

SUMMARY

Status and Role of New Human Rights in International Law

This diploma thesis compares three methods which have been used so far in the creation of new human rights in international law.

The first chapter establishes the theory of the creation of new human rights in international law. It is claimed that all new human rights have been created by one of the following three methods: the adoption of an international treaty; the interpretation of an international treaty; or the adoption of a declaration.

The second chapter provides definitions of a notion of human rights and determines a notion of new human rights as those rights which are not expressed in the International Bill of Human Rights. The distinction of human rights by generations is rejected.

The third chapter summarizes the sources of international human rights law, which are international treaties, international custom and general principles of international law. Further, the third chapter shows the significance of peremptory norms and soft law instruments for international human rights.

The fourth chapter deals with the first method of creating new human rights, i.e. adoption of international treaty. This method is presented through the Convention on the Rights of Persons with Disabilities and the right to live in community. The formulation and adoption of this treaty was accompanied by an assurance that no new human rights were being created and that no norms established in this treaty will be applied to other groups of people.

The fifth chapter focuses on the interpretation method. The claim is made that the right to water was created through the interpretation of the Covenant on Economic, Social and Cultural rights by General Comment No. 15 of the Committee on Economic, Social and Cultural rights. Human rights established by this method have faced criticism from State Parties based on a lack of legitimacy of the Committee's interpretative function and its non-application of international rules of interpretation.

The sixth chapter presents the right to development as an example of a new human right which has been recognized through a legally non-binding instrument, such as a declaration of the United Nations' General Assembly. The right to development is criticized mostly for the indeterminacy of its content, including duty-bearers and right-holders.

The last chapter examines these three methods and compares them on the grounds of legal force, content, process and jurisdiction. Each method deals with different issues, none

prevails above the others.

The conclusion contains the assessment that each method provides an useful tool for the creation of new human rights. Which method is the most suitable depends on the features of the potential human right.