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Educational, Scientific and
Cultural Organization

Executive Board

Hundred and eightieth session

180 EX/63

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REPORT OF THE COMMITTEE ON CONVENTIONS AND RECOMMENDATIONS

1. The Committee on Conventions and Recommendations (CR) held three public working meetings on 1 and 3 October 2008, with Mr Günter Overfeld, representative of Germany, in the Chair. It met on 14 October 2008 to adopt this report. In accordance with Rule 16.2 of the Rules of Procedure of the Executive Board, the Committee elected Mr Duarte Ramalho Ortigão, representative of Portugal, temporary Chairperson. The Committee examined the agenda items below.

**Item 29 Methods of work of the Committee on Conventions and Recommendations (CR):
question of the participation of observers in the private meetings of the CR
(180 EX/CR/2)**

2. At the request of the Chair, the representative of the Director-General, the Legal Adviser, introduced document 180 EX/CR/2 prepared by the Secretariat as a follow-up to the debates held at the 179th session regarding the Committee's methods of work, in particular the question of the participation of observers in the Committee's private meetings. In that connection, he recalled that the question was a recurrent one in the Committee, which had been required to strike a balance between 104 EX/Decision 3.3, paragraph 14 (c), which stated that "*the Committee shall examine in private session the communications transmitted to it by the Director-General*" and Rule 30, paragraph 5, of the Rules of Procedure of the Executive Board which provided that "*[a]ny Member of the Board may take part in the work of subsidiary bodies to which it does not belong. In such cases, and in the absence of any contrary decision by the Board, it shall not have the right to vote*". Since the establishment of the procedure laid down in 104 EX/Decision 3.3, Members of the Board that are not members of the CR have abstained from participating in the Committee's private meetings. That practice had as a general rule been respected in the past, except, in particular, for very exceptional cases when a few Members of the Board that were not members of the CR had requested the Chair to allow them to attend private meetings; the Chair had then consulted the members of the CR which had then taken a decision on a case-by-case basis. Such exceptional participation had always been very discreet, as the observer did not participate in any way whatsoever in the Committee's debates. As the practice had generally worked in the past, the Secretariat proposed that it be brought to the notice of Members of the Board at the first session following the renewal of the membership of the Board and of the Committee and that it be reflected in paragraphs 35 to 37 of document 179 EX/CR/2 setting out the CR's practice.

3. Many members of the Committee were in favour of continuing the Committee's current practice since it had not proved to be dysfunctional nor had it influenced the Committee's work in the 30 years that the procedure laid down under 104 EX/Decision 3.3 had been applied. While stressing the need to make Members of the Board aware of the confidential nature of the CR's proceedings, they also stated that the participation of observers was consistent with the spirit of the Organization within which a spirit of international cooperation, conciliation and mutual understanding among Member States should prevail.

4. Some members were of the view, however, that the Committee's practice should be clarified, in particular the procedures for requesting observer status, in order to avoid an increase in such requests or systematic attendance by such observers.

5. Other members nonetheless considered that discussions constituting the most confidential part of the Committee's proceedings, namely those leading to decisions relating to communications or to the adoption of decisions, should be held in private, with no observer present, especially as the procedural practice required that Committee members representing countries concerned by the communications submitted should not attend those private discussions.

6. While stressing that paragraphs 35 to 37 of document 179 EX/CR/2 no longer reflected the Committee's recent practice, some members considered that all of the Committee's private meetings should in future be closed to participation by all observers in order to respect the confidentiality of the Committee's proceedings and avoid exertion of any pressure on the members of the Committee. In that connection, one member stressed that the participation of observers was not authorized in other international bodies either, in particular in the proceedings of the Human Rights Council under the 1503 procedure.

7. In conclusion, and following informal consultations led by the Chair, the members of the Committee decided to continue the Committee's practice which will, henceforth, be drawn to the attention of all the new Members of the Board. The Committee also decided that in the exceptional case when a Member of the Board not a member of the CR wishes to have observer status, it shall submit its request in writing to the Chair of the CR who will ask the Committee to consider it. In such an exceptional case when an observer is thus admitted to one of its meetings, such observer shall not be present for the private discussions leading to a decision on a communication or for the adoption of decisions. These improvements in the Committee's practice will accordingly appear in paragraphs 35 to 37 of document 179 EX/CR/2, as set out in the annex of the draft decision.

8. Moreover, the Committee members thought it necessary that other questions relating to the Committee's methods of work be addressed during the next session of the Executive Board and that the Board therefore be asked to grant the Committee an extra half day of work.

9. The Committee recommended that the Executive Board adopt the following draft decision:

The Executive Board,

1. Recalling 19 C/Resolution 6.113, 19 C/Resolution 12.1 and 104 EX/Decision 3.3, on the second aspect of the terms of reference of the Committee on Conventions and Recommendations (CR) on the examination of communications relating to cases and questions concerning the exercise of human rights in UNESCO's fields of competence,
2. Having examined document 180 EX/CR/2 as well as the report of the Committee on Conventions and Recommendations on the matter (180 EX/63),
3. Confirms that, given the private nature of the meetings of the CR, Members of the Board who are not members of the CR refrain from attending the Committee's meetings when it is considering communications, as recalled in the practice of the Committee;
4. Decides to take note of the improvements made by the Committee to its practice as set out in paragraph 7 of the report of the Committee on Conventions and Recommendations (180 EX/63) and annexed to the present decision;
5. Also decides to grant to the CR an extra half day at its 181st session in order to continue the examination of its methods of work.

Annex

Improvements of the practice of the Committee

(new paragraphs of document 179 EX/CR/2 in bold)

“The special character of the CR’s meetings

35. The concern for effectiveness in the search for an amicable solution means that communications are examined in the strictest confidence, in the Committee and also in the Board when it examines the report of the CR. Nothing has ever been done to make public cases that have been considered and/or settled. Nevertheless, the Board has examined a communication in public meeting at the Committee’s request.

36. Members of the Board who are not members of the CR shall refrain from attending the Committee’s meetings when it is considering communications, in accordance with paragraph 14(c) of 104 EX/Decision 3.3. This custom, based on a well-established practice of the Board, shall be drawn to the attention of all the Members of the Board at the first session following the renewal of the membership of the Executive Board and of the Committee.

37. Members of the Board not members of the CR who may exceptionally wish to have observer status shall submit their request in writing to the Chairperson of the CR who will ask the Committee to consider it. In the exceptional case when an observer is thus admitted to one of its meetings, such observer shall not be present for the private discussions leading to a decision on a communication and for the adoption of the decisions.”

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10. When the report was adopted, one observer (United States of America) made the following statement: "The United States fully recognizes the importance of the issue of observer presence during private sessions of the CR when it examines communications. The United States fully and unreservedly respects the confidential nature of these sessions. The record shows that we have consistently done so both as a member of the CR and as an observer at its sessions. But what is the central issue to be addressed here? The issue is respect for ensuring confidentiality, rather than disputing whether fellow Executive Board Members may be present in the room. In the past, Indonesia, Canada and the United States have participated as observers during private sessions with no distraction from the proceedings of the CR and with full respect for the confidentiality and dignity of those proceedings. On the basis of this proven track record, we see no basis to depart from this successful practice. Even more important is that these instances of observer participation are fully in accord with Rule 30.5 of the Board’s Rules of Procedure, which authorizes every Board Member to observe any subsidiary body of the Board, even when not a Member. The United States would not have had any objection to the original draft decision that accompanied this item. However, we do have serious concerns about the new draft that has emerged, and particularly its Annex. That draft is worded in a way that could result in shutting down any realistic future possibility of observation of private CR sessions by fellow Members of the Executive Board. Arbitrary, subjective or even politically motivated reasons could ultimately determine observer participation, or non-participation, rather than continued respect for the principle embodied in Rule 30.5. And, on that note, we find it strange that Rule 30.5 is not mentioned in the draft decision, not even in a preambular paragraph, even though it is at the core of, and is a key predicate for, this debate. The concerns that we have noted deserve to be addressed with proper adjustments to the draft text. The United States appreciates this opportunity to share its views and concerns to this distinguished Committee, and we ask that these comments be fully included in the records of this meeting.”

11. Another observer (Canada) then made the following statement: “The Canadian Delegation would like to see a reference to Executive Board Rule 30.5 of the Rules of Procedure incorporated in the draft decision on item 29 – Observers at private meetings of the Committee on Conventions and Recommendations. The reference to Executive Board Rule 30.5, which stipulates that Executive Board Members may observe any subsidiary body of the Board, could be incorporated as the members of the CR see fit. For the Canadian Delegation, the inclusion of a reference to Executive Board Rule 30.5 will reinforce the rights of membership in UNESCO and the principles of openness and transparency. Canada would like to request that these comments are added to the official minutes of this public session of the CR.”

Item 31 Monitoring of the implementation of UNESCO's standard-setting instruments
(180 EX/31)

12. By way of introduction, the Chairman introduced document 180 EX/31 and its two annexes summarizing information concerning the follow-up of the implementation of the three conventions¹ and 11 recommendations² for whose monitoring the Committee is responsible, in the context of the application of the new procedures adopted at its 177th session on the implementation of UNESCO conventions and recommendations.

13. The Committee members thanked the Secretariat for the quality of the document, in particular that of its annexes, which provided a very useful timetable for planning the future work of the Committee in respect of the first aspect of its terms of reference concerning consideration of the reports of Member States on the application of the Organization's standard-setting instruments. In this regard, they considered it necessary to complete the timetable by specifying the Executive Board sessions at which the Committee would consider the framework guidelines and the reports on the instruments concerned.

14. Most members considered, however, that the Secretariat should also inform them of the practical substantive measures taken to implement these new procedures so that the Committee could provide quality follow-up of the initiatives taken by the Secretariat in that regard.

15. The members considered that it was essential for the Committee to spend more time during its sessions considering the issues related to the first aspect of its terms of reference. Some members stressed the importance of securing the participation of governmental experts and National Commissions in Committee meetings. Non-governmental organizations (NGOs), which were now stakeholders in the implementation of the new legal framework, also had a role to play. Furthermore, the importance of providing technical assistance to Member States to enable them to fulfil their obligations was highlighted. Some members considered it necessary for the Committee to focus, at its next meetings, on substantive issues such as the issue of academic freedoms in the context of the implementation of the Recommendation concerning the Status of Higher-Education Teaching Personnel (11 November 1997) and the work of the Joint ILO-UNESCO Committee of Experts on the Application of the Recommendation concerning the Status of Teachers, and the

¹ The Convention against Discrimination in Education (Paris, 14 December 1960), the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Paris, 14 November 1970) and the Convention on Technical and Vocational Education (Paris, 10 November 1989).

² The Recommendation against Discrimination in Education (14 December 1960), the Recommendation concerning the Status of Teachers (5 October 1966), the Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms (19 November 1974), the Recommendation on the Status of Scientific Researchers (20 November 1974), the Recommendation on the Development of Adult Education (26 November 1976), the Revised Recommendation concerning the International Standardization of Educational Statistics (27 November 1978), the Recommendation concerning the Status of the Artist (27 October 1980), the Recommendation on the Recognition of Studies and Qualifications in Higher Education (13 November 1993), the Recommendation concerning the Status of Higher-Education Teaching Personnel (11 November 1997), the Revised Recommendation concerning Technical and Vocational Education (2 November 2001) and the Recommendation concerning the Promotion and Use of Multilingualism and Universal Access to Cyberspace (15 October 2003).

issue of follow-up of the work of the various international conferences organized by UNESCO (for instance the 1998 World Conference on Higher Education).

16. The Committee members, drawing attention to the low rate of ratification of some conventions – such as the Convention against Discrimination in Education, ratified to date by only 95 Member States – considered it necessary for the Secretariat to further raise awareness, among Member States, of the possibility of becoming a party to the various UNESCO conventions. Moreover, in order to increase the participation of States in the reporting procedure, they stressed the importance of reminding Member States of their obligation to submit reports under Article VIII of the Constitution, which stipulates 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”.

17. The Legal Adviser, representing the Director-General, pointed out that for many years there had been a weak response to the requests for reports (about 20%). That was also the case in other organizations in the United Nations system that had recently begun trying to establish new mechanisms, such as the Universal Periodic Review established by the Human Rights Council for the monitoring of international instruments relating to human rights. In 2001, the Committee on Conventions and Recommendations had embarked on a long-term exercise to revive the reporting procedure within the Organization, which had led to the adoption in 2007 by the Board of a specific multi-stage procedure for the monitoring of the implementation of UNESCO conventions and recommendations for which no specific institutional mechanism was provided (177 EX/Decision 35 Part I), and of framework guidelines for the preparation of reports on conventions for whose monitoring the Committee on Conventions and Recommendations was responsible (177 EX/Decision 35 Part II), and also to the identification by the General Conference of 11 recommendations requiring monitoring as a matter of priority (34 C/Resolution 87). Since the adoption of that new legal framework, the programme sectors had made repeated efforts to sensitize the Member States to the new procedures established since 2007, an example being the Education Sector, which had published an information leaflet on monitoring the implementation of UNESCO’s standard-setting instruments regarding the right to education.³ Lastly, he said that, in addition to the Secretariat’s efforts to improve the monitoring of instruments, the Member States should reflect on the matter. In response to an observer’s question, he confirmed that the practice of reporting within UNESCO was based essentially on Article VIII of the Organization’s Constitution, whose provisions were reproduced in the articles of the conventions and recommendations set out in the third column of the 180 EX/31 document annexes.

18. In conclusion, the members decided to continue their consideration of the matter, which deserved more in-depth scrutiny, at the next session of the Board, and accordingly to ask the Board to grant them an extra working day for that purpose.

19. Following the examination of this item, the Committee recommended that the Executive Board adopt the following draft decision:

The Executive Board,

1. Recalling 15 C/Resolution 12.2, 23 C/Resolution 29.1, 32 C/Resolution 77 and 34 C/Resolution 87, and 165 EX/Decision 6.2, 170 EX/Decision 6.2, 171 EX/Decision 27, 174 EX/Decision 21, 175 EX/Decision 28, 176 EX/Decision 33 and 177 EX/Decision 35 Parts I and II relating to the first aspect of the terms of reference of the Committee on Conventions and Recommendations (CR), which concerns the implementation of UNESCO’s standard-setting instruments,

³ The document “The right to education: Monitoring standard-setting instruments of UNESCO” is available online: <http://unesdoc.unesco.org/images/0016/001611/161161e.pdf>.

2. Having examined document 180 EX/31 and the report of the Committee on Conventions and Recommendations thereon (180 EX/63),
3. Reminds Member States that they are required to fulfil their legal obligations under Article VIII of the Constitution of UNESCO regarding periodic reports on the action taken upon conventions and recommendations;
4. Notes with satisfaction the first steps taken by the Secretariat to implement the new procedures adopted at its 177th session on the implementation of UNESCO conventions and recommendations for which no specific institutional mechanism is provided;
5. Invites the Director-General to ensure the implementation of this new legal framework by the programme sectors responsible for the conventions and recommendations monitored by the Committee on Conventions and Recommendations;
6. Requests the Committee on Conventions and Recommendations to continue to examine this item at its 181st session and accordingly decides to grant it an extra working day.