Peoples' Rights and Minorities' Rights

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Introduction

Has the notion of people's rights much more to offer than as a political idea or a legal fiction? In his history of the idea of Sovereign equality among states Robert Klein, in a discussion of notional rights, found that in the nominal world of Roman law, a group of individuals acting together was deemed to have a single legal personality for the purpose of according rights and duties. Roman legists, he cautioned however, "never lost sight of the fictitious nature of this creation. They were far too realistic to believe that by attributing legal personality to a group of men they had thereby created a real person." Legal science has since seen the emergence of corporate legal personality, the legal personality of international organizations and indeed the legal personality of the state. Klein identifies Hobbes as the first to have applied the concept of the personality of a territorial State, which permitted pinning on these new political entities rights and duties towards each other. With the rise of the nation-State the concept of its legal personality took on added importance. Under the influence of Rousseau and Hegel, however, "Men came to identify 'the people' as a real if not superior individual. Thus Rousseau found sovereign power in a 'moral person' with a 'general will'. Here was the first step in the idealization of the State; for the general will was only precariously identified with the wills of human beings. It was not any will, but a higher will."2

Klein's remarks raise the possibility that though the concepts of 'the people' and its 'rights' were used in political and legal theory, their usefulness may have been more as abstract concepts outside of the right of peoples to self-determination. To what extent a 'people' as distinct from the state or from specific individuals or groups could seize the law or enforce rights was more problematical. As opposed to 'the people', however, a clearer position has obtained with regard to States, which are recognized as possessing legal rights and duties under international law. Those rights and duties are exercised for the State by its respective Government in accordance with the relevant rules of international law.

The distinction between 'peoples' and 'States' is not to be taken lightly. Professor Ian Brownlie, commenting on the Universal Declaration of the Rights of Peoples which was adopted, in 1974, by a conference organized by non-governmental organizations in Algiers, has complained: "As a professional lawyer I find the Algiers Declaration odd from a legal point of view. It confuses peoples with States, and in doing so collides with a large number of instruments, subscribed to by Third World States, in which it is clear that, apart from the cases of illegal occupation resulting from aggression or other usurpation of rights and unfulfilled claims to self-determination, international law applies as between States and the principle of non-intervention forbids going over the heads of

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States to the populations. Moreover, the plea of assisting oppressed minorities has been used in attempts to legitimate policies of intervention.3

As if the ambiguity between 'peoples' and 'States' were not enough, numerous categories or examples of 'peoples' are asserted in a most perplexing manner in the current debate on peoples' rights. At a recent UNESCO experts meeting held to discuss the subject, for example, it was suggested that the term 'peoples' might have been left deliberately vague in certain instruments and that "the task must therefore be undertaken to give it more content, e.g. its meaning in the African Charter (national peoples, religious groups, village councils, cooperatives) would have to wait on practice. There could be different intermediary groups to be identified by the principle of self-selection together with corresponding recognition."4 At the same meeting, it was recognized that "in the course of discussions in all the sessions many possible meanings had been given to the term 'peoples'. 'Peoples' had been used to refer to minorities, anti-colonial movements, oppressed groups (which might include majorities), peoples in the sense of 'population' (e.g. the Zimbabwean people), in the sense of communities (which seemed to emerge from ... human and peoples' rights in African traditions,5 in the sense of nations and nationalities States, and in the sense of the 'common people' as opposed to the bourgeoisie."6 It was further suggested at the meeting that the concept of peoples could be studied on three levels: (a) Peoples, not recognized as such, associated with a particular territory. Minorities associated with a distinct territory and wanting either autonomy or independence were included in this category; (b) Peoples organized within their own territories as national States; (c) Peoples recognized by international law.7

The relationship between 'peoples', 'nationalities' and 'minorities' raises especially perplexing questions in the on-going debate. At the UNESCO experts' meeting just referred to there was a discussion of the meanings of 'nations' and 'nationality', and it was explained that in USSR practice for example, 'nations' referred to the fifteen nations, twenty autonomous republics, ten autonomous regions and eight autonomous districts i.e. fifty-three nations which had their own statehood under domestic law. 'Nationalities', however, referred to groups which did not have their own territory or their own economic life, or were too small to be organized in their own areas such as the Ukaigiri, a group of about 200 to 300 persons in the extreme north of the country. While these groups did not have statehood they could send their children to their own national schools.8

Further difficult questions arise with regard to the relationship between 'peoples' rights and group rights. At the UNESCO meeting referred to earlier, a participant, observing that the notion 'people' had sometimes been taken to refer to a social community within a State which had distinctive features, thought that this could be considered in two ways: the rights of minorities protected by non-discrimination provisions and the rights of other groups. The speaker therefore suggested that further research was needed on the possibility of replacing the term 'peoples' by such terms as 'groups', 'collectivities' or 'minorities'.9 Professor Brownlie, however, has expressed the opinion that "the heterogenous terminology which has been used over the years – the reference to 'nationalities', 'peoples', 'minorities' and 'indigenous populations' – involves essentially the same idea ... the type of political consciousness involved is broadly the same." To him, "the issues of self-determination, the treatment of minori-