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The UN and the Protection of Minorities[1]

The Legal Character of International Regulations Concerning Minorities

International norms that prohibit the discrimination of minorities and norms that promote minority rights are the two types of international regulations concerning minorities. From these two, international regulations that deal with various forms of discrimination contain more specific obligations for the states.

The following definition is a good illustration of the legal character of the other field of regulation, that is, the regulation safeguarding the international protection of minorities (even if this might not be true for the whole body of international law): "International law is a body made up of uncertain rules, [which is worthy] of the attention of political scientists and good for the entertainment of law students, who otherwise are not too interested in law."[2] Almost all laws dedicated to the safeguarding of the special protection of minorities can be classified in the category of 'soft law'. The concept of soft law denotes a phenomenon that many consider to be subordinate to law, since in this case the legislator fails to provide for the enforceability of a given legal norm. (At the same time, there are others who believe that law is either binding or non-existent.) Legally non-binding resolutions of international organisations belong here, together with those otherwise binding resolutions that have vague normative contents or can be freely interpreted.[3] It stems from the legal nature of international documents that safeguard the protection of minorities that, in contrast to the regulations concerning the prohibition of discrimination, they usually do not allow for the international sanctioning of the rights they established.

Those, who expect a satisfying resolution of problems concerning minorities from international law, might take heart from the remark of Gábor Kardos on the internal and international development of human rights: "At the beginning – there was declaration!"[4] The author points out that at first national legal systems set forth human rights in this form (e.g. the Declaration of the Rights of Man and the Citizen or the Virginia Declaration of Rights), and the international protection of

[1] The study was prepared in the framework of legal research project No. 5/014 of the National Research and Development Program.

[2] Kardos, Gábor: *Emberi Jogok egy új korszak határán* [Human Rights on the Verge of a New Era]. Budapest, 1995. 41.

[3] See in connection to this: Kardos, Gábor: *Mi is az a nemzetközi soft law*? [What is International Soft Law?] or Nagy, Károly: Soft Law jellegű szabályok Magyarország kisebbségi rendelkezéseket tartalmazó kétoldalú szerződéseiben [Soft Law-like Regulations in the Bilateral Treaties of Hungary that Include Provisions on Minorities]. In: *Acta Juridica et politica,* Szeged, 2000.

[4] Kardos, Gábor: *Emberi Jogok egy új korszak határán* [Human Rights on the Verge of a New Era]. Budapest, 1995. 151.

minority rights started out with a declaration as well (the UN Universal Declaration of Human Rights). These declarations were then followed by legally binding documents. No matter how promising this trend may look for those who belong to a minority, there are also examples in international law to other human rights, in the case of which no legally binding documents have followed the "soft law" type of legislation, even though these documents could have been adopted in the decades since the introduction of the regulations. The need for regulation is nonetheless constantly present in this field, and states and international organisations have adopted several documents concerning the protection of minorities.

The fact that documents appeared in support of minorities at all indicates the development of an international consensus that "recognises the particular needs of minorities, together with the obligations concerning their security, identity, and the protection of their lifestyle."[5] At the same time, the European Court of Human Rights remarked with respect to this consensus that it has not become so specific as to have implications on "norms or rules of behaviour desirable in a certain situation."[6]

Furthermore, 'soft law' types of formulations appear not only in international law but, enthused by this international example, certain national legal systems are keen to use similar formulations as well. Hungary's Law on National and Ethnic Minorities, for example, reminds one of the framework documents of international law not only because it is, in fact, a framework document, but also because the legislator often does not stipulate the implementation of the legal norms. (The Hungarian legislator adopted the Status Law, which it declaredly considered a part of the international regulation of minority protection, as a framework document. It declared only principles, while its implementation and its filling up with legal contents were left to regulations that were to be adopted later on.) Besides the Hungarian example, we can find similar soft legal formulations in the legal system of other countries as well. The Law on Czech Television and Radio obliges the electronic media to take part in the formation of Czech identity, as well as the reinforcement of the identity of national and ethnic minorities. The Polish law does not demand anything else from the public media than to take the demands of national minorities and ethnic group into consideration.[7]

Antecedents

The Protection of Minorities Under the Aegis of the League of Nations

Conventions on minority protection based on international treaties were adopted under the aegis of the League of Nations following WWI. These sought to secure

[5] Chapman v. United Kingdom, European Court of Human Rights judgment on application No. 27238/95 delivered on 18 January 2001, Paragraphs 93 and 94.

[6] Chapman v. United Kingdom, European Court of Human Rights judgment on application No. 27238/95 delivered on 18 January 2001, Paragraphs 93 and 94.

[7] Quoted by the EU Accession Monitoring Program: *Kisebbségek védelme* [Protection of Minorities]. Open Society Institute, 2001. 39.

the new borders of East Central Europe. The established minority protection system composed of regional rules concerning the central and eastern regions of Europe.[8] Its sources included the Minorities Treaties signed by the Allied and Associated Powers and the successor states, the Peace Treaties signed with the defeated states, and the ceremonial Minorities Declarations of the representatives of the new countries in front of the League of Nations. The first treaty to establish such a minority protection system was the treaty signed by the Allied and Associated Powers and Poland on 29 June 1919. Under the treaty, Poland accepted that the obligations concerning minorities meant obligations of international concern, the compliance to which would fall under the supervision of the League of Nations.[9] (From among the new countries, Finland, instead of a declaration, presented a "memorandum" on the rights of minorities, and signed a separated treaty with Sweden on the Ĺland Islands. Under this agreement, the population of the islands, the majority of which was Swedish, was granted territorial autonomy.)

Measures for the protection of minorities included the liberty of using one's mother tongue and the right of maintaining institutions and schools. The signatory countries lifted these provisions to the level of statutes, so the successor, defeated, or new states affected by the regulation could not easily amend them. The thus established legal regulation was under the protection of the League of Nations, and their amendment would have required the consent of the Council of the League. Yet, the provisions drafted in that period included "soft" formulations as well. Consequently, provisions concerning minority education were made dependent on the fact that a given minority had lived in the given territory in *significant numbers*. Moreover, these provisions had to be implemented in a way as to allow for *adequate facilities* in the field of public education.

The Council monitored the observation of the provisions. Although even individuals could report on the violation of minority rights, the Council discussed the issue exclusively when presented by one of its members. The preliminary proceedings took place in front of a committee, during which the accused state, in order to avoid a public hearing, often promised remedy for the offences suffered by minorities. When it was necessary, the opinion of the Permanent Court of International Justice was asked in connection to the controversial legal issue.[10] It was a merit of the system of the protection of minorities that functioned between the two world wars that, at least in theory, it obliged the East Central European states to adopt measures for the protection of minority rights. In practice, all it managed to do was to prevent the countries under this legal regulation from taking openly hostile steps against minorities.

[8] Buza, László: *A kisebbségek jogi helyzete, a békeszerződések és más nemzetközi egyezmények értelmében* [Legal Status of Minorities Under the Peace Treaties and Other International Conventions]. Bp., 1930.

[9] Thomas Buergenthal: *Nemzetközi emberi jogok* [International Human Rights]. Helikon, Budapest, 2001. 20.

[10] See e.g. "Court of International Justice in its Advisory Opinion of 6 April 1935 on minority schools in Albania"; P. C: I. J. Ser. A/B, N 64 (1935)

The UN and the Protection of Minorities

International Conventions to Prohibit the Discrimination of Minorities

The founders of the new world order following 1945 believed that the protection of human rights with a universal effect would be a sufficient guarantee for minorities as well. Thus, as opposed to the peace treaties signed following the First World War, from among all the peace treaties signed following the Second World War, only the Italian treaty of 1947 contained provisions concerning a minority, the German national minority of South Tyrol.[11] Following this, however, international documents of binding character were adopted concerning the protection of human rights already in the first years of the UN. These, among other achievements, prohibited various forms of open intervention against minorities.

The **Convention on the Prevention and Punishment of the Crime of Genocide**, which was adopted in 1948 and came into effect in 1951, defined genocide as an act "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group".[12] According to Article 2 of the convention, such actions include: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group. According to the Convention, genocide is a serious violation of the law of the nations because of which even private individuals can be punished. (The violation of international law usually makes governments and not the individuals responsible for the damages.) Under the rules concerning the implementation of the convention, the persons charged with genocide are to be tried "by a competent tribunal of the State in the territory of which the act was committed." This is possible, however, in democratic states founded on the rule of law only, where it is rather dubitable that a state authority would commit genocide and then another state organ would sanction this act. In spite of this, opinions were put forth in scientific literature, according to which the principle of universal jurisdiction should be applied in the case of genocide, which would authorise the tribunals of every state to punish those who commit these crimes.[13]

[11] The General Assembly of the UN adopted a resolution in 1960 and 1961 that called upon the parties to settle the issue by way of negotiations. Thereafter negotiations began, which bear results in 1992.

[12] Law Decree 16 of 1955 concerning the Prevention and Punishment of the Crime of Genocide on the Promulgation of the Convention on the Prevention and Punishment of the Crime of Genocide signed on 9 December 1948. (The Hungarian People's Republic deposited its instrument of ratification with the Secretary-General of the United Nations on 7 January 1952.)

[13] Buergenthal op. cit. 59.

The convention raises the possibility of trying persons charged with genocide by an international criminal court, but this court has not yet started its operation.[14]

In 1960, the General Conference of the United Nations Educational, Scientific and Cultural Organization adopted the **Convention against Discrimination in Education**[15] at its 11th Session in Paris. Article 1 of the Convention defines the term discrimination as "any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, that has the purpose or effect of nullifying or impairing equality of treatment in education." Article 5 Point 1/a of the Convention underlines that "education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups." Under the Convention, it is an act of discrimination to inflict on any person or group of persons conditions which are incompatible with the dignity of man. This includes the limiting of any person or group of persons to education of an inferior standard and, in the cases described in the Convention, the establishing or maintaining separate educational systems or institutions for persons or groups of persons.[16]

Under the Convention, "it is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language. (Article 5, Point c)" It adds, however, that this right cannot be exercised in a manner which prejudices national sovereignty, moreover that should the educational policy of a state fail to make it possible, then it is not obliged to allow the teaching of minority language either. The Article does not oblige the states to take positive action. Therefore, the establishment of the conditions of education, if it is compatible with national sovereignty and allowed by the educational policy, is a task of the members of the given minority.

In the framework of the review mechanism of the Convention, the states are to submit periodical reports on the legislative and administrative provisions they have adopted and other action they have taken for the application of the Convention.

The **International Convention on the Elimination of All Forms of Racial Discrimination** was adopted in 1965 and entered into force in 1969. Its Article 1 pro-

[14] In theory the institution was established on 11 April 2002, when the sixtieth state ratified the Statute of Rome. The Hungarian National Assembly disposed of the ratification of the Statute of the International Criminal Court in its resolution 72/2001 (passed on 7 November).

[15] Law Decree 11 of 1964 announced the Convention against Discrimination in Education.

[16] Under the Convention, the term "education refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given".

hibits distinction based "on race, colour, descent, or national or ethnic origin".[17] It defines discrimination as an act "which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

Under the Convention, the states undertake to "declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof." Yet, not even the severe punishment of crimes committed out of racial hatred can serve as a guarantee in societies permeated with prejudices. In Slovakia, for example, the District Court of Bereznó decided that the Roma could not be targets of attacks based on racial prejudice, since, together with the majority society, they belonged to the Indo-European race. (It is another matter that following the appeal by the claimant the court of second instance annulled the previous decision.)[18]

Under the Convention, the states promised to "declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law."

According to Article 7, the "States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups."

The Parties established the Committee on the Elimination of Racial Discriminations (CERD); its eighteen members of different nationality are elected for a term of four years by secret ballot. The Committee is to consider the reports submitted by the states on the legislative, judicial, administrative or other measures which they have adopted. "The Committee shall report annually, through the Secretary General, to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of the reports and information received from the States Parties." The sphere of authority of the Committee extends to the examination of individual complaints should this be approved by a separate declaration by the state in concern.

Up to the present day, the Committee has disapproved of the treatment of the Roma in the case of several countries following the consideration of the reports.

[17] Law Decree 8 of 1969 concerning the announcement of the International Convention on the Elimination of All Forms of Racial Discrimination signed in New York on 21 December 1965. (The Hungarian People's Republic deposited its instrument of ratification in New York on 4 May 1967.)

[18] On the judgement of the court see: Halász, Iván: *A romák jogi helyzete Szlovákiában* [Legal Situation of the Roma in Slovakia]. (Manuscript), Budapest, 2002. 20.

In the case of Spain, it pointed out that although it reported achievements concerning its program that provides assistance to the Roma, the Committee would be interested in the assessment of these achievements as well.[19] The Committee criticised Italy too when it did not take adequately serious steps against the perpetrators of attacks against foreigners of African or Roma origin.[20] According to the findings of the Committee, many Roma who are called nomads by government officials despite the settled lifestyle of their majority, are constrained to live in camps surrounded by walls or a fence, situated far away from the city centre, schools, and public services, and lacking basic hygienic requirements. In the case of Slovenia, the Committee found it disquieting that only groups of the Hungarian and Italian minority enjoyed enhanced legal protection of all the minorities of the country.[21]

According to the **International Covenant on Economic, Social and Cultural Rights**, which was adopted in 1966 and came into effect in 1976, the rights set forth in the document should be "exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." The economic, social and cultural rights included in the Covenant may be important especially for those who belong to the Roma minority, since they, beyond belonging to a minority group, usually belong to the socially disadvantaged groups of European societies. The Covenant sets forth rights such as the right to work, to the enjoyment of just and favourable conditions of work, to social security, to an adequate standard of living, and to the highest attainable standard of physical and mental health. However, not much can be expected from a mere declaration of these rights, since second generation rights are usually not individual rights, that is, they cannot be enforced by means of legal action, and their implementation is in close connection with the capacities of the states. Consequently, the State Parties of the Covenant only commit themselves to ensure the full realisation of these rights gradually, according to their financial capabilities. The implementation of the Covenant is monitored by the Committee on Economic, Social, and Cultural Rights, which pointed out that every state was obliged to ensure that at least the minimum, basic level of all the rights are guaranteed".[22]

The above-mentioned and other, presently not discussed documents reflect, if nothing else, the approach of the UN, according to which the open discrimination

[19] Committee on Elimination of Racial Discrimination takes up of Spain. 8 March 1996, RD/860

[20] Committee on Elimination of Racial Discrimination: Italy. 07604/99 CERD/C/304/Add.68. (Conclusions/Remarks), Paragraph 9.

[21] Conclusions of the Committee on Elimination of Racial Discrimination: Slovenia. 10 August 2000, A/55/18, 237–251.

[22] Buergenthal op. cit. 55.

of minorities is unacceptable in the age of the international protection of human rights. The observation of the prohibition of discrimination is a pillar of the protection of human rights anyway, an obligation with respect to any right that a state has to observe.

UN Documents for the Protection of Minorities

The UN Commission on Human Rights founded the **Sub-Commission on Prevention of Discrimination and Protection of Minorities** in 1947. The 26 members of the Sub-Commission are elected with due regard to equitable geographical distribution and, in theory, they act in their personal capacity, not as representatives of their countries.[23] The Sub-Commission participated in the drafting of documents on the protection of minorities adopted by the UN. In 1999, the Economic and Social Council changed the title of the Sub-Commission to **Sub-Commission on the Promotion and Protection of Human Rights**, which did not make any reference to minorities.

International legal regulation concerning minorities appeared with Article 27 of the **International Covenant on Civil and Political Rights**, adopted in 1966 and in force since 1976. This Article goes beyond the prohibition of discrimination set forth in Article 26 by stating that "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."[24] (The Hungarian decree that ratified the official text used "national" instead of "ethnic".)

By using the adjectives ethnic, religious, and linguistic together, as in this Article, international documents seek to avoid situations when it would be necessary to take a stand on which of these adjectives describes a given minority best.[25] For it would be difficult to find a regulation applicable in the case of every minority. There are many potential methods of regulation in life, which is too variegated to repeat itself. The regulation concerning minorities, exactly because of the differences between the various ethnicities, calls for a dispositive regulation. Another

[23] The composition of the members of the Sub-Commission: 7 African, 5 Asian, 5 Latin American, 3 East European, 6 Western European and other.

[24] Law Decree 8 of 1976 concerning the announcement of the International Covenant on Civil and Political Rights adopted at the 21st Session of the General Assembly of the United Nations on 16 December 1966. (The Council of Ministers of the Hungarian People's Republic deposited its instrument of ratification with the Secretary-General of the United Nations on 17 January 1974. Under its Article 49 Paragraph 1, the Covenant came into force on 23 March 1976.)

[25] In general, international law does not define the concept of minority. However, there exist various drafts for its definition, including the definition of Prof. Capotorti. See on this: Capotorti, F.: *Study on the Rights of Persons Belonging to Ethnic, Religions and Linguistic. Minorities,* UN Doc E/CN.4/Sub. 2/384/Rev.1.

reason why many countries, who otherwise recognise the existence of national minorities, insisted on using these three adjectives together was to avoid the appearance of the adjectives "national" and "nationality" in international regulation. They felt these adjectives to be too close to the concept of the nation[26], which was problematic since nations and peoples have the right to autonomy according to international law. Therefore, these adjectives were substituted with the adjectives ethnic, religious, and linguistic, which seemed safer to use.

Through Article 27, minority law appeared on the level of universal international law. Since this was not followed by universal documents of binding force, this single sentence means the fundamental and framework regulation of the protection of minorities. This provision regards minority rights as individual rights but it refers to the existence of the minority community as well. Yet, despite this reference, neither Article 27 nor the international documents that followed granted rights to minority communities. With due linguistic and legal ingenuity, all documents refer to the individual and joint right of persons who belong to a minority.

The Covenant, as a first generation human rights document, sets forth only "negative commitment" on the part of the state. According to the literal interpretation of this Article, a state, instead of the implementation of positive measures, is only required to tolerate that the persons who belong to a minority enjoy their own culture, to profess and practise their own religion, or use their own language. Accordingly, the state is not obliged to establish minority schools or delegate certain powers of the state to minority organisations. The significance of Article 27 lies in the fact that, through it, a universally binding international document adopted the approach that it was not enough to grant general human rights protection for the persons belonging to a minority; they would have to be endowed with certain additional rights within the framework of the protection of human rights.

The Human Rights Committee is to monitor the implementation of the Covenant. It is responsible for the operation of the reporting system as set forth in the document, and the complaints mechanism between the states and the individual proceedings according to the Optional Protocol. This latter can be instituted against those countries only that endorsed the Protocol. (In general, complaints between states are rare because states often refrain from proceedings against another state, since that would have a negative effect on their bilateral relations.) Under the individual complaints procedure, the committee has dealt with about a dozen cases concerning minorities, most of which ensued because of the violation of rights related to Article 27. In the Lovelace case, for example, the Human Rights Committee emphasised the following aspects that determine one's membership in a minority community: birth, bringing up, ties kept with the

[26] Therefore, the use of the term "national" was avoided even following the commitment to the international protection of minorities. (The right of peoples and nations to autonomy is considered a principle of international law, traced back to the 14 points of Wilson. However, it has not been defined what is to be understood under peoples and nations.)

minority community, and the wish to maintain these ties.[27] (The Human Rights Committee found in the Lovelace case that Canada violated Article 27. The summary of the case is as follows: Lovelace, and Indian woman married a non-Indian and, after the breakdown of her marriage, she could not return to the reservation. Outside the reservation, however, no other place existed where she could have practiced her own culture and used her own language together with other members of her community.)[28]

The Committee has often made it clear that the rights granted by the Covenant had to be granted to all members of the minorities, and that these rights were the due not exclusively of the citizens of a given state.[29] Contrary to this, the majority of the countries, which otherwise recognise the existence of minorities, apply minority rights mostly in the case of citizens who belong to a minority only, without extending their force to foreigners, refugees, and the homeless.[30] This latter approach is all the more problematic, since, under international law, every state has the sovereignty to decide whom to accept as a citizen. According to Georg Brunner, the denying of minority status could thus be criticised under international law only in the case when a state denies it from an "indigenous" ethnic group.[31] (Naturally, in function of its minority policy, a state can freely define what it understands under the term "indigenous".)

Following the Covenant, it took almost twenty years before the next UN document on minority rights, **The Declaration in the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities**, was adopted in 1992.[32] This declaration was the first attempt of the international community at showing its commitment to the protection of minority rights in a separate document. (The Declaration was adopted by the UN General Assembly as a resolution, that is, as a non-binding document.) The Declaration establishes a link between the protection of minorities and the protection of human rights, and emphasises

[27] Quoted by Kardos, Gábor: *Emberi jogok egy új korszak határán* [Human Rights on the Verge of a New Era]. Budapest, 1995. 36.

[28] In the Kitok case, the Committee declared following the examination of a complaint lodged by a member of the Lapp minority that in the cases when the regulation of economic activity is a decisive part of the culture of a community, its application concerning the individual may fall under the scope of Article 27.

[29] This conception reflects the situation outside Europe as well. In Canada, for example, immigrant and not assimilated ethnic groups are considered minorities.

[30] Several EU member states – including France and Greece – have not even recognised the existence of minorities.

[31] See in this respect: Brunner, Georg: Az Európai Unió kisebbségpolitikája és a nemzetállami törvényhozás [Minorities Policy of the European Union and the Legislation of the Nation State]. In: Magyar Jog 2002/3 129–135.

[32] G. A. Resolution 47/135. See the Hungarian text of the document in: Mavi Viktor (ed.): *Nemzetközi okmányok gyűjteménye* [Collection of International Documents]. Emberi Jogok Magyar Központja, 1993. In connection to the Document, see: Phillips, A. – Rosas, A. (eds.): *The UN Minority Rights Declaration*. London, 1993.

the importance of minority protection for the political and social stability of the states. The document recommends that the right of persons belonging to minorities to participate effectively in cultural, religious, social, economic, and public life, moreover their right to maintain contacts across frontiers, and establish their own associations be observed. The Declaration drafts the principle of positive discrimination in a manner typical of 'soft law' documents: states shall take measures to ensure that persons belonging to minorities may exercise fully and effectively the rights laid down in the document, and to create favourable conditions to ensure that these persons can express their characteristics and develop their identity. Other vague 'soft law' type formulations of the Declaration include references to appropriate measures taken to ensure opportunities for instruction in the mother tongue with an eye to the possibilities of the states. It is also up to the states to encourage knowledge and preservation of the history, traditions, language, and culture of the minorities existing within their territory.

Point 3 of Article 2 of the Declaration refers to the right of persons belonging to minorities to autonomy. Accordingly: "Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation." This formulation, however, is nothing more than the recognition of these persons' right to autonomy, once this is granted to them by national legislation. It may also follow from this reference to autonomy that the international community encourages its implementation in practice.

The merit of the Declaration is that we can finally see references to positive actions on the part of the state. According to these, the government is to intervene in the operation of society in certain fields to ensure the protection of minorities.

The activity of the UN Working Group on Minorities is connected to the Declaration. Although it cannot be considered a monitoring body in lack of legal commitments, it is to follow closely the operation of the document, and the national, regional, and universal achievements and problems.[33] The delegates of the states who participate in the work of the Working Group introduce their regulations and measures, while the representatives of minority organisations point out the deficiencies of the regulations.[34] (The Human Rights Commission authorised the establishment of the Working Group on Minorities in 1995 on the recommendation of the Sub-Commission.) The importance f the Working Group lies in the fact that currently it is the only body under the aegis of the UN with the exclusive task of examining the effectiveness of minority rights.

[33] The Working Group on Minorities belongs under the Sub-commission, its five members are chosen from among the members of the Sub-commission.

[34] See on his topic: Böszörményi, Jenő: Az ENSZ Kisebbségi Munkacsoportja [The UN Working Group on Minorities]. In: *Acta Humana* Issues 44-45, 30–43.

In connection to UN documents that safeguard minority rights, it is important to touch upon the **Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries**, adopted by the General Conference of the International Labour Organisation[35] in 1989. (Probably with reference to the right to autonomy, the Convention sets forth that "the use of the term "peoples" in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.") The document points out that "indigenous peoples shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly, moreover that they have the right to participate in the use, management and conservation of the natural resources pertaining to their lands." (The realisation of this latter, however, is up to the states because of the 'soft law' type formulation.)

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The aforementioned international documents concerning the protection of minorities are significant in so far as they reflect the view generally accepted in universal international law that the issues related to minorities need to be dealt with on an international level. Yet, the protection of minority rights under international law continues to exist for the moment on paper only because no actual commitments and effective enforcement system have been realised. Furthermore, the traditional approach to law expects the legislative power not only to adopt legal norms, but also to enforce its will, should this be necessary. Current international regulations aimed at the protection of minorities hardly fulfil this latter requirement.

[35] The International Labour Organisation was founded in 1919 as an associated institution of the League of Nations. The organisation survived the League and, under a convention of 1946, transformed into a UN specialised agency.