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**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.