

Hundred and seventy-fifth session

175 EX/19
PARIS, 11 October 2006
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**REPORT OF THE COMMITTEE
ON CONVENTIONS AND RECOMMENDATIONS**

1. The Committee on Conventions and Recommendations (CR) examined these items during five public working meetings from 26 to 30 September chaired by Mr Luiz Filipe de Macedo Soares (Brazil). It met on 10 October 2006 to adopt this report. In accordance with Rule 16.2 of the Rules of Procedure of the Executive Board, the Committee on Conventions and Recommendations elected Mr Owen S.M. Bethel (Bahamas) temporary Chairperson.

Item 28 Monitoring of the implementation of UNESCO's standard-setting instruments
(175 EX/27 Parts I and II and Corr. (*in English, Russian and Arabic only*))

2. By way of introduction, the Chairperson of the Committee recalled that, as early as 2001, the Board had noted the weak point in the fulfilment of the Committee's initial task, namely the practice of considering reports entrusted to it on the follow-up of UNESCO standard-setting instruments. In order to strengthen and improve the Committee's initial mandate, the Executive Board decided, at its 171st session in April 2005, to make three requests of the Committee (171 EX/Decision 27): (i) to identify, in conjunction with the Secretariat, the priority recommendations in the list of standard-setting instruments; (ii) to propose new procedures specifically for the monitoring of the implementation of UNESCO conventions and recommendations for which no specific institutional mechanism was provided; and (iii) to formulate harmonized model guidelines for conventions monitored by the Committee. The Chairperson of the Committee pointed out that, at the 174th session, the Committee had initiated discussions on those three points and the Board had requested it to pursue its examination of the first two points at the current session, while the third point would be postponed to the 176th session of the Board.

Identification of UNESCO priority recommendations (175 EX/27 Part I)

3. With regard to Part I, the Chairperson of the Committee stated that, following an increase by the 2003 General Conference in the number of recommendations in respect of which the Committee was required to examine periodic reports, the Board, at its 171st session, had requested the Committee, in cooperation with the Secretariat, to ascertain whether the 31 recommendations, which covered all the sectors of UNESCO, were still relevant and needed to be monitored. In order to help the Committee to sort through the recommendations, the Secretariat, at the Board's last session, submitted document 174 EX/22 Part I, containing a breakdown of the 31 recommendations into various categories according to whether or not they were being monitored. At the conclusion of the debate, the Executive Board requested the Secretariat to pursue the examination of all those instruments and to provide further information, in particular giving reasons for their continued relevance or otherwise.

4. Introducing document 175 EX/27 Part I, the Legal Adviser, representing the Director-General, began by reminding the Committee that, with respect to monitoring the implementation of recommendations, Article VIII of the UNESCO Constitution provided that each Member State should submit to the Organization, at such times and in such manner as determined by the General Conference, reports on the action taken on recommendations, and that the spirit of that constitutional provision was reflected in the preambles to most of the standard-setting instruments. Out of the Organization's 31 recommendations, the Secretariat had listed ten that were still being monitored. According to the answers provided by the programme sectors and by the UNESCO Institute for Statistics (UIS), the remaining 20 or so recommendations were no longer being monitored for the following three reasons:

- some recommendations had been overtaken by the later adoption of a standard-setting instrument dealing with the same subject or by new technological developments;
- some contained principles that were considered to be generally accepted and applied;
- some were being monitored by other organizations by means of surveys.

5. After thanking the Secretariat for the substantial taxonomic work it had started at the last session and had undertaken with a view to facilitating the work of the Committee, the members of the Committee expressed the opinion that priority was to be given only to the recommendations that were currently being monitored and that were listed in paragraph 7 of document 175 EX/27 Part I.

6. With regard to the 21 recommendations that were not being monitored, the Committee took note of their division into three categories based on the reasons why they were not being monitored as stated in paragraph 8 of document 175 EX/27 Part I and mentioned in paragraph 4 *in fine* of the present report, while at the same time stating that they could not be considered to be exhaustive criteria for declaring the Organization's recommendations redundant or not.

7. Recalling that only the General Conference could decide on the future of the recommendations, the Committee consequently decided to request the latter at its next session to entrust to the Board the monitoring of only the 10 recommendations that the Committee had considered to be priorities.

8. Lastly, the members of the Committee felt that if the Secretariat were to update Annex I of document 175 EX/27 Part I concerning recommendations being monitored, the column entitled "Obsolete" should be deleted.

Proposed new procedures specifically for the monitoring of the implementation of UNESCO conventions and recommendations for which no specific institutional mechanism is provided
(175 EX/27 Part II and Corr. (*in English, Russian and Arabic only*))

9. The Chairperson introduced the second part of the item by reminding the members of the Committee that they were required to continue their examination of the proposals summed up in paragraph 46 of the Annex to document 175 EX/27 Part II. Having already considered at the Committee's last session the section concerning the structures responsible for the implementation of monitoring, in respect of which they had decided to maintain the present composition of the Committee, the members of the Committee were required at this session to examine the sections concerning the major monitoring stages and monitoring methods. In that connection, the Chairperson of the Committee stated that the result of the in-depth debate on the question would lead the Board to submit concrete proposals to the General Conference at its 34th session (2007).

10. The Legal Adviser, representing the Director-General, drew the Committee's attention to the fact that the Secretariat, in preparing the document, had taken into account not only the specific features of the Organization, but also the good practices of other international organizations, in particular the International Labour Organization (ILO). In that regard, he pointed out that the provisions of the UNESCO Constitution relating to the follow-up to conventions and recommendations, and those of the Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution were based on existing provisions set out in ILO instruments. He concluded by saying that the proposals contained in the document were talking points that were intended solely to move the Committee's discussions forward.

11. With regard to the section entitled "Major monitoring stages", most of the Committee members stated that they were in favour of the two stages identified by the Secretariat. However, one member expressed reservations about the first stage, particularly promotion of the ratification of conventions, on the grounds that ratification was a sovereign act of States. Regarding the second stage, members pointed out that the effective discharge of the obligations undertaken by States when adopting conventions should be achieved through objective description and analysis rather than "impartial assessment". They added that arrangements for monitoring the effective implementation of the standard-setting instruments should be more flexible for recommendations and declarations than for conventions.

12. Concerning the section entitled "Monitoring methods", the Committee members made a number of preliminary observations relating specifically to some of the ten points identified by the Secretariat under that section. Regarding paragraph 6 in particular, the Committee members expressed their preference for reports to be submitted every four years, while pointing to the need to amend the wording of that paragraph so as to avoid any confusion with the frequency of submission of the comprehensive report by the Director-General to the General Conference on UNESCO's standard-setting instruments, provided for in 33 C/Resolution 88. Regarding paragraph 7, the majority of the Committee members expressed reservations about the provision of technical assistance through the field offices, and considered it preferable to strengthen the role of National Commissions in gathering information. The Committee also considered that the gathering of information from civil society stakeholders referred to in paragraph 8 was premature at that stage, and that it would be preferable initially to strengthen the mechanisms for gathering information from the competent authorities of Member States.

13. Some Committee members emphasized that the financial implications of any proposed new specific procedures should also be taken into consideration prior to the adoption of those procedures.

14. In conclusion, the Committee deemed it necessary to continue its consideration of the second section relating to the monitoring of the implementation of UNESCO's standard-setting instruments at its next session, working on the basis of a revised version of paragraph 46 of the Annex to Part II of document 175 EX/27 and taking into account the various observations made by Committee members during the meeting.

15. After having examined the item, the Committee recommended that the Executive Board adopt the following draft decision:

The Executive Board,

1. Recalling 15 C/Resolution 12.2, 23 C/Resolution 29.1, 32 C/Resolution 77 and 165 EX/Decision 6.2, 170 EX/Decision 6.2, 171 EX/Decision 27 and 174 EX/Decision 21

on the first aspect of the terms of reference of the Committee on Conventions and Recommendations (CR) relating to the implementation of UNESCO's standard-setting instruments,

2. Having examined document 175 EX/27 Part I and the report of the CR Committee thereon (175 EX/...),
3. Bearing in mind the considerations set forth in document 175 EX/27 Part I as well as other considerations that may also be relevant,
4. Considering that of the Organization's 31 recommendations, the following 10 instruments should be monitored as a matter of priority:
 - Recommendation against Discrimination in Education (14 December 1960)
 - Recommendation concerning the Status of Teachers (5 October 1966)
 - Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms (19 November 1974)
 - Recommendation on the Status of Scientific Researchers (20 November 1974)
 - Recommendation on the Development of Adult Education (26 November 1976)
 - Revised Recommendation concerning the International Standardization of Educational Statistics (27 November 1978)
 - Recommendation concerning the Status of the Artist (27 October 1980)
 - Recommendation concerning the Status of Higher-Education Teaching Personnel (11 November 1997)
 - Revised Recommendation concerning Technical and Vocational Education (2 November 2001)
 - Recommendation concerning the Promotion and Use of Multilingualism and Universal Access to Cyberspace (15 October 2003),
5. Recommends that the General Conference, at its 34th session, request the Executive Board to monitor the 10 above-mentioned recommendations as a matter of priority.

II

The Executive Board,

1. Having examined document 175 EX/27 Part II, in particular the proposals set out in paragraph 46 of its Annex, and the report of the Committee on Conventions and Recommendations thereon (175 EX/19),
2. Requests the Committee to resume examination of this item at the 176th session on the basis of a revised version of the proposals contained in paragraph 46 of the Annex to the document, taking into account the exchanges of views that took place at its 175th session.

Item 29 Report on the Fourth Meeting of the Joint Expert Group UNESCO (CR)/ ECOSOC (CESCR) on the Monitoring of the Right to Education (2006)
(175 EX/28)

16. On 27 September 2006, the Committee on Conventions and Recommendations (CR) examined the Report on the Fourth Meeting of the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education (2006). Ambassador Olabiyi B.J. Yai (Benin), who had chaired the meeting, presented the main elements of the Report. The Chairperson of the CR enumerated the recommendations contained in the Report: elaboration of an operational definition of basic education (para. 7); giving enhanced consideration to right to education in the implementation of the Global Action Plan for EFA (para. 8); organization of a seminar for stakeholders to examine state obligation for providing free primary/basic education (para. 10); reinforcing UNESCO's ongoing collaboration with the intellectual community and professional bodies and research and studies on the right to education (para. 12).

17. Several members of CR commended the Report and expressed their appreciation of the work accomplished by the Joint Expert Group. All the Recommendations made by the Joint Expert Group were endorsed. Activities being carried out by the Secretariat for promoting the right to education were also commended.

18. During the debate, queries were raised as to the justiciability of the right to education. It was stated that there are no international mechanisms for this purpose and that the right to education was not internationally justiciable. It was pointed out that regional level enforcement mechanisms exist both in Latin America as well as in Europe. The suggestion by the Joint Expert Group that it would be useful to elaborate a document on the justiciability of the right to education for making the judicial and quasi-judicial systems and procedures for the enforcement of the right to education better known received support.

19. Responding to the queries, Mr Kishore Singh, who represented the Education Sector, explained that justiciability has to be seen in conjunction with the enforcement of the right to education, as elucidated in the Concept Paper (annexed to document 175 EX/28). The CR and also CESCR, entrusted with the monitoring of implementation of the right to education, contribute to this. A number of cases of individual complaints involving, *inter alia*, the right to education and resolved by the CR also bear evidence to the enforcement of the right to education. Moreover, the elaboration of the Optional Protocol to International Covenant on the Economic, Social and Cultural Rights would make it possible for individuals to have recourse to CESCR in cases of violation of the right to education. What is of critical importance is whether the right to education has its foundation in national legal systems by virtue of which individuals can have resort to law courts or tribunals. As such, comparative analysis of the right to education in the constitutions and national laws, as stated in the Report, is highly significant. National Commissions have a vital role to collaborate with UNESCO in this respect. Moreover, UNESCO's ongoing collaboration with the intellectual community and professional bodies deserves to be reinforced.

20. Another key dimension of discussion was the importance to be given to the right to education in the implementation of the Global Action Plan for EFA. In this context, need for legal reforms at national level for advancing EFA was underlined. It was proposed that the right to education be promoted within the framework of EFA. Another proposition related to sensitizing UNESCO's partners in the implementation of the Global Action Plan for EFA.

21. During the debate, amendments were proposed to the draft decision contained in paragraph 16 of document 175 EX/28. In their interventions, most Member States considered it necessary to lay emphasis on promoting the realization of the right to education since this was at the heart of the

mandate and the work of the Joint Expert Group. A compromise text, which would reflect all the views and concerns was prepared, and presented by the Chairperson of CR in the forenoon of 30 September. After some clarifications, it was endorsed by the CR unanimously.

22. After having examined the item, the Committee recommends that the Executive Board adopt the following draft decision:

The Executive Board,

1. Recalling 172 EX/Decision 26,
2. Having examined document 175 EX/28,
3. Expresses its appreciation of the work of the Joint Expert Group;
4. Commends the activities of the Secretariat in promoting the realization of the right to education and encourages the Secretariat to support, as appropriate, reforms at the national level which advance the goals of education for all (EFA);
5. Recommends that the Director-General give enhanced consideration to the role of UNESCO in promoting the realization of the right to education, and raise partners' awareness of the need to give effect to this realization;
6. Requests the Director-General to take appropriate action as a follow-up to the recommendations made by the Joint Expert Group;
7. Encourages the Joint Expert Group to continue its work on the issues of key importance for the realization of the right to education in developing practical solutions for achieving EFA, and requests it to report to the Executive Board at its 177th session.

Item 30 Report by the Director-General on allegations received by the Joint ILO/UNESCO Committee of Experts on the application of the recommendations concerning teaching personnel (CEART) (175 EX/29)

23. On 28 September 2006, the Committee on Conventions and Recommendations (CR) examined the Report by the Director-General on allegations received by the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART). The report contained an allegation from the All Japan Teachers and Staff Union (ZENKYO) on the non-observance of certain provisions of the ILO/UNESCO Recommendation in Japan.

24. Mr Georges Haddad, Director of the Division of Higher Education, represented the Education Sector and introduced the agenda item. He informed the CR that its mandate was to take note of this report and to invite the Director-General to communicate the report to the Government of Japan and ZENKYO so that the two parties concerned could take the necessary follow-up action as recommended. The CR endorsed the draft decision proposed in paragraph 6 of document 175 EX/29.

25. At the end of the debate, the Delegate from Japan, with permission from the Chairperson of the CR, made a statement regarding the CEART Report. He commented that the report did not take fully into consideration the consultations that had been held with ZENKYO or of the appropriate implementation of the systems under allegation. He added that the Joint Committee's report

reflected ZENKYO's one-sided allegation and included many misconceptions of existing systems in Japan.

26. The Chairperson replied that Japan's comments would be communicated to the CEART for its next session, and CEART will then come up with a Report to be submitted to the Executive Board.

27. After having examined the item, the Committee recommends that the Executive Board adopt the following draft decision:

The Executive Board,

1. Recalling 154 EX/Decision 4.4,
2. Having examined 175 EX/29, containing the interim report of the ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel, regarding an allegation by the All Japan Teachers and Staff Union (ZENKYO) annexed to the present document,
3. Takes note of the interim report;
4. Invites the Director-General to communicate the interim report to the Government of Japan and ZENKYO and to invite them to take the necessary follow-up action as recommended in this report.