

**Hundred and seventieth Session**

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Item 6.2 of the provisional agenda

**EXAMINATION OF THE METHODS OF WORK OF THE COMMITTEE  
ON CONVENTIONS AND RECOMMENDATIONS, AND REPORT  
OF THE COMMITTEE THEREON**

**Basis for discussion**

**SUMMARY**

This document has been drawn up to help members of the Committee on Conventions and Recommendations to respond to the concerns expressed at previous sessions of the Committee on Conventions and Recommendations and the Executive Board. It consists of two parts, each concerning one aspect of the Committee's terms of reference. Each part contains questions that might be examined by the Committee.

## **Terms of reference of the Committee on Conventions and Recommendations**

1. The Committee on Conventions and Recommendations (CR) is entrusted with two tasks:
  - (a) to consider all questions relating to the implementation of UNESCO's standard-setting instruments that are entrusted to it by the Executive Board, including Member States' periodic reports on the implementation of conventions and recommendations;
  - (b) to examine communications relating to cases and questions concerning the exercise of human rights in UNESCO's fields of competence.

### **Part I – to consider all questions relating to the implementation of UNESCO's standard-setting instruments that are entrusted to it by the Executive Board, including Member States' periodic reports on the implementation of conventions and recommendations**

2. In accordance with Article VIII of the Constitution, each Member State shall submit to the Organization, at such times and in such manner as shall be determined by the General Conference, reports on the action taken upon recommendations and conventions. At its 15th session, the General Conference invited the Executive Board to “make appropriate arrangements for reports by Member States on the implementation of conventions or recommendations to be examined by a subsidiary organ of the Board” (15 C/Resolution 12.2). The subsidiary organ in this case is the Committee on Conventions and Recommendations. The Committee's terms of reference, however, cover only the examination of those reports expressly entrusted to it (at present those relating to seven conventions and recommendations, mainly in the field of education). Since the 23rd session of the General Conference, the draft questionnaires or forms sent to Member States with a view to the preparation of their reports are submitted to the CR (23 C/Resolution 29.1).

3. At its 162nd session, the Executive Board considered that there was a need for improving the effectiveness of that part of the Committee's terms of reference. At the Board's 164th and 165th sessions, the Committee, after identifying a number of problems, examined various options concerning the procedures applicable to the examination of questions relating to the implementation of UNESCO's standard-setting instruments (see Annex I to this document). It agreed on a series of measures designed to ensure wider acceptance and effective application of those instruments, which were adopted by the Executive Board at its 165th session in 165 EX/Decision 6.2 (see Annex II to this document). In paragraph 7 of its decision, the Executive Board recommended that the General Conference undertake a revision of Section VI 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. The Board also considered that in the light of such revision, the CR should examine the possibility of preparing a set of rules of procedure for the Committee concerning the examination of reports on conventions and recommendations (paragraph 8 of the decision).

4. At its 32nd session, the General Conference, after considering document 32 C/22, amended in 32 C/Resolution 77 (see Annex III to this document) Part VI of the Rules of Procedure concerning recommendations to Member States and international conventions, which now provides that the Executive Board, and in particular the Committee on Conventions and Recommendations, shall consider the reports on conventions and recommendations that it requests from Member States.

5. It would therefore be appropriate for the CR to examine the possibility of adopting specific procedures for the examination of such reports. The nature, scope and definition of the criteria for such a procedure should be determined by the CR.

## **Part II – To examine communications relating to cases and questions concerning the exercise of human rights in UNESCO’s fields of competence**

6. UNESCO became aware of the need for a mechanism for the effective protection of human rights as early as 1952. At that time the Director-General was receiving complaints alleging violations of human rights, in particular educational and cultural rights, from individuals and associations. In accordance with 30 EX/Decision 11 of the Executive Board, such complaints were examined by the Bureau of the Executive Board. In 1967, the question was re-examined and the Board decided in 77 EX/Decision 8.3 to implement a procedure for handling communications on individual cases involving human rights and to bring such communications to the notice of the “Special Committee on Discrimination in Education”. It was in response to the request of the General Conference, which in two resolutions (19 C/Resolution 12.1 and 19 C/Resolution 6.113) had recommended the establishment of a system to protect human rights in UNESCO’s fields of competence, that in 1978 the Executive Board, on the recommendation of a working party, established the procedure for the examination of communications relating to human rights in UNESCO’s fields of competence.

7. That procedure, which is set out in 104 EX/Decision 3.3 and implemented by the CR, does not apply to human rights in general but only to those falling within UNESCO’s fields of competence, which are defined in the Organization’s Constitution and include the fields of education, science, culture and information (communication). It is in relation to those fields of competence of UNESCO that human rights within the Organization’s competence must be defined.

8. The procedure also has specific characteristics in comparison with similar procedures in other organizations of the United Nations system (see Annex IV to this document).

9. Since the establishment of the procedure laid down in 104 EX/Decision 3.3, the Committee has regularly examined and improved its methods of work, in particular as from 1993.

10. During the debates in the Committee and the Executive Board, at the 169th session in particular, several questions have been raised about the CR’s methods of work relating to the second aspect of its terms of reference and in particular questions concerning the admissibility of a communication that falls within UNESCO’s fields of competence.

11. In accordance with paragraph 14(d) of 104 EX/Decision 3.3, the Committee decides on the admissibility of communications in accordance with its procedure relating to human rights in UNESCO’s fields of competence. The conditions governing admissibility are set out in paragraph 14(a) of the procedure. Over the years, the Committee has clarified the way in which admissibility is determined:

- UNESCO’s competence is determined *rationae personae*. When the profession of the alleged victim comes within UNESCO’s fields of competence, there is a presumption at the stage of examination as to admissibility that there exists a link between the alleged violation and UNESCO’s fields of competence. Whenever there has been uncertainty as to that status, the alleged victim has always been given the benefit of the doubt. The Committee has made it clear that this presumption cannot be considered to be a decisive factor justifying UNESCO’s intervention. It counts only for the admissibility of the communication.
- UNESCO’s competence is also determined *rationae materiae*. The activity of which the alleged victim is accused is decisive in determining whether or not a communication is admissible.

12. The Committee may wish to examine once again the following questions:

- Admissibility of communications: should the criteria be further elaborated?
- On what basis and by whom should the communications to be examined by the CR be selected?
- How should UNESCO's competence, which is determined *rationae materiae* (activity of which the alleged victim is accused) and/or *rationae personae* (profession of the person concerned), be applied in practice?
- Is the CR's procedural practice in this area appropriate?
- Would it be desirable to establish a working group on admissibility?

13. The Committee may also wish to examine the following questions:

- Is there duplication between the UNESCO procedure for the examination of complaints received by the Organization concerning alleged violations of human rights in its fields of competence and the procedures followed by United Nations human rights bodies (see Annex IV)?
- When reviewing the admissibility criteria, should consideration be given to the possibility of drawing a clear and sharp distinction between criminal activities, which do not fall within the competence of UNESCO, and human rights that fall within the competence of the CR?
- Is it appropriate to review systematically in a public meeting of the Executive Board certain cases examined by the CR?
- Should the Chairperson of the CR be given a greater role to play in the identification of solutions for communications and should consideration be given to the establishment of small working groups on certain questions?

**Hundred and sixty-fifth Session**

165 EX/21

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Item 6.2 of the provisional agenda

**PROPOSALS BY THE COMMITTEE ON CONVENTIONS  
AND RECOMMENDATIONS ON THE CONDITIONS AND PROCEDURES  
APPLICABLE TO THE EXAMINATION OF QUESTIONS  
RELATING TO THE IMPLEMENTATION  
OF UNESCO'S STANDARD-SETTING INSTRUMENTS**

**SUMMARY**

In 164 EX/Decision 5.2, the Executive Board deemed that consideration of this item should be resumed at the 165th session. Document 164 EX/23, which was prepared by the Secretariat to serve as a basis for discussion for the members of the Committee for the elaboration of possible new procedures, is reproduced hereafter.

**Hundred and sixty-fourth Session**

164 EX/23  
PARIS, 8 April 2002  
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Item 5.2 of the provisional agenda

**PROPOSALS BY THE COMMITTEE ON CONVENTIONS  
AND RECOMMENDATIONS ON THE CONDITIONS  
AND PROCEDURES APPLICABLE TO THE EXAMINATION  
OF QUESTIONS RELATING TO THE IMPLEMENTATION  
OF UNESCO'S STANDARD-SETTING INSTRUMENTS**

**BASIS FOR DISCUSSION**

**SUMMARY**

This document has been prepared by the Secretariat to help members of the Committee to submit to the Executive Board, pursuant to 162 EX/Decision 5.4 (I)1, proposals on the conditions and procedures applicable to the examination of questions relating to the implementation of UNESCO's standard-setting instruments. It falls into three parts, and covers the legal framework for monitoring the implementation of UNESCO's standard-setting instruments, the problems of monitoring in general, and the draft proposals and options that might serve as a basis for discussion with a view to the possible development of new procedures.

## **INTRODUCTION**

1. In 162 EX/Decision 5.4 (I)1, the Executive Board requested “the Committee on Conventions and Recommendations to submit to the Executive Board, at its 164th session, proposals on the conditions and procedures applicable to the examination of questions relating to the implementation of UNESCO’s standard-setting instruments”.
2. During the discussions that took place at the 162nd session of the Executive Board regarding its examination of the methods of work of the Committee on Conventions and Recommendations (CR), its Members considered that there was justification for improving the effectiveness of the second part of the CR’s mandate, namely its examination of all questions relating to the application of UNESCO’s standard-setting instruments entrusted to it by the Executive Board, including the periodic reports by Member States on the implementation of conventions and recommendations. The Committee also asked the Secretariat to identify UNESCO’s standard-setting instruments (see Annex A).
3. In this context, and in order to assist members of the Committee, the Secretariat has prepared this document, which sets forth for the Committee the legal framework in which the implementation of UNESCO’s standard-setting instruments is monitored, the problems of monitoring in general, and draft proposals and options that might serve as a basis for discussion with a view to developing new procedures.

## **I. LEGAL FRAMEWORK FOR THE MONITORING OF THE IMPLEMENTATION OF UNESCO’S STANDARD-SETTING INSTRUMENTS**

### **General legal framework**

4. Reporting practice within UNESCO is founded upon the Constitution itself, whose Article VIII, as amended by the General Conference at its 17th session (1972), provides that “Each Member State shall submit to the Organization, at such times and in such manner as shall be determined by the General Conference, reports on the laws, regulations and statistics relating to its educational, scientific and cultural institutions and activities, and on the action taken upon the recommendations and conventions referred to in Article IV, paragraph 4”.
5. While Article IV, paragraph 4, of the Constitution distinguishes between conventions and recommendations, paragraph 6 stipulates that “The General Conference shall receive and consider the reports sent to the Organization by Member States on the action taken upon the recommendations and conventions referred to in paragraph 4 above or, if it so decides, analytical summaries of these reports”.
6. For their part, the Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution (amended several times) lay down a procedure for the submission and examination of Member States’ reports on the action they have taken in pursuance of conventions and recommendations adopted by the General Conference. This procedure makes a distinction between the “initial [special] reports” that must be transmitted no later than two months prior to the first ordinary session of the General Conference following that at which such recommendation or convention was adopted, and “additional reports” requested by dates prescribed by the General Conference and giving such further information as may be necessary (Article 16) (see Annex B).
7. While the examination of “initial special reports” is still carried out by the Legal Committee of the General Conference, the latter decided, at its fifteenth ordinary session (1968), that the

examination of the other reports would be entrusted to a subsidiary organ of the Executive Board (15 C/Resolution 12.2), in this case the Committee on Conventions and Recommendations.

### **List of standard-setting instruments monitored by the CR**

8. However, the terms of reference of this Committee are still limited to the examination of those reports that are expressly entrusted to it. Currently concerned are:

- the Convention (and the Recommendation) of 1960 against Discrimination in Education;
- the 1966 Recommendation concerning the Status of Teachers (although in this case a special procedure was adopted whereby Member States submit their reports to the joint ILO/UNESCO Committee of Experts on the implementation of the recommendation<sup>1</sup> and the Committee on Conventions and Recommendations examines only the report of that joint Committee);
- the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (and the 1964 Recommendation on the same subject);
- the 1974 Revised Recommendation concerning Technical and Vocational Education;
- the 1974 Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms (included since 1985 in the permanent system of reporting on education for peace, human rights, democracy, international understanding and tolerance); and
- the 1976 Recommendation on the Development of Adult Education (see Annex C).

9. In any case, it is the General Conference that has the final say on reports submitted to it by any decision-making body.

### **Specific framework for standard-setting instruments monitored by the CR**

10. As already stated, the legal basis for the obligation to submit reports lies in the Constitution itself. The application of that obligation, however, calls for some additional measures.

11. Except in the case of the 1966 Recommendation on the Status of Teachers, for which a special mechanism was provided, all the recommendations mentioned above contain a provision whereby in substance, the General Conference requests Member States to submit to it, at dates and in a form prescribed by it, reports on the action taken by them further to a particular recommendation.

12. In view of the legal nature of these recommendations, this form of words cannot of itself create a binding obligation; it simply announces the recourse to the procedure of periodic reports. Article VIII of the Constitution serves as the basis for the obligation to submit reports (its wording is imperative: “Each Member State *shall* submit to the Organization ...”). However, it may be asked

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<sup>1</sup> At its 157th session, the Executive Board decided to extend the mandate of the Joint ILO-UNESCO Committee of Experts on the Application of the Recommendation concerning the Status of Teachers (CEART) to cover the monitoring of the UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel and to include experts in higher education in its composition (1997). Following 162 EX/Decision 3.2.2 of the Executive Board, that Committee is now known as the “Joint ILO/UNESCO Committee of Experts on the Application of the Recommendation concerning Teaching Personnel”.



if the General Conference has always intended to subject Member States to a real obligation. Although the 1960 Recommendation uses a particularly ambiguous formulation (“Member States *should* in their periodic reports submitted to the General Conference...”), the other recommendations simply provide that “the General Conference *recommends* that Member States submit to it ... reports ...”. It is difficult to regard this form of words as more than a simple invitation.

13. The situation is different in the case of the two Conventions since the instrument is in itself a creator of obligations for the States Parties. Article 7 of the 1960 Convention provides that “The States Parties to this Convention *shall* in their periodic reports submitted to the General Conference ... give information ...”. Similarly, Article 16 of the 1970 Convention affirms that “The States Parties to this Convention *shall* in their periodic reports submitted to the General Conference [of UNESCO] on dates and in a manner to be determined by it, give information on the legislative and administrative provisions which they have adopted and other actions which they have taken for the application of this Convention, together with details of the experience acquired in this field”. In both these cases, the obligation under the convention is undeniably explicit.

## II. MONITORING PROBLEMS

14. Practice has developed without due consideration really being given to this legal distinction. Generally speaking, it has been frequently observed that the reports from States were not always very numerous, whether the Member States had been merely invited or whether they were under an obligation to provide them. Without going into detail, it can be stated that the response rate to requests for reports is around 20% (with large differences according to regional group).<sup>2</sup>

### Background

15. The Organization has on several occasions expressed concern about this state of affairs. As early as its 11th session, the General Conference invited Member States to take all the necessary steps to fulfil the constitutional obligation laid down in Article VIII of the Constitution (11 C/Resolution 38). The Director-General echoed the same concern in various documents submitted to the General Conference (13 C/12 and 20 C/22). The Executive Board, as early as its 116th session,<sup>3</sup> and the General Conference at its 22nd and 23rd sessions,<sup>4</sup> considered the matter and tried, but without success, to rationalize the monitoring procedure in force at UNESCO. Pursuant to a resolution adopted by the General Conference in 1985 (23 C/Resolution 29.1), the Office of International Standards and Legal Affairs sent Member States a questionnaire on the difficulties likely to be encountered by Member States in drawing up their reports on the implementation of UNESCO’s standard-setting instruments and in implementing those instruments, which itself elicited few replies. More recently, in 1999, on the occasion of the examination of reports received from Member States during the sixth consultation on the

<sup>2</sup> For example, during the sixth consultation (1999) of Member States on implementation of the *Convention and Recommendation against Discrimination in Education*, 56 reports were received, 26 concerning the Recommendation and 30 concerning the Convention (Africa: 8, Arab States: 7, Asia and the Pacific: 9, Europe: 24, Latin America and the Caribbean: 8). Seven NGOs also took part in this consultation.

In regard to the *Convention and Recommendation on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, 29 replies from States were received in 1977, 38 (out of 60 ratifications) in 1987, and 20 (out of 82 ratifications) in 1995. In regard to the third consultation (2001) in the context of the *Permanent system of reporting on education for peace, human rights, democracy, international understanding and tolerance*, 33 countries (18%) out of 185 replied (Africa: 1, Arab States: 1, Asia and the Pacific: 8, Europe: 19, Latin America and the Caribbean: 4).

<sup>3</sup> See document 116 EX/28.

<sup>4</sup> See documents 22 C/21 and 23 C/27.

implementation of the Convention and Recommendation against Discrimination in Education, the Executive Board and then the General Conference at its 30th session also voiced concern about the Member States' low level of participation in the consultation.<sup>5</sup>

16. In other words, the attention paid by the Executive Board to conditions and procedures applicable to the examination of questions relating to the implementation of the Organization's standard-setting instruments at its 162nd session has a long history that should not be neglected. While questions may legitimately be raised about the methods used by the Committee on Conventions and Recommendations and about the means of improving them, there is also a need for overall reflection on the relevance of the reporting procedure at UNESCO.

### **Practice and limits of monitoring**

17. The periodic reports procedure is one of the oldest forms of monitoring States' fulfilment of their international obligations. It is also the procedure that, without doubt, is the least prejudicial to their sovereignty since it rests on submission by the States themselves of reports on action taken to fulfil their commitments. The procedure has the advantage of reminding public authorities of international deadlines and obligations to be met. The requirement to report on a given date can only encourage the governments concerned to ascertain that they have indeed taken steps to fulfil their international obligations.

18. In contemporary international practice, other, more intrusive or more direct forms of monitoring (such as investigative or verification procedures, quasi-judicial techniques of lodging individual complaints or appeals, or genuine legal proceedings) have developed, without, however, eliminating the traditional procedure of national reports. It is true that the latter functions satisfactorily in certain cases: that of ILO, for example.

19. The role of the reports is not merely to bring about monitoring of Member States' fulfilment of their international obligations. It is also a means of promoting respect for international standards and of informing the Organization.

20. Without conducting an in-depth analysis of questionnaires sent to Member States, which are necessarily designed according to the specific requirements of each particular standard-setting instrument, we can see that the requests they contain vary widely: they include the communication of legislative and regulatory texts relating to the subject concerned, general information on measures taken, appraisals of the results achieved at the national level, forecasts, statistics, lists of private initiatives, comments on the relevance of international instruments, and even the names and addresses of the organizations concerned.

21. The procedure does not always take into consideration actual information-gathering conditions in the Member States receiving the questionnaire. First, the long period of time granted to each one to draw up its report – which is justified by the scope of the investigation – can lead to questionnaires being forgotten or disappearing during the administrative transmission process. Second, the information requested may be scattered among several administrations or institutions (some maintaining tenuous relations with UNESCO or none at all), which will require the establishment of an interministerial fact-finding coordination body. It may be feared that many Member States, whose administrative structures are often inappropriate and staff overworked, will shrink from the difficulty, since the stakes are low.

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<sup>5</sup> On the recommendation of the Executive Board, the General Conference at its 30th session invited the Director-General to look into the possibility of creating a coherent mechanism for reporting on and monitoring the right to education.

22. Consequently, this situation has resulted in:

- a small number of State reports received by the Organization;
- reports often submitted beyond the deadline;
- reports whose content is in some cases too general;
- reports which in some cases are difficult to use.

23. The Secretariat then has to draft a summary of each report received and, in certain cases, it also submits a general synopsis. However, the result of this work provides only an extremely limited picture of the implementation of the conventions and recommendations concerned.

24. In these circumstances, examination of the reports – or, to be more accurate, the synopsis of the reports – by the Committee on Conventions and Recommendations can only be relatively limited in terms of its scope and effectiveness.

25. It is clear, therefore, that the reports policy is not functioning satisfactorily. The implementation techniques place a heavy strain on the Member States which make the effort to answer the questionnaires and mobilize a great deal of energy within the Secretariat. But, the results achieved remain modest. It would accordingly no doubt be desirable to rethink the reporting system entirely, with priority consideration being given to its aims and the conditions and procedures applicable to the examination of these reports.

### **III. PROPOSALS AND OPTIONS**

26. If one assumes that the aim of the reporting procedure is to encourage respect for certain standards, monitor compliance or simply provide the Organization with information, it is important to determine which of these functions should take priority. Since the incentive function could well be regarded as secondary to the other two, the main choice is between the monitoring function and the information function, even though one evidently does not exclude the other and even though any combination of the two approaches may be envisaged.

27. Each aspect of the procedure may be examined in more detail:

- the source of the information (Member States, National Commissions, non-governmental organizations, individuals?)
- the nature of the information requested (general questionnaires or specific questions?)
- the periodicity of the requests (periodic reports or regular informal exchanges?)
- the scope of the investigation (all the Member States at once, or only some of them?)
- the recipient of the information (Committee on Conventions and Recommendations, expert body, Director-General?)
- the processing and availability of the replies (simple receipt or critical examination? circulation of the observations or confidentiality?).

28. Furthermore, it would no doubt be wise to consider the advisability of maintaining a procedure under which, in theory – if not in fact – all Member States are equally bound to report, while for monitoring purposes it would be possible to confine our efforts to States likely not to have fulfilled their obligations.

29. Mention will be made in passing of two extreme possibilities which do not appear to merit consideration. The first would be to leave entirely intact the system that has been used for years, despite evidence of its poor performance and the lack of interest in it. The second would be to take note of the situation and to let the system fall into disuse. Because the submission of reports is always in response to a request from the General Conference, the Conference could refrain from making such requests and the mechanism would be paralysed indefinitely. Such an option, while legally feasible, would not be the best solution to the problem. We must therefore look for ways to improve the system as well as alternative approaches that might be proposed.

**(A) Proposals based on information gathering**

30. On the supposition that the primary objective is to gather information, several options may be put forward.

31. **Option A 1:** Each standard-setting instrument falls within the competence of one of the Organization's sectors. Monitoring of the implementation of conventions and recommendations, which is part of the ordinary work of the sector concerned, should become a more integral part of a policy of regular contacts with the Member States. Rather than relying on the periodic submission of national reports, the Director-General could make ongoing efforts to gather relevant information from the Member States by establishing constructive dialogue with them, according to a timetable and through arrangements of his own choosing. The Executive Board would then no longer consider the national reports; instead, the Director-General would submit to it periodically – on dates which could be determined by the Board – a synoptic document on the implementation of the instrument concerned. In this case, additional staff would be needed to carry out these tasks.

32. **Option A 2:** The system of national reports could be maintained, but modified to make it more effective. There are several possibilities (all of which could, of course, be combined):

33. (a) rather than all the Member States being asked to submit a report, a representative sample of Member States could be selected and asked to report (this should lead to a more efficient policy of contacts and reminders);

34. (b) the Organization might regularly request information not only from Member States but also from National Commissions and from various private-sector entities or individuals, national (associations, unions, eminent persons and so forth) and/or international (non-governmental organizations);

35. (c) rather than request comprehensive reports at very long intervals, it might be possible to issue a series of questionnaires at shorter intervals focusing on a specific aspect of the instrument concerned in order to make it easier to obtain responses from each national administration (bearing in mind the aim of having the report prepared by a single ministry at a time).

36. **Option A 3:** The process of considering the reports could be more dynamic and more high-profile. The reports could be submitted to the Organization within a shorter deadline (several months) and they could be examined at a special session of the Board or the Committee, as part of an awareness campaign. The entire process could then be written up in a synoptic document which would be made public.

37. **Option A 4:** In general, the Secretariat might assist States which encounter difficulties in preparing their periodic reports. Such technical assistance would be designed to help them understand the standard-setting instrument whose implementation is being monitored and help them with the presentation of the report. This would naturally require the setting up within the Secretariat of special units to provide this type of assistance.

**(B) Proposals based on monitoring**

38. If the primary objective is to reinforce the monitoring function:

39. **Option B 1:** Rather than being limited to the monitoring of six standard-setting instruments, the mandate of the Committee on Conventions and Recommendations could be broadened:

40. (a) the Committee on Conventions and Recommendations might propose adding other standard-setting instruments (see Annex A) to its monitoring list, in which case it could apply the procedures suggested below:

41. (b) If the examination of a large number of instruments were to be entrusted to it, the Committee could request Member States to report not on texts but on rights. This would make possible a global approach to each right as it is defined in all the relevant provisions, an approach which might also yield valuable information for the preparation of new programmes at UNESCO. For each right, which would have to be determined precisely (for example: the right of girls to education, or the right of migrants to participate in cultural life), the Secretariat could draw up a list of the provisions found in UNESCO instruments which would have to be taken into account and, possibly, a list of the relevant international provisions. The Committee could establish a timetable for the examination of the rights, in cycles, at appropriate intervals. The report issuing from the examination would also mention any difficulties encountered in the regions and in the Member States.

42. **Option B 2:** Examination of the reports could be entrusted either to the Committee on Conventions and Recommendations, whose members would include specialists in the field under examination (States could appoint experts on the subjects under review), or to a separate specialized body, composed of independent experts, which would be better able to engage in a dialogue with the States concerned. In contrast to other international organizations such as the International Labour Organization (ILO), for example, UNESCO's standard-setting instruments deal with a wide variety of subjects. Thus, if such a specialized monitoring body were to be composed of technical experts, their field of expertise would have to vary in accordance with the contents of the standard-setting instrument. It might be possible to imagine a twofold composition: (i) a restricted "permanent core" of legal experts who would participate in every meeting and whose mission would be to ensure the uniformity of the examination procedures and to compare national efforts with the regulations set forth in the instruments; and (ii) groups of experts in each field covered by the instruments who would participate only in those meetings where questions within their fields of competence were under consideration. The specialized body could then report to the Committee on Conventions and Recommendations.

43. **Option B 3:** The reporting procedure could be supplemented or replaced by a procedure of examining communications originating from persons, groups of persons or non-governmental organizations, similar to the procedure instituted by 104 EX/Decision 3.3 of the Executive Board.

44. Even though the procedure of periodic national reports has reached the limits of its effectiveness, it might be possible to reverse the logic of the system of monitoring. Rather than exhausting its resources by undertaking a comprehensive examination of States' reports with a view

to determining progress in the implementation of conventions and recommendations, it might be possible for the Organization to take action in specific cases of non-compliance with standards to encourage the States concerned to correct the behaviour of their authorities. Such a procedure could be established not only in relation to conventions but also, in view of its non-judicial nature (cf. 104 EX/Decision 3.3, paragraph 7), in relation to recommendations.

45. With a view to making the Organization's efforts more effective, the Committee on Conventions and Recommendations could be recognized as competent to receive and examine communications from individuals or groups of individuals who may reasonably be presumed to be victims of an alleged violation of one of the norms under a convention or recommendation whose follow-up is entrusted to the Executive Board. The submission and examination of such communications would, *mutatis mutandis*, be subject to the conditions of admissibility and the rules of procedure stipulated in 104 EX/Decision 3.3. Accordingly, the rule of confidentiality would govern the procedure as a whole, including examination of the communications by the Committee and examination of the Committee's reports by the Board. The Board could, however, also decide to make public certain of the Committee's reports.

46. In the overall context of the examination of the implementation of conventions and recommendations, such a procedure could help draw a clearer distinction between the information function which is governed by the ordinary administrative machinery, and the monitoring function, which naturally falls within the competence of the bodies composed of representatives of Member States.

## ANNEX A

### LIST OF UNESCO'S STANDARD-SETTING INSTRUMENTS

#### A. CONVENTIONS AND AGREEMENTS

##### **OF A STANDARD-SETTING NATURE ADOPTED EITHER BY THE GENERAL CONFERENCE OR BY INTERGOVERNMENTAL CONFERENCES CONVENED SOLELY BY UNESCO OR JOINTLY WITH OTHER INTERNATIONAL ORGANIZATIONS**

Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural character with Protocol of Signature and model form of certificate provided for in Article IV of the above-mentioned Agreement. Beirut, 10 December 1948.\*

Agreement on the Importation of Educational, Scientific and Cultural Materials, with Annexes A to E and Protocol annexed. Florence, 17 June 1950.\*

Universal Copyright Convention, with Appendix Declaration relating to Article XVII and Resolution concerning Article XI. Geneva, 6 September 1952.

Protocol 1 annexed to the Universal Copyright Convention concerning the application of that Convention to the works of stateless persons and refugees. Geneva, 6 September 1952.

Protocol 2 annexed to the Universal Copyright Convention concerning the application of that Convention to the works of certain international organizations. Geneva, 6 September 1952.

Protocol 3 annexed to the Universal Copyright Convention concerning the effective date of instruments of ratification or acceptance of or accession to that Convention. Geneva, 6 September 1952.

Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention. The Hague, 14 May 1954.\*

Protocol for the Protection of Cultural Property in the Event of Armed Conflict and resolutions of the conference. The Hague, 14 May 1954.

Convention concerning the International Exchange of Publications. Paris, 3 December 1958.\*

Convention concerning the Exchange of Official Publications and Government Documents between States. Paris, 3 December 1958.\*

Convention against Discrimination in Education. Paris, 14 December 1960.\*

International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. Rome, 26 October 1961.

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\* Provision for monitoring of application in the standard-setting instrument itself or by decision of a decision-making body.

Protocol Instituting a Conciliation and Good Offices Commission to be Responsible for Seeking the Settlement of any Disputes which may Arise between States Parties to the Convention against Discrimination in Education. Paris, 10 December 1962.

Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Paris, 14 November 1970.\*

Universal Copyright Convention as revised on 24 July 1971, with Appendix Declaration relating to Article XVII and Resolution concerning Article XI. Paris, 24 July 1971.

Protocol 1 annexed to the Universal Copyright Convention as revised on 24 July 1971 concerning the application of that Convention to work of stateless persons and refugees. Paris, 24 July 1971.

Protocol 2 annexed to the Universal Copyright Convention as revised on 24 July 1971 concerning the application of that Convention to works of certain international organizations. Paris, 24 July 1971.

Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms. Geneva, 29 October 1971.

Convention concerning the Protection of the World Cultural and Natural Heritage. Paris, 16 November 1972.\*

Convention relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite. Brussels, 21 May 1974.

Regional Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in Latin America and the Caribbean. Mexico City, 19 July 1974.\*

Protocol to the Agreement on the Importation of Educational, Scientific and Cultural Materials, with Annexes A to H. Nairobi, 26 November 1976.\*

International Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in the Arab and European States bordering on the Mediterranean. Nice, 17 December 1976.

Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in the Arab States. Paris, 22 December 1978.\*

Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties, with model bilateral agreement and additional Protocol. Madrid, 13 December 1979.

Convention on the Recognition of Studies, Diplomas and Degrees concerning Higher Education in the States belonging to the Europe Region. Paris, 21 December 1979.\*

Regional Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and other Academic Qualifications in Higher Education in the African States. Arusha, 5 December 1981.\*

Regional Convention on the Recognition of Studies, Diplomas, and Degrees in Higher Education in Asia and the Pacific. Bangkok, 16 December 1983.\*

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\* Provision for monitoring of application in the standard-setting instrument itself or by decision of a decision-making body.



Convention on Technical and Vocational Education. Paris, 10 November 1989.\*

Convention on the Recognition of Qualifications concerning Higher Education in the European Region. Lisbon, 11 April 1997.

Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 26 March 1999.

Convention on the Protection of the Underwater Cultural Heritage. Paris, 2 November 2001

## **B. OTHER AGREEMENTS**

### **OF A NORMATIVE CHARACTER FOR WHICH THE ORGANIZATION IS DEPOSITARY**

Convention on Wetlands of International Importance especially as Waterfowl Habitat. Ramsar, 2 February 1971.

Protocol to amend the Convention on Wetlands of International Importance especially as Waterfowl Habitat. Paris, 3 December 1982.

## **C. RECOMMENDATIONS**

Recommendation on International Principles Applicable to Archaeological Excavations. 5 December 1956.\*

Recommendation concerning the Most Effective Means of Rendering Museums Accessible to Everyone. 14 December 1960.\*

Recommendation against Discrimination in Education. 14 December 1960.\*

Recommendation concerning the Safeguarding of the Beauty and Character of Landscapes and Sites. 11 December 1962.\*

Recommendation concerning the International Standardization of Statistics Relating to Book Production and Periodicals. 19 November 1964.\*

Recommendation on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. 19 November 1964.\*

Recommendation concerning the Status of Teachers. 5 October 1966.\*

Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private Works. 19 November 1968.\*

Recommendation concerning the International Standardization of Library Statistics. 13 November 1970.\*

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\* Provision for monitoring of application in the standard-setting instrument itself or by decision of a decision-making body.

Recommendation concerning the Protection, at National Level, of the Cultural and Natural Heritage. 16 November 1972.

Recommendation concerning Education for International Understanding, Co-operation 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 Legal Protection of Translators and Translations and the Practical Means to improve the Status of Translators. 22 November 1976.\*

Recommendation concerning the International Standardization of Statistics on Radio and Television. 22 November 1976.\*

Recommendation on the Development of Adult Education. 26 November 1976.\*

Recommendation on Participation by the People at Large in Cultural Life and Contribution to It. 26 November 1976.

Recommendation concerning the International Exchange of Cultural Property. 26 November 1976.\*

Recommendation concerning the Safeguarding and Contemporary Role of Historic Areas. 26 November 1976.

Revised Recommendation concerning International Competitions in Architecture and Town Planning. 27 November 1978.\*

Revised Recommendation concerning the International Standardization of Educational Statistics. 27 November 1978.\*

Recommendation concerning the International Standardization of Statistics on Science and Technology. 27 November 1978.\*

Recommendation for the Protection of Movable Cultural Property. 28 November 1978.\*

Recommendation concerning the Status of the Artist. 27 October 1980.\*

Recommendation for the Safeguarding and Preservation of Moving Images. 27 October 1980.\*

Recommendation concerning the International Standardization of Statistics on the Public Financing of Cultural Activities. 27 October 1980.\*

Revised Recommendation concerning the International Standardization of Statistics on the Production and Distribution of Books, Newspapers and Periodicals. 1 November 1985.\*

Recommendation on the Safeguarding of Traditional Culture and Folklore. 15 November 1989.\*

Recommendation on the Recognition of Studies and Qualifications in Higher Education. 13 November 1993.

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\* Provision for monitoring of application in the standard-setting instrument itself or by decision of a decision-making body.

Recommendation concerning the Status of Higher-Education Teaching Personnel. 11 November 1997.

Revised Recommendation concerning Technical and Vocational Education (2001). 2 November 2001.

#### **D. DECLARATIONS ADOPTED BY THE GENERAL CONFERENCE**

Declaration of the Principles of International Cultural Co-operation. 4 November 1966.

Declaration of Guiding Principles on the Use of Satellite Broadcasting for the Free Flow of Information, the Spread of Education and Greater Cultural Exchange. 15 November 1972.

International Charter of Physical Education and Sport. 21 November 1978.

Declaration on Race and Racial Prejudice. 27 November 1978.\*

Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and Countering Racialism, Apartheid and Incitement to War. 28 November 1978.

Declaration of Principles on Tolerance. 16 November 1995.

Universal Declaration on the Human Genome and Human Rights. 11 November 1997.\*

Declaration on the Responsibilities of the Present Generations Towards Future Generations. 12 November 1997.

UNESCO Universal Declaration on Cultural Diversity. 2 November 2001.

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\* Provision for monitoring of application in the standard-setting instrument itself or by decision of a decision-making body.

## ANNEX B

### MACHINERY FOR MONITORING THE IMPLEMENTATION OF STANDARD-SETTING TEXTS

1	2	3	4	5
Nature of the reports	Instruments	Legal basis of the obligation to submit reports	Competent organ for initiating the report submission procedure	Submission deadlines or periodicity
- First special reports on the submission of recommendations or conventions to the competent national authorities	- All the conventions and recommendations adopted by the General Conference	- Article VIII of the Constitution – Article 16 (2) of the Rules of Procedure concerning recommendations and conventions	- The General Conference	- Within two years of the adoption of the instrument
- Additional reports on action taken on recommendations and conventions	- All the conventions and recommendations adopted by the General Conference	- Article VIII of the Constitution - Article 16 (3) of the Rules of Procedure concerning recommendations and conventions	- The General Conference	- According to the decision of the General Conference

ANNEX B (continued)

6	7	8	9
<b>Organs involved in the report examination procedure</b>	<b>Role and powers of the organ in charge of the first examination of the reports</b>	<b>Results of the procedure</b>	<b>Recipients of the final report</b>
<p>- The Legal Committee of the General Conference, then the General Conference</p>	<p>- Examine the reports - Report to the General Conference</p>	<p>- The General Conference embodies its comments in one or more general reports</p>	<p>- Member States - National Commissions - United Nations - All other authorities designated by the General Conference</p>
<p>- A subsidiary organ of the Executive Board (15 C/Resolution 12.2) for those standard-setting instruments that have been expressly entrusted to it (see Annex C); then:</p> <ul style="list-style-type: none"> <li>• the Executive Board</li> <li>• the General Conference</li> </ul>	<p>- Examine draft questionnaires or forms sent to Member States with a view to the preparation of their reports (23 C/Resolution 29.1) - Examine executive summaries of the reports - Embody its comments in a report transmitted:</p> <ul style="list-style-type: none"> <li>• to the Executive Board, which attaches its comments</li> <li>• to the General Conference</li> </ul>	<p>- The General Conference embodies its comments in one or more general reports</p>	<p>- Member States - National Commissions - United Nations - All other authorities designated by the General Conference</p>

## ANNEX C

### STANDARD-SETTING INSTRUMENTS MONITORED BY THE CR

1	2	3	4	5	6
Instruments	Legal basis* of the obligation to submit reports	Texts that entrust examination of reports to the CR	Nature of the reports	Competent organ for initiating the report submission procedure	Submission deadlines or periodicity
- Convention and Recommendation against Discrimination in Education (1960)	- Article 7 of the Convention - Article VII of the Recommendation	- 70 EX/Decision 5.2.1 - 71 EX/Decision 3.2 (1965)	- Periodic reports on the legislative and regulatory provisions adopted and other measures taken to implement the Convention	- The General Conference	- Every 6 years - 7th consultation scheduled for 2005 (33rd session of the General Conference)
- Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970) and the Recommendation on the same subject (1964)	- Article 16 of the Convention	- 20 C/ Resolution 4/7.6/4 (1978) - 105 EX/Decision 5.5.1 (1978)	- Periodic reports on the legislative and regulatory provisions adopted and other measures taken to implement the Convention and Recommendation	- The General Conference	- In 1978, 1983, 1987 and 1995 - Fifth report scheduled for 2003 (32nd session of the General Conference)
- Recommendation on the Status of Teachers (1966)	- 14 C/Resolution 1.311 - 77 EX/Decision 4.2.5	- 82 EX/Decision 4.2.4 (1969)	- Reports on the submission of the Recommendation to competent authorities - Reports on action taken on the Recommendation	- The Executive Board in consultation with the ILO Governing Body	- Every 6 years until 1995

\* Other than indicated in Annex B, Column 3.

ANNEX C (continued)

7 Number of reports submitted during the last consultation	8 Organs involved in the report examination procedure	9 Role and powers of the organ in charge of the first examination of the reports	10 Results of the procedure	11 Recipients of the final report
<ul style="list-style-type: none"> <li>- Sixth consultation (1999):                             <ul style="list-style-type: none"> <li>• Convention: 30 reports by Member States out of 87 States Parties</li> <li>• Recommendation: 26 reports by Member States</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- The CR, then:                             <ul style="list-style-type: none"> <li>• the Executive Board</li> <li>• the General Conference</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- Draw up the questionnaire that is submitted to the Executive Board for adoption</li> <li>- Examine the reports</li> <li>- Embody its comments in a report transmitted:                             <ul style="list-style-type: none"> <li>• to the Executive Board, which attaches its comments</li> <li>• to the General Conference</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- The General Conference embodies its comments in a general report or, more often, in a resolution containing its conclusions, recommendations and decisions which it transmits with the CR report</li> </ul>	<ul style="list-style-type: none"> <li>- Member States</li> <li>- National Commissions</li> <li>- United Nations</li> <li>- All other authorities designated by the General Conference</li> </ul>
<ul style="list-style-type: none"> <li>- Fourth consultation (1995):                             <ul style="list-style-type: none"> <li>• 20 reports by Member States (out of 82 States Parties to the Convention)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Until 1987:                             <ul style="list-style-type: none"> <li>- The CR, then:                                     <ul style="list-style-type: none"> <li>• the Executive Board</li> <li>• the General Conference</li> </ul> </li> </ul>                             Since 1995: The fourth report has been submitted to the General Conference                         </li> </ul>	<ul style="list-style-type: none"> <li>- Examine the reports</li> <li>- Embody its comments in a report transmitted:                             <ul style="list-style-type: none"> <li>• to the Executive Board, which attaches its comments</li> <li>• to the General Conference</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- The General Conference embodies its comments in a general report or, more often, in a resolution containing its conclusions, recommendations and decisions which it transmits with the CR report</li> </ul>	<ul style="list-style-type: none"> <li>- Member States</li> <li>- National Commissions</li> <li>- United Nations</li> <li>- All other authorities designated by the General Conference</li> </ul>
	<ul style="list-style-type: none"> <li>- The Joint ILO/UNESCO Committee of Experts on the Application of the Recommendation*</li> <li>- Then the CR, followed by:                             <ul style="list-style-type: none"> <li>• the Executive Board</li> <li>• the General Conference</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- Examine the reports</li> <li>- Evaluate the general situation regarding the implementation of the Recommendation</li> <li>- Embody its comments in a report</li> </ul>	<ul style="list-style-type: none"> <li>- The Joint Committee's report is transmitted to the CR, then:                             <ul style="list-style-type: none"> <li>• to the Executive Board</li> <li>• to the General Conference</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- Member States</li> <li>- National Commissions</li> <li>- United Nations</li> <li>- NGOs of the teaching profession</li> </ul>

\* At its 157th session, the Executive Board decided to extend the mandate of the Joint ILO-UNESCO Committee of Experts on the Application of the Recommendation concerning the Status of Teachers (CEART) to cover the monitoring of the UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel and to include experts in higher education in its composition (1997). Following 162 EX/Decision 3.2.2 of the Executive Board, that Committee is now known as the "Joint ILO/UNESCO Committee of Experts on the Application of the Recommendation concerning Teaching Personnel". It meets every three years.

**ANNEX C (continued)**

1	2	3	4	5	6
<b>Instruments</b>	<b>Legal basis* of the obligation to submit reports</b>	<b>Texts that entrust examination of reports to the CR</b>	<b>Nature of the reports</b>	<b>Competent organ for initiating the report submission procedure</b>	<b>Submission deadlines or periodicity</b>
- Recommendation on Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms (1974)*	- Preamble - 21 C/Resolution 1/02 - 23 C/Resolution 13.3 and 28 C/Resolution 5.41 (1995) on the establishment of a Permanent System of Reporting	- 23 C/Resolution 13.3 (1985)	- National reports on the monitoring and implementation of the Recommendation and of other instruments, and synopsis of those reports drawn up by the Director-General	- The General Conference	- Every 6 years
- Revised Recommendation concerning Technical and Vocational Education (1974) and the Revised Recommendation of 2001	- Preamble to the 1974 Recommendation - 22 C/Resolution 25	- 22 C/Resolution 25 (1983)	- Reports on the implementation of the recommendation	- The General Conference	- Every 6 years At the 30th session of the General Conference (1999), the third consultation was deferred to the 31st session, at which it was decided that future consultations with Member States concerning the implementation of the Revised Recommendation (2001) would be conducted together with the five-yearly assessments of the follow-up to the Seoul Congress (which was held in April 1999)
- Recommendation on the Development of Adult Education (1976)	- Preamble to the Recommendation - 24 C/Resolution 2.7	- 24 C/Resolution 2.7 (1987)	- Reports by Member States on the implementation of the Recommendation	- The General Conference	- Every 6 years At the 30th session (1999), the consultation requested by the General Conference (27 C/Resolution 117 (1993)) did not take place. It will be noted that in 1997, the fifth International Conference on Adult Education adopted the Hamburg Declaration and called for the revision of the 1976 Recommendation

\* Since 1995, a further six instruments:

- The World Plan of Action on Education for Human Rights and Democracy (Montreal, 1993).
- The Declaration and Programme of Action of the World Conference on Human Rights (Vienna, 1993).
- The Declaration of Ministers of the 44th session of the International Conference on Education (Geneva, 1994) and the Integrated Framework of Action on Education for Peace, Human Rights and Democracy, approved by the General Conference of UNESCO at its 28th session (Paris, 1995).
- The Plan of Action of the United Nations Decade for Human Rights Education (1995-2004).
- The Declaration of Principles on Tolerance and Follow-up Plan of Action for the United Nations Year for Tolerance, adopted by UNESCO (Paris, 1995).
- The Declaration and Platform for Action of the Fourth World Conference on Women (Beijing, 1995).



## ANNEX C (continued)

7 <b>Number of reports submitted during the last consultation</b>	8 <b>Organs involved in the report examination procedure</b>	9 <b>Role and powers of the organ in charge of the first examination of the reports</b>	10 <b>Results of the procedure</b>	11 <b>Recipients of the final report</b>
<ul style="list-style-type: none"> <li>- In 2001:               <ul style="list-style-type: none"> <li>• 33 reports by Member States</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- The CR, then:               <ul style="list-style-type: none"> <li>• the Executive Board</li> <li>• the General Conference</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- Adopt the questionnaire</li> <li>- Embody its comments in a report</li> </ul>	<ul style="list-style-type: none"> <li>- A synopsis of the reports is transmitted to the Executive Board and then to the General Conference.</li> </ul>	<ul style="list-style-type: none"> <li>- Member States</li> <li>- National Commissions</li> <li>- United Nations</li> <li>- NGOs (in the field of education and maintaining relations with UNESCO)</li> </ul>
<ul style="list-style-type: none"> <li>- Second consultation (1993):               <ul style="list-style-type: none"> <li>• 54 reports by Member States</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- The CR, then:               <ul style="list-style-type: none"> <li>• the Executive Board</li> <li>• the General Conference</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- Adopt the questionnaire</li> <li>- Examine the reports</li> <li>- Embody its comments in a report</li> </ul>	<ul style="list-style-type: none"> <li>- The CR report together with summaries of the reports and the general synopsis are transmitted to the Executive Board and then to the General Conference.</li> </ul>	<ul style="list-style-type: none"> <li>- Member States</li> <li>- National Commissions</li> <li>- United Nations</li> </ul>
<ul style="list-style-type: none"> <li>- At the 27th session (1993):               <ul style="list-style-type: none"> <li>• 59 reports by Member States</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- The CR, then:               <ul style="list-style-type: none"> <li>• the Executive Board</li> <li>• the General Conference</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- Adopt the questionnaire.</li> <li>- Examine the summaries of the reports and the general synopsis</li> <li>- Embody its comments in a report</li> </ul>	<ul style="list-style-type: none"> <li>- The CR report, together with summaries of the reports by Member States, the general synopsis and the comments are transmitted to the Executive Board and then to the General Conference.</li> </ul>	<ul style="list-style-type: none"> <li>- Member States</li> <li>- National Commissions</li> <li>- United Nations</li> </ul>

## ANNEX II

### 165 EX/Decision 6.2

#### **6.2 Proposals by the Committee on Conventions and Recommendations on the conditions and procedures applicable to the examination of questions relating to the implementation of UNESCO's standard-setting instruments (165 EX/21 and 165 EX/47 Rev.)**

The Executive Board,

1. Recalling 164 EX/Decision 5.2,
2. Having examined document 165 EX/21,
3. Considering the proposals submitted to it by the Committee on Conventions and Recommendations (CR) on the conditions and procedures applicable to the examination of questions relating to the implementation of UNESCO's standard-setting instruments,
4. Mindful of the need to improve the effectiveness of the Committee's mandate and of the reporting system on UNESCO conventions and recommendations in general,
5. Reminds Member States to respect their legal obligations under the UNESCO Constitution concerning periodic reports on the follow-up to conventions and recommendations;
6. Calls upon the Secretariat to assist Member States in the preparation and follow-up of their periodic reports;
7. Recommends to the General Conference that, in order to rationalize such reporting procedures, it establish new procedures for reporting by Member States making a clear distinction between conventions and recommendations; to this end, a revision of Section VI 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 should be undertaken;
8. Decides to examine, in the light of such revision, the possibility of preparing a set of rules of procedure for the CR concerning the examination of reports on conventions and recommendations;
9. Decides, pending the adoption of new reporting procedures by the General Conference, to:
  - (a) request the Secretariat to rationalize the guidelines communicated to Member States for periodic reports having regard also to already existing information monitored by other treaty bodies in the United Nations system as well as by international statistical offices, in particular by the UNESCO Institute for Statistics;
  - (b) invite the Director-General to organize on the sidelines of the General Conference, a meeting of States Parties to conventions on which reports are due in the near future (for example in 2003, the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural

Property; in 2005, the 1960 Convention against Discrimination in Education) so that they can adopt appropriate measures to improve the reporting procedures on the conventions;

- (c) suggest, with regard to recommendations, that requests for submission of periodic reports by Member States should be organized by sector and in a manner which reflects the policy priorities of the Organization;
  - (d) call upon the Secretariat to use all avenues available to inform Member States about the most important aspects of recommendations and to sensitize them to the importance of such reports;
10. Decides that the above-mentioned measures will be applicable only to the conventions and recommendations entrusted to the CR until an appropriate decision has been taken by the General Conference:
- (a) the Convention (and Recommendation) of 1960 against Discrimination in Education;
  - (b) the 1966 Recommendation concerning the Status of Teachers;
  - (c) the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property;
  - (d) the 1974 Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms (including follow-up instruments);
  - (e) the 1976 Recommendation on the Development of Adult Education;
  - (f) the 2001 Revised Recommendation concerning Technical and Vocational Education;
11. Decides that UNESCO should continue to work with other institutions of the United Nations system with the aim of standardizing the procedure for the submission and examination of Member States' reports;
12. Decides to re-examine this item in 2006 in the light of the results achieved by the above-mentioned measures.

(165 EX/SR.6)

## ANNEX III

### 32 C/Resolution 77

#### VIII Constitutional and legal questions

#### 77 **Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution: amendment of Part VI thereof<sup>1</sup>**

*The General Conference,*

*Having considered* document 32 C/22 and *taken note* of the report of the Legal Committee (32 C/81),

1. *Approves* Part VI, as amended, 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, contained in annex to this resolution;
2. *Decides*, accordingly, to amend the second paragraph of Rule 37 of its Rules of Procedure which shall henceforth read as follows:  
“2. The Committee shall also consider the reports on conventions and recommendations transmitted to it by the General Conference.”;
3. *Invites* the Director-General to organize thematically, in an appropriate way, requests for the submission of reports relating to conventions and recommendations and their consideration;
4. *Invites also* the Director-General, when drawing up the guidelines to be communicated to Member States for the drafting of reports, to take into account existing information monitored by other treaty bodies in the United Nations system and also by international statistical offices, in particular by the UNESCO Institute for Statistics;
5. *Further invites* the Director-General to submit to it at its 33rd session a legal framework for the elaboration, examination, adoption and follow-up of declarations, charters and other similar standard-setting instruments adopted by the General Conference and not covered by the Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution.

#### *Annex*

#### *VI. Procedures for promoting Member States' acceptance and application of conventions and recommendations adopted by the General Conference*

##### *Article 16*

1. While transmitting, pursuant to Article 15 of the present Rules, a certified copy of any convention or recommendation to Member States, the Director-General shall formally remind them of their obligation to submit the convention or recommendation in question to their competent national authorities in accordance with Article IV, paragraph 4, of the Constitution, drawing also their attention to the difference in the legal nature of conventions and recommendations.
2. The Member States shall make the text of any convention or recommendation known to the bodies, target groups and other entities interested in matters dealt with therein.

##### *Article 17*

1. The Member States shall submit, by the dates specified by the General Conference, reports on the measures that they have adopted in relation to each convention in force and each recommendation adopted.
2. The General Conference may invite the Secretariat to assist the Member States in the implementation of the convention or recommendation concerned and in the preparation and follow-up of such reports.

##### *Article 18*

1. The General Conference shall entrust the examination of the reports on such conventions and recommendations received from Member States to the Executive Board.

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<sup>1</sup>. Resolution adopted on the report of the Legal Committee at the 18th plenary meeting, on 15 October 2003.

2. The Executive Board shall transmit to the General Conference the reports or, if so decided by the General Conference, the analytical summaries thereof, together with its observations or comments and any that the Director-General may make. They shall be examined by the competent subsidiary organs prior to their consideration in plenary meeting.

3. The Director-General shall regularly inform the General Conference and Executive Board with respect to the implementation of the conclusions and decisions adopted by the General Conference concerning reports on conventions and recommendations.

## ***VII. Suspension and amendment***

### *Article 19*

If there are special circumstances justifying such a course, the General Conference may decide, by a two-thirds majority, to suspend the application of the provisions of one or more articles in the present Rules of Procedure in any particular case. The Conference may not, however, suspend the application of Articles 8 and 12.

### *Article 20*

With the exception of Articles 8 and 12, these Rules may be amended by a decision of the General Conference taken by a two-thirds majority, provided that the proposal for amendment has first been placed on the agenda.

## ANNEX IV

United Nations Educational,  
Scientific and Cultural Organization

**Executive Board****eX****Hundred and sixty-sixth Session**

166 EX/23

PARIS, 13 March 2003

Original: French

Item 6.1 of the provisional agenda

**EXAMINATION OF THE COMMUNICATIONS TRANSMITTED  
TO THE COMMITTEE ON CONVENTIONS AND RECOMMENDATIONS  
IN PURSUANCE OF 104 EX/DECISION 3.3**

**COMPARISON OF THE PROCEDURES  
OF THE COMMITTEE ON CONVENTIONS AND RECOMMENDATIONS  
WITH THOSE OF THE UNITED NATIONS HUMAN RIGHTS BODIES**

**SUMMARY**

The Director-General submits to the Executive Board this document concerning a comparison of the procedures of the Committee on Conventions and Recommendations with those of the United Nations human rights bodies.

## INTRODUCTION

1. The question has periodically arisen of whether there is duplication between UNESCO's procedure for the examination of complaints received by the Organization concerning alleged violations of human rights in its fields of competence (education, science, culture and information) and those of the United Nations human rights bodies.

2. The Committee on Conventions and Recommendations (CR) has on several occasions, when examining its methods of work,<sup>1</sup> taken a stand on the matter and stressed the special character of UNESCO's procedure as compared with similar United Nations procedures. The Committee has also observed that such procedures were not incompatible but, rather, complementary. The fact that a case is being examined within another organization in the United Nations system does not prevent the CR from examining it as well. On the contrary, it has been made clear, from the beginning, in the course of the Committee's debates that 104 EX/Decision 3.3 was deliberately worded to enable the Committee to examine a communication that has already been submitted to another international organization for consideration.<sup>2</sup> At the Committee's request, the Secretariat of the CR has, in addition, often had occasion to contact the Secretariat of other international organizations, particularly when dealing with the same cases, in order to obtain information or to agree on the distribution of responsibilities.

3. Before determining whether this unique procedure is still relevant by comparing the procedure of the CR with those of the United Nations human rights bodies, it might be helpful to point out that there are two categories of mechanisms functioning on the basis of complaints or communications among the bodies at the United Nations. They are:

Extra-conventional mechanisms or "special procedures" that have developed over the years. These terms refer to a special independent fact-finding system outside the framework of a treaty. The procedure of the Commission on Human Rights, which is often mentioned as duplicating the UNESCO procedure, also comes into this category (Part I);

Conventional mechanisms, which are specific committees established under the main standard-setting instruments in the field of human rights. These "treaty-monitoring bodies" monitor the implementation of each of these instruments by their States Parties. Only four treaty monitoring bodies have established procedures under which persons claiming to be victims of a violation by a State Party of any one of the rights set out in the respective treaties may submit their complaints for examination (Part II).

### I. FACT-FINDING MECHANISMS OF THE COMMISSION ON HUMAN RIGHTS

4. Like the UNESCO procedure implemented by the CR as defined by 104 EX/Decision 3.3 of the Executive Board (1978), the procedure of the Commission on Human Rights, established by the Economic and Social Council (ECOSOC) in its resolution of 1970 (revised in 2000) known as resolution 1503, allows anyone or any group of persons to report human rights violations to the United Nations even when the case is not covered by a United Nations treaty.

5. Although there is some resemblance between the procedure of the CR and that of the Commission on Human Rights as to the source of the communications (they may be submitted by any person or group of persons who may reasonably be presumed to be victims of the alleged

<sup>1</sup> In particular at the 156th session of the Executive Board.

<sup>2</sup> See paragraph 56 of document 112 EX/CR/HR/5 on the procedural practice of the Committee.

violations, any person or group of persons with direct and reliable knowledge of the violations or any non-governmental organization acting in good faith and having direct and reliable knowledge of the violations), the two procedures are dissimilar in many respects.

### **The procedure of the Commission on Human Rights**

6. Under its terms of reference, the Commission on Human Rights examines situations on the basis of communications denouncing the existence of a pattern of flagrant and systematic violations relating to all human rights in general.

7. Individual cases as such are not examined under procedure 1503, in which a large number of communications is considered merely as a source of information on a given situation involving a pattern of flagrant and systematic violations of human rights. The State thus impugned may be regarded as responsible for the situation denounced. The communications are considered individually only at the time of submission to the Secretariat of the Commission on Human Rights.

8. It is to be noted that all the introductory stages of this process are confidential until the situation has been referred to the Economic and Social Council (ECOSOC). It is at this stage that, since 1978, the country whose situation is being examined is named. If the case is not settled during the initial stages of the process, a pattern of violations committed in a given country is thus brought to the notice of the international community by this main United Nations body.

9. Furthermore, in order to monitor the human rights situation in certain countries and to study certain specific issues, the Commission on Human Rights has established special procedures on an ad hoc basis consisting in the appointment of “Special Rapporteurs” or in the formation of working groups that are given specific mandates. The persons appointed to fulfil those mandates are independent experts sitting in a personal capacity. As there is no formal procedure for the filing and examination of complaints, these experts gather all the information from various sources (authors of communications, victims or their relatives, local or international NGOs, etc.). These communications may therefore be submitted in various forms (letters, fax, telegrams) and may concern individual cases or situations of presumed violation of human rights. They then draw up reports focused either on a specific country or on a theme (for example: arbitrary detention, freedom of opinion or expression, etc.), which are made public.

### **The CR procedure and its specific characteristics**

10. Far from the conflictual and accusatory character of procedure 1503, the CR procedure helps gradually to “bring about a friendly solution designed to advance the promotion of human rights”. The CR does not set itself up as a supreme international court with the power to review the judgements of the competent courts of Member States. Its sole object, for purely humanitarian reasons, is to establish dialogue with the governments concerned in order to consider with them what might be done on behalf of alleged victims in the event of their having suffered from violations of human rights in UNESCO’s fields of competence. For example, the victim might be an intellectual (artist, journalist, student, teacher, scientist, etc.) imprisoned as a result of a violation by the government concerned of his or her right to freedom of expression.

11. Unlike communications under procedure 1503, all these submitted to the Committee on Conventions and Recommendations in pursuance of 104 EX/Decision 3.3 are examined under a procedure that preserves their individual character from start to finish.



12. In the CR, communications are examined in private meeting, confidentiality being the rule throughout their examination, save in exceptional cases when the Committee decides to ask the Executive Board to examine a communication in a public meeting.

13. Only the representatives of the Member States examine communications, directly and individually, and no fact-finding is involved. The governments concerned by communications are invited to participate in these meetings in order to provide additional information or to answer questions from members of the Committee (paragraph 14(e) of 104 EX/Decision 3.3). Generally speaking, practically all States respond positively to such invitations. Good faith is presumed on the part of both the authors of communications and the governments concerned.

14. In conclusion, the humanitarian approach and the spirit of dialogue with the government concerned have made the Executive Board's procedure under 104 EX/Decision 3.3 a very distinctive mechanism in comparison with the fact-finding procedure under ECOSOC resolution 1503 and with the "extra-conventional mechanisms".

## II. MECHANISMS OF BODIES SET UP TO MONITOR THE IMPLEMENTATION OF TREATIES

15. Four treaty-monitoring bodies have established procedures to examine communications from individuals claiming to be victims of a violation, by a State Party, of one of the rights listed in the treaty concerned. These monitoring bodies are:

the **Human Rights Committee**, set up in connection with the implementation of the International Covenant on Civil and Political Rights;

the **Committee on the Elimination of Racial Discrimination**, set up under the International Convention on the Elimination of All Forms of Racial Discrimination;

the **Committee Against Torture**, established under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

the **Committee on the Elimination of Discrimination against Women**, established under the provisions of the Convention on the Elimination of All Forms of Discrimination against Women.

16. Only complaints from persons under the jurisdiction of States that have officially accepted these committees' procedures may be examined. Such acceptance is effected by means of ratification (Optional Protocol to the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination against Women) or by means of an express statement (International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

17. Only a small number of States have recognized the competence of these committees, with the exception of the Human Rights Committee, to examine complaints in which they may be impugned. As at 10 January 2003:

of the 149 States Parties to the International Covenant on Civil and Political Rights, 102 had ratified or have acceded to the Protocol;

of the 165 States Parties to the International Convention on the Elimination of All Forms of Racial Discrimination, only 39 had accepted the procedure by means of a declaration;

of the 132 States Parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, only 52 had made a statement accepting that the Committee could examine communications submitted by or on behalf of individuals invoking a violation by those States of the provisions of the Convention;

of the 170 States Parties to the Convention on the Elimination of All Forms of Discrimination against Women, 47 had ratified or acceded to the Protocol.

18. It may be noted that, unlike these bodies' monitoring mechanisms, UNESCO does not request the agreement of the State concerned since the latter is not put in the position of a defendant. A complaint may be directed at any Member State, for the very reason that it is a Member of UNESCO.<sup>3</sup> Accordingly, an increasing number of the governments concerned by communications send representatives to the Committee and cooperate with it although they are under no legal obligation to do so. This is a tribute to the procedure established by the Executive Board in 104 EX/Decision 3.3 and to the way in which it has been applied for 25 years.

19. As these four committees function along similar lines and have a similar structure, a comparison will only be made between the procedure of the Human Rights Committee and that of UNESCO.

### **Procedure of the Human Rights Committee**

20. When it examines communications from individuals alleging violations of the rights set out in the Covenant under its Optional Protocol, at the conclusion of its proceedings the Human Rights Committee adopts findings.

21. Even though the findings formally have no binding force, the Committee acts as a quasi-judicial body. In addition, when the Human Rights Committee concludes in its findings that there has been a violation of a provision of the Covenant (that is to say, in more than two thirds of cases), it may request the State Party to take all the appropriate remedial measures (for example, commutation of sentence, release or reparations for the violations suffered).

22. The Committee's final decisions (findings, inadmissibility decisions and decisions to discontinue consideration of a communication) are made public, after the communications have been examined in private meeting.

23. Until 1985, the Human Rights Committee's role ended with the adoption of the findings. Since 1990, under growing pressure from authors of communications complaining about the lack of action by the governments concerned on such findings, the Human Rights Committee has adopted a measure consisting in appointing a special rapporteur to follow up the findings. As a result, since 1991, the Special Rapporteur has sent States Parties requests for information on action taken to follow up the findings. Chapter VI of the Human Rights Committee's report, which is not confidential, contains a list, by country, of replies received or expected.

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<sup>3</sup> In practice, even States non-Members of UNESCO have readily agreed to cooperate with the Committee.

### **The procedure of the Committee on Conventions and Recommendations and its specific characteristics**

24. As indicated earlier (see above), the CR procedure is designed to seek a friendly solution to the cases that have been brought to the Committee's attention. Bearing in mind paragraph 14(k) of the decision, members have often stressed that "in exercising its mandate, the Committee endeavoured, for humanitarian reasons, to establish dialogue with the governments concerned in order to consider with them what might be done to promote human rights falling within the competence of UNESCO by seeking an amicable solution to cases brought to its attention".<sup>4</sup>

25. The search for a solution generally means that the communication is examined at several sessions of the CR at the conclusion of which decisions are adopted. That might make it possible for the dialogue with the States concerned to continue, and a fresh opportunity may thus be afforded to those States to find a satisfactory solution tending to favour the promotion of human rights within UNESCO's fields of competence. In its decisions, the CR makes appeals for clemency to the authorities. It may also request the Director-General or the Chairperson of the CR to make humanitarian representations on behalf of the alleged victim.

26. The members of the CR have always asserted and reiterated that the strength of this procedure is its confidentiality, the end result being what really matters. In fact, in the endeavour to solve a case, the cooperation of the government concerned is indispensable. Without confidentiality, it is doubtful that governments would agree to engage in dialogue before the Committee. The members of the CR have expressed the view that it is precisely this discretion which distinguishes the 104 EX/Decision 3.3 procedure from that of the Human Rights Committee and has given the CR the moral authority that it needs to convince the States concerned by communications that they should cooperate. Furthermore, strict observance of this rule does not prevent certain statistical data on the CR's activities from being made public and being publicized among the National Commissions and NGOs and on the Internet.

27. Lastly, it is to be noted that follow-up action has not proven necessary at UNESCO since all the communications are examined until the cases have been settled (for example, until the early release of the victim by the government concerned).

### **CONCLUSION**

28. It can be seen from this comparison that the procedure laid down in 104 EX/Decision 3.3 of the UNESCO Executive Board has specific characteristics in comparison with similar procedures in United Nations human rights bodies.

29. Even though the various aspects of UNESCO's procedure are not, taken separately, either very original or very new, it is the combination of these aspects and the spirit in which they are applied that give the procedure its originality. While the other procedures seem to take a conflictual, accusatory and quasi-judicial form, the UNESCO procedure has, from the very beginning, been deliberately applied exclusively with a view to seeking a solution with the State concerned. For this reason, everything has always been done to avoid reaching the conclusion that a State has violated human rights. Such a conclusion would in fact mean a deadlock, preventing the continued search for a solution. This is the background against which the many and varied stages of the CR procedure must be understood, since each stage represents a further level of dialogue with the State concerned and, consequently, another opportunity to find a satisfactory solution. The desire shown

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<sup>4</sup> See Report of the Committee on Conventions and Recommendations, 155 EX/3 PRIV., paragraph 198.

by the Committee to take its decisions solely by consensus is no doubt a reflection of the same concern.

30. It has often been pointed out in the course of debates within the CR that, in accordance with paragraph 7 of the decision, “the aim of the Committee was not to condemn the governments concerned, nor a fortiori to sanction them, but to improve the situation of the alleged victims”.<sup>5</sup>

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<sup>5</sup> Report of the working group on the methods of work of the Committee on Conventions and Recommendations, 156 EX/CR/2, paragraph 7.