Integration of Peoples and Minorities: An Approach to the Conceptual Problem of Peoples and Minorities with Reference to Self-Determination under International Law

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1. Introduction

Despite the long history of the discussion on the protection of minorities in international law, the clarity of relevant international legal standards on minority rights remains unsatisfactory.¹ This is largely related to the fact that there exists no binding definition of the concept of a minority as the holder of minority rights. The definitional question of the concept of a minority thus goes to the heart of the issue of the international legal protection of minority rights. If international law is the legal basis for the protection of the rights of persons belonging to ethnic, religious or linguistic minority groups, identification of persons belonging to such groups is essential. Without identification of what constitutes the concept of a minority, the discussion on the protection of minority rights under international law itself may lack effectiveness, as the ambiguities in defining the concept of a minority directly impinge on the protection of minority rights themselves. One can easily imagine the situation that a number of States can deny minority rights, arguing that they do not have minorities within their territory by reference to the definition of a minority.² With this lack of a binding definition of the concept of a minority, it is also important to

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² However, this does not mean that international protection of minority groups is not possible in the absence of an official definition of the concept of minority; this absence has nevertheless contributed to the insufficiency and weakness of the present international protection of minority rights. The positive role of the Organization for Security and Co-operation in Europe (OSCE) High Commissioner on National Minorities (HCNM) illustrates this point. In the absence of a formal definition of the concept of minority, the Commissioner has preferred a practical approach in defining a minority status. He has addressed minority issues regardless of traditional definition criteria such as citizenship or historical presence on the territory. The HCNM has acted with regard to a variety of groups, including non-citizens, for instance, the ethnic Russian stateless persons in Estonia and Latvia. See V. Poleschchuk, Advice not welcomed: Recommendations of the OSCE High Commissioner to Estonia and Latvia and the response (Transaction Publishers, New Brunswick and London, 2001).
note that the task of defining the concept of a minority should not be undertaken alone within the framework of the protection of minority rights in a narrow sense,3 because the concept of a minority is related to other categories of right holders, such as peoples, indigenous populations, interacting with each relevant international legal standard. This is the reason why the question of the definition of a minority in international law of minority protection should be discussed in connection with other relevant norms of international law.

This article is concerned with the relevance of the right to self-determination in international law to the protection of minority rights in addressing the conceptual problems of people and minority.4 This approach seems to be necessary, because the definition of the concept of people as the holders for the right to self-determination under international law has consequences with respect to the protection of minorities. Depending on how the concept of people is defined, the extent and degree of the protection of minorities will be affected accordingly, since persons belonging to minorities have resided in a particular State to which self-determination is being applied as an organising and governing principle. This means that even if one can successfully propose a definition of the concept of a minority within the framework of ‘international protection of minorities’, the adequacy of such a definition of a minority would be questioned in terms of effectiveness if the concept of minority were not taken into account in the context of the exercise of the right to self-determination. This is because a State may arbitrarily delimit the scope of what defines the term ‘people’ by enacting restrictive citizenship laws, thereby preventing some ethnic, religious or linguistic groups from being full members of the people.

With this basic premise in mind, this article seeks to address the question of definitions of people and minority on the basis of normative consideration in a way to justify the right to self-determination as a legal basis for the protection of minority rights. In particular, this article shall pay special attention to the development of the internal aspect of self-determination under which members of the people are entitled to democratic governance and representative government in their States of residence, as the internal aspect of self-determination may be a relevant normative basis for the effective protection of minority rights under present international law.

3 By the “framework of the protection of minority rights in a narrow sense” the writer refers to the standards reflected within the United Nations and European instruments that are directly related to minority rights in the sense of having made special references to “minorities or persons belonging to national, ethnic, religious or linguistic minorities”.

4 The terms ‘people’ and ‘peoples’ are used alternatively in this article depending on given contexts. This is necessary to avoid terminological confusion in discussing the right to self-determination under international law. In this article, the term ‘people’ refers to the entire body of persons who satisfy the criteria generally accepted for determining the existence of a people in a territorial unit. However, if the holders of the right to self-determination are to be referred to universally beyond a single territorial unit, the expression of ‘peoples’ will be used instead.