

Two trends can be observed in international fora, relating to the protection of minorities, since the Universal Declaration of Human Rights has been under discussion. On the one hand it is agreed that rights of minorities can be effectively protected within the general framework of the protection of human rights. On the other hand it is agreed that, irrespective of the general protection, specific rights should be guaranteed to minorities. It would be difficult to adopt one or the other view. The merits of both have to be examined within a wider context. The proponents of assimilation policies would oppose the granting of specific rights to minorities. Furthermore, programmes and policies towards the assimilation of minority groups can be part of the entire structure of the policy related to the minorities of a state. Equally, those who claim that human rights can be granted only to individuals would be against minorities rights since the rights of minorities are of a collective nature. These arguments among others were frequently evoked in the discussions in international fora.

Two opposed views were voiced on the question of minority protection during the discussions in the Commission of Human Rights on the draft of the Universal Declaration. Arguments of both parties seem to be equally strong and

[20] See more by Ganji M., *International Protection of Human Rights*, Geneva, E. Droz, 1962, Chapter II and Eziejiefori G., *Protection of Human Rghts under the Law*, Butterworths, London, 1964, pp. 35-51.

convincing. Proponents of a special protection of minorities proposed the inclusion of a special provision in the Declaration along the following lines: «In States inhabited by a substantial number of persons of race, language, or religion other than those of the majority of the population, persons belonging to such ethnic, linguistic or religious minorities shall have the right to establish and maintain, out of an equitable proportion of any public funds available for the purpose, their schools and cultural and religious institutions, and to use their own language before the courts and other authorities and organs of the State and in the press and in public assembly»[21]. In the course of the discussions, certain alterations and modifications pertaining to the matter were proposed. The following questions were among the controversial ones:

– Should the rights mentioned above be granted to a minority group as a whole or to its particular members? The controversy was thus between those who held that only an individual human being is the subject of human rights and those who favoured collective rights. The latter advocated that it was necessary to guarantee rights to a group and for the individual member of that group to make use of these rights;

– Should a special protection be guaranteed exclusively to substantially large groups or equally to smaller groups with a lesser degree of integration?

– Should a clause be added such as «if the minorities wish so», since some believed that the Universal Declaration did not aim at reinforcing a perception of diversity but aimed at ensuring that the expression of such a possibility would be legally guaranteed? Representatives of the United States of America and of some other American States were the main opponents of the minority protection provisions. Eleanor Rossevelt recalled that it was considered unadvisable to offer a separate protection to ethnic, linguistic or religious groups, during the Inter-American Conference in Lima in 1938. Similarly, at the Chapultepec Conference in 1945 full assimilation policies were strongly supported. It was indicated that provisions for minority protection would foster the creation of closed social groups which would then strive – often groundlessly – to be granted a minority status. It was also pointed out that the previous policy of assimilation had yielded good results.

Opponents to the minority protection provisions recalled that the call of minority protection had become one of the pretexts for Hitler to wage a new war. They equally recalled the hopes President Wilson had put in the minority treaties and which were deceived. They also pointed out that the special provisions for minority protection could foster not only larger diversification, but stronger discrimination as well. Proponents of special provisions for the protection of minorities pointed out several shortcomings in cases of forced assimilation. Interestingly enough, a compromise proposal was set forth by the representative of the USSR who stressed that «everybody has a right to his own ethnic or national culture, irrespective of whether he belongs to a majority or minority» [22].

It is interesting to note that the trend was strong in the Third Committee to formulate minority rights as collective rights. It was even suggested that the following provision be included in the Universal Declaration: «Les collectivités

[21] E/CN.4/AC.1/3/Add.1, pp. 409-416.
[22] E/CN.4/SR.62. See also E/CN.4/Sub.2/SR.10, pp. 3 and 4.

nationales qui constituent un Etat en commun avec d'autres collectivités sont égales en droits nationaux, politiques et sociaux» [23]. This provision would have covered not only minorities but also national groups belonging to the society of a given state.

Finally, the view that the Universal Declaration deals with individual and not collective rights prevailed, and the question of the protection of minority groups was called to the attention of the ECOSOC.

During the discussions on the draft of both Covenants, the participants examined once more all the controversial questions presented here in relation to the drafting of the Universal Declaration [24]. The International Covenant on Civil and Political Rights includes the following provision: «In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their religion, or to use their own language».

Instead of examining the discussions on the draft of the Covenant, let us look at the interpretation of the provision by the Human Rights Committee and by some states. Some examples are provided below:

a) Some members enquired about the position of ethnic, religious or linguistic minorities as well as that of aliens, in particular, the right of the latter to leave the country (Report of the Human Rights Committee, 1978, p. 12). The question was left unanswered;

b) Reference was made to a statement in a given report that there were no religious minorities, and the representative was asked whether that meant that there were no religious groups in that country. The representative of that state pointed out that there was no state religion and consequently there were no religious minorities (Report of the Human Rights Committee, 1978, pp. 29, 39);

c) Details were requested on the steps being taken to enable minorities to develop their own culture. The representative of that state said that steps had been taken to overcome problems arising from the recent arrival in his country of minorities with different culture and languages, by increasing the budget of local authorities to enable them to increase the number of teachers in schools and by providing assistance to voluntary organizations (Report of the Human Rights Committee, 1978, pp. 35,38);

d) Members asked what rights had linguistic, ethnic or religious minorities with regard to the publication of newspapers and to the establishment of schools and churches. The representative of that state pointed out that the Constitutions of some Republics and Provinces contained special provisions to protect the cultural and language rights of ethnic groups such as Gypsies (Report of the Human Rights Committee, 1978, pp. 64, 67);

e) Some members inquired about the role of the various forms of property ownership in ensuring the equality of people and the protection of minorities, in particular certain groups who were dispersed throughout the country. The representative of that state said that in accordance with the Constitution, citizens of different races and nationalities have equal rights. In every union or autonomous

[23] A/C.3/307/Rev.1/Add.1 and A/C.3/307/Rev.1/Add.2.
[24] Report of the Third Committee, UN Doc. A/5000.

republic or region, national languages were studied in schools, newspapers and books were published in local languages and there were also national theaters. Any advocacy of racial or national exclusiveness, hostility or contempt is punishable by law (Report of the Human Rights Committee, 1978, pp. 72, 75);

f) Members asked the representative of a given state what constituted a minority according to national legislation. The representative of that state declared that by "minority" was meant a group of nationals who ethnically, religiously or culturally differed from most other nationals and could be clearly identified from a historical, social and cultural point of view. (Report of the Human Rights Committee, 1982, pp. 15, 19);

g) Some members noted that in a given report insufficient information was given on ethnic, religious and linguistic minorities which certainly existed, considering the country's colonial past. The representative of that state declared that the Government's policy on minorities was based on the recognition that the country was a multicultural community in which minorities would have a permanent place; that many measures had been taken in order to fight discrimination in various fields and to improve intercommunity relations (between members of various minorities). In addition, he declared that his Government did not consider that minorities had, as such, group rights which needed to be protected but that the individuals within these minorities had rights that needed to be protected. He further pointed out that although foreigners resided in the country, their number was extremely small and that, in any case, domestic law did not prohibit anyone from enjoying one's own culture, professing and practising one's own religion or using one's own language (Report of the Human Rights Committee, 1982, pp. 25, 30).

The Human Rights Committee did not pay much attention to the means and scope of realization by the States Parties of Article 27. Many states took no account whatsoever of the protection of minorities in their reports or mentioned it rather briefly. Additional explanations required by the Committee led by no means to comprehensive replies. Therefore the review of state's practice merely allows to pointing out some problems.

Article 27 of the Covenant represents in the opinion of the author a compromise position between the concept of protection of individuals as members of a minority and the concept of protection of a minority as a group. The provision refers namely to «persons belonging to minorities» but then provides that these persons enjoy «their own culture (...) in community with the other members». Yet, the predominant view commonly expressed interprets this provision as affording protection only to individual members of a minority.

Three types of minorities are identified in Article 27, namely ethnic, religious and linguistic minorities. One can wonder whether other minorities, e.g. national or racial would enjoy the rights formulated in that Article. It is not possible to define a single criterion determining its precise limits. Article 4 of the Covenant regarding derogations of fundamental rights only requires that discrimination be not based on the grounds of race, color, sex, language or social origin. Other criteria are not mentioned. On the basis of Art. 1 of the International Covention of the Elimination of all Forms of Racial Discrimination, "race" includes color, descent, national or ethnic origin. Ethnic origin relates to language, social origin and even religion. Political and other opinions are closely connected

to national and social origines, to birth and other status. The question of a precise definition of ethnic minorities has to be left open in this case.

The list of rights of minorities or individual members of minorities is formulated in Article 27 with some room left for ambiguities. Some have argued that this provision did not impose any positive obligation on states with regard to the protection of the said rights. The author believes on the contrary that this provision does impose positive obligations on states. In addition, these obligations cannot be limited only to legislative measures. A state should also take positive measures in the socio-economic and cultural spheres. Practice indicates that this is precisely the way these obligations are understood. Reports refer for instance among others to local budgets that enable an increase in the number of theaters, foster newspapers and books published in local languages or promote the creation of schools.

Duties imposed on states by Article 27 of the Covenant are wider than the duty to respect the principle of equal rights and non-discrimination with regard to their minorities. The latter duty can be derived from other provisions. As a matter of fact some experts have a tendency to interpret the implementation of Article 27 in terms only of a statutory ban of discrimination. However, for the present author, this interpretation is too limiting.

The negative aspect of prohibiting discrimination against minorities is covered by Article 14 of the European Convention on Human Rights, which reads as follows: «The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground as sex, race, color, language, religion, political and other opinion, national or social origin, association with a national minority, property, birth, or other status». Some have wondered whether Article 14 is complementary to the rights and freedoms set out in Section I, or whether it establishes a right to non-discrimination [25]. Decisions of the European bodies prove that Article 14 is complementary to the rights and freedoms set out in the Convention and does not create a right to non-discrimination. For instance in the Belgian Linguistic Cases, the Commission set out at length its approach to this question and its conclusion was the following: «(...) L'applicabilité de l'Article 14 n'est pas douteuse lorsqu'une loi ou une mesure d'une partie contractante constitue une violation de l'un des Articles 2 à 13 de la Convention (...) et que cette loi ou mesure entraîne, par surcroît, une discrimination» [26].

In 1961, the Parliamentary Assembly wished to take a step further in the direction of the "positive aspect" of this problem by ensuring to minorities special rights and advantages which are necessary to maintain their existing features, such as the use of their own language, the practice of their religion and the development of their own culture. In Recommendation 285 (1961), the Assembly proposed the inclusion in a protocol to the Convention on Civil and Political Rights. The Assembly also proposed to include the right of minorities to establish their own schools and receive teaching in the language of their choice and to profess and practice their own religion. The Committee of Ministers rejected this proposal.

[25] Fawcett J.C., *The Application of the European Convention on Human Rights*, Oxford, Clareton Press, 1969, pp. 233-237.

[26] Report of the Commission, "Yearbook of the European Commission on Human Rights", 1965, paras. 454-455.

Article 1 of the American Convention on Human Rights has to be interpreted in a similar way as Article 14 of the European Convention. Although some authors dissent, this interpretation seems to be prevailing. However, even among those who do accept this interpretation they consider that these rights can and should be recognized only with regard to individuals as members of a minority, and not to minorities as groups. Therefore, individuals only could enjoy the rights as formulated in Article 27 of the Covenant. But for what reasons has such a position been adopted?

First of all, this is in line with the traditional individualistic approach to human rights. Secondly, the negative experience of the mechanism set up before World War II to protect minorities was not conducive towards another attempt. Thirdly, rights recognized to minorities as groups entail a danger for the nation-states and could even lead to secession, while such a danger does not exist when rights are recognized to individuals as members of a minority group. In this respect it is further argued that the principle of equal rights and non-discrimination presents sufficient protection to minorities and at the same time fosters the integration of minorities within the nation-state. It seems reasonable to believe that states aim at the most far-reaching integration and assimilation of minorities. On the other hand, it is legitimate to wonder whether minorities wish this type of integration and assimilation.

Considering the various political, ideological, religious and cultural consequences of the international protection of minorities, it is difficult at present to reach an agreement on this issue. For instance, R. Monaco writes: «Certains articles des Pactes anticipent déià sur les droits de l'homme que nous trouvons dans l'article 27» and considers that the right to profess and practise one's own religion is implied by the liberty of conscience and religion, the right to enjoy one's own culture is included in the right to freedom of expression, in the right to education and liberty to establish educational institutions and in the right to take part in cultural life [27]. This author however does not share this opinion because article 27 of the Covenant refers exclusively to certain groups and aims at protecting the cultural values of these groups.

The argument that special protection of minorities can hinder complete integration and assimilation carries undoubtedly some weight. But again, the question remains as to whether assimilation is in all cases accepted by minorities, or in their interest or whether assimilation policies serve only the interest of the state. Special international protection of minorities could indeed lead to conflicts and international tensions (as was the case before the Second World War). But equally lack of such protection could lead to tensions and international conflicts.

Stricking a balance between the interests of the nation-state and the interests of particular minorities within that nation-state is certainly a difficult task. One such attempt is to be found in the Algier's Declaration. Article 19 of that Declaration guaranteed to minorities the: «respect de son identité, de ses traditions, de sa langue et de son patrimoine culturel». Article 20 formulates the principle of equality and non-discrimination. One could argue that the above Article 19 is similar to Article 27 of the Covenant, and Article 20 to Article 14 of

[27] Monaco R., *Minorités nationales et protection internationale des droits de l'homme*, in: *Problèmes de protection internationale des droits de l'homme*, Paris, A. Pédone, 1969, pp. 180-184.

the European Convention, as far as means and scope of protection are concerned. However, it should be noted that Article 21 states: «L'exercice de ces droits doit se faire dans le respect des intérêts légitimes de la communauté prise dans son ensemble et ne saurait autoriser une atteinte à l'intégrité territoriale et à l'unité politique de l'Etat (...)». That provision, which is the attempt at reaching a compromise position between the safeguarding of different values, paved the way to divergent interpretations. For instance, some authors went as far as interpreting this article not only as negating a right to secession but also negating the right to autonomy [28]. Some others, read in it the full recognition of a right to secession [29]. Nevertheless, many authors admit that this provision protects minorities against the possible oppression of the state as well as protects the interests of the nation-state from demands of minorities which would be excessive.

It would certainly be difficult for the international community to find solutions even partial to all the problems pertaining to the international protection of minorities, and the discussion is still open [30]. Nevertheless, one of the arguments often evoked against international protection of minorities is the denial of a need of protecting collective rights.

Denial of such a need is presently, in the judgement of the author, by all standards obsolete. There are many rights which can only be exercised by an individual if the community he belongs to can enjoy certain rights. What would become for example of the freedom to join trade unions if certain rights were not guaranteed to trade unions as such? What would be the meaning of the right of an individual to his own culture if the minority to which he belongs have no possibility to develop that culture?

Thus it seems, that in the discussions on the international protection of minority rights, more stress should be laid on the list of rights and scope of their protection than on the problem of «individual rights vs. collective rights».

B. Rights of other groups

The majority of the international instruments guarantees rights to individual, every person, every human being, everyone, etc. Not only does the wording of the provisions of such instruments provide evidence of this but equally probatory are the discussions surrounding the adoption of these instruments and their subsequent interpretation.

However, especially in recent years, groups have also become the subject of international protection in the international instruments. Here are some examples:

a) Article II of the Convention on the Prevention and Punishment of the Crime of Genocide states: «Genocide means any of the following acts committed

[28] Fenet A., *Un regrettable pas en arrière: le concept de peuple minoritaire dans la Déclaration universelle des droits des peuples*, in: *Peuples et Etats du Tiers-Monde face à l'ordre international*, Paris, PUF, 1978, pp. 109 et seq.

[29] Condorelli L., *Droits des minorités et garantie des droits des peuples: les risques de la Déclaration*, in: *Essais (...)*, p. 129.

[30] See in particular: Von Haeften, *Héraud and Goriely*, in *Les droits garantis par la Convention. La protection internationale des droits de l'homme dans le cadre européen*, Paris, Dalloz, 1961, pp. 197-208 (discussion).

with the intent to destroy, in whole or in parti, a national, ethnic, racial or religious group as such: killing members of the group, (...) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent birth within the group (...)». The group is here a direct subject of protection which can be unambiguously derived from the wording of the quoted provisions. It has to be emphasised that the size of the group, its importance and its role in the state is of no relevance here. It is to be noted that the Draft Code of Offences against the Peace and Security of Mankind embodies provision based on the Genocide Convention.

b) Groups are also the subject of international protection in the Convention on the Suppression and Punishment of the Crime of Apartheid. The Convention defines the crime of apartheid as applying: «to the following inhuman acts committed for the purpose of establishing domination by one racial group of persons over any other racial group of persons and systematically opprressing them; by murder of members of a racial group (...)». The Convention forbids «the expropriation of landed property belonging to a racial group or groups or to members thereof (...)». Individuals are the direct subjects of protection for most of the provisions, nevertheless racial groups are the indirect subject of these provisions. Yet, some provisions aim at protecting these groups as such, e.g.: «Deliberate imposition on a racial group or groups living in conditions calculated to cause its or their physical destruction in whole or in part (...)».

c) Article 1 para. 4 of the Convention on the Elimination of All Forms of Racial Discriminations provides: «Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination (...)».

J.W. Brugel is correct in writing that minorities automatically benefit from any steps taken to combat discrimination and apartheid [31]. But in my opinion, both Conventions concern not only minorities, they refer to any group mentioned by them and in specific cases, the group can indeed be the majority in a state, e.g. South Africa.

d) Numerous provisions of the Convention against Discrimination in Education (Unesco) protect both groups and individuals, e.g.: «(...) of depriving any person or group of persons of access to education (...)», «of limiting any person or group of persons to education of an inferior standard (...)», Article 1, para. 1 (a) and (b).

It is worth mentioning here that previously mentioned Conventions protect only racial groups or racial and ethnic groups, or racial, ethinc, national and religious ones. The specification of such groups is much wider in the Convention on Discrimination in Education. It specifies the following criteria besides those mentioned above: sex, language, political or other opinion, social origin, economic condition or birth.

e) Protocol n. 4 to the European Convention on Human Rights forbids collective expulsion both of nationals and of aliens from the territory of a member

[31] Bruegel J.W., *A Neglected Field: the Protection of Minorities*, in "Human Rights Journal", vol. IV, n. 2-3/1971, p. 428.

state of the Council of Europe. A similar provision is included in the American Convention.

f) The Declaration on Race and Racial Prejudice (Unesco) declares: «All peoples of the world possess equal faculties for attaining the highest level in intellectual, technical, social, economic, cultural and political development» (Article 1, para. 4).

g) The Declaration of the Principles of International Cultural Co-operation (Unesco) provides among others: «Every people has the right and the duty to develop its own culture» (Article I, para. 2). «Nations shall endeavour to develop the various branches of cultures (...)» (Article II). «Cultural co-operation is a right and a duty for all peoples and nations (...)» (Article V).

1. International instruments recognize protection either to a group as such or to a group and its members.

2. Every group is internationally protected – according to the criteria listed in specific conventions – irrespective of its size, importance and place within a state.

3. In the light of examples quoted above, the reluctance to accept that rights of minorities are extended to minority group as such and not only to its members is, in my opinion, difficult to justify.

4. The notion "people" used in the title of the present chapter has a different meaning and scope than the notion "people" as used in the context of the discussion on the right to self-determination. But "people" as subject of the right to external self-determination and "people" as subject of the right to the internal self-determination are both groups. Differences in terminology are often to be attributed to different language purposes.

IV. Rights of peoples as human rights

A. From the individualist to the collective approach

The general orientation of the Universal Declaration was towards the protection of rights of individuals. Due to the growing influence of the Third World in the United Nations, a great deal of emphasis has shifted from individual rights to collective rights. A notable landmark in this development was the Proclamation of Teheran. It refers to gross and massive denials of human rights, particularly under the policy of apartheid and other policies and practice of racial discrimination as a result of colonialism or arising from discrimination on the grounds of race, religion, belief of expression of opinion. The Proclamation and many other international instruments adopted since, place the human person in various social relationships of which he is an integral part, e.g. his family, his religious community, his ethnic or language group.

More and more are collective rights recognized by the international instruments. When a distinction is made between individual rights and collective or group rights, this distinction should not be viewed in terms of contradiction. This does not deny the fact that certain rights are of an individual nature, e.g. the right to privacy, freedom of thought, while other rights are by their nature, collective

rights, such as economic, social and cultural rights [32]. There are also rights which present both individual and collective aspects, for instance, the freedom of association.

Van Boven listed the socio-economic rights among the collective rights. But it seems that individuals are the final beneficiaries of such rights. Moreover, some of those rights are related to claims and they can be enforced by means of legal provisions. But there are also human rights that have an exclusively collective character and groups; communities and peoples are the beneficiaries of such rights.

In recent years the evolution in the direction of recognition of collective human rights han been more evident in the emergence of new rights, such as the right to development, the right to peace, the right to environment, the right to communicate. Those who oppose these new rights do not claim that they do not deserve international protection. They claim that these are not «real human rights» [33].

One can discuss the necessity and advisability of extending the international catalogue of human rights by the inclusion of collective rights. But one cannot deny that some are already considered as human rights in international instruments. For instance, Resolution 34/64 of 1979 as adopted by the General Assembly recognizes that the right to development is a human right. By Resolution 36/133 of 1981, the General Assembly declared that «the right to development is an inalienable human right». In a 1979 report on the international dimensions of the right to development, the UN Secretary-General portrayed the individual and collective dimensions of this right as being complementary, and expressed the view that «it is probably unnecessary to pose the issue as one involving the choice of mutually exclusive alternatives» [34].

The notion of human rights is not and can never be thought as a static one. New trends in human rights appear nowadays, less in terms of socio-political and philosophical doctrines, but as the result of pressures formalizing new relations between men and society.

B. Towards an extension of the rights of peoples

The right of peoples and nations to self-determination is a prerequisite to the full enjoyment of all fundamental rights [35]. But at the same time the General Assembly recognized «the right of peoples and nations to self-determination as a fundamental human right» [36].

In the present study, I have attempted to indicate the scope of international protection of:

[32] van Boven T.C., *Distinctive Criteria of Human Rights*, in: *The International Dimensions of Human Rights*, *op. cit.*, p. 54.

[33] Pelloux R., *Vrais et faux droits de l'homme. Problèmes de définition et de classification*, in: "Revue du droit public et de la science politique en France et à l'étranger", n. 1-2, 1981, p. 67.

[34] UN Doc. E/CN.4/1448, para. 89.

[35] Resolution of the General Assembly 637A VII.

[36] Resolution of the General Assembly 421D V.

– the right of peoples to self-determination in the external aspect;
– the right of peoples to self-determination in the internal aspect;
– the rights of minorities which also definite specific groups.

The most important peoples' right in United Nations practice was originally the right to self-determination of colonial and dependent peoples. At the present time, the question of the right of peoples arises more and more often within the confine of independent states and is postulated to award special protection and special rights to minority groups: ethnic, linguistic, religious, etc.

The African Charter of Human Rights and Peoples Rights is clearly inspired by the concept, which can be described as the concept of social solidarity. It is not solidarity in the European sense of this term. The African concept of human rights is rooted in African cultural traditions. Islam has also affected it substantially. Islam gives recognition to the concept of community based on the family, clan or tribe, i.e. on criteria of origin, race, life-style and living conditions, and to that of an ethnic or national community based on a common language or history, i.e. on historical, geographic or cultural factors [37].

The preamble of the African Charter refers expressly to the «historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human rights and peoples' rights». The leading idea of the African Charter is best expressed in the following part of the Preamble: «*Recognizing* (...) that the reality and respect of peoples' rights should necessarily guarantee human rights». Provisions on the right of peoples to self-determination in their external aspect (Article 20) and the right of peoples to freely disposition of the natural resources (Article 21) are more complex and more detailed than the provisions of both UN Declarations of 1960 and of both Covenants. Besides, the scope of protection of those rights is wider.

The list of peoples' rights is opened in the African Charter by the following provisions: «All people shall be equal; they shall enjoy the same respect and have the same rights» (Article 19). It is characteristic that there is no provision in the Charter that «all human beings» or «all individuals» shall be equal; Article 2 formulates only the principle of non-discrimination, and Article 3 the principle of equality before the law and equal protection by the law.

There are rights of peoples to be found in the African Charter which are not expressed in any other universal instrument concerning peoples' rights. The following rights can be included among them: «All peoples shall have the right to their economic, social and cultural development (...)» (Article 22); «All peoples shall have the right to national and international peace and security (...)» (Article 23); «All peoples shall have the right to a general satisfactory environment (...)» (Article 24).

The Universal Declaration of the Rights of Peoples (The Algiers Declaration) takes a leading position in promoting the transnational character of these rights. The list of peoples rights formulated in that Declaration requires separate analysis and studies, which have already been undertaken to a certain extent [38].

[37] Der Thiam I., *Human Rights in African Cultural Traditions, Human Rights Teaching*, Unesco, vol. II, 1982, p. 4.

[38] Compare with *Pour un droit des peuples (...)* see above.

The Declaration was welcomed with varied judgements. Historian Albert Soboul characterized the Declaration with the words of Saint-Just, writing that «le laconisme est révolutionnaire». Others advocate that the Declaration is not the code of peoples' rights but only a proclamation of principles which should become the basis for those rights. There are also opinions that the task of the Declaration was only to collect in one body all provisions scattered in various UN instruments [39]. The creation of a Standing Tribunal of Peoples was intended to «(...) créer des structures internationales qui soient en mesure d'attirer l'attention des gouvernements, des mouvements politiques et syndicaux et de l'opinion publique mondiale sur les violations graves et systématiques des droits des peuples et, en relation avec ces violations, celles des droits des minorités et des individus, ainsi que leurs causes économiques, politiques et sociales» (Preamble to the Statute) [40].

Research propositions

1. Rights of peoples had appeared in international instrumenst even before the concept itself was elaborated. The notion "people" is vague and leads to confusion. It is worth considering how to replace it in some instances, by such terms as rights of group, rights of collectivities or rights of minorities.

2. Rights of peoples are recognized in the international instruments as human rights. Present thinking is however divided on this issue. Theoretical reflections on the modern concept of human rights and their scope is therefore necessary.

3. Rights of peoples are collective rights. It is worth therefore to undertake further research on the question of these rights, both at the international and national levels. ■

[39] Comparee specially with Cassese A., *La portée politico-juridique de la Déclaration d'Alger, op. cit.*, pp. 62-80; Rigaux F., *Remarques générales sur la Déclaration d'Alger, op. cit.*, pp. 42-47.

[40] The Tribunal's statute and its activity is discussed and evaluated by Matarasso L., *A propos d'initiatives de caractère non étatique en faveur du droit des peuples*, in: *Méthodes d'analyse du droit international*, Mélanges offerts à Charles Chaumont, Paris, A. Pédone, 1984, pp. 397-406.