

## Minority rights in world politics: group or individual rights?

Corina Rebegea  
[corinarebegea@yahoo.com](mailto:corinarebegea@yahoo.com)

*Minority rights are a very sensitive issue for the international community in the context of the recognition and protection afforded to human rights. As the only internationally recognized rights-holders are the states, the recognition of minority groups as rights-holders would challenge the established principles of sovereignty, territorial integrity and statehood. Consequently, minority rights are constructed through international and regional documents from an individualistic perspective in order to project a certain notion of citizenship, sovereignty, nationhood or autonomy. International and regional documents deal with the rights of 'persons belonging to' minorities, rather than with minorities as such, a concept still in search of a clear-cut definition.*

### Introduction

Human rights can be considered to have a subversive force on the established principles of state sovereignty. International recognition of human rights broke the exclusive tie between the individual and the state in that the way in which a state treated its citizens became a matter of international scrutiny. On the other hand, minority rights movements (especially powerful after the end of the Cold War) challenged state pre-eminence once more by bringing into discussion principles such as self-determination, territorial integrity and again sovereignty. The idea of minorities as groups seeking recognition on the international arena raises very interesting issues regarding the type of entities which are entitled to rights and the types of rights they may possess. What kind of rights are minority rights, group or individual rights?

In a world in which precedents make the rule while the established norms are hailed, the question above reaches beyond the purely theoretic conundrum. The rapid multiplication of collectivities claiming to be right-holders and the increasing importance of identity place both recognized minority groups and states in a complex and problematic circumstance. The clash of identities and the quest for recognition demands increased attention and a new type of management of minority issues especially in the historic context of emerging group identities and maybe even new nations. It becomes apparent not only in international law, by which only states can be considered legitimate rights-holders *qua* groups, but also in theoretical circles that the central problem is where to place minorities on the axis from individual to state, if ever should they take a position between the two.

Given the political and normative complexity of minority issues, exploring the problem of the type of rights that should be accorded to minorities becomes extremely cogent. From the perspectives of both political theory and political practice, the question regarding the entities that should possess rights and the types of rights that should be recognized remains unaddressed with respect to minorities despite this flux of normative instruments. The importance of norms and legal instruments is not only given by their regulative meaning, but also by their political implications and the maintenance of a certain stability or *status-quo*. Nevertheless, this regulative meaning of norms impacts on the formation of identities and interests, individual or group ones.

This article will approach the problem of minority rights as reflected in international documents and practices and it will show that minority rights are constructed within these documents through the perspective of individual human rights so as to preserve a certain political *status-quo*. More precisely minority rights are not considered group rights, as the only authentic internationally recognized group rights are those of states. This means that instead of really addressing the problem of minorities by offering a framework of defining and interpreting the nature of minority rights, the practice of international politics and the norms governing it frame minority rights in such a way as to preserve the current understanding of basic principles of international law: self-determination, territorial integrity, sovereignty. The basic constructivist assumption utilized in this paper is that norms have an important role in consolidating the structures of political order and that the social environment and its collectively shared systems of meanings define behaviour and identities (Wiener 2003).

In order to show that minority rights are constructed within international norms in such a manner as to respond to sovereignty concerns of states this article will follow a triple strategy. First of all it will address definitional issues concerning minorities, groups and their rights. Secondly, it will identify the main problems for the principles of sovereignty that are attached to the international recognition of minority rights as group rights. Thirdly, the perspective on minority rights as constructed in international instruments will be analyzed from the point of view of individual-centred approaches.

One more specification is necessary at this point. In this essay the concept of minority is understood in its broadest sense without addressing issues of different types of minorities and their different entitlements. However, the international documents seem to leave the interpretation of the concept of minority to national governments (taking mainly a historic stance). The emergence of new groups claiming the status of minorities (such as life-style minorities or people with disabilities) poses further problems for the existing interpretations of minority rights, already contested and very problematic. The issue of definition is controversial and remains largely un-addressed in international documents, as will be shown later in this article, despite the fact that giving a clear-cut definition of minorities would clarify not only which groups are minorities, but also to what types of rights they are entitled.

## Minority rights - a definition bid

There are several components of a possible definition of minorities that can be identified notwithstanding the different typologies: a numerical component, an identity component, a sense of self-preservation, a non-voluntary character, a temporal and sometimes territorial component. There is another general characteristic of minorities, the relational component, which complicates the idea of minority rights in that it can only be understood by opposition with some other groups. This relational component can either be a 'numerical disproportion between two or more groups of people' (Vizi 2002, p. 40), a political imbalance or ethnicity issue. A widely accepted definition of minority groups is that offered by Francesco Capotorti, a Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1977, but it's a working definition not one agreed upon in a binding document:

*A group which is numerically inferior to the rest of the population of a State and in a non-dominant position, whose members possess ethnic, religious or linguistic characteristics which differ from those of the rest of the population and who, if only implicitly, maintain a sense of solidarity, directed towards preserving their culture, traditions, religion or language. (Lerner 2003, p. 8)*

The definition is formulated widely enough to include the basic characteristics so that a group could be considered a minority whether in terms of ethnicity, race, culture, or religion. It does however leave a lot of room for interpretations as to the number of people who can form a minority or what does a non-dominant position presuppose (it may well be applicable to some majorities, such as women). A further question would be whether the criteria are cumulative or just some of them would do for a group to be considered a minority. Moreover, the definition leaves aside the issue of territorial concentration which is one of the most problematic aspects in dealing with minority rights.

Thus recognizing minority rights raises many difficulties because on the one hand it is not readily obvious which types of collectivities constitute minorities, and on the other hand, it is extremely problematic to establish on the basis of which moral or legal considerations we should give rights to minorities/groups. We can't explore all the facets of this issue, but it's worth pointing at the relevance of having all these problems in mind when addressing minority rights in world politics.

## Group rights within the theoretical debate

Minority rights have either been seen from an individualistic point of view, or a collectivist one, a theoretical duality with broad political implications. The former sees individuals as the only possible right-owners due to their moral capacity (for instance Carl Wellman) or inherent worth (from a Kantian perspective). Mainly focused on the moral standing of right-owners Peter Jones sees the rights of a group *qua group* only making sense because of the

individuals who form the group and their eventual need for protection against vulnerability due to group membership (Jones 2000, pp. 202-203). Consequently groups or group rights can only have an instrumental value for advancing individual rights. However, Jones seems to agree that there are group rights but with a necessary clarification between what he calls collective group rights and corporate group rights. The collective approach promotes the idea that individuals enjoy their human rights collectively but the individuals' moral standing grounds the allocation of group rights.

The second understanding is that of corporate group rights, by which the group has an identity and moral standing independent from its members which is not based on the individual identity, but on that of the group (Jones 1999, pp. 86-87). This brings us to the second perspective on minorities and groups, with far less adepts (Vernon Van Dyke), which sees groups as entities entitled to have different sorts of rights that are both different from and non-reducible to individual rights. He claims that group rights should be the foundation of any theory of the state and that when we talk about the rights of representation or to self-determination of a certain community we are committing ourselves to the position that groups have moral rights (Van Dyke 2000, pp. 34-45). This however does not explain the nature of group rights. This debate between individual and group rights informs (and is informed by) the political debates and has an obvious impact on the implementation of minority rights.

Whatever the perspective, there is a certain number of rights associated with minorities: a right to existence, to representation, to preserve its traditions, culture, language and identity, to internal self-determination (Lerner 2003, pp. 39-41) and very rarely to form their own states.

### Group rights in international documents

The discussion of minority rights in international politics is extremely important because giving rights to groups other than states, but which might have similar claims, such as self-determination, would completely change the principle of inviolability of the states' territorial and political integrity. But before turning to these problems, it is worth pointing out that there is a noticeable increase in the attention towards minorities and their rights in international politics, especially after the end of the Cold War.

Under the UN system, the idea of minority protection reflected the impact of the Second World War and a first concern for the treatment of minorities appears in the Convention on the Prevention and Punishment of the Crime of Genocide, which addresses expressly in article 2 the importance of group membership from the perspective of human rights and rights violations. This idea of group membership and its repercussions on the exercise of rights is on the other hand inherent to all UN documents under the general clause of non-discrimination.

The first direct reference to minority groups and their rights appears in article 27 of the International Covenant on Civil and Political Rights. Only in 1992, a Declaration on the Rights of Persons Belonging to National or Ethnic, Religious

and Linguistic Minorities was adopted, although it hasn't constituted a major impact on the existing understanding of minority rights. To these we can add documents adopted by regional organisations, such as the OSCE (minority clauses appear in all its working documents) or the Council of Europe (the 1995 Framework Convention on Minorities), as well as instruments concerning non-discrimination. However, although the importance of group/cultural belonging is recognized, the individual (and not groups) remains the right-holder. Moreover these documents fail to give a clear definition of minorities and minority rights and thus avoid a commitment towards minority claims. In what follows we will look at the construction of minority rights within these international documents.

Minority rights as group rights raise difficult problems for the world of sovereign states which can be addressed at several levels. First of all there is a fundamental principle of self-determination to which only "peoples" are entitled. Secondly, the distinction between minorities and nations or peoples is not clear-cut. Thirdly, states are already facing problems of 'domestic jurisdiction' in the field of human rights (Pentassuglia 2002, p. 303) with the creation of supra-national human rights organizations and courts and minority rights put more strains on the existing understanding of sovereignty. All three aspects are interrelated and have serious repercussions on the practice of international relations and interpretation of international law (for instance the problem of double standards) at least at three levels: recognizing minorities as such, protecting individuals and groups from massive abuses of their rights, recognizing a right to external self-determination and the formation of new sovereign states.

The principle of self-determination is inscribed in article 1(2) of the UN Charter and the two International Covenants and it is seen as a right of a community to conduct its own business without interference. By guaranteeing this principle the UN took a slightly different approach than the way self-determination was understood under the League of Nations. While after the First World War this principle was meant to contribute to the formation of new independent states and was strictly connected with the idea of minority rights, both the rights to have their own nation and that of being protected inside a newly created state (Kovacs 2003, p. 436), self-determination had to do more with non-interference in internal affairs of states after the Second World War. Thus, it meant an absence of outside constraints (external self-determination) and the possibility to make collective choices concerning the form of government or political system, i.e. internal self-determination (Preda 2003, p. 206). Article 1(1) of the International Covenant on Civil and Political Rights states: 'All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development'.

The danger of supporting the creation of collective rights for national minorities would be the reinterpretation of this principle as to mean a 'trespass on the right of states to choose their own form of political organisation' (Jackson Preece 1997, p. 354) by giving certain rights of self-government to minorities, on the internal dimension, but also a possible claim to secession, which is not

recognized by international law. Moreover, there is a general acceptance of the notion of statehood which emphasizes the loyalty of citizens (including members of minorities) towards their state (Vizi 2002, p. 41). Obviously this is incompatible with the existence of groups claiming rights that interfere with this unitary state doctrine. The (probably deliberate) lack of an agreed definition of minorities leaves the interpretation of self-determination to the will of governments representing the 'whole people' belonging to its territory without any distinctions (Jackson Preece 1997, p. 348). This brings us to the second problem of group rights for minorities: the differentiation between minorities and peoples.

## Sovereignty v. minority rights

The theoretical approaches concerning terms like nation, nationality, people etc. are extremely vast and definitions are not clearly cut and generally agreed upon. Some authors see no inherent difference between national minorities and nations, which can be defined as 'historical communities, more or less institutionally complete, occupying a given territory or homeland, and sharing a distinct language and mass culture' plus an element of self-definition (seeing themselves as nations). National minorities are nothing more than 'stateless nations' (Kymlicka and Norman 2000, pp. 18-19). Notably, it seems that dictionary definitions in different languages bring no clarification as to the distinctions between ethnic groups and nations except for the level of their political organization, which for nations is the state (Bauman 1999, p. 31). If this description of minorities were agreed, the entire system of nation-states we know now would be put under a big question mark. As we can see, the only apparent difference between nations and national minorities is statehood and this poses interesting problems to the idea of self-determination and national sovereignty. It is interesting that external self-determination is seen as the basis of group rights for independent nations, when in fact it is more a consequence of independence. On the other hand, in the absence of definitions and of an acknowledgement of the nature of group rights the status-quo remains relatively untroubled. Sovereignty, however elastic, remains an important line for demarcating a large range of issues in global politics.

Sovereignty issues were first raised by the recognition that individuals possess rights which overflow national borders both through the establishment of regional (for instance the European Convention or the Inter-American systems) and international (the procedure of individual communication under the First Optional Protocol to the ICCPR) mechanisms of judicial or quasi-judicial enforcement of human rights, and through the norm of humanitarian intervention.

Secondly, minority rights made room for a reconsideration of the principle of sovereignty primarily for international security concerns. These concerns envisaged not only the possibility of inter-ethnic wars and of intervention of an international organization to protect a minority group, but also the possibility of involvement of the kin-state of the respective minority (Vizi 2002, p. 43). Internal ethnic conflicts risk not remaining internal and producing a spill-over

effect, but the idea of international security risks is an elastic one and is used for political purposes (sometimes a conflict is an international problem, sometimes it's an internal affair). To give just an example of the malleability of concepts, the beginning of the 1990s with the inter-ethnic conflicts in Europe led to a temporary re-interpretation of self-determination, sovereignty and statehood. On the one hand the international community gave way to the recognition of a right to secession in the case of the former Yugoslav republics of Croatia, Slovenia, Bosnia and Macedonia (Kovacs 2003, p. 434). On the other hand however, in dealing with the situations in Kosovo or Chechnya among others the same principle did not apply. But even in the absence of conflict, the idea of separate nationhood inside a sovereign state may constitute a serious challenge to the world-order. Minority rights and other concepts are thus constructed in such a way as to respond to the existent or desired characteristics of the international state-system.

### Minority rights as individual rights

While group rights for minorities remain somehow a taboo for international law, the rights of persons belonging to minority groups are internationally recognized. This individualistic picture of minority rights takes the form of two protection models: the first one is the anti-discrimination model and the second is the positive action model. The former presupposes the neutrality of the state in relation to its citizens and the equality of rights. The latter requires the involvement of the state in protecting and promoting minority identities.

The principle of non-discrimination touches every aspect of human rights law and thus it falls under the monitoring mechanisms established under different UN bodies. There are also several conventions regarding the principle of non-discrimination and usually this provision is attached to the enjoyment of every recognized human right. The problem of discrimination is seen as one affecting individuals, as a result to their belonging to a certain category or group, but not as one possibly affecting groups as such. As Natan Glazer observes the issue is one of making justice for individuals, rather than for groups (Glazer 2000, p. 124). As for the second model, interpretations of recognition and positive action are more complicated. Some of these interpretations are dealt with in the following section.

Article 27 of the ICCPR is considered to be a major step in the protection of minorities, probably because it is the first to deal directly with this issue, but also because it shows that minority problems are of legitimate international concern and need to be considered as such. However, when analyzing the individualistic wording of this article it may seem superfluous to guarantee rights that are already contained in other articles of the Covenant. Although this article frames minority rights as individual rights – the persons belonging to minorities have rights, not minorities as such – it also points to the importance of group identity. This is an obvious progress from the Genocide Convention which only envisaged a right to existence (Thornberry 1992, p. 141). Moreover, despite the implicit negation of group rights for minorities, article 27 makes the object of the individual communication procedure established under the First

Optional Protocol and thus, through the affirmation of individual rights, minority rights can permeate the system of international protection. On the other hand, article 1 (self-determination) of the same Covenant can not make the object of this procedure and no group can claim a violation of their right to self-determination (Verstichel 2005, p. 27).

Furthermore, the 1992 UN Declaration on Minorities brings no new developments on the conception of minority rights. As seen from the title minority rights are still to be understood in terms of individual rights. The only article that mentions minorities without attaching an individualistic sense is article 1, but it gives no definition of minorities and thus increases the ambiguity surrounding the application of these rights. The element of innovation is that it establishes positive rights and obligations upon states to ensure the enjoyment of rights by the members of minorities. Article 4 makes reference to the possibility of enjoying minority rights both individually and in community with others, but this is far from recognizing any group right. It should be noted that article 8(4) of the declaration reassures states of the primacy of sovereignty and related principles. On the other hand, by doing that it implicitly acknowledges the need to contemplate the idea of group rights for minorities and the danger it may pose to the existing order of sovereign states. While the Declaration lists very important rights and somehow brings them to the mainstream human rights, it didn't produce any development to the traditional understanding of minority rights. Minority rights are constructed as a special category of individual rights.

On the same frame of mind, regional documents are equally cautious in representing minority rights as group rights for the same reasons of preserving a certain political balance. More than that, they make the recognition of minority status conditional upon citizenship of the state of residence. The preference for individual rights as opposed to group rights is often motivated by a concern regarding the proliferation of groups and of their claims that would lead to the 'piracy of minority discourse' by any kind of self-proclaimed group, to inter-minority competition and even to a certain homogenization between minorities (Joppke and Lukes 1999, p. 13). This concern reveals how the definitional indeterminacy creates further problems for decision-makers, but for groups as well. Moreover, it is difficult to separate different characteristics of minorities from their territorial disposition and this is a major challenge for any minority protection regime. In the absence of standards by which to give minorities rights, the existing individual rights system seems safer.

In a nutshell, while constructing minority rights as individual rights may serve for protecting minority groups, as well as for keeping minority rights protection at an acceptable level for states, this does not solve the problem of ethnic conflicts. It is still unsure whether individual rights suffice to prevent massive violations of rights and conflicts from occurring. Furthermore, by constructing minority rights as individual rights the international community seeks to avoid problems of definition and re-ordering of principles so as to preserve the fragile international equilibrium and internal political arrangements. But as far as ethno-cultural conflicts are concerned, 'in the absence of accepted principles,

these conflicts are often decided on the basis of brute power' (Kymlicka 2000, p. 3).

## Final remarks

One last point about minority rights in international politics should touch upon the value of discourse and official documents that regulate the relations between states. Talking about the EU, Andrew Williams explains that it continuously constructs its identity through 'textual projections' and thus becomes a 'print community' (Williams 2003, p. 8). Similarly, other regional and international organizations can be said to affirm their existence mainly through the documents they produce. It is a matter of justifying and legitimating themselves, as well as ensuring their self-preservation. By defining minority rights as individual, rather than group rights, the international community commits itself to a certain notion of the nation-state. It not only constructs minority rights by emphasizing the individual, but in a certain way it re-constructs minority identities by putting them in the context of global politics dominated by the existent state-units. The wording of norms and documents has not only a regulatory meaning, but also an identity-building value and consequences in the sphere of recognition. In the case of minority rights, their framing points more to state affiliation and individual value, rather than group membership.

All in all, the problem of minority rights – which minorities, which rights – is extremely difficult both from a theoretical point of view and a political and practical one. While individual rights adepts see group rights as morally unsustainable and as possible encroachments on a person's human rights, the adepts of group-based perspectives show that there are identities and values that are not based on individuals, but which nevertheless need the protection offered by rights. To a certain extent both categories of rights have an instrumental value: the recognition of individual rights may ensure the protection of minority groups, while the protection of groups may be absolutely necessary for human rights to be respected. As seen in recent cases of ethnic or religious conflicts, such as those in Yugoslavia, Chechnya, Palestine etc., by not granting rights to groups, individuals find their human rights violated. However this is not an answer to the question whether minority rights are group rights and whether they should be recognized as such.

What this article has tried to show is that the problem of minority rights is dealt within international documents from an individual rights perspective and that the indeterminacy of minority status serves particular political interests. Minority rights are constructed by international norms not to exceed the already heavily contested framework of human rights. Considerations of sovereignty, territorial inviolability, self-determination of (existing and recognized) peoples are still taking precedence in world politics. But the very fact that minority rights have penetrated international politics and the discourse on rights demonstrates the importance they retain both for safeguarding rights and for preventing conflicts. Taking into account all the difficulties raised by the recognition and application of minority rights, recognizing and responding to

minority claims should be a matter of balancing between individual and group-based approaches.

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