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Item 5.8 of the provisional agenda

**REPORT BY THE JOINT EXPERT GROUP UNESCO (CR)/ECOSOC (CESCR)
ON THE MONITORING OF THE RIGHT TO EDUCATION**

SUMMARY

The Executive Board by decision 5.4 taken at its 162nd session in October 2001 established the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education. The first meeting of the Joint Expert Group was held at UNESCO Headquarters on 19 May 2003.

In this document, the Chairperson of the Committee on Conventions and Recommendations (CR) presents the report of this first meeting. It should be recalled that the Joint Expert Group was created to:

- (a) formulate practical suggestions for strengthening the growing collaboration between UNESCO (CR) and ECOSOC (CESCR) for the purpose of monitoring and promoting the right to education in all its dimensions;
- (b) suggest specific measures for cooperative action by the two bodies with a view to imparting synergy to the follow-up to the Dakar Framework for Action within the United Nations system;
- (c) consider the possibilities for reducing the reporting burden on States in relation to the right to education and identify ways in which arrangements could be both streamlined and made more effective;
- (d) advise on right to education indicators.

This report contains a set of recommendations and suggestions made by the Joint Expert Group on some of its above-mentioned terms of reference. Taking into account these suggestions and recommendations, the Committee may wish to provide further guidance to the Group with regard to its future work.



**Economic and Social
Council**

**JOINT EXPERT GROUP
UNESCO (CR)/ECOSOC (CESCR)
ON THE MONITORING OF
THE RIGHT TO EDUCATION**

First Meeting

Monday 19 May 2003

Room VI

REPORT

UNESCO
7 place de Fontenoy
75352 Paris 07 SP

INTRODUCTION

1. The Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education (hereinafter referred to as the Joint Expert Group) was established by decision 5.4 adopted by UNESCO's Executive Board at its 162nd session in October 2001. Welcoming the experts¹ to its first meeting on behalf of Mr Koïchiro Matsuura, Director-General of UNESCO, Mr Marcio Barbosa, Deputy Director-General of UNESCO underlined the importance of giving effect to the right to education, which is at the heart of UNESCO's education programme. The meeting was opened, on behalf of the Chairperson of UNESCO's Executive Board, by His Excellency Mr Louis P. Van Vliet, Chairperson of UNESCO's Committee on Conventions and Recommendations of the Executive Board (CR), bringing into prominence key issues for deliberations. Annex I is the copy of his opening address. In her introductory statement (Annex II), Professor Virginia B. Dandan, Chairperson of the United Nations Committee on Economic, Social and Cultural Rights (CESCR) recalled that when the International Covenant on Economic, Social and Cultural Rights was being elaborated, UNESCO drafted Articles 13 and 14 concerning the right to education. It can therefore be said that these articles are "owned" by UNESCO. She stated that education plays a crucial role in all economic, cultural and social rights, and all the rights impacted by the right to education.

2. After adopting the agenda, the experts agreed at the outset on an informal working pattern, in a collegial spirit. They decided that the chair will rotate among the members representing the CESCR and CR on the Joint Expert Group. Professor Virginia B. Dandan, Chairperson of CESCR was requested to chair the meeting. Mr Kishore Singh from UNESCO's Education Sector served as Secretary for the Joint Expert Group.

I. COOPERATION BETWEEN CR AND CESCR, ESPECIALLY AS A FOLLOW-UP TO DECISION 6.2, ADOPTED BY THE EXECUTIVE BOARD AT ITS 165TH SESSION IN OCTOBER 2002

3. The discussions on the above agenda item covered several substantive questions, mainly, comparing the working methods of CESCR and CR with a view to complementarity in the monitoring of the right to education.

4. It was mentioned that in monitoring the implementation of the International Covenant on Economic, Social and Cultural Rights, which covers the right to education (Articles 13 and 14 of the Covenant), CESCR maintains dialogue with the States Parties to the International Covenant. It was significant that as a result of UNESCO's active participation in the work of CESCR in recent years, achieving the right to education for all systematically figures in such dialogue. In the Concluding Observations CESCR adopts for the follow-up action by the State Party after examining national reports, it advises States Parties to seek assistance from UNESCO. On the other hand, CR as a subsidiary organ of UNESCO's Executive Board has the mandate of monitoring the implementation of UNESCO standard-setting instruments. Unlike CESCR, which is composed of 18 independent experts, CR is composed of 30 representatives of Member States and not of independent experts. Rather than examining the reports submitted by States individually, it examines a synthesis report prepared by the Secretariat. Moreover, unlike CESCR, CR does not benefit from participation by NGOs and civil society. As such, CR is exploring ways of making the monitoring more effective, concentrating on the right to education.

¹ The Joint Expert Group is composed of four members: Professor Virginia B. Dandan, Chairperson of the United Nations Committee on Economic, Social and Cultural Rights (CESCR) and Professor Eibe Riedel, Vice-Chairperson of CESCR, representing CESCR; and His Excellency Mr Olabiyi B.J. Yai and Professor Klaus Huefner, members of the Committee on Conventions and Recommendations (CR), representing CR.

5. The Joint Expert Group, therefore, recommended:

- stepping up reciprocal exchange of information, including the States' reports between CESCR and UNESCO and feedback on the Concluding Observations as well as on the decisions of UNESCO's Executive Board in the field of the right to education;
- cooperation with CESCR in the elaboration of UNESCO's guidelines for monitoring, foreseen in decision 6.2 mentioned above, even as CESCR has collaborated with UNESCO in the elaboration of General Comment No. 13 on the Right to Education (Article 13 of the Covenant).

6. The Joint Expert Group raised the question of endowing CR with independent experts. They suggested that bringing such a concern to UNESCO's General Conference could lead to examining eventually the possibility of transforming the nature of CR. Other suggestions that emerged related to ensuring that the States' reports reflect the reality on the ground and are of quality; to standardization of reports and publicizing them so as to bring the two reporting systems closer; to actively involving UNESCO's National Commissions in the State reporting and the follow-up; and to drawing upon human rights institutions which play a major role at the country level, etc.

7. Emphasis was placed upon the State obligations in reporting.² As General Comment No. 13 on the Right to Education, mentioned above, provides the right to education, like all human rights, imposes three levels of obligations on States parties: the obligations to respect, protect and fulfil. In turn, the obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide. The State obligation remains even in case of privatization of education.

II. FOLLOW-UP TO THE DAY OF DISCUSSION ON THE RIGHT TO EDUCATION AND THE FOLLOW-UP TO THE WORLD EDUCATION FORUM (ORGANIZED BY CESCR IN COOPERATION WITH UNESCO ON 14 MAY 2002)

8. The above meeting bears evidence to shared concerns and common objectives of UNESCO and CESCR in promoting the right to basic education for all as a fundamental human right, as the report on it indicates. Bearing in mind that the realization of the right to basic education for all is UNESCO's priority, a number of areas were examined for further measures. The discussion indicated the need for:

- operational definitions of basic education for all, lifelong learning as also of quality education so that the progress could be monitored on the basis of agreed legal parameters and the United Nations system uses the same language;
- EFA Global Monitoring Report could possibly be reviewed in the light of this discussion to see how the monitoring of the right to education can be used in the whole process, with key targets and quality indicators, starting from an analysis of the 18 indicators on EFA as the first step. The guidelines on human rights and poverty reduction are useful in developing indicators.

9. The Joint Expert Group considered it especially important that work on the legal implications of the Dakar Framework for Action deserves greater consideration.

² UNESCO's Constitution provides that "Each Member State shall submit to the Organization, at such time and in such manner as shall be determined by the General Conference, reports on laws, regulations and statistics relating to its educational, scientific and cultural institutions and activities, and on the action taken upon the recommendations and conventions (...)" (Article VIII).

III. QUESTIONS OF KEY IMPORTANCE FOR STRENGTHENING LEGAL FOUNDATIONS OF THE RIGHT TO EDUCATION

10. The discussions showed that it was crucial to emphasize the importance of the incorporation of the State obligations on the right to education into national legal system and to project it as being justiciable for promoting its enforcement. Research and studies in the field of the right to education are vital for examining how the right to basic education as a fundamental right is integrated into constitutions.

11. With that end, the Joint Expert Group suggested that it was important to:

- create greater awareness about the need for and the importance of national laws on the right to education (seminars and meetings especially involving the lawmakers and the parliamentarians, etc.);
- undertake detailed studies as regards the foundations of the right to education in national legal systems, including legislation on non-discrimination in and on accessibility to education and collaboration with the intellectual community;
- develop further UNESCO's proactive role and technical assistance to Member States in response to emerging concerns for modernizing legislation and administrative processes, thus ensuring fulfilment of their State obligation;
- expound legal questions and issues in universalizing access to education, especially universal, free and primary education.

12. It was mentioned that the focus of the World Bank's Fast Track is on the completion of universal primary education. As regards the justiciability of the right to education, reference was made to the recent case law in South Africa and in India with respect to the obligation of providing universal free primary education. Larger areas such as the rights in education and the right to education also figured in the discussions.

IV. COMPLEMENTARITY BETWEEN CESCR AND CR AND MAJOR CONCLUSIONS

13. The main thrust of the discussion of the Joint Expert Group was to fully explore the potential of the complementarity between CESCR and CR. An important substantive question on which it focused related to the proposal for the revision of the Rules of Procedures on Section VI – 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,³ in the terms of Article IV, paragraph 4, of UNESCO's Constitution. Mr A. Yusuf, Director of UNESCO's Office of International Standards and Legal Affairs provided information and explanations with respect to the proposed revision. Such revision will cover the entire process concerning the submission and examination of State reports and follow-up action in monitoring implementation of UNESCO's standard-setting instruments. In this process, a distinction would be made between conventions and recommendations so that reports on recommendations could be separated from reports on conventions, which create legal obligations for States. Furthermore, conventions on education could be separated from other forms of conventions in order to have a more effective monitoring on such conventions on the right to education itself.

³ Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution.

14. In light of the above information and explanations, the Joint Expert Group explored the possibility as to how a new approach would create complementarity between the work of UNESCO and the work of CESCR. After taking into consideration the above elements, the Joint Expert Group arrived at a set of major recommendations:

- The suggestions and recommendations made by the members of the Joint Expert Group will be taken into consideration in the proposals that the Secretariat is preparing for the General Conference and on which CR has already given its views. It will be suggested to the General Conference to accept revision of Section VI, mentioned above, concerning the submission of reports, taking into account a rights-based approach with respect to the conventions in the field of education;
- The distinction between conventions and recommendations in State reporting would be the way towards a rights-based reporting system, on the basis of the conventions on education. This would facilitate the cooperation between UNESCO and CESCR but also make it easier to monitor the right to education, if a rights-based approach was adopted. UNESCO would rather have to seek information on the fulfilment of the rights than on their protection. That way, UNESCO's reporting system could, in the final analysis, be fed into the reports to be presented. As UNESCO deals with plans of action, policies and strategies, etc., it would also be useful to CESCR and its work;
- UNESCO will need information from CESCR particularly on the fulfilment of the right to education. Indeed, CESCR does measure progress in realizing the right to education whether it be primary education, the national plans for primary education, the Dakar Framework for Action or EFA and universal free and compulsory primary education. A critical evaluation of progress by State Parties in that respect would allow to move quite a large step forward;
- The Joint Expert Group recognized the need to elaborate on the complementarity of the two bodies in normative action: CESCR with Articles 13, 14 and 15 of the Covenant and its General Comments No. 11 and 13 on primary education and on the right to education, and the work of CR with respect to the monitoring of the implementation of UNESCO's standard-setting instruments relating to the right to education. The issues concerning the complexity of the reporting cycles, individual State reports, and the kind of States who are parties to the Covenant in the case of CESCR and to the Convention against Discrimination in Education (1960) in the case of UNESCO, and who are reporting, need to be considered carefully, as they require innovative and creative solutions.

15. While concluding the meeting, it was decided that the report of the Joint Expert Group will include the summary of discussions, along with suggestions and a set of recommendations. After its approval by the members of the Joint Expert Group, this will be presented by the Chairperson of CESCR, Professor Virginia B. Dandan, to CESCR, and by the Chairperson of CR, Mr Louis P. Van Vliet to CR as a document.

16. A website on the right to education was launched by UNESCO on the occasion of the meeting. It presents UNESCO's work in this field and includes landmarks in the collaboration between CESCR and UNESCO as also the documents prepared by the Secretariat and information on the first meeting of the Joint Expert Group. The website can be accessed at: http://portal.unesco.org/education/ev.php?URL_ID=9019&URL_DO=DO_TOPIC&URL_SECTION=201.

17. Finally, it was proposed that the next meeting of the Joint Expert Group would take place on 12 or 13 November 2003 during the 31st session of CESCR in Geneva. This will provide the

occasion for the members of CR to see how CESCR conducts the dialogue with the States Parties to the International Covenant and how the General Comments, elaborated by CESCR, are used in reporting, especially as regards the right to education.

18. As Chairperson of CR, Mr L.P. Van Vliet stated that, despite the complexity of the matter discussed, the meeting had led to “undreamed concrete results”. The Joint Expert Group really came out with a lot of substance and the outcome was “unbelievably positive”. The Chairperson of CESCR, in her general conclusions, characterized the meeting as being historic. For the first time, treaty bodies are working together hand in hand on a particular right, that is, for realizing the right to education. This was a landmark. The work done by the Secretariat was highly commended.

ANNEX I

OPENING ADDRESS BY MR LOUIS P. VAN VLIET, CHAIRPERSON, UNESCO'S COMMITTEE ON CONVENTIONS AND RECOMMENDATIONS OF THE EXECUTIVE BOARD

Mr Marcio Barbosa, Deputy Director General, UNESCO,
Distinguished Members of the Joint Expert Group UNESCO (CR)/
ECOSOC (CESCR) on the Monitoring of the Right to Education,

On behalf of the Chairperson of UNESCO's Executive Board, and on my own behalf as Chairperson of the Committee on Conventions and Recommendations, it is a great pleasure for me to join Mr Marcio Barbosa, Deputy Director-General, in extending a hearty welcome to you to the first meeting of the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR). Professor Virginia Dandan, Chairperson of the United Nations Committee on Economic, Social and Cultural Rights (CESCR) and Professor Riedel, Vice-Chairperson of CESCR are with us today for this meeting as members of this Joint Expert Group – and I am especially pleased over their presence here today. I am also thankful to my colleagues Professor Huefner and His Excellency Mr Yai of the Committee on Conventions and Recommendations (CR) for having accepted to be part of the Joint Expert Group.

The collaboration between UNESCO and CESCR has grown significantly in recent years. UNESCO has been participating actively in the work of the Committee and, as a result, achieving the right to education for all systematically figures in the dialogue that CESCR maintains with the States Parties to the international Covenant on Economic, Social and Cultural Rights. We may recall that the dialogue with CR on monitoring the right to education with Professor Virginia B. Dandan was very fruitful. On this occasion, a rich exchange of views took place over the working methods of the two committees in a comparative perspective. The creation of the Joint Expert Group proposed on that occasion, was given concrete shape by decision 5.4 taken subsequently by the Executive Board at its 162nd session in October 2001. With its becoming now operational, this Joint Expert Group has come to fruition today. It is gratifying that the Committee on Conventions and Recommendations and the United Nations Committee on Economic, Social and Cultural Rights (CESCR) will now be able to collaborate even more closely within this institutionalized framework for making basic education accessible to all.

Another landmark in this development was the meeting organized by CESCR in cooperation with UNESCO on 14 May 2002 on the right to education and follow-up to the World Education Forum. This bears evidence to our shared concerns and common objectives.

Education is UNESCO's prime objective and the right to education an integral part of its mission. UNESCO's Constitution expresses the belief of its founders "in full and equal opportunities for education for all [...]". The Organization has the mission "to advance the ideal of equality of educational opportunity". The Convention against Discrimination in Education, adopted by UNESCO, with which you are no doubt familiar, embodies this ideal. It also finds renewed expression in the Dakar Framework for Action, adopted at the World Education Forum in April 2000. These, coupled with a certain number of other standard-setting instruments UNESCO has elaborated, provide the normative basis of the right to education. Similarly, the right to education is comprehensively covered in Article 13 of the International Covenant on Economic, Social and Cultural Rights. In the field of the right to education, both CESCR and CR have responsibility for monitoring its implementation and share the common objective of realizing the right to basic

education for all as a fundamental human right. This raises certain questions and provides certain points of strength. We need to avoid overlapping and we have been concerned with this. We need to develop complementarity and we could impart synergy to our work. We need to reduce State burden in reporting and this will help in rationalizing our working methods, and harmonize the monitoring mechanisms.

In its recent sessions, CR has discussed such questions related to making its working methods more effective, while emphasizing the importance of complementarity with the work of the United Nations treaty bodies, especially CESCR. In this context, I would like to lay emphasis on the decision taken recently by UNESCO's Executive Board at its 165th session in October 2002. As you know, one of the major priorities of UNESCO is the realization of the right to education for all (EFA). To this end, activities of the Organization aim at more effective implementation of the standard-setting instruments relating to the right to education, on the one hand, and strengthening the constitutional and legal bases of this right, on the other. UNESCO's collaboration with the United Nations Committee on Economic, Social and Cultural Rights is indeed vital.

Complementarity in the work of UNESCO and CESCR is all the more important as regards streamlining the monitoring mechanisms for advancing the right to education. UNESCO's Committee on Conventions and Recommendations and 165 EX/Decision 6.2 of the Executive Board in October 2002 recognize the need for new conditions and procedures in order to optimize the effectiveness of monitoring the implementation of UNESCO's conventions and recommendations in the field of education, with particular emphasis given to the right to education, which is integral to UNESCO's constitutional mandate.

You have before you a very heavy agenda, established within the framework of the mandate of this Joint Expert Group. We will be discussing the matters related to the collaboration between UNESCO and CESCR, follow-up to the World Education Forum as well as some questions of critical importance for advancing the right to education such as universal access to education, foundations of the right to education in national legal system and the justiciability of the right to education, etc. I have no doubt that we will be able to deliberate on all these important items in a very substantive manner. I can assure you that it will be my privilege to report the recommendations and suggestions resulting from your deliberations to CR and to the Executive Board for follow-up action.

Thank you.

ANNEX II

INTRODUCTORY STATEMENT BY MS VIRGINIA B. DANDAN, CHAIRPERSON OF THE UNITED NATIONS COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (CESCR)

I would first of all like to thank UNESCO very sincerely for the warm welcome given. I bring to you the greetings from the United Nations Committee on Economic, Social and Cultural Rights (CESCR), which is still in session until Friday, 28 May 2003. Professor Riedel, its Vice-Chairperson and myself have come here to honour the commitment by CESCR to the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education. We are indeed pleased that its first meeting is taking place at UNESCO Headquarters.

For CESCR, this meeting is a historical landmark. Indeed, it is the first time that a treaty body reaches out to a United Nations organization, particularly in a common concern such as the right to education, and this as part of a joint cooperation for the realization of this right. The significance of such a development in the United Nations system is indicated by the fact that, by resolution 2003/19 on the right to education, adopted on 22 April 2003, the Commission on Human Rights welcomes the decision by the Economic and Social Council to approve the establishment of this Joint Expert Group.

The International Covenant on Economic, Social and Cultural Rights is not very well known. But education plays a crucial role in all economic, cultural and social rights and the impact of education is overarching within all the rights: work, health, education, social rights, etc. All the rights are impacted by the right to education. It is for this reason that the right to education is one of the critical elements in the work of CESCR. The principal role and responsibility of UNESCO in the field of education in the United Nations system can be traced back to the origin of the International Covenant on Economic, Social and Cultural Rights. When the International Covenant was being elaborated, UNESCO drafted Articles 13 and 14 concerning education, and it can therefore be said that these articles are “owned” by UNESCO.

As a consequence, UNESCO has always been a partner for CESCR. We feel it is just the beginning of joint cooperation with UNESCO, within the institutionalized framework provided by the mandate of the Joint Expert Group on the Monitoring of the Right to Education.