12P
XIE



澳門大學

UNIVERSIDADE DE MACAU

MASTER THESIS OF FACULTY OF LAW

UNIVERSITY OF MACAU

Faculty of Law

Master of Law Thesis

Protection of Minority Rights: Issues and Challenges in International Law and Chinese Law

By

XIE YANGWEI (M-A8-6136-1)

Supervisor: Prof. Muruga Perumal Ramaswamy

A thesis submitted in partial fulfillment of the requirements for the degree of Master of International Law at the University of Macau

May 2010

Table of Contents

Chapter 1 Introduction **12**

1.1 Opening Remarks 12
1.2 Literature review 13
1.3 Major Objectives 16
1.4 Research Questions. 17
1.5 Methodology 17
1.6 Scope and Limitation 18
1.7 Chapter Layout 19

Chapter 2 Issues and Challenges of Minority Rights Protection in International Law **21**

2.1 Definition of Minority in International Law 21
2.1.1 Definitions of Minority Attempted by International Organizations and Scholars 22
2.1.1.1 Permanent Court of International Justice 22
2.1.1.2 Sub-Commission on Prevention of Discrimination and Protection of Minorities 23
2.1.1.3 Francesco Capotorti 25
2.1.1.4 Jules Deschênes 27
2.1.1.5 Other Attempted Definitions 28
2.1.2 Minority and the Relevant Groups 29
2.1.2.1 Minority and Indigenous Populations 30
2.1.2.2 Minority and National Minorities 32
2.1.3 Objective and Subjective Elements of Defining Characteristics of a Minority 35
2.1.3.1 Objective Elements 36
2.1.3.2 Subjective Elements 42
2.1.3.3 Relationship between Subjective and Objective Elements 45
2.2 Contents of Minority Rights 46
2.2.1 Right to Religious, Cultural and Linguistic Autonomy 46
2.2.1.1 Enjoy the Cultural Rights 46
2.2.1.2 Freedom of Religion 48
2.2.1.3 Rights of Using Their Own Languages 51
2.2.2 Right to Participate Effectively in Public Life 52
2.2.2.1 Right to Participate in Social, Political, Economic, Cultural and Religious Life 53
2.2.2.2 Right to Participate Effectively in Decisions on the National and Regional Level 54

2.2.2.3 Right to Participate Fully in the Economic Progress and Development in Their Country 55
2.2.3 Right to Contact Freely and Peacefully 57
2.2.4 Obligations of States 58
2.2.4.1 Negative Obligations 58
2.2.4.2 Positive Obligations 61
2.3 Challenge of Minority Rights Implementation 66
2.3.1 Situation of Minority Rights Implementation in International Law 66
2.3.1.1 The League of Nations Period 67
2.3.1.2 after the World War II 70
2.3.2 The Way of Minority Rights Implementation 71
2.3.2.1 States Party Periodical Reporting 72
2.3.2.2 Inter-State Complaints Procedure 75
2.3.2.3. Individual Complaints Procedure 78
2.4 Balance between Majority Rule and Minority Rights 81
2.4.1 Theoretical Basis of Balancing between Minority Rights and Majority Rule 81
2.4.2 The Way of Balancing between Minority Rights and Majority Rule 84

Chapter 3 International Legal Regime on Minority Rights Protection 87

3.1 Major International Instruments on Minority Rights Protection 87
3.1.1 Definition of Minority 87
3.1.2 Contents of Minority Rights 91
3.1.2.1 Minority Rights of Culture 91
3.1.2.2 Minority Rights of Education 96
3.1.2.3 Minority Rights of Language 100
3.1.2.4 Minority Rights of Religion 102
3.1.2.5 Minority Rights to Effective Participation 104
3.1.2.6 Other Minority Rights 107
3.1.3 Implementation of Minority Right 108
3.1.3.1 State Parties Periodical Reporting 108
3.1.3.2 Inter-State Complaints Procedure 111
3.1.3.3 Individual Complaints Procedure 114
3.2 Non-State Organizations International Legal Instruments and Policies on Minority rights Protection 117

Chapter 4 Issues and Challenges of Minority Rights Protection in China 122

4.1. The History of Complex Ethnic Relations in China 123
4.2. Definition of Minorities in China 130
4.2.1"Nationality" and "Ethnic Group" 132

4.2.2"Assimilation" and "Integration" 133
4.2.3"Han Chinese" and "Chinese Minority" 134
4.2.4"Class Struggle" and "Nationality Equality" 134
4.3 Contents of Minority Rights in China 135
4.3.1 Equal Rights of Minority Nationalities 135
4.3.2 Special Rights of Minority Nationalities 137
4.3.2.1 Right to Participate in Administering National Affairs 137
4.3.2.2 Autonomy Right to Administer Regional Affairs 138
4.3.2.3 Right to Protect the Freedom of Religion 140
4.3.2.4 Rights to Use and Develop National Minority Languages 140
4.3.2.5 Right to Maintain Manners and Customs 141
4.3.2.6 Right to Inherit and Carry Forward the Traditional Culture 142
4.4 Challenge of Implementation of Minority Rights Protection in China 142
4.4.1 An Overview of Minority Rights Implementation in China 142
4.4.2 Obstacles of Minority Rights Implementation 143
4.4.2.1 Diversity and Complexity of Minority Nationality 143
4.4.2.2 Identification of 'Nationality' 145
4.4.2.3 Goal of Stability and Emphasis on Development 146
4.4.3 Challenge of Improving Minority Rights Implementation in China 148
4.4.3.1 Expand the 'National Minority' and Introduce the 'Minority' 148
4.4.3.2 Establish a Legal System of Minority Rights Protection in China 149
4.4.3.3 Fully Protect the Rights of Scattering Ethnic Minorities 150

Chapter 5 Major Legal Instruments and Polices on Minority Rights in China 152

5.1 Major Domestic Legal Instruments 152
5.1.1. Constitution of the People's Republic of China 152
5.1.2. The Law of the People's Republic of China on Regional National Autonomy 157
5.2 Other Major Policies and Regulations of Autonomous National Regions on National Minority Rights 161
5.2.1 Policies and Regulations of Autonomous National Regions on National Minority Rights of Religion 161
5.2.2 Policies and Regulations of Autonomous National Regions on Minority Rights of Education 166
5.2.3 Policies and Regulations of Autonomous National Regions on Minority Rights of Political Participation 169
5.2.4 Policies and Regulations of Autonomous National Regions on Minority Economic Rights 171

Chapter 6 Conclusion 175

Bibliography 184