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SOLIDARITY RIGHTS: UNIVERSALITY AND DIVERSITIES (PRAVA SOLIDARNOSTI: UNIVERZALNOST I RAZLIČITOST)

Sažetak – Rad se bavi pitanjem i razvojem kolektivnih ljudskih prava. Tokom vekova, teorije ljudskih prava i osnovnih sloboda bile su zasnovane na ideji da su uživaoci ovih prava i sloboda pojedinci. Tako da je dosta dugo ključna ideja teorije o ljudskim pravima bila centralnost ljudskog dostojanstva i dobrobit pojedinca. U isto vreme ne smemo zaboraviti da je istorija dokazala da je čovek društveno biće. Zbog toga se javila ideja da se individualna ljudska prava mogu ograničiti kolektivnim interesima. Ipak, veoma je teško uporediti klasične teorije o ljudskim pravima sa teorijama kolektivnih prava, pošto uživaoci ovih prava nisu pojedinci nego kolektivni subjekti prava. Teoretičari mnogo puta zovu ova kolektivna prava i pravima treće generacije ljudskih prava, posle građanskih i političkih prava, koje čine prvu generaciju i socijalno-ekonomsko-kulturnih prava koje čine drugu generaciju ljudskih prava. Rad daje analizu tih prava koja su sa strane većine autora prihvaćena kao kolektivna prava. Među ostalom, to su prava samoopredeljenja, pravo na postojanje grupa ljudi, zaštite manjina, prava domorodaca, kolektivna kulturna prava, kolektivno pravo za mir i sigurnost, pravo korišćenja prirodnih resursa, pravo na razvoj i napredak. Nakon pojedinačne analize ovih prava, rad posvećuje prostora i za mišljenja po kojima kolektivna prava kao takva ne postoje. I na kraju se rad bavi pitanjem zaštite kolektivnih prava, tj. ko je obavezan da obezbedi zaštitu ovih prava kao u unutrašnjem tako i u međunarodnom pravu.

Ključne reči: ljudska prava (human rights), kolektivna prava (collective rights), prava solidarnosti (solidarity rights)

The opposition between the individual and the community is one of the central themes in the non-Western cultural critic of international human rights.¹ For a

¹ Brems, E.: *Human Rights: Universality and Diversity*, Martinus Nijhoff, The Hague 2001, s. 67.

very long time, theories of human rights and fundamental freedoms provided that their beneficiaries are individual human beings. Under these theories, human beings are entitled to these rights simply by virtue of their humanity, dignity and integrity.² Thus, one of the key features of human rights thinking was the centrality of the dignity and well being of individuals. On the other hand, human beings are „social animals“. Thus, individual human rights have collective interests as legitimate restriction grounds. Moreover, such interests may impose duties on individuals. Some scholars argue that most human rights have a collective aspect.³ Some human rights are intended for the protection of an individual's capacity for relating with others (freedom of expression, freedom of assembly, etc.). In relation to the state's obligation to implement human rights, most of the rights are collective, as they can be implemented by means of general measures only. Some of the human rights are ascribed to special groups of human beings (such as children, women, prisoners, etc.), but still they belong to individual members of the group, rather than to the group itself as a hypothetical entity.

However, solidarity rights are difficult to reconcile with the classical theory, as they are held not by individuals, but by collective subjects („peoples“). They are frequently referred to as „third generation“ rights. Karel Vasak, former director of the Division of Human Rights and Peace of UNESCO, began to use these terms at the end of the 1970s. According to him, following the first generation of negative civil and political rights and the second generation of positive economic, social and cultural rights, a new, third generation of rights received international recognition. These rights are the so-called rights of solidarity as they can be brought through only by joint action of all social actors (individuals, state, public and private entities, and the international community). Using the terminology of the French Revolution of 1789, the first generation of rights implies freedom, the second generation equality, and the third generation (solidarity rights) fraternity.⁴ This model can be considered a simplified expression of a very complicated historical advance. It does not indicate a linear progression in which every generation of rights appears changing the existing one and disappears with the emergence of the next generation of rights. Also, it does not suggest that one generation of rights is more important than another. The three

² Sieghart, P.: *The international law of human rights*, Clarendon Press, Oxford 1995, s. 367; Ayala-Lasso, J.: *The Universality of Human Rights*, in Warner, D. (ed.): *Human Rights and Humanitarian Law. The Quest for Universality*, Martinus Nijhoff, The Hague 1997, s. 93.

³ Brems, E.: *op.cit.* 67.

⁴ *Ibidem*.

generations are implied to be cumulative, overlapping and interdependent.⁵ The „third generation“ rights proposed by Vasek include the right to development, the right to peace, the right to healthy and balanced environment, the property right of the common heritage of the mankind, and the right to humanitarian assistance.⁶

In modern theory, the range and classification of collective rights is not clear-cut. Some commentators distinguish particular rights as such – for example, the right to self-determination, liberation and equality, the right to international peace and security, the right to the use of wealth and resources, the right to development, the right to environment and minority rights.⁷ Others use classifications of collective rights, distinguishing for example:

- „nationalist“ collective rights, that imply the group of rights, which in some respect deal with the existence and cultural or political continuation of groups (e.g. right to self-determination),⁸ and other collective human rights,⁹ or
- collective human rights reflecting demand for a global redistribution of power, wealth, and other important values or capabilities (right to political, economic, social, and cultural self-determination, right to economic and social development, right to participate in and benefit from „the common heritage of the mankind“), and rights suggesting the impotence or inefficiency of the state in certain critical respects (right to peace, right to a healthy and sustainable environment, and right to humanitarian disaster relief).¹⁰ In the following we discuss those rights that are recognized by the majority of commentators.

The principle of „equal rights and self-determination of peoples“ is cited in the United Nation’s Charter (UNCH) art. 1 (2) as a basis for friendly relations among nations. This is also declared as one of the basic principles of the UN.¹¹ Throughout its existence, the UN has undertaken and supported many measures to promote and protect *the right to self-determination*, especially in encouraging and accelerating the grant of independence to colonial countries, trust territories and other non-self-governing territories, 75 of which became independent be-

⁵ Weston, B. H.: *Human Rights the Content of Human Rights: Three Generations of Rights* <<http://www.uichr.org/features/eb/weston4.shtml>>, visited Aug. 14, 2006.

⁶ Brems, E.: *op.cit.* 68.

⁷ Sieghart, P.: *op.cit.* 368.

⁸ Crawford, J.: *The Rights of Peoples: ‘Peoples’ or ‘Governments’?*, in Crawford, J. (ed.): *The Rights of Peoples*, Oxford University Press, Oxford 1988, s. 57.

⁹ Brownlie, I.: *The Rights of Peoples in Modern International Law*, in Crawford, J. (ed.): *The Rights of Peoples*, Oxford University Press, Oxford 1988, s. 124.

¹⁰ Weston, B. H.: *op.cit.*

¹¹ Charter of the United Nations <<http://www1.umn.edu/humanrts/instrree/chapter1.html>>, visited July 20, 2006.

tween the entry into force of the UNCHR in 1945 and the end of 1977. As one of those measures, this right is incorporated into the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Both of these documents (art. 10) identically provide this right:

„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.“¹²

One of the most progressive documents dealing with collective human rights is the 1981 African Charter on Human and Peoples' Rights (ACHPR).¹³ In this Charter the right to self-determination is complemented with the „right to existence“ and the further right to liberation „from the bonds of domination“, meaning for liberation being unrestricted, except for recognition of such „by the international community“.¹⁴ Moreover, the ACHPR declares a right to assistance from the other State Parties in any „liberation struggle against foreign domination“. The right to self-determination under the ICCPR and the ACHPR is absolute and immediate, and non-derogable under any circumstances. Nevertheless, it must be noted that self-determination does not always refer to the right to secede and form an independent state entity but rather to 'internal' self-determination. Reeves is of the opinion that self-determination has been the single most powerful legal concept shaping our world during the last 50 years, at the same time being very strongly affected by economic self-efficiency.¹⁵

The right of a group to existence is generally protected by the prohibition of genocide and apartheid. Article II of the Convention on the Prevention and Punishment of the Crime of Genocide¹⁶ defines genocide as „acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such“. The International Convention on the Suppression and Punishment of the Crime of Apartheid relates the definition of the crime both to acts against individuals and to acts against groups.¹⁷

¹² International Covenant on Civil and Political Rights, UNHCHR <http://www.unhcr.ch/html/menu3/b/a_ccpr.htm>, visited July 20, 2006; International Covenant on Economic, Social and Cultural Rights <http://www.unhcr.ch/html/menu3/b/a_icescr.htm>, visited July 20, 2006.

¹³ African Charter on Human and Peoples' Rights <<http://www1.umn.edu/humanrts/instrum/afchar.htm>>, visited July 21, 2006.

¹⁴ *Ibidem*, art. 20.

¹⁵ Reeves, P.: *The Human Rights of Indigenous People: Tiptoeing Towards Self-determination* in Patman, R. G. (ed.): *Universal Human Rights?*, Palgrave, New York 2000, s. 68-69.

¹⁶ Convention on the Prevention and Punishment of the Crime of Genocide <<http://www.preventgenocide.org/law/convention/text.htm>>, visited July 20, 2006.

¹⁷ International Convention on the Suppression and Punishment of the Crime of Apartheid <<http://www.unhcr.ch/html/menu3/b/11.htm>>, visited July 20, 2006.

The right not to undergo *group-based discrimination*, granted to individuals, is frequently cited as an example of collective rights. This view finds support in many international human rights instruments. The most important example is the International Convention on the Elimination of All Forms of Racial Discrimination.¹⁸ In particular, the state parties under this convention have an obligation „to engage in no act or practice of racial discrimination against persons, groups of persons or institutions“.¹⁹ Even so, since these provisions are formulated as state obligations, rather than as collective or individual human rights, „their result is a recognition of the rights of groups.“²⁰

The protection of minorities, reflecting the needs of minorities and groups as collectives,²¹ is the oldest illustration of collective rights' protection. Since the seventeenth century, international treaties included provisions guaranteeing certain rights to religious minorities. Examples are the Treaty of Westphalia (1648), granting religious rights to Protestants in Germany, the Treaty of Olivia (1660), in favor of Roman Catholics in Livonia, ceded by Poland to Sweden, the Treaty of Ryswick (1697), protecting Catholics in territories ceded by France to Holland, and the 1763 Treaty of Paris between France, Spain and Great Britain, protecting Catholics in Canadian territories ceded by France.²² After the First World War the system of minority rights protection was established by the League of Nations. By means of special provisions in peace treaties this system secured legal equality for individuals belonging to minorities, as well as preservation of the group identity and traditions of minorities.²³ After the Second World War, an individual human rights approach was applied to the protection of minorities. This means, that in the first place, minority rights are secured through the prohibition of group-based discrimination. In the second place, the ICCPR includes a

¹⁸ International Convention on the Elimination of All Forms of Racial Discrimination <http://www.unhcr.ch/html/menu3/b/d_icerd.htm>, visited July 20, 2006.

¹⁹ *Ibidem*, art. 2(a).

²⁰ Brems, E.: *op.cit.* 479.

²¹ Lerner, N.: *Group Rights and Discrimination in International Law*, Martinus Nijhoff, Dordrecht 1991, s. 10.

²² Lerner, *ibid.*, 11-14.

²³ For example, articles 86 and 93 of the Treaty of Versailles of 1919 <<http://www.lib.byu.edu/~rdh/wwi/versailles.html>>, visited July 20, 2006; the Polish-German Upper Silesia Treaty of 1922 not only guaranteed certain rights – including life, liberty, and the free exercise of religion – for all inhabitants, and equal treatment before the law and the same civil and political rights for all nationals, but also the same treatment and security in law and in fact to all linguistic, or ethnic minority groups of nationals; the right of minority groups to establish schools and religious institutions and to use their own language for publications, at public meetings, and before the courts. Binghamton University <<http://history.binghamton.edu/resources/bjoh/PolesAndJews.htm>>, visited July 24, 2006.

special provision on the rights of individuals belonging to minorities serving as a starting point for further international and domestic legislation:

„In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in communities with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.“²⁴

In modern human rights development there is a shift towards collective rights of minorities. However, in many international and domestic human rights instruments these rights are declared together with rights of individual members of minority groups. Examples are the Council of Europe's 1995 Framework Convention for the Protection of National Minorities²⁵, the 1993 Vienna Declaration,²⁶ the 1978 UNESCO Declaration on Race and Racial Prejudice,²⁷ the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities.²⁸

*The rights of indigenous peoples*²⁹ can be considered as a particular minority rights category, as historically the indigenous population was the target of discrimination in many New World countries.³⁰ These rights, compared to minority rights, are more readily recognized as group rights.³¹ For example, the 1994 United Nations Draft Declaration on the Rights of Indigenous People declares

²⁴ Article 27 of the International Covenant on Civil and Political Rights, UNCHR op.cit.

²⁵ Framework Convention for the Protection of National Minorities, Council of Europe <<http://conventions.coe.int/Treaty/EN/Treaties/Html/157.htm>>, visited July 24, 2006.

²⁶ Vienna Declaration and Program of Action, UNHCHR <[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument)>, visited July 24, 2006.

²⁷ Declaration on Race and Racial Prejudice, UNHCHR <http://www.unhchr.ch/html/menu3/b/d_prejud.htm>, visited July 21, 2006.

²⁸ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, UNHCHR <http://www.unhchr.ch/html/menu3/b/d_minori.htm>, visited July 21, 2006.

²⁹ Brems, E.: op.cit. 480.

³⁰ Wallace, R. M. M.: *International Human Rights Text and Materials*, Sweet and Maxwell, London 2001, s. 104.

³¹ E.g.: Federal Law on Territories of Traditional Exploitation of Nature by Indigenous Small Numbered Peoples of North, Siberia, and Far East in Russian Federation of Apr. 4, 2001 <<http://black.inforis.nnov.su/infobase/www.exe/a/90.new/upload.html?doc=77965>>, visited July 24, 2006., ILO Convention nr. 107, on the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (June 26, 1957), declaring the collective rights of indigenous people, such as the right to decide their own priorities for the process of development and to participate in the formulation, implementation and evaluation in national and regional development plans affecting them (article 7 (1)), the right to retain their own customs and traditions (article 8 (2)), the rights of ownership and possession over the lands which they traditionally occupy (article 14 (1)), and the right to the natural resources pertaining to their lands (article 15 (1)) (ILO Convention nr. 107, CWIS <http://www.cwis.org/fwdp/International/ilo_107.txt>, visited July 24, 2006).

for „collective rights“ many of the rights included in the Declaration.³² An exception in this tendency is the Vienna Declaration referring to „the rights of indigenous people“, not peoples.³³ It might be worth mentioning that the indigenous people, in line with international legal instruments, have a right to internal self-determination within the framework of existing states.

The group of the so-called *collective cultural rights* defines an individual's right to take part in the cultural life of the community. This right is recognized in the 1966 UNESCO Declaration on the Principles of International Cultural Co-operation³⁴ and separately protected in ICESCR³⁵ art. 15 (1)(a). The right to profess and practice a religion in a community with others is declared in IC-CPR³⁶ art. 18 (1). Surprisingly, the right to use a language is provided by neither of them.³⁷ The right to the common heritage of mankind is included in the UNESCO Draft Declaration on the Safeguarding of Future Generations of 1997.³⁸ This right is supposed to be more comprehensive than other cultural rights. It provides every individual, in community with others, with the right to share „Earth and space resources, scientific, technical, and other information and progress, and cultural traditions, sites, and monuments.“

The collective *right to peace and security* or „the right to live in peace“ is declared as a right of „every nation and every human being“ in the Declaration on the Preparation of Societies for Life in Peace, adopted by the UN General

³² E.g., the collective right to live in freedom, peace and security as distinct people and full guarantee against genocide or any other act of violence, including the removal of indigenous children from their families and communities under any pretext (article 6); the collective and individual right not to be subjected to ethnocide and cultural genocide (article 7); the collective and individual right to maintain and develop their distinct identities and characteristics (article 8); the right to determine their own citizenship in accordance with their custom and traditions (article 32) etc. (Draft Declaration on the Rights of Indigenous People, USASK <<http://www.usask.ca/nativelaw/ddir.html>>, visited July 24, 2006).

³³ Vienna Declaration article II, 28-29, UNHCHR <[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument)>, visited July 21, 2006.

³⁴ Declaration on the Principles of International Cultural Co-operation, UNESCO <http://www.unesco.org/culture/laws/cooperation/html_eng/page1.shtml>, visited July 21, 2006.

³⁵ International Covenant on Economic, Social, and Cultural Rights, Tufts University <<http://www.tufts.edu/departments/fletcher/multi/texts/BH497.txt>>, visited July 28, 2006.

³⁶ International Covenant on Civil and Political Rights op. cit.

³⁷ However, the European Court of Human Rights has held that the right to education would be meaningless if it did not imply the right to be educated in their national language (judgement of the European Court of Human Rights in *Six Groups of Belgian Citizens v. Belgium*, Council of Europe <<http://www.coe.int/portalT.asp>>, visited Aug. 5, 2006).

³⁸ Draft UNESCO Declaration on Cultural Diversity, UNESCO <<http://unesdoc.unesco.org/images/0012/001234/123405e.pdf>>, visited Aug. 5, 2006.

Assembly in 1978.³⁹ Another declaration on this right, Declaration on the Right of Peoples to Peace, adopted by the UN General Assembly in 1984⁴⁰ declares that the peoples of our planet have a „sacred right to peace“ in its art. 1.

The *right to use of wealth and resources or the right to sovereignty over natural resources* might be described as an economic counterpart of the right to self-determination. There is an opinion that the permanent sovereignty of peoples and nations over their natural resources is a component of the „principle of equal rights and self-determination of peoples“ declared in the UN charter (art. 1).⁴¹ This right is formulated in art. 1 (2) of the ICCPR and the ICESCR as right of peoples to „freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law“. However, these documents limit the right to sovereignty over natural resources by „obligations arising out of international economic cooperation“ and by international law.

One of the most significant collective right – *the right to development*, according to some commentators, is difficult to define as a human right, because it rather „tends to suggest the presence of certain conditions conducive for human rights“. ⁴² The origin of this right is tracked back by some authors to the 1944 Declaration of Philadelphia, adopted by the General Conference of the International Labor Organization, which stated, that „all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual freedom in conditions of freedom and dignity, of economic security and equal opportunity“. ⁴³

The right to development as a human right was launched by Keba M'Baye, that time Chief Justice of Senegal, in his inaugural lecture on that subject to the 1972 study session of the International Institute of Human Rights in Strasbourg. In 1986 the General Assembly adopted the United Nations key document in this field – the Declaration on the Right to Development setting up the right to development as „an unalienable human right“. ⁴⁴ The Vienna Declaration and the Program of Action (art. I/10-11 and II/72-74) describes this right as „a universal

³⁹ Implementation of the Declaration on the Preparation of Societies for Life in Peace, UN <<http://www.un.org/documents/ga/res/42/a42r091.htm>>, visited Aug. 5, 2006.

⁴⁰ Declaration on the Right of Peoples to Peace, UNHCHR <<http://www.unhcr.ch/html/menu3/b/73.htm>>, visited Aug. 5, 2006.

⁴¹ Sieghart, P.: op.cit. 368.

⁴² Wallace, R. M. M.: op.cit. 1.

⁴³ Declaration of Philadelphia, IDHBB <<http://www.idhbb.org/uk-page4.1.htm>>, visited Aug. 5, 2006.

⁴⁴ Declaration on the Right to Development, UNHCHR <<http://www.unhcr.ch/html/menu3/b/74.htm>>, visited Aug. 8, 2006.

and inalienable right and an integral part of fundamental human rights⁴⁵. However, most commentators agree, that this right doesn't really have any enforceable means of implementation, except in the regional ACHPR system.⁴⁶ The right has been discussed broadly in recent years,⁴⁷ partly because the economic circumstances in many countries are such that their inhabitants' rights are violated steadily, and partly because some programs for the economic development of these countries may themselves result in deprivation of human rights.⁴⁸ There is no generally agreed definition of the nature or scope of the right to development in the context of human rights. Many authors agree with the collective nature of this right,⁴⁹ however, the right to development might be considered as being both of collective and individual nature.⁵⁰ The UN Declaration on the Right to Development defines the right to development as right to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be realized.⁵¹ Therefore, this right, besides economic and social dimensions, has cultural and political dimensions as well.⁵²

As individual human right, the right to development represents a kind of combination of all individual human rights or the basis of all other rights. The individual right to development is a right to human flourishing in all spheres of life,⁵³ in other words the individual right of every person to benefit from a developmental policy.⁵⁴ An important element of the right to development as an

⁴⁵ Vienna Declaration: op.cit.

⁴⁶ Alfredson, G.: *The right to Development: perspectives from human rights law*, in Rehof, L. A., Gulmann, C. (ed.): *Human Rights in Domestic Law and Development Assistance Policies of the Nordic Countries*, Martinus Nijhoff, Dordrecht, 1987, s. 84-85.

⁴⁷ See, for example, the 1992 Rio Declaration on Environment and Development, SEDAC <<http://sedac.ciesin.org/pidb/texts/rio.declaration.1992.html>>, visited Aug. 18, 2006; Program of Action of 1994 Cairo Conference, UNDP <http://www.undp.am/archive/gender/UN/Coordinator/Cairo/Cairo_1.htm>, visited Aug. 18, 2006; Declaration and the Programme of Action of the World Summit for Social Development (Copenhagen, 1995), Visionoffice <<http://www.visionoffice.com/socdev/wssd.htm>>, visited Aug. 14, 2006; The 1995 Platform of Action of the Beijing World Conference on Women, UNDP <<http://www.undp.org/fwcw/fwcw2.htm>>, visited Aug. 14, 2006.

⁴⁸ Sieghart, P.: op.cit. 401.

⁴⁹ Kunig, P.: *Human Rights Approach to the Right to Development: Merits and Shortcomings*, in Chowdhury, S. R., Denters, E. M. G., de Waart P. J. I. M. (ed.): *The Right to Development in International Law*, Martinus Nijhoff, Dordrecht 1992, s. 84.

⁵⁰ Brems, E.: op.cit. 71.

⁵¹ Declaration on the Right to Development: op.cit.

⁵² Reported in *Development, Human Rights and the Rule of Law*; also UN General Assembly Resolution 32/130 of 16 December 1977.

⁵³ Brems, E.: op.cit. 72.

⁵⁴ Weston, B. H.: op.cit.

individual human right is „active“ political and economical participation.⁵⁵ Article 3 (3) of the Declaration on the Right to Development states, that national development policies must be based on „active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.“ Pursuing these aims, states are obliged to ensure equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income.⁵⁶ It should be noted that the participatory element is essential in other collective rights as well.

As a collective right, the right to development implies full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.⁵⁷ This right is the best example of the double state role with regard to collective rights. Acting as responsible for the promotion and protection of the right to development on national level, states have the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals.⁵⁸ Acting as representatives of nations on the international level states are obliged to take steps, individually and collectively, to formulate international development policies with a view to facilitating the „full realization of the right to development“.⁵⁹

A *collective human right with regard to the environment* is not generally accepted. It is included in the Rio Declaration concluding the 1992 United Nations Conference on Environment and Development⁶⁰ by reference to the right to development. The Vienna Declaration adopted the same position. Article I/11 of the Declaration states that the right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations.⁶¹ In many documents this right was mentioned not as a collective right but among the rights of individuals.⁶² The collective environmental

⁵⁵ Article 2 (1), United Nations Declaration on the Right to Development: op.cit.

⁵⁶ It also says that: „Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices“.

⁵⁷ Art. 1 (2), United Nations Declaration on the Right to Development: op.cit.

⁵⁸ *Ibidem*, art. 2 (3).

⁵⁹ *Ibidem*, art. 4 (1).

⁶⁰ The Rio Declaration on Environment and Development (1992), SEDAC <<http://sedac.ciesin.org/pidb/texts/rio.declaration.1992.html>>, visited Aug. 5, 2006.

⁶¹ Vienna Declaration: op.cit.

⁶² E.g., Commission on Human Rights Resolution 1999/23, „Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights“, article 4., UN <<http://www.un.org/documents/ecosoc/dec/1998/edec1998-242.htm>>, visited Aug. 5, 2006.

right is provided by the 1981 African Charter on Human and Peoples' Rights in the following formulation: „All peoples shall have the right to a general satisfactory environment favorable to their development“ (art. 24).⁶³

The *right to humanitarian assistance* is described in the guiding principles for the strengthening of the coordination of humanitarian emergency assistance of the United Nations as having cardinal importance for the victims of natural disasters and other emergencies.⁶⁴ However, there is no mechanism to enforce this right at the international level (except for the ACHPR).

We could see that there are many collective rights declared in international and regional human rights instruments and recognized by the international community. However, some commentators suggest that the status of collective rights as international human rights standards still remains ambiguous.⁶⁵ On the reason that „people“ cannot consist of anything more than the individuals who make it up, collective human rights are viewed as a non-existing concept and considered as rights of all individual human beings.⁶⁶ Many authors consider these rights to be too vague to be justifiable, and nothing more than slogans promoting goals of the United Nations that are sometimes even used for propaganda purposes in some countries.⁶⁷ Besides, the skeptical attitude towards collective rights is largely based on supposed impossibility of enforcement of collective rights.⁶⁸ The current trend in the international human rights law and theory shows weakness of these views.⁶⁹ Moreover, many authors agree that the traditional system of individual human rights combined with non-discrimination provisions is not sufficient for the protection of the rights of individuals as group members.⁷⁰

Nonetheless, there is widespread opinion that indiscriminate recognition of numerous demands or values as human rights would weaken the idea of human rights in general.⁷¹ However, the inclusion of collective rights, like the right to political determination and the right to sovereignty over natural resources, into the two fundamental universal human rights instruments over thirty years

⁶³ African Charter on Human and Peoples' Rights: op.cit.

⁶⁴ See, e.g., General Assembly RES/45/100 of 14 December 1990, UN <<http://www.un.org/documents/ga/res/45/a45r100.htm>>, visited Aug. 5, 2006.

⁶⁵ Weston, B. H.: op.cit.

⁶⁶ Donnelly, J.: *Human rights and collective rights*, in Berting J.: *Human Rights in a Pluralist World. Individuals and Collectives*, Meckler, Westport 1990, s. 43.

⁶⁷ Lillich, R. B., Hannum, H.: *International Human Rights Problems of Law, Policy and Practice*, Little, Boston 1995, s. 201.

⁶⁸ Id. 204.

⁶⁹ „Unqualified resistance to the idea of collective human rights is not very productive for the pragmatic reason that such rights already exist.“ (Brems, E.: op.cit. 73.).

⁷⁰ Donnelly, J.: *Third Generation Rights*, in Brölmann, C., Lefeber, R., Zieck, M. (ed.): *Peoples and Minorities in International Law*, Martinus Nijhoff, Dordrecht 1993, s. 91.

⁷¹ Lillich, R. B., Hannum, H.: op.cit. 201.

ago has not ruined individual human rights.⁷² In the same way, many authors are afraid of possible underestimation of individual rights in favor of collective rights. This idea is supported by the fact that the worst violations of individual human rights occurred in the name of an „inspiring abstraction“, such as „the one true faith“, „the nation“, „the state“, etc. The term „people“ is an abstraction as well. As a result, grave abuses of individual human rights might occur under „legitimizing“ label of collective interest, if any of the individual rights and freedoms protected by modern international human rights law will be ever regarded as in some sense inferior to peoples' rights.⁷³ On the other hand, there is a view that „peoples are above all people“⁷⁴, and that consequently such order has its advantages as well. According to the latter approach the main function of collective rights is still their benefit to the individual. Groups have no ultimate or necessary value, but they are a way in which individuals achieve various ends, which are necessary or desirable (in particular the good of community and the fulfillment of certain human capacities and attributes which are best fulfilled in community).⁷⁵ There is an opinion, that recognition of collective rights as human rights is meaningful as far as specific collective goods are essential for human self-realization.⁷⁶

At all events, collective human rights are considered as an important component of the protection of individual human rights, as, for example, wars and local armed conflicts are clearly the most significant causes of violations of individual human rights. The collective character of the first rights is justified from the insider perspective of the suffering individuals, who frequently experience their suffering as group suffering.⁷⁷ Furthermore, since 1945 the objects for many serious human rights violations were ethnic groups as such. Therefore, as the injustice is upheld by hostile attitude towards groups, the solution requires the promotion of the dignity of groups.⁷⁸

Another issue is securing these rights. It is not difficult to identify the entities whose duty is to respect and secure rights of individuals (the state, its government, or other public authorities). This obligation is imposed on those who have

⁷² Brems, E.: op.cit. 73.

⁷³ Sieghart, P.: op.cit. 368.

⁷⁴ Kamenka, E.: *Human Rights, Peoples' Rights*, in Crawford, J. (ed.): *The Rights of Peoples*, Oxford University Press, Oxford 1988, s.133.

⁷⁵ Crawford, J.: op.cit. 167.

⁷⁶ Jones, P.: *Human Rights, Group Rights, and Peoples' Rights*, *Human Rights Quarterly*, 2/1990, s. 86-88.

⁷⁷ Felice, W. F.: *The Case for Collective Human Rights: the Reality of Group Suffering*, *Ethics and International Affairs*, 1996, s. 48.

⁷⁸ Freeman, M.: *Are there Collective Human Rights?* in Beetham, D. (ed.): *Politics and Human Rights*, Blackwell Publishing, New Jersey 1995, s. 32-33., Donnelly, J.: (1993) s. 92.

it in their power. At the same time, it is not clear who is in power to ensure for people collective rights (like the right to dispose of the natural wealth and resources). In Karel Vasek's view solidarity rights are rights with undetermined subjects and opposing to all centers of power.⁷⁹ That power can be spread very thinly over other states, public and private, national and international bodies, and many individuals. The right to peace, the right to a healthy environment and similar rights can be considered as rights typical for a group of people (and of the whole human race).

The possible solution could be to regard a state as responsible before it's population for performing in it's competence the duties imposed by collective rights' obligations, and as a representative of it's population in protecting these rights on the international level,⁸⁰ bearing in mind that these are primarily governments who have to take the prime responsibility for promotion and protection of human rights.⁸¹

Some commentators consider collective rights as a result of both the rise and the decline of the nation-state in the second half of the 20th century.⁸² In this case, collective rights are understood as reflecting the emergence of Third World nationalism and its „revolution of rising expectations“ (i.e., its demand for a global redistribution of power, wealth, and other important values or capabilities) and suggesting the impotence or inefficiency of the nation-state in certain critical respects.⁸³

Considering the role of states with regard to collective rights, some writers „distrust“ collective rights, since states might interpret them as state's rights widening the area for individual rights abuses. However, states violate the rights of collectives in the same way as they violate the rights of individuals. They also promote the rights of collectives as they promote the rights of individuals. Therefore, collective rights have to be opposable to the states in the same manner as individual rights. Considering the nature of collective rights, some of them have to be, and are able to oppose foreign states and the international community as well. The latter characteristic demonstrates an unarguable advantage of collective rights before individual rights.⁸⁴

Collective rights are traditionally given more attention to in non-Western societies, where the communal dimension is more important for an individual's well being than in Western societies. The interest of the group is automatically in the

⁷⁹ Brems, E.: op.cit. 74.

⁸⁰ Brems, *ibid.*, 485.

⁸¹ Ayala-Lasso, J.: op.cit. 94.

⁸² Weston, B. H.: op.cit.

⁸³ *Ibidem.*

⁸⁴ Donnely, J.: (1993) s. 72-73.

individual's interest.⁸⁵ For this reason international human rights frequently undergo critique in non-Western countries, since the conflict between the individual and the community is the base of the human rights law originated in Western countries. The promotion of collective human rights expresses the efforts of non-Western governments to assert their values at the international level. The 1976 Universal Declaration of the Rights of Peoples adopted in Algiers may serve as an example of this tendency. The so-called collective „Third Worldist“ and „Globalist“ approaches⁸⁶ to collective human rights are based upon the non-Western way of thinking, and they similarly perceive these rights as a proper response to the globalization and the unconditional control of Western countries over the international politics.

In this way some commentators challenge the universality of collective rights on the ground that some groups of peoples do not need them at all. Although possibly true with regard to minority and indigenous peoples' rights, this argument is void concerning other collective rights attributed to all people. For example, peoples from rich countries enjoy a right to development on an equal base with people from poor ones. However, the protection of the first's right does not require any action. In the same way providing for special rights to children or women doesn't violate their universality. Eva Brems argues that human rights can be stipulated on behalf of certain categories of individuals or groups as long as these same rights are not denied to others.⁸⁷

It seems that arguments against collective rights are often based on the fact that many people are less sympathetic to the rights of others as a group, especially, when that group is perceived as very different.⁸⁸ The international collective human rights' concept is still in process of development, and we may say the same about many of international human rights. However, such a view is particularly true with regard to this group of rights. The potential of collective rights is great, and the view that „individual human rights [...] are a safer and probably more effective course to pursue human rights“⁸⁹ will probably change. Collective human rights are recognized and protected in many of international human rights documents. There is a large academic interest to the topic as well, especially in connection with the globalization issues. And, although there is a role for international human rights instruments, they in themselves will not free the world of human rights violations.⁹⁰

⁸⁵ Brems, E.: *op.cit.* 67.

⁸⁶ Brems, *ibid.*, 70.

⁸⁷ Brems, *ibid.*, 71.

⁸⁸ Donnelly, J.: (1993) s. 149.

⁸⁹ *Ibidem.*

⁹⁰ Wallace, R. M. M.: *op.cit.* 104.

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SOLIDARITY RIGHTS: UNIVERSALITY AND DIVERSITIES

Summary

This work deals with the issue and development of collective human rights. Throughout the centuries, human rights and fundamental freedoms provided that the beneficiaries of these rights and freedoms are individual human beings. Thus, for long, one of the key features of human rights thinking was the centrality of the dignity and well being of individuals. On the other hand, history has proven that man is a social being. Therefore, individual human rights have collective interests as legitimate restriction grounds. However, the solidarity (collective) rights are difficult to reconcile with the classical theory, as they are held not by individuals, but by collective subjects. These rights are frequently referred to as third generation human rights, after the first generation of negative civil and political rights, and the second generation of positive economic, social and cultural rights. This work analyses the third generation of human rights, the so-called solidarity rights. Among others, these are the right to self-determination, the right of a group existence, the rights of indigenous peoples, protection of minorities, collective cultural rights, etc. Following this, the work looks at opinions that question the existence of such rights.

Key words: *human rights, collective rights, solidarity rights*