Summary

Obligations to Protect in International Law – Doctrinal Reflections

A Contribution to Basis, Content and Limits of the Doctrine of Obligations to Protect under International Human Rights Conventions

In their "traditional" role, conventionally granted human rights are fundamental rights that protect the individual from the interference with their human rights by actions of state agents or actions attributable to a state. Thus, fundamental rights constitute defence rights against states ("Abwehrrechte") that occur in bi-polar constellations between victim and a responsible state. Accordingly, fundamental rights within the European Convention on Human Rights (ECHR), the International Covenant on Civil and Political Rights (ICCPR) and the Inter-American Convention on Human Rights (ACHR) are formulated in a "defensive" enunciation.

However, the recent past in public international law has shown that this dimension of conventionally granted human rights leaves gaps of legal protection in cases in which individual rights are infringed by non-state actors or in situations not imputable to a state, i. e. situations in which a three-pole-constellation occurs (victim-state under the duty to protect and a non-stately cause, "Schutzpflichtkonstellationen"). Those are constellations in which another category of rights is needed: fundamental rights in their function as protecting rights ("Schutzrechte").

Rulings of the international tribunals expressed only some years ago the opinion that conventionally granted human rights do not only constitute defence rights but also protecting rights and accordingly grant different obligations of states to protect individual rights ("Schutzpflichten").

The – very few – rulings of the European Court of Human Rights, the UN-Human-Rights-Committee and the Inter-American Court of Hu-

man Rights to date, show that the concept of the dimension of protecting rights was firstly recognised in the eighties.

Each of the aforementioned bodies has its own leading case representing the starting point of the ruling on protection rights ("Spruchpraxis zu den Schutzpflichten"). The case *Young, James und Webster* (1981) was the first one within the European judicature. Within the universal ruling of the UN-Human-Rights-Committee it was presumably the General Comment 6/16 of 1982. The Inter-American Court of Human Rights has shown a first attempt in its View on a state report ("Länderbericht") of 1981, though the beginning of its judicature on protecting rights is commonly seen in the case *Rodriguez vs. Honduras* of 1989. Although this latter case was about the infringement of fundamental defence rights, the court evolved on protecting rights within the ACHR in an orbiter dictum.

Since then, the dimension of conventionally granted protecting rights is a recognised concept in international public law and of growing importance in the international relations. Nevertheless, this concept has not yet been thoroughly addressed, clarified and systematized by international tribunals and courts or by scholars. Instead, the case-law concerning conventionally granted protecting rights is still sparse. In addition, academic work on this subject remains limited and either restricted to the European judicature or cursory and without a dogmatic style. To date, there is no study exclusively dedicated to a *universally* applicable doctrine on conventionally granted protecting rights in international public law.

Hence, his thesis develops a potential *universally* applicable doctrine of conventionally granted protecting rights in international public law for the first time and thereby one way to structure the somewhat disordered practice.

The author presents questions arising within the context of conventionally granted protecting rights and states' obligations to protect, systematises and answers them. The insights have been put in a dogmatic structure.

The work is based on the three currently most important human rights conventions in public international law (ECHR, ICCPR and ACHR) and the rulings of their bodies – acknowledging that protecting rights at present only result from the source of law "law of treaties".