



United Nations  
Educational, Scientific and  
Cultural Organization

The background of the cover features a large, faint UNESCO emblem, which consists of a world map surrounded by olive branches, set against a blue and green color scheme.

# ***UNESCO's Procedure for the Protection of Human Rights***

*The Legislative History of the 104 EX/3.3 Procedure*

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of Human Rights***

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# Preface

The purpose of the procedure instituted by 104 EX/Decision 3.3 of the Executive Board was to enable UNESCO to examine individual communications on human rights falling within its spheres of competence. This procedure, so defined, constitutes one of the mechanisms set up by a number of organizations in the United Nations family as well as regional organizations in Europe, America and Africa for the better protection of the human rights proclaimed in the Universal Declaration of Human Rights of 1948. The study of 1977 by the Director-General, which forms the basis of the “104 Procedure” within the framework of the Constitution of UNESCO (see page 17 and seq.), illustrates this relationship well, while at the same time emphasizing UNESCO’s determination to avoid duplication of effort, or a judicial approach to human rights.

It was suggested during the commemoration by the Executive Board of the thirtieth anniversary of the 104 Procedure in September 2008 that the legislative history of 104 EX/Decision 3.3 (the French term “*travaux préparatoires*” is also frequently used) should be published.

The publication I now have the honour to present shows, firstly, that although almost three years of work crystallized in the form of a decision of the Executive Board, it was in fact the joint work of the principal organs of UNESCO: the General Conference which, inspired by what has been called the “spirit of Nairobi”, had asked for suitable procedures to be put in place to make UNESCO’s action in the field of human rights more effective, a request that was reiterated in the same terms in two of its resolutions; the Director-General, whose major comparative study had the merit of outlining the future constitutional and policy framework of the new procedure; and lastly, the Executive Board, which brought its work to a conclusion by adopting, by consensus, a decision that was both succinct and precise, and withstands comparison with treaty-based procedures that have often required long years to perfect.

In publishing the legislative history of the 104 Procedure, UNESCO demonstrates that this instrument could not have come into being without the cooperation of the governing bodies of the Organization: when, at its 20th session, the General Conference took note of 104 EX/Decision 3.3, it confirmed that, far from being the work of the Executive Board alone, the 104 Procedure was also its own.

Even though 104 EX/Decision 3.3 is obviously not a treaty between sovereign States, it is still the formal legal act of the Member States, which they are bound to apply and therefore interpret. Having access to the legislative history always facilitates the interpretation of a legal instrument, be it a national law, a treaty, or the decision of an international organization. That being so, the publication of the legislative history of 104 EX/Decision 3.3 can only strengthen the procedure it created. By making the legislative history available, through publication, to the Member States and potential authors of communications – to say nothing of the academic community – the Organization is helping to achieve equality between all the actors in the 104 Procedure, which, after all, lies at the heart of all systems for the protection of human rights.

Now thirty years old, the 104 Procedure has withstood not only the test of time, but also the tensions that have inevitably arisen. It is generally, and rightly, considered as one of the outstanding successes of the Organization. The main reason, undoubtedly, is that there is no question of passing judgment on the State to which a communication relates. Mutual cooperation has to be re-established between the Member States of the Organization and the State concerned if the full exercise of fundamental rights is to be restored to the victim of an alleged violation.

At the outset of the present volume, I must mention the names of two members of the Executive Board, each of whom played an important role in the successful inauguration of the 104 Procedure. While this procedure is still the least well known of the existing procedures for the protection of human rights internationally, it is, thanks to them, by no means the least effective. The first is Leonard C. J. Martin (United Kingdom), who during the critical period chaired both the Executive Board and the Working Party set up to draft the decision. The second name is that of Arturo Uslar-Pietri, a

Venezuelan writer who was the first Chairman of the Committee on Conventions and Recommendations, which was charged with implementing the new procedure from the time of its adoption. Both deserve a place in this publication devoted to the legislative history of 104 EX/Decision 3.3.

I would like to thank all those who contributed to the realization of this work, in particular Mr Karel Vasak, former Director of the Office of International Standards and Legal Affairs of UNESCO and Mrs S. Robert-Cuendet for their assistance in the conception of this publication.

Paris,  
March 2009

*Ambassador Günter Overfeld*  
*Chairman of the*  
*Committee on Conventions and Recommendations*

# History of UNESCO's procedure for the Protection of Human Rights

**O**n Tuesday 30 September 2008, the Committee on Conventions and Recommendations of the Executive Board of UNESCO commemorated the thirtieth anniversary of UNESCO's human rights procedure. That procedure, commonly known as the "104 Procedure", was put in place by a decision of UNESCO's Executive Board, adopted at its 104th session in 1978. But if one looks further back into the history of this procedure – or rather, these procedures – for the examination of cases and issues that might be submitted to UNESCO concerning the exercise of human rights within its fields of competence, it becomes clear that, well before 1978, UNESCO had devised instruments to meet the expectations it aroused (and still does) in the field of human rights.

Tracing the course of the different stages leading up to the implementation of the 104 Procedure, following its evolution up to the point when it crystallised in Executive Board 104 EX/Decision 3.3 and analysing the debates surrounding the adoption of that decisions, are all forays into the history of the procedure that give us a better understanding of its philosophy and the aims for which it was needed. This history of the procedure seeks to give an account of its genesis by exploring the discussions surrounding its creation, and the work done by the different constitutional organs of UNESCO.

# I. The antecedents of 104 EX/Decision 3.3

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## The competence of UNESCO to examine communications concerning violations of human rights

The need became very soon apparent at UNESCO to put in place a specific procedure enabling it to respond to many communications addressed to the Organization drawing its attention to one situation or another in the field of human rights.<sup>1</sup> The three constitutional organs of the Organization (General Conference, Executive Board, and Director-General) had to fulfil the expectations of those who, as victims of alleged violations of human rights within the spheres of competence of the Organization, were turning to UNESCO in an attempt to have their situation addressed.

Thus as far back as 1952 in 29 EX/Decision 1.31, the Executive Board noted that:

“the Chairman of the Board and the Director-General receive communications from private persons or associations alleging violation by States, members or non-members of UNESCO, of certain human rights, and, in particular, of educational and cultural rights”,

And that :

“having regard to the present provisions of the Constitution and regulations of the Organization, no cognizance can be taken of these communications”.<sup>2</sup>

At its next session, the Executive Board took a further step, by expressing, in 30 EX/Decision 11, its wish to “define the procedure whereby it can take cognizance of these complaints and take suitable action in regard to them so far as it is within its power to do so”.<sup>3</sup> The decision provided that the Director-General must forward the various complaints to the Chairman of the Executive Board; the Chairman of the Executive Board was to examine the complaints in consultation with the other members of the Bureau and submit to the Executive Board those complaints that seemed to him to “call for some action” by the Organization.<sup>4</sup>

These decisions thus sketched the first outlines of an embryonic procedure, as yet undeveloped, but providing a first step that would enable the basic architecture to be drawn up, as part of UNESCO’s standard-setting activities, of a system of

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1 In 1954, the Director-General noted that some thirty complaints had been submitted to UNESCO since 1950. See document 37 EX/12 (1954), Report of the Director-General on action to be taken on the possibility of providing machinery for appeal to an international authority in the event of violations of educational and cultural rights.

2 29 EX/Decision 11.3 (1952), Action to be taken on communications addressed to UNESCO alleging violations of human rights, in particular educational and cultural rights, Item I.

3 30 EX/Decision 11 (1953), Action to be taken on communications addressed to UNESCO alleging violations of human rights, in particular educational and cultural rights.

4 30 EX/Decision 33 (1953).

examination that would enable a response to be given to communications that had hitherto been regarded as an act of faith in UNESCO on the part of their authors.<sup>5</sup>

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## The procedure established by 77 EX/Decision 8.3 (1967)

Following these initial stages, the discussion in the Executive Board was postponed until the adoption, on 16 December 1966, of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which radically altered the normative and institutional landscape of the United Nations in the field of human rights.<sup>6</sup> At its 77th session, in 1967, the Executive Board adopted 77 EX/Decision 8.3, which put in place a more elaborate procedure for the action to be taken on communications relating to individual cases, invoking human rights in the fields of education, science and culture. This procedure was defined by reference to resolution 728 F (XXVIII) adopted by the Economic and Social Council (ECOSOC) in 1959 which laid down the procedure to be followed by the United Nations Commission on Human Rights.<sup>7</sup> Thus, 77 EX/Decision 8.3 provided that “communications addressed to UNESCO in connexion with individual cases alleging a violation of human rights in education, science and culture shall be handled by it in the same manner as is stipulated in Economic and Social Council resolution 728, except in cases where the author of the complaint does not wish that his name should be mentioned”.<sup>8</sup>

In fact, the procedure followed by UNESCO would not be identical in every respect with the procedure followed by the United Nations Commission on Human Rights. However, UNESCO adopted, for the most part, the overall structure of the Commission’s procedure. Furthermore, as early as 1967, it had been decided that complaints and allegations concerning individual cases must be dealt with on a confidential basis, in private session. From then on, the confidential nature of the examination of communications has always been maintained in UNESCO.



The implementation of 77 EX/Decision 8.3 proved not to be entirely satisfactory. The procedure merely explained the terms on which certain communications would be brought to the attention of a restricted body, without indicating the terms of reference of that body. Neither 77 EX/Decision 8.3 nor any other instrument set forth in detail the procedure for examination of communications by the Committee. The practice that followed the adoption of 77 EX/Decision 8.3 soon brought out the inadequacies in the procedure.

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5 Document 77 EX/29 (1967), Note drawn up by the Secretariat: Procedure for handling communications on individual cases involving human rights in education, science and culture. In the same vein, the Director-General noted, in 1954, that “the lively stir created throughout the world by the Universal Declaration of Human Rights, which UNESCO has been largely instrumental in publishing, and the volume of the complaints alleging violations of those rights addressed to the United Nations and some of the Specialized Agencies, bear witness to the hopes and confidence which the Universal Declaration has inspired amongst the nations, and which must not be disappointed”. Document 37 EX/12 (1954), Report of the Director-General on action to be taken on the possibility of providing machinery for appeal to an international authority in the event of violations of educational and cultural rights.

6 Resolution 2200 (XXI) of 16 December 1966 of the United Nations General Assembly.

7 At a time when the possibility of setting up a judicial procedure was being considered, the procedure followed by the United Nations Commission on Human Rights for examining communications concerning human rights attracted the attention of the Director-General, who saw it as an interesting path to pursue, which would allow a non-judicial mechanism to be put in place. The Director-General therefore invited the Executive Board to give further consideration to the prospects of setting up a similar procedure. The parallel with that procedure was entirely justified, since, as was the case with UNESCO, the United Nations Commission on Human Rights had found it necessary to create systems that would be adequate to deal with a considerable number of communications about violations, without having to resort to devising new conventional instruments. See document 77 EX/29, Note from the Secretariat, Procedure for handling communications on individual cases involving human rights in education, science and culture, Item 17.

8 77 EX/Decision 8.3 (1967), paragraph 4.

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## The discussion of inadequacies of the 77 EX/8.3 procedure at the 99th session of the Executive Board (1976)

Though the 77 EX/8.3 Procedure formed the basis for the examination of communications for more than 10 years, the necessary adjustments were never made.<sup>9</sup> Added to this, the expectations placed on UNESCO in terms of protection and promotion of human rights were mounting, and the application of the 77 EX/8.3 procedure was subjected to great strain by the particularities of the cases brought to UNESCO's attention.<sup>10</sup>

The shortcomings of the procedure were highlighted not only by the Secretariat but also by the Executive Board and the Committee itself.<sup>11</sup> In carrying out its mandate, the Committee was confronted with technical issues having to do, on the one hand, with the lengthy process of the procedure which often prevented it from concluding its examination of one communication in a single session of the Executive Board,<sup>12</sup> and on the other, with the lack of accurate detail in the information supplied in the communications.<sup>13</sup> An anomaly appeared when, starting in 1975,<sup>14</sup> the Executive Board had to examine, in a public session, cases that the Committee<sup>15</sup> had examined in a private meeting. Furthermore, under the procedure laid down in 77 EX/Decision 8.3, the Executive Board was not required to discuss the actual content of the communications themselves. It was invited to take a decision only on the basis of the observations and conclusions formulated in the Committee's report.<sup>16</sup> But the reports of the Committee were, of necessity, lacking in detail, because of the contradiction between the public nature of the reports and the confidential nature of the procedure.

How to address these problems generated much discussion at the 99th session of the Executive Board. Some members of the Board proposed that the Board examine the Committee's reports in a private meeting, which would mean they

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9 From 1967 to 1978, the procedure in force at UNESCO referred back to ECOSOC resolution 728 F(XXVIII), when in fact that body had made a number of very major modifications to its procedure in resolutions 1235 (XCLL) of 1967, 1503 (XLVIII) of 1970 and especially resolution 1 (XXIV) of the Subcommission on Prevention of Discrimination and Protection of Minorities of the United Nations Commission on Human Rights.

10 In 1976, when criticisms were raised concerning the procedure, the Committee on Conventions and Recommendations in Education had before it 29 complaints the great majority of which concerned Chile. Document 99 EX/53 (1976), Report of the Committee on Conventions and Recommendations in Education on the communications submitted to the Committee pursuant to 77 EX/Decision 8.3 and 98 EX/ Decisions 9.4, 9.5 and 9.6.

11 A number of documents record these shortcomings. In its report 99 EX/53 presented to the 99th session of the Executive Board (1976), the Committee on Conventions and Recommendations in Education, in its most substantial report, mentioned a number of obstacles that prevented it from effectively carrying out its terms of reference (document 99 EX/53 (1976), Report of the Committee on Conventions and Recommendations in Education on the communications submitted to the Committee pursuant to 77 EX/Decision 8.3 and 98 EX/ Decisions 9.4, 9.5 and 9.6). An analysis of the discussions that took place at the 99th session of the Executive Board also brings out the weaknesses in the procedure (document 99 EX/ SR.12, SR.13 and SR.14, analytical records of the discussions in the Executive Board on item 9.4 of the agenda – Report of the Committee on Conventions and Recommendations in Education on the communications submitted to the Committee pursuant to 77 EX/8.3 and 98 EX/Decisions 9.4, 9.5 and 9.6 (99 EX/53) – and on item 9.5 on the agenda – Report of the Director-General in accordance with paragraphs 8 and 10 of 98 EX/Decisions 9.4, 9.5 and 9.6 (99 EX/54). Finally, a note by the Secretariat drawn up at the request of the Committee to facilitate the examination of the question of the procedures confirmed, through a painstaking analysis of the practice under 77 EX/Decision 8.3, that a number of aspects of the procedure required improvement (document 100 EX/CR/2 (1976), Note by the Secretariat at the request of the Chairman of the Committee on Conventions and Recommendations in Education to facilitate the examination by the Committee of the question of the procedures).

12 See paragraph 43 of the report of the Committee on Conventions and Recommendations in Education on the communications submitted to the Committee pursuant to 77 EX/Decisions 8.3 and 98 EX/Decisions 9.4, 9.5 and 9.6 (document 99 EX/53 (1976)).

13 See especially item (e) of the conclusions reached in the Committee's report. On the issue of the timing of communications and their excessively vague content, see also the remarks made by the Director-General during the discussions at the 99th session of the Executive Board (document 99 EX/ SR.12, point 8.2).

14 Until the 94th session of the Executive Board (1974), neither the Chairman of the Executive Board nor the Committee had laid a communication before the Executive Board. Up to that date, the Committee had confined itself to informing the Executive Board from time to time, in extremely succinct form, that it had examined certain communications. At the 94th session of the Executive Board, the Committee drew up a separate report that presented a summary of the examination of each of the communications and conclusions of a general nature. That report, which was not confidential, was examined by the Executive Board in public session. Finally, only from the 95th session in 1975 onwards did the Executive Board examine the Committee's report.

15 This anomaly, for example, was raised a number of times during the discussions in the Executive Board at its 99th session.

16 Statement by the Director-General at the 99th session of the Executive Board (see document 99 EX/ SR.12).

were no longer public.<sup>17</sup> The “virtues of discreet diplomacy”, in the words of one member, did not however meet with the unanimous approval of the members of the Board. The proposal was rejected.<sup>18</sup> But the indecisiveness of the majority of members of the Executive Board (17 members had abstained on the question of private meetings of the Board) pointed to the manifest need to modify the procedure.

The Executive Board finally adopted 99 EX/Decision 9.4 which invited “the Committee on Conventions and Recommendations in Education to review its current procedure, including methods of work and report to the Executive Board, with a view to making recommendations for improvement where necessary”.<sup>19</sup>



This initial foray into the antecedents of the 104 Procedure shows that they were put in place because of the need for UNESCO to have its own procedure, adapted to the specific nature of its mission in the field of human rights. The embryonic procedure introduced in 1967 did not adequately meet this need, and the discussions that took place at the 99th session of the Executive Board served to highlight the weaknesses in the procedure. The 19th session of the General Conference, held in Nairobi in 1976, provided the opportunity to strengthen the action of UNESCO in the field of promotion and protection of human rights and to address these concerns.

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17 This proposal was made by Ms Paronetto Valier (Italy) and received some support, notably from Mr Van Ussel (Belgium) (see the summary record of the discussions, documents 99 EX/ SR.13 and SR.14).

18 By 13 votes to 1 with 17 abstentions.

19 99 EX/Decisions 9.4 and 9.5 (1976), paragraph 8. That decision was adopted by 29 votes to 1 with 4 abstentions (see the summary record of the discussions, 99 EX/ SR.29). That decision is the fruit of an effort at compromise achieved on the basis of three draft resolutions (documents 99 EX/DR.5, 99 EX/DR.6 and 99 EX/DR.7).



# II. Legislative History of the 104 Procedure

## The 19th session of the General Conference of UNESCO, Nairobi, 1976

The Nairobi General Conference was a milestone in the history of UNESCO. 1976 was the year of the thirtieth anniversary of UNESCO. For the first time, the General Conference took place on the African continent and for the first time, too, the Organization discussed an ambitious programme that defined its goals for the next six years. The Medium-Term Plan drawn up by the Director-General and submitted to the General Conference for approval set out the goals of the Organization for the years from 1977 to 1982. That plan gave a prominent position to the goal of promoting human rights.<sup>20</sup> The debates concerning human rights therefore promised to be particularly substantial, the more so because 1976 was the year the two International Covenants on Civil and Political Rights<sup>21</sup> and on Economic, Social and Cultural Rights,<sup>22</sup> came into force. UNESCO was to be part of the implementation of those two instruments.<sup>23</sup>

UNESCO needed to equip itself with the necessary means to fulfil its objectives, while at the same time taking account new challenges. As Member States decided to work constructively together, the Nairobi General Conference succeeded in making the transition “from confrontation to consensus”.<sup>24</sup> The “spirit of Nairobi” was born.<sup>25</sup> That same spirit has guided discussions about procedures on human rights in UNESCO since. It has inspired Member States with a real determination to implement practical forms of cooperation, in the field of human rights.

Human rights provided the overriding theme for the debates in the 19th session of the General Conference of UNESCO. The topic transcended all the discussions on general policy and the more technical aspects of UNESCO’s programme. Most of all, it was the catalyst that determined Member States to strengthen the practical means of action available to UNESCO.

The draft Medium-Term Plan submitted by the Director-General for discussion by Member States placed human rights at the head of the Organization’s objectives.<sup>26</sup> In order to address this multidimensional goal, the Director-General noted that, alongside the “persistent efforts needed to build a world more conducive to the full enjoyment of human rights, the protection, consolidation and extension of those same rights call urgently for resolute, specific, direct action”.<sup>27</sup> Focusing more specifically on the objective of *promotion of research on measures aimed at assuring human rights and fundamental*

20 See document 19 C/4.

21 Entered into force on 23 March 1976.

22 Entered into force on 3 January 1976.

23 Document 19 C/13 (1976), Report of the Director-General on the application of Resolution 11.1 adopted by the General Conference on UNESCO’s contribution to peace and its tasks with respect to the promotion of human rights and the elimination of colonialism and racialism, paragraph 119.

24 Report of the Director-General on the activity of the Organization in 1975-1976, 19th session of the General Conference.

25 Amadou-Mahtar M’Bow, *UNESCO and the Solidarity of Nations. The Spirit of Nairobi*, foreword. The year before the 19th General Conference had seen the adoption of the Final Act of Helsinki. Many Member States that had taken part both in the General Conference debates and also the Conference on Security and Cooperation in Europe expressed the wish to see a continuation of the spirit of cooperation and conciliation that had emerged at Helsinki (see the statements by the delegates of the Federal Republic of Germany, Finland, Hungary and Czechoslovakia. General Conference, 19th session (1976), Records of general policy debates).

26 Document 19 C/4.

27 Document 19 C/4, Chapter I, paragraph 109.



*freedoms both for individuals and for groups, on the manifestations, causes and effects of the violation of human rights, with particular reference to racism, colonialism, neo-colonialism and apartheid, as well as on the application of the rights to education, science, culture and information and the development of normative measures to further these rights,*<sup>28</sup> the Director-General noted the need to adopt new measures, while at the same time consolidating the existing institutional and standard-setting achievements of the Organization. From this dual standpoint, along with the promotion of the social sciences that was to be another of the new main thrusts of UNESCO's action programme, the Director-General called for consolidation of the existing systems and procedures for the international protection of human rights.<sup>29</sup>

The discussions guided by the proposals in the Medium-Term Plan also testify to the determination of the Member States and constitutional organs of UNESCO to step up their action in the field of human rights by equipping the Organization with effective, practical instruments. The procedure for examining communications on human rights addressed to UNESCO set up under 77 EX/Decision 8.3 of the Executive Board was thus deemed to be an *acquis* the implementation of which must be pursued and consolidated. Thus, for instance, in the general policy debate, the Director-General presented the procedure as an instrument for the implementation of UNESCO's mission in the field of peace and human rights.<sup>30</sup> In the same way, the Draft Programme and Budget for 1977-1978 recalled that the procedure drawn up by the Executive Board in its 77 EX/Decision 8.3 must continue to be applied.<sup>31</sup> But the essential directive to emerge from the discussions was that instruments for the promotion and protection of human rights, such as the procedure in question, had to be strengthened in order to render UNESCO's action more effective.

The question of human rights was viewed as being inseparable from that of promoting and safeguarding peace.<sup>32</sup> This was the perspective in which the direction for the discussions about massive and flagrant violations of human rights took place. A number of delegations expressed their indignation at the persistence of racism and apartheid and their determination to contribute to the struggle against these particularly flagrant forms of violation of human rights. As the Director-General said, the close attention Member States paid to all these issues, and in particular their level of concern when confronted with flagrant human rights violations, was taken as encouragement to set up new programmes at UNESCO in the field of human rights.<sup>33</sup>

While the general debate took place, work on the drafting of resolutions that would be adopted by the General Conference was progressing. Programme Commission I, charged with examining those parts of the draft Medium-Term Plan drawn up by the Director-General on basic natural and social sciences, progressively adopted the various objectives set forth in the plan.<sup>34</sup> The drafting and negotiating group responsible for drawing up the resolutions of the Conference in the area of human rights had received draft resolutions from several members.<sup>35</sup> Those drafts mainly referred to situations of flagrant and massive human rights violations. One draft submitted by European States recalled the practice whereby numerous complaints had been addressed to UNESCO and invited the Executive Board to consider the problem of

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28 Objective 1.1 of the Medium-Term Plan 1977-1982.

29 Document 19 C/4, paragraph 1106.

30 General policy debate, 4th meeting, 27 October 1976. See also Document 19 C/13, Report of the Director-General on the application of Resolution 11.1 adopted by the General Conference on UNESCO's contribution to peace and its tasks with respect to the promotion of human rights and the elimination of colonialism and racialism.

31 Document 19 C/15, Draft Programme and Budget, Title II – Programme Operations – Chapter 5. Copyright, Statistics and Programme Services, paragraph 5035.

32 General Conference, 19th session (1976), Record of debates, Vol. II.1, Introduction to the general policy debate, statement by the Director-General. Also, the discussions at the 19th session on peace and the promotion of human rights took as their starting point Resolution 11.1 adopted by the General Conference at its previous session, entitled *UNESCO's contribution to peace and its tasks with respect to the promotion of human rights and the elimination of colonialism and racialism*. Item 12.1 in the programme of the 19th General Conference, on the basis of which the general debate on human rights was held, also covered those two themes as well as the long term programme for UNESCO's contribution to the maintenance of peace.

33 Director General, General Conference, 19th session, Nairobi, 1976, Record of debates, Volume II.2, point 5.69.

34 See document 19 C/122.

35 A draft submitted by the USSR (Document 19 C/PLEN/DR.5.); a draft submitted by the Syrian Arab Republic, Algeria, Iraq, the Socialist Republic of Vietnam, Mozambique, Cuba, India, Sudan, Sri Lanka and Kuwait (document 19 C / PLEN / DR.8); a draft submitted by Algeria, Mozambique, the United Republic of Tanzania, Congo, Niger and Mauritania (document 19 C/PLEN/DR.10) and a draft submitted by the Netherlands, the Federal Republic of Germany, Belgium, Denmark, France, Ireland, Italy, Luxembourg and the United Kingdom of Great Britain and Northern Ireland (document 19 C/PLEN/DR.11). The drafting and negotiating group also had the report of the Director-General on UNESCO's contribution to peace and its tasks with respect to the promotion of human rights and the elimination of colonialism and racialism (document 19 C/13)

human rights “with a view to working out a suitable procedure enabling the Director-General to take effective action on behalf of victims of violations of human rights”.<sup>36</sup> In drawing up the programme and budget, Programme Commission III, charged with examining general issues arising out of the programmes, had also received a draft resolution, proposing an amendment to the draft programme and budget for 1977/1978, in Chapter 5.1 on Copyright, Statistics and Programme Services.<sup>37</sup> In paragraph 7, the draft invited “the Executive Board and the Director-General to study measures to improve the examination of cases which may be submitted to UNESCO concerning the exercise of human rights in the spheres of its competence”.

Thus, by stages, the general debate on human rights was shifting towards a more technical discussion of the practical means required to achieve the ambitious goals in UNESCO’s programme.

Programme Commission III initially produced a draft Resolution 5.11.2, which more specifically provided for the procedures followed by UNESCO to be studied, with the aim of rendering its action more effective. That draft resolution was also adopted by the General Conference at its 27th meeting and formed the basis of 19 C/Resolution 6.113.<sup>38</sup>

### Resolution 19 C/6.113

*“The General Conference,*

[...]

*Anxious* to ensure that the Organization is in a position to discharge to the full its responsibilities in the field of human rights, as they emerge from the principles underlying its Constitution,

***Invites the Executive Board and the Director-General to study the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective.”***

The plan of work on the approved programme and budget stated that the task conferred on the Executive Board and the Director-General must begin with the production by the Director-General of a document containing a study of the question to be submitted to the Executive Board at its 102nd session.<sup>39</sup> That document was to become the cornerstone of the subsequent legislative history of the 104 Procedure.

Resolution 19 C/12.1 was adopted on the basis of the work of the drafting and negotiating group, as submitted to the General Conference and discussed at the 36th and 38th plenary meetings on 29 and 30 November 1976. There were two items on the agenda relating to the promotion of human rights: one was UNESCO’s contribution to peace and its tasks with respect to the promotion of human rights as well as the elimination of colonialism and racism (item 9); the other was the long term programme for UNESCO’s contribution to the maintenance of peace (item 10). The drafting and negotiating group, which drew up draft resolution 19 C/PLEN/DR.18 in three distinct but complementary parts, considered that these two items were inseparable. The first of the three parts dealt with UNESCO’s contribution to peace; the second related to UNESCO’s action to support human rights and the third part concerned UNESCO’s contribution to the elimination of colonialism, racism and apartheid. In preparing that draft, the drafting and negotiating group drew very broadly on the draft resolutions cited above, that had been submitted by several States or groups of States. Furthermore, as the Director-General of the Organization explained at the 35th plenary meeting, draft resolution 19 C/PLEN/DR.18 inviting the Executive Board and the Director-General to study those procedures (Part II of the resolution), had to be read “in the light of Resolution 5.11.1 which was adopted by the Plenary on the recommendation of Commission III”.<sup>40</sup> Parts

<sup>36</sup> 19 C/PLEN/DR.11

<sup>37</sup> Document 19 C/DR.108 (1976) submitted by France.

<sup>38</sup> See the report of the rapporteur of Commission III to the 27th meeting of the General Conference. See also Document 19 C/INF.24, Report of Programme Commission III (general questions relating to the programme), paragraph 7.

<sup>39</sup> Document 19 C/5, paragraphs 6039-6040.

<sup>40</sup> General Conference, 19th session (1976), Record of debates, 35th meeting, Vol. II, tome 2.

I and II of draft resolution 19 C/PLEN/DR.18 were adopted at the 36th plenary meeting of the General Conference by 84 votes to 3, thus bringing 19 C/Resolution 12.1 into being.

### Resolution 19 C/12.1

*“The General Conference,*

[...]

*Noting* that, in his Introduction to the General Policy Debate (19 C/INF.12), the Director-General asked, with reference to the problems of human rights, that he might in future be given, within UNESCO’s spheres of competence, the necessary moral means to enable him to act more effectively in safeguarding human rights,

4. *Reaffirms* the principle that respect for human rights and fundamental freedoms is an essential prerequisite for all development and for a new international economic order;
5. *Condemns* violations of human rights, in whatever part of the world they may occur;
6. *Requests* the Director-General to see that special measures are taken in the Organization’s fields of competence with regard to violations of human rights in regions of the world under foreign occupation and domination;
7. *Expresses* the hope that the bodies within the United Nations system will, each in its fields of competence, continue their activity to promote human rights and effective and universal respect for those rights;
8. *Draws attention* to the terms of Articles 55 and 56 of the United Nations Charter;
9. *Recalls* that UNESCO is not an international judicial body and that, in conformity with paragraph 3 of Article I of its Constitution, it must avoid any interference in the domestic affairs of Member States;
10. *Invites* the Executive Board and the Director-General:
  - (a) to examine with particular attention the general situation with regard to respect for human rights throughout the world, in UNESCO’s fields of competence;
  - (b) to study the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres to which its competence extends, in order to make its action more effective;
  - (c) to continue to establish, with a view to the implementation of subparagraphs (a) and (b), close co-operation and co-ordination with the relevant United Nations organs so as to take advantage of their work and the lessons that can be learnt from them in this field;
  - (d) to report on the implementation of Part II of this resolution to the General Conference at its twentieth session;”

[...]

It was 19 C/Resolution 6.113 and 19 C/Resolution 12.1 that gave the necessary impetus for the improvement of the mechanisms in force until then for the protection of human rights. The contribution of the General Conference was, thus, vital, and set the seal on the determination of all Member States to improve this pillar of UNESCO’s mission.

At the 102nd session of the Executive Board, during the discussion on the concrete measures that needed to be adopted to ensure the implementation of the two General Conference resolutions, the Legal Adviser to the Organization gave the following assessment of the mission conferred on the Executive Board and the Director-General:

“Resolutions 6.113 and 12.1 [...] mark a turning point and represent a considerable shift in the approach to the problem. In fact there are major differences between the terms of the relevant paragraphs of Resolutions 19 C/6.113 and 19 C/12.1 on the one hand, and of 77 EX/Decision 8.3 on the other. The General Conference decisions no longer refer to a single procedure, but to procedures: thus more than one could be provided for. There is no further mention of “communications received”, but of examination of the “cases” and “questions” that might be submitted to the Organization, the terms of which are neither defined nor, therefore, limited. There is no further mention of “individual cases”, but of “cases” and “questions”, the second clearly being deemed distinct from the first. Lastly, reference is no longer made to violations of human rights, but to the exercise of these rights, and the spheres of competence of the Organization are no longer listed, but referred to in a global fashion. This means that the task conferred on the Executive Board and the Director-General is one of particular breadth and importance”<sup>41</sup>.

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## The study carried out by the Director-General pursuant to 19th General Conference resolutions

Under paragraph 10 of 19 C/Resolution 12.1, the Director-General and the Executive Board were mandated to “study” the procedures for examining cases and questions, “in order to make the action of UNESCO more effective”. To fulfil that task, the Secretariat prepared Document 102 EX/19, which was intended to serve as the basis for the Executive Board’s deliberations when it came to study the issue. That document laid the foundation for all the subsequent work on the procedures. It was the cornerstone of the *travaux préparatoires*.

Taking as a starting point the experience derived from the implementation of 77 EX/Decision 8.3 (1967),<sup>42</sup> the Director-General proposed that the procedures at UNESCO should be reviewed from a dual perspective: while there was a need to adapt these procedures in line with the evolution of the systems in place in other international organizations,<sup>43</sup> this must be done in such a way as to consolidate and clarify the body of experience acquired through the practice of UNESCO’s own organs.<sup>44</sup>

Document 102 EX/19 set out the main features of the existing procedures within the United Nations, the ILO and two other regional organizations.<sup>45</sup> It also gave a more detailed indication of the procedures in force at the time in UNESCO itself. On the one hand, it set forth the conventional procedures, namely those put in place under the 1960 Convention against Discrimination in Education and the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict and, on the other, the procedures put in place by the Executive Board or the General Conference, namely the procedure followed by the joint ILO/UNESCO Committee of Experts on the application of the Recommendation Concerning the Status of Teachers and the procedures for the examination by the Committee on Conventions and Recommendations of communications in the field of education. These latter procedures, obviously, were analysed in

41 Summary record of the discussions at the 102nd session of the Executive Board (1977) (Document 102 EX/SR. 10).

42 Document 102 EX/19, *Study of the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective*, paragraph 9.

43 Especially in the light of the adaptations made by ECOSOC to the procedure followed by the United Nations Commission on Human Rights since the adoption of resolution 728 F.

44 Document 102 EX/19, paragraph 125.

45 The procedures studied were the following: within the context of the United Nations, the procedure under ECOSOC resolution 728 F (XXVIII) (the procedure followed by the United Nations Commission on Human Rights) and the two systems provided for in international conventions, namely the International Convention on the Elimination of All Forms of Racial Discrimination and the two International Covenants of 1966; in the context of the International Labour Organization, document 102 EX/19 referred to the procedure under Article 24 of the ILO Constitution and the special procedure with regard to freedom of association; and lastly, in the international organization context of, the document referred to the legal procedure provided by the European Convention on Human Rights and the procedure followed in the Organization of American States, which were the only ones in existence at the time. The procedure set up under the African Charter on Human and Peoples’ Rights came later.

greater depth, with the Director-General presenting a historical summary of their introduction and a critical analysis of the different stages in the examination of the communications.<sup>46</sup>

Taking the approach of comparative analysis,<sup>47</sup> the document made it possible to understand the different types of action that could be taken on a communication on human rights. A communication was defined as “both for the State and for the individual, the means of implementing such rights at the international level, particularly by denouncing their violation”,<sup>48</sup> The remedies available, as set forth in document 102 EX/19, ranged from *ex gratia* – in other words, the intercession on humanitarian grounds by a Head of State or the Secretaries-General or Directors-General of international organizations – to a genuine appeal to a judicial body. The document also set out the different ways of handling the phases of determining the admissibility of communications, examining them on the merits and resolving them.

Document 102 EX/19 approached the issue of a better procedure along two main axes that reflected the difficulties inherent in devising such procedures. The first was the need to adopt a procedure that was adapted to UNESCO’s mission. The second derived from the fact that UNESCO was faced with two contradictory requirements: it was being asked to act with the maximum effectiveness in the sphere of human rights, yet, it was prohibited from intervening in matters falling within a State’s internal jurisdiction.

The new procedure should ensure cooperation with States that would have to be established on the basis of dialogue and conciliation within a flexible procedural framework.

Moreover, a definition was necessary of the areas in which the Organization had its competence bearing in mind the competence of the other bodies operating in the sphere of human rights, without appearing to be merely residual. It had also to be borne in mind that the human rights falling within the competence of UNESCO could not be too restrictively defined without running the risk of artificially truncating this competence *ratione materiae*. The definition of that competence therefore called for a judicious balance.

Another balance had to be found between the principle of non-intervention laid down in Article I.3 of the Constitution of UNESCO and Article 2.7 of the Charter of the United Nations and the need to protect human rights. Document 102 EX/19 indicated some approaches that might lead to the reconciliation of these two seemingly contradictory requirements.

It is immediately apparent from Document 102 EX/19 that at no time was there any question of elevating UNESCO into an international judicial body:

“if we have regard to Article 1, paragraph 2 of the Constitution, concerning the methods by which the Organization is to realize its purpose, we find that these methods consist essentially in promoting: the Organization must “collaborate in the work of advancing the mutual knowledge and understanding of peoples”, “give fresh impulse to ... the spread of culture” and “maintain, increase and diffuse knowledge”. Promotion methods of *this* kind could be considered equally appropriate in the sphere of human rights in UNESCO’s fields of competence and therefore in the procedures for examining communications relating to human rights. The Act of promoting human rights within UNESCO’s fields of competence, even though it cannot transform the Organization into an international tribunal, could nevertheless enable it to act by means of study, examination, investigation and conciliation. The Organization should therefore seek primarily to put its services at the disposal of Member States to help them to overcome the difficulties revealed by communications on human rights; but, in doing this, it does not impose measures of any kind, since it cannot in the event take any binding decision relating to an alleged violation of human rights without intervening in the domestic jurisdiction of Member States.”<sup>49</sup>

The way in which the two principles could be reconciled emerged very clearly, and in greater detail, when the Director-General described, in Document 102 EX/19, the role he himself might play in the event of a violation of human rights.

46 Annex II to document 102 EX/19 is document 100 EX/CR/2 (1976) prepared by the Secretariat at the request of the Committee on Conventions and Recommendations in Education, which gave the status of application of 77 EX/Resolution 8.3.

47 Annex I to the document is a comparative table showing the principal procedures for examining individual communications relating to human rights.

48 Document 102 EX/19, paragraph 23.

49 Document 102 EX/19, paragraph 130. Italics added.



The document in fact makes a distinction between intervention and *intercession*, the latter being a “diplomatic practice” allowing attention to be drawn to the desirability of improving the lot of any individual or group on “humanitarian grounds” and by “moral means”.<sup>50</sup> Document 102 EX/19 thus recalls that, considering that it is “a constitutional principle of the United Nations as well as of UNESCO that Member States should act, together and individually, in order to further universal respect for, and observance of, human rights and fundamental freedoms, such action cannot be unaffected by what occurs within States”. Intercession, as a “request and entreaty” on behalf of someone, should offer a way of reconciling State sovereignty with the universal respect for human rights.<sup>51</sup> The whole of the 104 Procedure is very largely derived from that practice.

The considerations put forward by the Director-General were intended to identify the essential points to be addressed in the discussion in the Executive Board. The Director-General began by identifying the legal issues that arose, and then moved on to give some indications as to the mechanisms that could be adopted at each stage of the procedure of examining cases and questions.

As fundamental basis for UNESCO’s competence, the Director-General identified Article 1.3 of the Charter of the United Nations, which obliges Member States “to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all”. Articles 55 and 56 of the Charter of the United Nations establish another basis, as they identify “universal respect for, and observance of, human rights and fundamental freedoms for all” the objective of the United Nations, which Member States must seek to achieve through cooperation.

The Constitution of UNESCO provides the direct basis for the competence of the Organization in the field of human rights. Article I.1 expressly provides that “the purpose of the Organization is to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations”.

To these original sources of UNESCO’s competence must be added the conventions and recommendations adopted by the Organization, many of which relate to human rights.<sup>52</sup>

Resolutions and decisions of the General Conference and the Executive Board are further elements of that competence. The Director-General cited, principally General Conference Resolutions 19 C/6.113 and 19 C/12.1, which equally formed the basis of the study he had carried out.

The second legal issue identified by the Director-General was to identify which human rights fell within the competence of UNESCO.

A first category identified by the Director-General concerned those human rights that were the very basis and driving force of human activity in education, science, culture and communication (the right to education, the right to share in scientific progress, the right to participate freely in the cultural life of the community, and the right to information).<sup>53</sup> The second category identified the rights and freedoms that were indispensable to the realisation of these rights, like freedom of thought and conscience, freedom of research, freedom to receive and disseminate information and ideas, and the right to intellectual property. As to the third category, the question was whether or not UNESCO should provide personal protection for the individuals through whom those human rights were realised, or, put another way, whether UNESCO should contribute to the personal protection of teachers and educators, scientists, writers, artists, journalists etc. In that case, the rights in question might be the prohibition of torture and inhuman and degrading treatment, or the

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50 Document 102 EX/19, paragraphs 29-30.

51 Document 102 EX/19, paragraph 28.

52 For instance the Convention against Discrimination in Education.

53 These were human rights which had, de facto, been the subject of communications since individuals and non-governmental organizations had spontaneously started the practice.

right to procedural safeguards in criminal proceedings.<sup>54</sup> The risk here was to ascribe to UNESCO a general competence in human rights that would go beyond the specific nature of its mission and possibly undermine its effectiveness. The Director-General suggested, however, that it was possible to extend this competence to those human rights where the alleged violation had been committed, for example, against a teacher by reason of that person's capacity as a teacher. That point however remained to be clarified by the members of the Executive Board.

Concerning procedural mechanisms the Director-General's report put forward the considerations to be taken into account for each of the stages of the procedure envisaged. Here, the distillation of various experiences derived from the implementation of procedure 77 EX/8.3 and the other procedures set forth in the document would point the way to mechanisms that were best adapted to UNESCO's terms of reference.

As to the authors of communications addressed to the Organization, the Director-General's report included communications submitted by States as well as those submitted by individuals or non-governmental organizations. Communications of States were not expected to present any problems, as, by their nature, Member States were authorized to raise questions relating to human rights with the Executive Board directly.

By contrast, it was less obvious how an individual or a private legal entity might bring a question before the Organization. The Director-General suggested that the procedure might be open to the "direct victim" as well as the "indirect" or "potential victim". By recognising the possibility that non-governmental organizations could address the Organization, the Director-General was also contemplating the possibility of an *actio popularis*, but he made it clear that the decisive criterion in identifying the authors of communications must be the existence of a legitimate interest.<sup>55</sup>

The conditions for admissibility to be chosen by the members of the Executive Board were not, in the view of the Director-General, likely to present much difficulty, as he had found that here a certain consensus existed already. He noted that a communication must not be anonymous; it must not be already pending before another international investigation or settlement organization,<sup>56</sup> it must be compatible with the fundamental principles of the Organization; it must not be manifestly ill-founded; it must be neither offensive nor amount to an abuse of the right to submit communications; and, finally, it must have been submitted within a reasonable time from the date the alleged facts occurred.<sup>57</sup>

The Director-General did identify one condition that was bound to generate discussion within the Executive Board. This was the condition that local remedies must first be exhausted. The Director-General noted that this condition was typically a feature of proceedings before a court. He pointed out, however, that it could be made a requirement in more flexible procedures, as for example in the procedure put in place by ECOSOC in its resolution 1503.<sup>58</sup> This condition was therefore judicial in nature, but the Director-General noted that it could nonetheless be adapted, and did not rule out its use in the procedure to be set up.<sup>59</sup>

When it came to deciding which organ should have competence to rule on whether or not a communication was admissible, the Director-General envisaged the possibility of changing the practice hitherto followed at UNESCO, by divesting the Director-General of the role of examining the admissibility of communications and conferring it either on the Committee on Conventions and Recommendations in Education, or on a more restricted body, thus following the practice of other institutions.<sup>60</sup>

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54 The Director-General also noted in his report that the communications addressed to UNESCO based on the 1967 procedure mainly concerned persons in professions related to UNESCO's fields of competence who had been the subject of measures such as arrest, conviction, detention, harsh treatment while in detention, torture, execution, murder, shooting, "disappearance", exile, dismissal, suspension, acts of repression, or other acts involving the closure or search of premises, the burning or confiscation of books, and the denial or deprivation of legal status (Document 102 EX/19, paragraph 115).

55 Document 102 EX/19, paragraphs 134-136.

56 This condition was ultimately not included in the procedure as adopted.

57 Document 102 EX/19, paragraph 137.

58 Resolution 1503 (XLVIII) of 1970 modifying resolution 728 F.

59 Document 102 EX/19, paragraphs 76-78.

60 Document 102 EX/19, paragraph 139. See the table in Annex I of the document which records the specific nature of UNESCO's practice on this point.

In the interests of effectiveness, the Director-General further noted that the organ charged with examining admissibility might, when faced with incomplete or unclear communications, be allowed to supplement the dossier with any information necessary for it to verify its admissibility.<sup>61</sup>

The Director-General proposed that communications constituted cases when they concerned specific cases<sup>62</sup> and questions when they were presented in the form of a report on the general status of the human rights within the competence of UNESCO in the territory of a State.<sup>63</sup>

On the subject of the procedure to be followed for individual cases, consistently with the philosophy that was to underpin the procedure, the Director-General expressly excluded modelling it on criminal proceedings. He explained that the procedure must allow dialogue to be engaged with the State concerned so that ways could be found to ensure better respect for human rights, in those individual cases deemed to be admissible.<sup>64</sup> The Director-General took the view that, by virtue of its long experience in the field, the Committee on Conventions and Recommendations in Education was clearly the organ best equipped to conduct that dialogue between the Organization and the State concerned.<sup>65</sup> Conferring that competence on the Committee must not, however, prevent the Director-General from continuing to intercede personally with the State concerned when he deemed it necessary.<sup>66</sup> The Director-General wanted to reinforce the prerogatives of the competent body by allowing it to make direct contact with the State concerned and conduct missions of good offices or conciliation, for example.<sup>67</sup>

On the procedure to be followed in examining questions, the Director-General suggested that the Executive Board might be mandated to examine these in private meeting. He also raised the possibility that competent body in individual cases might combine them to a “question”, and submit it to the Executive Board. The Executive Board might do the reverse, and refer a question to the Committee for it to decide whether it was not in reality a series of specific cases.<sup>68</sup> The Director-General also envisaged a third category of communications: a question made up of a cluster of several interrelated specific cases.

On the issue of confidentiality of the reports, the Director-General emphasised that nothing in the Constitution of UNESCO prevented the reports from being published. In his comparative presentation of the different procedures, he also pointed out that, where a report was made public, the authority of the procedure was enhanced.<sup>69</sup> Nonetheless, he favoured confidentiality for the reports in individual cases and left it to the discretion of the Executive Board whether reports on a question should be made public.<sup>70</sup>

The last item in the Director-General’s report dealt with the coordination of UNESCO’s procedures with procedures followed by other United Nations agencies and international organizations. The question mainly arose in the context of the procedures put in place under the Optional Protocol to the Covenant on Civil and Political Rights and by ECOSOC,<sup>71</sup> but the Director-General’s analysis looked at all the procedures on human rights in an attempt to determine whether or not there was a real problem of duplication.

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61 Document 102 EX/19, paragraph 140

62 Document 102 EX/19, paragraph 142.

63 Document 102 EX/19, paragraph 146.

64 Document 102 EX/19, paragraph 142.

65 Document 102 EX/19, paragraph 144.

66 Document 102 EX/19, paragraph 145.

67 Document 102 EX/19, paragraph 143.

68 Document 102 EX/19, paragraphs 146-147.

69 This was the case for the procedure followed at the ILO. See Document 102 EX/19, paragraphs 88-89.

70 Document 102 EX/19, paragraphs 149-150.

71 For these two procedures, the Director-General considered that the risk of competition would disappear automatically, because on the one hand, Article 5.2 of the Covenant provided that “the Committee shall not consider any communication from an individual unless it has ascertained that [...] the same matter is not being examined under another procedure of international investigation or settlement” and, on the other, point 4 (a) of resolution 1 (XXIV) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the United Nations Commission on Human Rights provided that “Communications shall be inadmissible if their admission would prejudice the functions of the specialized agencies of the United Nations system”.



The report by the Director-General concluded that this risk was relatively slight as duplication or competition between them was extremely rare. Moreover, and with specific reference to individual cases, the Director-General noted that those rare instances of competition had not damaged the interests of the authors of the complaints, but quite the reverse, as they could avail themselves of several effective remedies.

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## The discussions at the 102nd session of the Executive Board

Document 102 EX/19 was put before the members of the Executive Board, which examined and discussed it at its 102nd session, held from 25 April to 12 May 1977<sup>72</sup> with the aim of reaching a consensus on each point.

At this stage in the legislative history, consensus was obtained at once on the question of the non-judicial nature of the procedure. UNESCO was not an international judicial body, and the members of the Executive Board acknowledged that it had no mandate to become one.<sup>73</sup> However, everyone took the view that this should not prevent it from taking action, in its own way and using the proper and appropriate channels given the nature of its mission, on the cases and questions communicated to it.<sup>74</sup>

As UNESCO had no powers to impose sanctions or to convict, the Executive Board laid great emphasis on the moral authority of the Organization, its persuasive role, and its mission to promote human rights by dialogue with the States.<sup>75</sup>

Referring to the constitutional and conventional texts and the resolutions of its governing bodies, identified by the Director-General as the basis of UNESCO's competence members pointed out that the principles of international cooperation justified UNESCO's action in the domain of human rights.

The human rights as listed by the Director-General in the domains of education, science, culture and communication and the additional safeguards without which those rights could not be guaranteed, were recognized by all members of the Executive Board as falling within the scope of the competence *ratione materiae* of the Organization. That said, some speakers stressed that it was difficult to identify, which human rights fell within the competence of UNESCO without running the risk of artificially limiting that competence.<sup>76</sup> UNESCO must be competent to consider the right to life, the right to protection from cruel or degrading treatment, and from politically motivated persecution.<sup>77</sup> The question whether UNESCO's competence should be extended to all human rights relating to certain categories of profession, as the Director-General had envisaged, was also discussed, the conclusion being that this could have the undesirable effect of creating specially privileged groups.<sup>78</sup>

On the issue of duplication, members who took part in the discussions in the 102nd session of the Executive Board decided that the existence of other procedures for the protection of human rights within the United Nations system

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72 See Document 102 EX/SR.1-17, Analytical reports of the discussions in the Executive Board and Document 103 EX/18, Analytical summary of the discussions in the 102nd session of the Executive Board drawn up by the Director General, as to item 5.6.2.: Study of the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective.

73 This automatic exclusion of any judicial character of the procedure had repercussions for the discussions on whether or not to adopt the condition of the prior exhaustion of local remedies. Most of the members that opposed it did so on the grounds that this condition would have the effect of introducing a judicial element into a procedure where it did not belong.

74 See for example in the analytical reports of the discussions in the 102nd session, the statements of Messrs Van Ussel (Belgium), Mathieu (Italy) and Uslar-Pietri (Venezuela) (document 102 EX/SR.6).

75 See for example the statements of Messrs Carneiro (Brazil, Vice-Chairman of the Executive Board), Gopal (India), Thajeb (Indonesia) and Hummel (Switzerland), (document 102 EX/SR.5, 6 and 7).

76 Statement of Mr Uslar-Pietri (Venezuela) (document 102 EX/SR.6).

77 Document 103 EX/18 (1977), Analytical summary of the discussions in the 102nd session of the Executive Board on item 5.6.2., Study of the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective paragraphs 14-20.

78 See for example the statements of Mr Garbo (Norway) (document 102 EX/SR.5) and Ms Pintasilgo (Portugal) (SR.8).

should not prevent UNESCO from setting up its proper procedures.<sup>79</sup> The discussions yielded convergent observations about the need to strengthen cooperation between the various organs of the United Nations agencies.<sup>80</sup>

One of the topics of discussion that gave rise to much debate was that of the effect of the principle of non-intervention on UNESCO's competence. Members of the Executive Board were unanimous in acknowledging that the principle laid down in Articles I.3 of the Constitution of UNESCO and 2.7 of the Charter of the United Nations was absolute, and must serve as a base point for the limits of UNESCO's action. However, on the question of where these limits should be set, the members of the Board differed from each other.

For some of them, the principle of Article I.3 did not justify the conclusion that human rights were a matter for the exclusive jurisdiction of States. The duty on States in the domain of human rights, and their commitment to numerous international conventions in this field meant that human rights were of interest to the whole international community.<sup>81</sup> For other members, the Article I.3 principle firmly ruled out any intervention by UNESCO in the field of human rights, which fell within the exclusive competence of the States.<sup>82</sup>

Certain members disputed UNESCO's right to examine individual cases as they lay within the exclusive domestic competence of the States. Those members preferred to see UNESCO concentrate its efforts on instances of flagrant massive violations of human rights.<sup>83</sup> Other members considered that any violation of human rights was a question of international interest in respect of which UNESCO must be competent.

Strictly procedural aspects were also discussed. The question was raised whether the pre-existing mechanisms should be put aside. Some members considered that the mandate of the Executive Board was not to draw up new procedures but study the old ones, which were adequate to satisfy UNESCO's needs.<sup>84</sup> However, the majority took the view that the Executive Board must consider creating new and more effective procedures.<sup>85</sup>

The question that came up most frequently in these discussions was that of the nature of the body or bodies competent to examine the admissibility and the substance of cases and questions.<sup>86</sup> Members disagreed on whether these tasks should be conferred on a political or a technical body.

That the examination of admissibility might be conferred on an organ other than the Director-General provoked contradictory reactions. Several members were in favour of conferring this task on the Committee on Conventions and Recommendations in Education or on a body limited in membership.<sup>87</sup> For example, one Member proposed the setting up of a "Council of Elders" composed of five persons at the most, appointed personally for their qualities, who could examine the issue of admissibility free from political considerations. This proposition won the support of some given the impartiality such a Council might exercise.<sup>88</sup> Other members, however, took the view that the task should be conferred on a political body,<sup>89</sup> while still others considered that there was no reason why the Director-General should be stripped of

79 Therefore, the members of the Executive Board did not retain the condition for admissibility mentioned by the Director-General, according to which a communication could not be admissible if it was already the subject of examination by another international organization.

80 See for example the statement of Mr Gopal (India) (SR.6).

81 This position was maintained by Mr Toussaint (United States) (SR.7), Mr Hummel (Switzerland) (SR.6), Mr Van Hussen (Belgium) (SR.6), Mr Abad Grijalva (Ecuador) (SR.8), Mr Ki-Zerbo (Upper Volta) (SR.9) and also Mr Petersen (Federal Republic of Germany) (SR.10).

82 Mr Wagner de Reyna (Peru) for example refused to take part in the discussions because he took the view that they covered an area in which UNESCO was not in any event competent (document 102 EX/SR.5). See, also, the interpretation of Mr Upraity (Nepal) (SR.10) and the concerns expressed by Mr Bahner (German Democratic Republic) (SR.6).

83 See for example the statements of Mr Koutakov (Union of Soviet Socialist Republics) (document 102 EX/SR.5), Mr Lipatti (Romania) (SR.6) and Ms Krassowska (Poland) (SR.7).

84 See for example, Mr Koutakov (URSS) who drew attention to the actions UNESCO had taken until then against massive and flagrant human rights violations, or Mr Bahner (German Democratic Republic) who felt that the efforts of the Organization should not be dissipated (document 102 EX/SR.5).

85 Many members drew attention to the slowness of the procedure for examining communications (document 103 EX/18, paragraph 33).

86 Document 103 EX/18, paragraph 31.

87 That was the opinion of Messrs Toussaint (United States) (document 102 EX/SR.7), Van Ussel (Belgium) (SR.6) Mathieu (Italy) (SR.6), and also Hiraoka (Japan) (SR.6).

88 Proposal by Mr Rahnama (Iran) (document 102 EX/SR.7) shared by Ms Pintasilgo (Portugal) and also by Mr Abad Grijalva (Ecuador) (SR.8).

89 Document 103 EX/18, paragraphs 35-38.

this task.<sup>90</sup> Still other members proposed a middle course, which consisted of making the Director-General responsible for the formal examination of admissibility and giving the examination of substantive admissibility to the Committee on Conventions and Recommendations in Education.<sup>91</sup> At that stage in the legislative history, all those options remained open.

With regard to the competence to examine communications found to be admissible, some members thought that the task should be conferred on a political body, in particular the Committee on Conventions and Recommendations in Education<sup>92</sup> which had acquired long experience in the subject, others preferred a restricted committee whose members would be elected in their personal capacity.<sup>93</sup>

Members of the Board were unable to reach agreement on which fact-finding measures were consistent with the principle of non-intervention.<sup>94</sup> For some, it was clearly preferable that this task should be given to independent specialists. Others argued that the very possibility would stretch the principle of non-intervention.<sup>95</sup>

The same opposing viewpoints appeared in discussions on the possibility that the competent body could have a conciliatory role. Certain members were prepared to contemplate granting such role to the body responsible for examining communications.<sup>96</sup> For others, this scenario amounted to interfering as well in the internal affairs of the State.<sup>97</sup>

Most of the conditions for admissibility of communications mentioned by the Director-General did not cause much discussion. Some members considered however that the victim alone could be authorized to submit a communication to UNESCO. Only one member of the Executive Board opposed that non-governmental organizations should be granted the right to submit communications based on the hypothesis of "*actio popularis*".<sup>98</sup>

The condition of prior exhaustion of local remedies was debated, but at that stage members could not agree whether or not it should apply to the procedures they were contemplating.<sup>99</sup>

Though the question of the confidentiality of the examination of communications and of the reports of the Committee had divided the members of the Executive Board at its 99th session (1976), when document 102 EX/19 was discussed, it rapidly became clear that, for the majority of speakers, the confidentiality of the examination of cases was a guarantee of the effectiveness of the procedure. The members of the Executive Board could not, however, agree on the point at which the results of the examination should be made public, or indeed whether they should ever be.<sup>100</sup> Certain members noted that the procedure could never be fully effective if it was deprived of public support, at least at the end of the process, when the final conclusions were announced.<sup>101</sup> Other members thought that maintaining confidentiality up to the end of the process would allow more meaningful results to be achieved, free from political pressures.<sup>102</sup>

The discussions that took place at the 102nd session of the Executive Board were highly instructive. They showed which of the aspects of the procedure generated the most debate: the procedure was not to fall foul of the principle of non-

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90 Statement of Mr Ki-Zerbo (Upper Volta) (document 102 EX/SR.9).

91 This was the proposal of Mr Toussaint (United States of America) (SR.7). Mr Van Ussel (Belgium) spoke along the same lines (SR.6).

92 The members of the Executive Board considered whether, in the event the Committee were to be made responsible for examining admissible communications, the name of the Committee would need to be changed to better reflect its function. The Director-General had himself thought of changing its name to the "Committee on Human Rights and Conventions and Recommendations in Human Rights". Several members supported that proposal but others pointed out that such a modification risked causing confusion about the true nature of the Committee's mandate.

93 This proposal had the support, among others, of the Brazilian Vice-Chairman of the Executive Board, Mr Carneiro, (document 102 EX/SR.5). See also the statement of Mr Abad Grijalva (Ecuador) (SR.8).

94 Statement of the Director-General, document 103 EX/18, paragraph 39.

95 Document 103 EX/18, paragraph 39.

96 See for example the statement of Mr Van Ussel (Belgium) (document 102 EX/SR.6).

97 Statement of Mr Lipatti (Romania) (document 102 EX/SR.6) and Ms Krassowska (Poland) (SR.7).

98 Document 102 EX/SR.6.

99 Document 103 EX/18, paragraph 26.

100 Document 103 EX/18, paragraph 43.

101 See for example the statements of Messrs Bustamante (Panama) (document 102 EX/SR.6) and Toussaint (United States of America) (SR.7).

102 Statement of Mr Mathieu (Italy) (SR.6).

intervention the definition of the human rights falling within UNESCO's competence; the formulation of the distinction between "cases" and "questions"; and the designation of the organ or organs competent to examine the admissibility and the merits of communications. Even on the most technical issues, where the Executive Board might have been expected to reach rapid agreement, divergences of view persisted that were very much bound up with the determination of the States not to overstep the limits of UNESCO's competence in the field of human rights.

Given the scope of the undertaking, several members of the Board suggested setting up a Working Party to carry out an in-depth examination of the various aspects of the procedures under discussion.<sup>103</sup> Thus, in 102 EX/Decision 5.6.2 (1977), it was stated that the Executive Board

- “6. **Invites** all its members to send to the Director-General before 15 July 1977 further comments concerning this subject and the contents of document 102 EX/19;
7. **Decides** to set up a working party of 13 members (including the Chairman of the Executive Board as Chairman) to meet in the early part of August 1977 with the following terms of reference:
  - (a) to carry out an in-depth study of document 102 EX/19, the analytical summary of the discussions that took place at the 102nd session, and the written comments of members of the Executive Board mentioned in paragraph 6 above;
  - (b) to identify points of agreement and divergence and, working to the extent possible on a basis of consensus, try to reduce divergences;
  - (c) to prepare for submission to the 103<sup>rd</sup> session of the Board a report on its work containing suggestions regarding the procedures to be followed in future (proposing several alternatives whenever necessary);
8. **Further decides:**
  - (a) to include again in the agenda of the 103rd session the item “Study of the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective”;
  - (b) to study the report mentioned in paragraph 7 (c) above with a view to arriving, if possible, at a final conclusion at the 103rd session;”

The creation of the Working Party by the Executive Board was to mark the turning point between the general discussion and the drafting of a decision giving effect to the resolutions of the General Conference. It was composed of 13 members<sup>104</sup> and chaired by the Chairman of the Executive Board. The terms of reference of the Working Party were to continue to examine the issue, identifying the points of agreement and disagreement, and to draft a final decision, *working to the extent possible on a basis of consensus*. It was owing to the discipline and perseverance of the Working Party that the members of the Executive Board came to adopt 104 EX/Decision 3.3.

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<sup>103</sup> This possibility was suggested, among others, by Messrs Rahnama (Iran) (SR.7), Mathieu (Italy) (SR.6), Munoz Ledo (Mexico) (SR.7) and Ms Pintasilgo (Portugal) (SR.8).

<sup>104</sup> The Working Party was composed as follows: Mr Martin (United Kingdom, Chairman of the Executive Board and Chairman of the Working Party), Mr Agiobu-Kemmer (Nigeria), Mr Bagunywa (Uganda), Mr Carneiro (Brazil), Mr El-Wakil (Egypt), Mr Gopal (India), Mr Kamm (United States of America), Mr Koutakov (USSR), Ms Krassowska (Poland), Mr Messadi (Tunisia), Mr Thajeb (Indonesia), Mr Uslar-Pietri (Venezuela) and Mr Van Ussel (Belgium).

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## The work of the Executive Board Working Party

The Working Party produced two successive reports: one was submitted to the Executive Board at its 103rd session (1977), in which it put forward suggestions concerning the procedures to be followed, and the other submitted to the Executive Board at its 104th session (1978), intended as a final report enabling the discussion to be brought to a close.

In drawing up its first report, the Working Party had before it document 102 EX/19, the discussions at the 102nd session of the Executive Board<sup>105</sup> and the written communications submitted by certain members of the Executive Board during July 1977, on the invitation of the Executive Board.<sup>106</sup> The contents of the seven written communications addressed to the Secretariat reflect for the most part the opposition between those members who took the view that, based on the principle of non-intervention, UNESCO could not put a procedure in place to examine communications relating to human rights<sup>107</sup> and those members who gave that principle a different interpretation, that amply justified drawing up new procedures.<sup>108</sup> The same discussions characterized the Working Party. In addition, new questions appeared in the course of those discussions.

Agreement emerged more easily on certain points. Thus, the members of the Working Party emphasized that there were no longer any problems with accepting the formal bases of UNESCO's competence proposed by the Director General.<sup>109</sup> Nonetheless, some members were concerned by the lack of express agreement of all the States to implement the procedure, which they felt might result in the same questions being raised again in future debates.<sup>110</sup> As to the definition of the human rights falling within the competence of UNESCO, the question whether UNESCO could be competent for all human rights with regard to certain socioprofessional categories remained open, but consensus had been achieved on the other categories of rights.<sup>111</sup> The Working Party also confirmed that the risk of *lis pendens* was not of sufficient magnitude to stand in the way of UNESCO's initiatives.<sup>112</sup> Finally, a clear distinction was starting to emerge between the procedure to be followed in examining "individual cases" and that for "questions".<sup>113</sup>

At that stage in the legislative history, the implications of the principle of non-intervention for UNESCO's competence,<sup>114</sup> the condition of prior exhaustion of local remedies,<sup>115</sup> the designation of the body with competence to examine the admissibility and the merits of the communications,<sup>116</sup> the prerogatives granted to that body<sup>117</sup> and the publication of the reports drawn up on the communications were all aspects of the procedure on which the members of the Working Party were still divided.<sup>118</sup>

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105 Especially the analytical summary of the discussions that took place at the 102nd session of the Executive Board on Item 5.6.2, (document 103 EX/18).

106 Documents 103 EX/WP/HR/INF.1 and 103 EX/WP/HR/INF.1 Add. 1 and Add. 2. Seven members of the Executive Board sent additional written communications to the Secretariat: Mr El-Wakil (Egypt), Mr Lipatti (Romania), Mr Van Ussel (Belgium), Mr Bahner (German Democratic Republic), Mr Garbo (Norway), Mr Koutakov (USSR) and Mr Suganuma (Japan).

107 See the written communications of Messrs Lipatti (Romania), Bahner (GDR) and Koutakov (USSR) (Annexes 2 and 4 to document 103 EX/WP/HR/INF.1 and 6 to document 103 EX/WP/HR/INF.1 Add.1).

108 Those other communications mainly emphasized the spirit of cooperation that must underlie the creation of the procedure. See the written communications of Messrs Van Ussel (Belgium), Garbo (Norway) and Suganuma (Japan) (Annexes 3 and 5 to document 103 EX/WP/HR/INF.1 and 6 to document 103 EX/WP/HR/INF.1 Add. 2).

109 Report of the Working Party of the Executive Board drawn up pursuant to 102 EX/Decision 5.6.2 (7), document 103 EX/19 of 19 August 1977, Study of the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective, paragraph 6.

110 In his written communication, Mr Koutakov (USSR) expressed the problem in these terms: "It is important in any event for UNESCO, following the example of the United Nations Organization, to take account of the trend towards drawing up such procedures by agreement" (paragraph 18 of the written communication). See also the first report of the Working Party, document 103 EX/19, paragraph 12.

111 Document 103 EX/19, paragraphs 19-20.

112 Document 103 EX/19, paragraph 31.

113 Document 103 EX/19, paragraph 46.

114 Document 103 EX/19, paragraphs 8-9.

115 Document 103 EX/19, paragraphs 34-36.

116 Document 103 EX/19, paragraph 29, paragraph 44.

117 Document 103 EX/19, paragraph 49.

118 Document 103 EX/19, paragraphs 52-53.



The examination of the first report by the Executive Board at its 103rd session (12 September to 7 October 1977) and the divergences of view that emerged prompted some members to suggest that it would be appropriate to postpone the discussion, as it seemed too difficult to arrive at a solution that would satisfy all the members.<sup>119</sup>

Nonetheless, the Executive Board did not suspend its discussions, and, in 103 EX/Decisions 5.5.1 and 5.5.2 it invited the Working Party to draw up a final report for the 104th session in 1978. It is that report, drawn up on the basis of several documents reflecting the wishes of all organs of UNESCO to reach a consensus on the issue, that constitutes the basis of 104 EX/Decision 3.3.

To prepare the final report, the members of the Working Party examined the following documents:

- The report drawn up by the Director-General in 1977 (document 102 EX/19);
- A report drawn up by the Committee on Conventions and Recommendations in Education (document 103 EX/17, Part II);
- Analytical summaries of the discussions in the Executive Board on document 102 EX/19 (document 103 EX/18);
- The first report of the Working Party (document 103 EX/19);
- A draft decision prepared by the Chairman of the Executive Board together with the draft amendments presented by certain members including the one proposed jointly by Messrs Koutakov (USSR) and Paszkowski (Poland) which constituted a draft decision in its own right (document 104 EX/WG/HR/1) ;<sup>120</sup>
- A draft decision prepared by Mr Buergenthal (United States) (document 104 EX/WG/HR.DR.1).

At their meeting of 27 September 1977, the members of the Committee on Conventions and Recommendations in Education formulated a number of observations on the procedures to be put in place, and annexed these to their report to be examined by the Executive Board. With the benefit of its experience, the Committee could thus make specific comments about the improvements that should be made. For example the need for the body charged with examining the communications to be able to ask for additional details where the information given was not sufficiently detailed.<sup>121</sup>

On the various draft decisions the Working Party had before it, the proposals differed widely. The Working Party had the task of reconciling them.<sup>122</sup> To give an example, the proposals were most numerous and varied on the question of the designation of the body competent to rule on the admissibility of communications. The draft of the Chairman of the Executive Board, along with that of Mr Buergenthal envisaged that this responsibility should be conferred on a working group composed of the Chairman of the Committee and two other members of that Committee. The draft by Messrs Koutakov and Paszkowski also envisaged a working group, composed of the Chairman of the Committee and five other members. In January 1978, the Working Party favoured the Committee on Conventions and Recommendations in Education having competence to examine admissibility, and the setting up of “a working group consisting of the Chairman of the Committee and other members appointed by the Committee with due regard for equitable geographical distribution”.<sup>123</sup> That option was not kept in the final report.<sup>124</sup>



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119 See document 103 EX/SR.19.

120 This document is in the form of a table: it puts in parallel the text suggested by the Chairman of the Executive Board, the amendments proposed by the different members, the joint draft amendments of Messrs Koutakov and Paszkowski and, where applicable, the corresponding text of the instruments applicable within the United Nations system (namely the ECOSOC 1503 (XV VIII) procedure and resolution 1 (XXIV) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the United Nations Commission on Human Rights).

121 Document 103 EX/17, paragraphs 9 and seq.

122 The aspects of the procedure on which the proposals diverged most were the question of prior exhaustion of local remedies, the procedure to be followed to deal with “questions” and the designation of the organ competent to examine communications on the merits.

123 See document 104 EX/WG/HR/3.

124 However, the discussions that took place on that report at the 104th session of the Executive Board show that members left open the possibility of setting up a restricted group at the discretion of the Committee (document 104 EX/SR.6).

Paragraph 4 of Report 104 EX/3 of the Working Party put forward a draft decision to the Executive Board. That draft retained all the aspects of the procedure on which the States had insisted throughout the various stages of the legislative history, and which were intended to invest the procedure with a specific philosophy. UNESCO's competence in the field of human rights had solid constitutional and conventional foundations and was also based on the resolutions of the General Conference; the principle of non-intervention laid down in Article I.3 of the Constitution of UNESCO must be kept in mind, but did not prevent the Organization from acting in the sphere of human rights; UNESCO must act on the basis of "moral considerations" and "in a spirit of international cooperation, conciliation and mutual understanding", and "should not play the role of an international judicial body".

The "Committee on Conventions and Recommendations" – the special group proposed this change of the name of the Committee – was to be responsible for examining both the admissibility and the merits of communications and was to aim to bring about "a friendly solution designed to advance the promotion of human rights". The report no longer mentioned the possibility of good offices or a conciliation mission. That type of intercession was left to the Director-General who was encouraged to pursue his discreet efforts at mediation. Finally, a balance was found between the procedure to be followed for cases and that for questions and between the confidentiality of the procedure and the resort to public opinion in the case of the most severe violations.

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## The adoption of 104 EX/Decision 3.3 by the Executive Board

The 104th session of the Executive Board, held from 24 April to 9 June 1978, marks the end of the legislative history of the 104 EX/3.3 Procedure. The final report of the Working Party succeeded in achieving the compromise sought since the adoption by the General Conference of 19 C/Resolution 6.113 and 19 C/Resolution 12.1, and it was adopted without modification by the members of the Executive Board, in the form of 104 EX/Decision 3.3.

At the final discussion, the majority of members praised the strive for conciliation that had characterized the Working Party, and its success in having reached a consensus. The manner in which the discussions proceeded at the 104th session testified to the clear success of the process in which all the constitutional organs of UNESCO had played a role in devising a mechanism that would make the action of UNESCO more effective in the field of human rights.

The outcome of this process was a procedure that was accepted by all the members of the Board.<sup>125</sup>

With satisfaction the Chairman of the Executive Board at the time, Leonard C. J. Martin (United Kingdom) noted:

*"[D]espite many difficulties, a spirit of mutual understanding and cooperation which – even by UNESCO's standards – was quite remarkable had prevailed, and – together with the very considerable assistance provided by the Secretariat – had enabled the Working Party to approve by consensus the draft decision in paragraph 4 of its report".<sup>126</sup>*



At its 20th session in 1978, the General Conference took formal note of the 104 Procedure, thus confirming that the procedure was also its own. At the same time, it invited the Director-General to take steps to optimize its functioning.<sup>127</sup>

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<sup>125</sup> Statement by Mr Garbo (Norway), (document 104 EX/SR.6).

<sup>126</sup> Document 104 EX/SR.6.

<sup>127</sup> 20 C/Resolution 10.1 (1978), *UNESCO's contribution to peace and its tasks with respect to the promotion of human rights and the elimination of colonialism and racialism*.

## Resolution 20 C/10.1: UNESCO's contribution to peace and its tasks with respect to the promotion of human rights and the elimination of colonialism and racism

*“The General Conference,*

(...)

*Noting* the establishment of a new procedure, pursuant to 19C/Resolution 12.1, in order to make UNESCO's action more effective, as regards the exercise of human rights in the spheres to which its competence extends

(...)

2. *Invites* the Director-General: (...)

- (g) to ensure the smooth operation of the new procedure designed to increase the effectiveness of UNESCO's action in the examination of the complaints it receives concerning the exercise of human rights;”

At its 21st session in 1980, the General Conference hailed the “progress made” thanks to the new procedure as it “enabled individual petitions ...to be dealt with” and facilitated continuing dialogue with the Member States concerned by the communications.<sup>128</sup>

## Resolution 21 C/10.1: UNESCO's contribution to peace

*“The General Conference,*

(....)

*Noting* the progress made under the new procedure established by the Executive Board at its 104th session for the examination of communications concerning the exercise of human rights, which enables individual petitions concerning cases or matters relating to violations of these rights within UNESCO's fields of competence to be dealt with, and permits and facilitates constant and continual dialogue with the States involved in the communications which reach the Secretariat,

8. *Invites* the Director-General:

(....)

- (g) to pay particular attention to the protection of human rights and fundamental freedoms, including the elimination of massive, systematic or flagrant violations of human rights;
- (h) to continue to examine with particular attention the general situation regarding respect for human rights within UNESCO's fields of competence, placing special emphasis on activities in the realm of human rights teaching;”

<sup>128</sup> 21 C/Resolution 10.1 (1980), *UNESCO's contribution to peace*.



# **Documents of the Legislative History**

# Chapter 1: Human Rights at the nineteenth session of the General Conference of UNESCO in Nairobi

At the 19th session of the General Conference in 1976, 19 C/Resolution 6.113 concerning the social sciences programme and 19 C/Resolution 6.12, proposed by the Negotiating and Drafting Group of the General Conference, invited the Executive Board and the Director-General to study the procedures that should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres to which its competence extended in order to render its action more effective ([Section 1: Resolutions of the General Conference](#)).

The adoption of the two resolutions was preceded by several drafts submitted by Member States which were examined by the competent commissions and adopted by the Plenary ([Section 2. Drafting of the General Conference resolutions](#)).

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## Section 1: Resolutions of the General Conference

### Resolution 19 C/6.113

*The General Conference,*

**Recalling** the statement in its Constitution that UNESCO was founded in order ‘to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations’,

**Considering** that, to this end, the Organization has set itself the task of developing co-operation and understanding between nations in education, science, culture and communication,

**Reaffirming** UNESCO’s universal calling, respectful of the plurality of the economic systems, social structures and cultural values of the States of which it is composed,

**Recalling** that in the fields of its competence UNESCO must, in particular by study of the historical, philosophical, sociological and legal conditions on which human rights are dependent, seek to promote and safeguard civil and political rights as well as economic, social and cultural rights, which are interdependent both in theory and in practice,

**Taking note** of 98 EX/Decisions 9.4, 9.5 and 9.6 and of 99 EX/Decisions 9.4 and 9.5, adopted by the Executive Board at its 98th and 99th sessions respectively,

**Anxious** to ensure that the Organization is in a position to discharge to the full its responsibilities in the field of human rights, as they emerge from the principles underlying its Constitution,

*Invites* the Executive Board and the Director-General to study the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective.

## Resolution 19 C/12.1

12. UNESCO's contribution to peace and its tasks with respect to the promotion of human rights and the elimination of colonialism and racialism; long-term programme of measures whereby UNESCO can contribute to the strengthening of peace

### 12.1 *The General Conference,*

*Referring to* the provisions of Article I of UNESCO's Constitution, which defines the Organization's tasks with regard to the strengthening of peace and international security and respect for human rights and fundamental freedoms for all,

*Recalling* the resolutions concerning UNESCO's contribution to the cause of peace and the struggle against colonialism and racialism, which it adopted at its eleventh (1960), thirteenth (1964), fifteenth (1968), sixteenth (1970), seventeenth (1972) and eighteenth (1974) sessions,

*Considering* that the political climate now established is leading to the relaxation of international tension, which is conducive to more effective achievement of the aims and tasks set for UNESCO under its Constitution and as a result of decisions of the General Conference,

*Stressing* that the policy of relaxing international tension implies a genuine turning away from confrontation and unstable equilibrium towards greater peaceful co-operation among all States, irrespective of their social and economic systems,

*Acknowledging* the important part played in this encouraging process by the provisions of the Final Act of the Conference on Security and Co-operation in Europe, relating to UNESCO's fields of competence,

*Bearing in mind* the great efforts made by the Group of Non-Aligned Countries, the Organization of African Unity (OAU) and other groups to reduce tensions, on the basis of equality, co-operation and respect for the sovereignty, independence and territorial integrity of States,

*Noting likewise* that relaxation of international tension and peaceful co-operation, and the efforts aimed at establishing a new international economic order, open up new prospects for the satisfactory solution of the problems of development and social progress, and for the guaranteeing and protection of human rights,

*Aware* that colonialism, neo-colonialism, racialism in all its forms and manifestations, apartheid, and the policy of aggression and interference in the domestic affairs of States are serious obstacles to the exercise of man's right to lead his life in dignity and freedom,

*Affirming* that the efforts undertaken by UNESCO in its fields of competence for the liberation of the peoples still subject to colonialism, neo-colonialism and foreign occupation represent an important contribution to the establishment of peace throughout the world,

*Taking note* with satisfaction of the report of the Director-General on the implementation of resolution 11.1 adopted by the General Conference at its eighteenth session and entitled 'UNESCO's Contribution to Peace and its Tasks with Respect to the Promotion of Human Rights and the Elimination of Colonialism and Racialism',

*Stressing* the importance of a greater contribution by UNESCO to the cause of peace and the relaxation of international tension through specific forms of cultural and scientific co-operation among States,

*Taking into account* UNESCO's long experience which has convincingly shown that the more active the contribution the Organization makes, within its fields of competence, to the solution of contemporary problems by seeking international

security and peace, and by promoting the struggle for the elimination of colonialism and its consequences, and respect for human rights and fundamental freedoms, the greater its moral authority,

*Considering* that UNESCO, in accordance with its Constitution, is called upon to play a yet more active part in ensuring that cultural exchanges and the wider and freer dissemination of information serve, to a still greater degree, the cause of peace, mutual understanding and the strengthening of trust and friendship between nations,

1. *Urges* Member States:
  - (a) to contribute to the easing of regional and international political tensions in every possible way;
  - (b) actively to support any moves towards strengthening peace, promoting and safeguarding fundamental human rights and freedoms, solving the problems of disarmament, putting an end to military occupations, ensuring the independence, sovereignty and territorial integrity of States and non-interference in the domestic affairs of States, and combating colonialism, racialism and apartheid;
  - (c) to ratify the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and to take all necessary steps for their application;
2. *Invites* the Director-General, under the short- and medium-term programmes, to promote studies and research on the following questions:
  - (a) the strengthening of peace and the promotion of international understanding, as well as the resulting circumstances conducive to the broadening of co-operation in education, science, culture and communication;
  - (b) the contribution that can be made by UNESCO, in its fields of competence, to knowledge of the problems of disarmament, and to their solution, by employing all possible ways of making world opinion alive to these problems;
  - (c) violations of the independence, sovereignty and territorial integrity of States and the struggle against foreign occupation, colonialism, racialism and apartheid, whose inhuman theory and practice are a flagrant violation of human rights and freedoms, a threat to the progress of mankind and a serious danger to international peace;
  - (d) the links which exist between a just and lasting peace and a satisfactory solution of the problems of development at the national, regional and world levels;
  - (e) the means of guaranteeing more effectively basic human rights and freedoms, including the basic rights to life and to security, which are inseparable in the final analysis from a just and lasting peace;
3. *Invites* the Director-General to report on the implementation of paragraph 2 of this resolution to the General Conference at its twentieth session;

## II

*Recalling* the statement in its Constitution that UNESCO was founded ‘in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations’,

*Considering* that, to this end, the Organization has set itself the task of developing co-operation and understanding between nations in education, science, culture and communication,

*Considering* that UNESCO’s mission in relation to human rights has been confirmed throughout its existence and reaffirmed by the Draft Medium-Term Plan, which gives it very great importance,

**Recalling** that, in the fields of its competence, UNESCO must, in particular by study of the historical, philosophical, sociological and legal conditions on which human rights are dependent, seek to promote and safeguard civil and political rights as well as economic, social and cultural rights, which are interdependent both in theory and in practice,

**Noting** with anxiety that the situation as regards the effective, widespread application of the principles of the Universal Declaration of Human Rights and the various instruments relating to those rights adopted by the United Nations is at present far from satisfactory, as can be seen from the policy of apartheid, racialism, colonialism, social and national oppression and other forms of discrimination,

**Noting**, in particular, that violations of human rights in UNESCO's fields of competence are increasingly frequent and are the subject of numerous complaints sent to the Organization,

**Noting** that, in his Introduction to the General Policy Debate (19 C/INF.12), the Director-General asked, with reference to the problems of human rights, that he might in future be given, within UNESCO's spheres of competence, the necessary moral means to enable him to act more effectively in safeguarding human rights,

4. **Reaffirms** the principle that respect for human rights and fundamental freedoms is an essential prerequisite for all development and for a new international economic order;
5. **Condemns** violations of human rights, in whatever part of the world they may occur;
6. **Requests** the Director-General to see that special measures are taken in the Organization's fields of competence with regard to violations of human rights in regions of the world under foreign occupation and domination;
7. **Expresses** the hope that the bodies within the United Nations system will, each in its fields of competence, continue their activity to promote human rights and effective and universal respect for those rights;
8. **Draws attention** to the terms of Articles 55 and 56 of the United Nations Charter;
9. **Recalls** that UNESCO is not an international judicial body and that, in conformity with paragraph 3 of Article I of its Constitution, it must avoid any interference in the domestic affairs of Member States;
10. **Invites** the Executive Board and the Director-General:
  - (a) to examine with particular attention the general situation with regard to respect for human rights throughout the world, in UNESCO's fields of competence;
  - (b) to study the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres to which its competence extends, in order to make its action more effective;
  - (c) to continue to establish, with a view to the implementation of subparagraphs (a) and (b), close co-operation and co-ordination with the relevant United Nations organs so as to take advantage of their work and the lessons that can be learnt from them in this field;
  - (d) to report on the implementation of Part II of this resolution to the General Conference at its twentieth session;

### III

**Solemnly proclaiming** that colonialism, neo-colonialism, and racialism in all its forms and manifestations, are incompatible with the fundamental aims of UNESCO,

**Considering** that the policy of apartheid is a crime against the conscience and dignity of man, unanimously censured by the whole international community,

**Considering** that there can be no just and lasting peace, nor can the necessary conditions for the establishment of a new international economic order exist, until all forms of discrimination, domination and oppression have been eliminated in relationships between men and between peoples,

**Recognizing** the legitimacy of the struggles being waged by peoples subjected to all forms of domination to secure their right to self-determination and independence,

**Recalling** the provisions of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and the Geneva Conventions of 1949 concerning human rights in occupied territories and the protection of civilian persons in time of war,

**Expressing its solidarity** with the struggle upon which the African peoples have embarked in order to recover their national identity, dignity, sovereignty and independence,

**Noting** with satisfaction that the success of the national liberation struggles and the accession to independence of many countries previously under colonial domination have opened the way to the complete elimination of colonialism, neo-colonialism, racial discrimination and apartheid,

**Recalling** the objectives and tasks assigned to UNESCO under the Decade for Action to Combat Racism and Racial Discrimination,

**Bearing in mind** the International Convention on the Suppression and Punishment of the Crime of Apartheid, adopted with a large majority by the General Assembly of the United Nations at its twenty-eighth session,

**Stressing** the moral obligation for all States, individually and collectively, particularly within the framework of UNESCO, to contribute by all the means available to them to furthering the attainment of these objectives, in close co-operation with the representatives of those peoples which are the victims of colonialism, neo-colonialism, racialism and apartheid, and with those of the liberation movements recognized by the Organization of African Unity,

**Reaffirming** that the creation of Bantustans is a measure essentially designed to destroy the territorial integrity of the country, in flagrant violation of the principles enshrined in the United Nations Charter, and that the granting of so-called independence to Transkei is an inadmissible illustration of this,

**Reaffirming** that apartheid seriously hinders the development of education, science, culture and communication in the regions where it is practised,

**Noting** with acute concern that certain States continue to maintain relations with the present Government of South Africa, particularly in the military, nuclear, scientific and technological fields, in defiance of the resolutions of the United Nations,

11. **Reaffirms** the inalienable and imprescriptible right of the people of Namibia, at present under illegal occupation, to self-determination, independence and national sovereignty;
12. **Expresses** its profound indignation at, and condemnation of, the persecutions and massacres of the people of Zimbabwe and the attacks against neighbouring States, committed by the racist and illegal regime in Salisbury;
13. **Invites** Member States to respect and to uphold the right to self-determination and independence of the peoples still subject to any form of domination;
14. **Takes note** with satisfaction of the report of the Director-General entitled 'UNESCO's Contribution to Peace and its Tasks with Respect to the Promotion of Human Rights and the Elimination of Colonialism and Racialism' (19C/13), particularly as regards assistance, within UNESCO's fields of competence, to liberation

movements recognized by the Organization of African Unity and to the peoples of liberated regions and as regards information and research activities concerning racialism and apartheid;

15. **Stresses** the contribution which UNESCO can make to alerting world public opinion to the problems of apartheid, racialism, colonialism and neo-colonialism, to the analysis and clarification of the historical and sociopolitical origins of these phenomena and to the study of new forms of domination, inter-ethnic relations and the assimilation of minority groups;
16. **Invites** the Director-General to accord special importance in the 1977-1978 programme to these assistance, information and research activities, for example by granting increased aid, in UNESCO's fields of competence, to the liberation movements recognized by the Organization of African Unity;
17. **Appeals** to Member States to provide UNESCO, directly or indirectly, with additional assistance in financial or other form, so as to enable it to carry out these tasks more effectively;
18. **Requests** all governments and all organizations to refrain from any relations with the institutions or authorities of the Bantustans, in particular Transkei, and to refuse to recognize them in any way whatsoever;
19. **Invites** the Director-General, in consultation with the Executive Board, to take the necessary measures to cease all collaboration with any non-governmental organizations participating in any way in the policy of the Government of the Republic of South Africa, Rhodesia or any other territory where the policy of apartheid and racial discrimination subsists;
20. **Invites** the Director-General to report to it at its twentieth session on the application of Part III of this resolution.

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## Section 2: Drafting of the General Conference Resolutions

### Document 19 C/DR.108

Draft resolution submitted by France <sup>129</sup>

#### *The General Conference,*

1. **Recalling** the statement in its Constitution that UNESCO was founded in order “to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex language or religion, by Charter of the United Nations”;
2. **Considering** that to this end the Organization has set itself the task of developing cooperation and understanding between nations in education, science, culture and communication;
3. **Reaffirming** the need to maintain and strengthen UNESCO’s universal calling, respectful of the plurality of the economic systems, social structures and cultural values of the States of which it is composed;
4. **Recalling** that in the fields of its competence UNESCO must, in particular by study of the historical, philosophical, sociological and legal conditions on which human rights are dependent, seek to promote and safeguard civil and political rights as well as economic, social and cultural rights, which are interdependent both in theory and practice;
5. **Taking** note of 98 EX/Decisions 9.4, 9.5 and 9.6 and of 99 EX/Decisions 9.4 and 9.5, adopted by the Executive Board at its 98th and 99th sessions respectively;
6. **Anxious** to ensure that the Organization is in a position to discharge to the full its responsibilities in the field of human rights, as they emerge from the principles underlying its Constitution;
7. **Invites** the Executive Board and the Director-General to study measures to improve the examination of cases which may be submitted to UNESCO concerning the exercise of human rights in the spheres of its competence.

### Document 19 C/PLEN/DR.11

Submitted by the Netherlands, Federal Republic of Germany, Belgium, Denmark, France, Ireland, Italy, Luxembourg and the United Kingdom<sup>130</sup>

9. Implementation of resolution 11.1 adopted by the General Conference at its eighteenth session concerning UNESCO’s contribution to peace and its tasks with respect to the promotion of human rights and the elimination of colonialism and racialism.
10. Long-term programme of measures whereby UNESCO can contribute to the strengthening of peace.

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<sup>129</sup> This draft, received by the Secretariat on 23 October 1976, is dated 27 October 1976

<sup>130</sup> This draft, received by the Secretariat on 12 November 1976, is dated 13 November 1976



*The General Conference,*

**Recalling** that the purpose of UNESCO, according to its Constitution, is to promote collaboration among the nations “in order to further universal respect for justice, for the rule of law and for human rights and fundamental freedoms”;

**Recalling** that UNESCO’s mission in relation to human rights has been confirmed throughout its existence and reaffirmed by the Medium-Term Plan, which gives it the highest priority;

**Noting** with anxiety that the situation as regards the effective, widespread application of the principles of the Universal Declaration of Human Rights and other instruments relating to human rights is at present far from satisfactory;

**Noting**, in particular, the violations of human rights in UNESCO’s fields of competence are increasingly frequent and are the subject of numerous complaints sent to the Organization and accompanied by requests for intercession on behalf of intellectuals, artists and teachers persecuted for political reasons;

**Noting** with satisfaction the hope expressed by the Director-General in his introduction to the general policy debate that the General Conference will provide him with the means of taking effective action to come to the aid of victims of violations of human rights in the fields of competence of the Organization;

**Solemnly reaffirms** UNESCO’s calling to contribute, through education, science and culture, to universal respect for human rights and fundamental freedoms for all;

**Reaffirms** the principle that respect for human rights and fundamental freedoms is an essential prerequisite for all development and for the New International Economic and Cultural Order;

**Condemns** violations of human rights, in whatever part of the world they may occur;

**Expresses** the hope that the bodies within the United Nations system will, each in its fields of competence, continue their activity to promote the development of and respect for human rights;

**Invites** the Director-General to follow with particular attention the situation throughout the world with regard to human rights, in the Organization’s fields of competence, and to report on this subject to the General Conference at its twentieth session;

**Invites** the Executive board to consider this problem with a view to working out a suitable procedure enabling the Director-General to take effective action on behalf of victims of violations of human rights in the field of education, science, culture and communication in all parts of the world.

## Document 19 C/PLEN/DR.8 Parts I and II

Draft resolution submitted by the Drafting and Negotiation Group<sup>131</sup>

### I

*The General Conference,*

**Referring** to the provisions of Article I of UNESCO’s Constitution which defines the Organization’s tasks with regard to the strengthening of peace and international security and respect for human rights and fundamental freedoms for all;

**Recalling** the resolutions concerning UNESCO’s contribution to the cause of peace and the struggle against colonialism and racialism, which it adopted at the eleventh (1960), thirteenth (1964), fifteenth (1968), sixteenth (1970), seventeenth (1972) and eighteenth (1974) sessions;

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<sup>131</sup> This draft is dated 26 November 1976

*Considering* that the political climate now established is leading to the relaxation of international tension, which is conducive to more effective achievement of the aims and tasks set for UNESCO under its Constitution and as a result of decisions of the General Conference;

*Stressing* that the policy of relaxing international tension implies a genuine turning away from confrontation and unstable equilibrium towards greater peaceful co-operation among all States, irrespective of their social and economic systems;

*Acknowledging* the important part played in this encouraging process by the provisions of the Final Act of the Conference on Security and Co-operation in Europe, relating to UNESCO's fields of competence;

*Bearing in mind* the great efforts made by the Group of Non-Aligned countries, the OAU and other groups to reduce tensions, on the basis of equality, cooperation and respect for the sovereignty, independence and territorial integrity of States;

*Noting likewise* that relaxation of international tension and peaceful cooperation, and the efforts aimed at establishing a New International Economic Order open up new prospects for the satisfactory solution of the problems of development and social progress, and for the guaranteeing and protection of human rights;

*Aware* that colonialism, neo-colonialism, racialism in all its forms and manifestations, apartheid, and the policy of aggression are serious obstacles to the exercise of man's right to lead his life in dignity and freedom;

*Affirming* that the efforts undertaken by UNESCO in its fields of competence for the liberation of the peoples still subject to colonialism, neo-colonialism and foreign occupation represent an important contribution to the establishment of peace throughout the world;

*Taking note* with satisfaction of the report of the Director-General on the implementation of resolution 11.1 adopted by the General Conference at its eighteenth session and entitled "UNESCO's contribution to peace and its tasks with respect to the promotion of human rights and the elimination of colonialism and racialism";

*Recalling* decision no.11 of the fifteenth conference of International Non-Governmental Organizations enjoying consultative relations with UNESCO;

*Stressing* the importance of a greater contribution by UNESCO to the cause of peace and the relaxation of international tension through specific forms of cultural and scientific cooperation among States;

*Taking into account* UNESCO's long experience which has convincingly shown that the more active the contribution the Organization makes, within its fields of competence, to the solution of contemporary problems by seeking international security and peace, and by promoting the struggle for the elimination of colonialism and its consequences, and respect for human rights and fundamental freedoms, the greater its moral authority;

*Considering* that UNESCO, in accordance with its Constitution, is called upon to play a more active part yet in ensuring that cultural exchanges and the wider and freer dissemination of information serve, to a still greater degree, the cause of peace, mutual understanding and the strengthening of trust and friendship between nations.

## A

Urges Member States:

- (a) to contribute to the easing of regional and international political tensions in every possible way;
- (b) actively to support any moves towards strengthening peace, promoting and safeguarding fundamental human rights and freedoms, solving the problems of disarmament, putting an end to military occupations and ensuring the independence, sovereignty and territorial integrity of States, and combating colonialism, racialism and apartheid;
- (c) to ratify the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and to take all necessary steps for their application.

## B

*Invites the Director-General*, under the short and medium-term programmes, to promote studies and research on the following questions:

- (a) the strengthening of peace and the promotion of international understanding, as well as the resulting circumstances conducive to the broadening of cooperation in education, science, culture and communication;
- (b) the contribution that can be made by UNESCO, in its fields of competence, to knowledge of the problems of disarmament, and to their solution, by employing all possible ways of making world opinion alive to these problems;
- (c) violations of the independence, sovereignty and territorial integrity of States and the struggle against foreign occupation, colonialism, racialism and apartheid, whose inhuman theory and practice are a flagrant violation of human rights and freedoms, a threat to the progress of mankind and a serious danger to international peace;
- (d) the links which exist between a just and lasting peace and a satisfactory solution of the problems of development at the national, regional and world levels;
- (e) the means of guaranteeing more effectively basic human rights and freedoms, including the basic rights to life and to security, which are inseparable in the final analysis from a just and lasting peace.

## C

*Invites* the Director-General to report on the implementation of this resolution to the General Conference at its twentieth session.

## II

### *The General Conference,*

*Recalling* the statement in its Constitution that UNESCO was founded “in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations”;

*Considering* that, to this end, the Organization has set itself the task of developing cooperation and understanding between nations in education, science, culture and communication;

*Considering* that UNESCO’s mission in relation to human rights has been confirmed throughout its existence and reaffirmed by the Draft Medium-Term Plan, which gives it very great importance;

*Recalling* that, in the fields of its competence, UNESCO must, in particular by study of the historical, philosophical, sociological and legal conditions on which human rights are dependent, seek to promote and safeguard civil and political rights as well as economic, social and cultural rights, which are interdependent both in theory and in practice;

*Noting* with anxiety that the situation as regards the effective, widespread application of the principles of the Universal Declaration of Human Rights and the various instruments relating to those rights adopted by the United Nations is at present far from satisfactory, as can be seen from the policy of apartheid, racialism, colonialism, social and national oppression and other forms of discrimination;

*Noting*, in particular, that violations of human rights in UNESCO’s fields of competence are increasingly frequent and are the subject of numerous complaints sent to the Organization;

*Noting* the hope expressed by the Director-General that he may in future be given, within UNESCO’s spheres of competence, the necessary moral means to enable him to act more effectively in safeguarding human rights;

*Reaffirms* the principle that respect for human rights and fundamental freedoms is an essential prerequisite for all development and for a New International Economic Order;

*Condemns* violations of human rights, in whatever part of the world they may occur;

*Requests* that special measures be taken with regard to violations of human rights in regions of the world under foreign occupation and domination;

*Expresses* the hope that the bodies within the United Nations system will, each in its fields of competence, continue their activity to promote human rights and effective and universal respect for those rights;

*Draws* attention to the terms of Articles 55 and 56 of the United Nations Charter;

*Recalls* that UNESCO is not an international judicial body and that, in conformity with paragraph 3 of Article I of its Constitution, it must avoid any interference in the domestic affairs of Member States;

*Invites* the Executive Board and the Director-General:

- (a) to examine with particular attention the general situation with regard to respect for human rights throughout the world, in UNESCO's fields of competence, and to report on the implementation of this resolution to the twentieth session of the General Conference;
- (b) to study the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights, in order to make its action more effective;
- (c) to establish, with a view to the implementation of sub-paragraphs (a) and (b), close cooperation and coordination with the relevant United Nations organs so as to take advantage of their work and the lessons that can be learnt from them in this field.

## Extracts of the report of Programme Commission III: resolutions and recommendations

[...]

27.2. The draft resolution contained in document 19 C/DR.108 related to the procedure to be followed in the examination of cases submitted to UNESCO concerning the exercise of human rights. It was supported by the Chairman of the Executive Board's Committee on Conventions and Recommendations. A long discussion took place, which was closed by a procedural motion. Most of the discussion concerned the use of the term "cases" in the resolution and the proposal was made that this term should be replaced by the term "questions". In the end a compromise solution emerged whereby both the term "cases" and the term "questions" should be used. The draft resolution as a whole recommended for adoption by 79 votes to none, with one abstention.

[...]

## Extracts of the General Conference Debate – 35th and 36th meetings

"The Director-General:

[...]

98.5 Then, Mr President, I would like to pause at subparagraphs (a) and (b) of the seventh paragraph of the operative part, which invite the Executive Board and the Director-General to "examine with particular attention the general situation with regard to respect for human rights throughout the world in UNESCO's

spheres of competence ...”, and “study the procedures that should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in order to make its action more effective”. Subparagraph (b) does not present any difficulties, the more so when one considers it in the light of Resolution 5.11.2 which was adopted by the Plenary on the recommendation of Commission III, paragraph 7 of which reads as follows: “*Invite* the Executive Board and the Director-General to study the procedures which should be followed in examining human rights in its spheres of competence, in order to make its action more effective”. While it is not expressly stated in the text, I would interpret the request in subparagraph (b) as concerning the exercise of human rights only within the spheres of competence of UNESCO.

98.6 Lastly, in subparagraph (c), the Executive Board and the Director-General are asked to “establish, with a view to the implementation of subparagraphs (a) and (b), close cooperation and coordination with the relevant United Nations organs so as to take advantage of their work and the lessons that can be learned from them in this field”. I would simply say that those contacts already exist. Perhaps it would therefore be preferable to replace the word “establish” with “continue to establish”. Thank you, Mr President.”

# Chapter 2: Implementation of 19 C/Resolution 6.113 and 19 C/Resolution 12.1

The study by the Director-General (document 102 EX/19) analyses in detail the main procedures for examining communications concerning human rights in the United Nations, at the ILO and in the regional organizations, as well as within UNESCO itself. The study also puts forward considerations that could serve as the basis of the discussion in the Executive Board.

Annex I of the study contains a comparative table of the main existing procedures for examining communications concerning human rights and, Annex II, a document on the procedure for examining communications followed until that time by UNESCO (Annex I: Comparative table of existing procedures; Annex II: Former procedure of UNESCO).



United Nations Educational,  
Scientific and Cultural Organization

Executive Board

EX

Hundred-and-Second Session

102 EX/19  
PARIS, 7 April 1977  
Original: French

Item 5.6.2 of the Provisional Agenda

STUDY OF THE PROCEDURES WHICH SHOULD BE FOLLOWED IN THE  
• EXAMINATION OF CASES AND QUESTIONS WHICH MIGHT BE SUBMITTED  
TO UNESCO CONCERNING THE EXERCISE OF HUMAN RIGHTS IN THE SPHERES  
OF ITS COMPETENCE, IN ORDER TO MAKE ITS ACTION MORE EFFECTIVE

SUMMARY

The General Conference, at its nineteenth session, invited the Executive Board and the Director-General to "study the procedures which should be followed in the examination of cases and questions which might be submitted to Unesco concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective" (19 C/Resolutions 6.113 and 12.1). This document has been prepared in order to facilitate study of the question.

8 APR. 1977





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Terms of reference given to the Executive Board and the Director-General

1. Under the terms of resolution 12.1 entitled "Unesco's contribution to peace and its tasks with respect to the promotion of human rights and the elimination of colonialism and racialism; long-term programme of measures whereby Unesco can contribute to the strengthening of peace", the General Conference, at its nineteenth session, invited the Executive Board and the Director-General (paragraph 10):
  - "(a) to examine with particular attention the general situation with regard to respect for human rights throughout the world, in Unesco's fields of competence;
  - (b) to study the procedures which should be followed in the examination of cases and questions which might be submitted to Unesco concerning the exercise of human rights in the spheres to which its competence extends, in order to make its action more effective;
  - (c) to continue to establish, with a view to the implementation of subparagraphs (a) and (b), close co-operation and co-ordination with the relevant United Nations organs so as to take advantage of their work and the lessons that can be learnt from them in this field;
  - (d) to report on the implementation of Part II of this resolution to the General Conference at its twentieth session".
  
2. This resolution, which was adopted on the proposal of the Drafting and Negotiation Group of the General Conference, should be set alongside resolution 6.113 adopted on the proposal of Programme Commission III which, in identical terms, invites the Executive Board and the Director-General "to study the procedures which should be followed in the examination of cases and questions which might be submitted to Unesco concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective".
  
3. It should also be recalled that the Executive Board, at its 99th session, by resolution 9.4-9.5, invited "the Committee on Conventions and Recommendations in Education to review its current procedure, including methods of work and of reporting to the Executive Board, with a view to making recommendations for improvement where necessary". It is in pursuance of this resolution that the Committee on Conventions and Recommendations in Education studied, at its session held from 20 to 21 September 1976, the procedures applied, including its methods of work and of reporting to the Executive Board (see document 100 EX/CR/2). The Committee was unable, however, to conclude its consideration of the question so that the study thus initiated should, in principle, be pursued at the Committee's next session. Furthermore, in its report to the Executive Board (document 100 EX/PRIV.50), the Committee on Conventions and Recommendations in Education requested the Secretariat "to prepare for its next session a document on the procedures applied by the United Nations, as well as by certain Specialized Agencies having competence in human rights matters, and on any modifications made or under study". The Committee added that "such a document would be such as to facilitate the follow-up of the examination by the Committee of the procedure followed at Unesco and provide it with guidelines for making recommendations which it might subsequently wish to submit on this subject to the Executive Board".

Interpretation of the terms of reference

4. It will be seen, first of all, that whereas up to now the problem of communications concerning human rights has always been dealt with on the basis of

individual cases, the aforesaid General Conference resolutions refer in more general terms to the "cases" and "questions" which might be submitted to Unesco concerning the exercise of human rights in the spheres of its competence. The present study, therefore, has to cover both communications relating to individual cases, which can be identified with the "cases" referred to in the resolutions, and general problems and overall situations in the sphere of human rights, which can be identified with the "questions" concerning the exercise of human rights. Accordingly, the terms of reference given to the Director-General and the Executive Board in fact comprise examination of the procedures in regard to all communications concerning the exercise of human rights, whether governmental or not and whether they refer to individual cases or general questions concerning human rights.

5. In requesting the Director-General and the Executive Board to study this subject, the General Conference has, however, indicated its wish to remain within the limits of Unesco's competence, so that the procedures to be studied must apply exclusively to problems relating to the exercise of human rights in the spheres of Unesco's competence. This same concern is reflected in paragraph 10 (c) of 19 C/Resolution 12.1, where the General Conference asks that close co-operation and co-ordination be established with the relevant United Nations organs as regards the procedures to be followed; for in seeking to make the Organization's action more effective in this domain care must at the same time be taken not to create duplication of effort.

#### Preliminary observations and scheme of the study

6. When one studies existing international procedures for the examination of communications concerning the exercise of human rights, one is struck by the terminological imprecision on the subject. Depending on the organizations and procedures applied, there is reference to "communications" concerning human rights, "petitions", "complaints", "appeals", "claims" and "denunciations", without it being possible to give any of these terms a precise meaning entailing certain legal consequences. These terminological imprecisions merely reflect, in point of fact, the variety of the procedures in use within international organizations. To avoid any ambiguity it is the term "communication", doubtless the most general of all, that will be used in the present study, particularly since it is in current use within Unesco.

7. It is generally granted that communications addressed to international bodies concerning the exercise of human rights within a country constitute a phenomenon of very long standing. One of the first communications in modern times came from the famous Czech philosopher and teacher Johann Amos Komensky (or Comenius) who, in 1676, applied to the Congress of Breda which had met to prepare the peace treaty between France and the United Provinces on the one hand and England on the other. However, communications of this type have multiplied considerably since the First World War: one of the first procedures concerning them was drawn up under the League of Nations, this being applied essentially to communications from members of national minorities who were covered by certain provisions for the protection of human rights included in the 1919-1920 peace treaties.

8. It was, however, after the Second World War that the number of communications concerning human rights, whether individual cases or more general questions, increased considerably. International organizations now receive some 30 to 40,000 communications each year relating to the exercise of human rights in the member countries of the international community. A very large majority of these communications are addressed to the United Nations, but an increasing number are being submitted to the Specialized Agencies and regional intergovernmental organizations.

It is hardly surprising, in these circumstances, that practically all the inter-governmental organizations have been led to draw up procedures for examining such communications, whether within the context of a treaty for the protection of human rights, or under the provisions of an internal instrument of the competent organ of the organization (see the comparative table of these procedures for the examination of individual communications in Annex I, below).

9. In the case of Unesco, a procedure of this kind was laid down by the Executive Board in 77 EX/Decision 8.3. This decision constitutes the starting-point for the present study whose aim it is to make Unesco's action more effective in this domain, in accordance with the wish expressed by the General Conference, it being understood that the study will necessarily have to take into account, first, the state of the problem in the organizations of the United Nations system and, secondly, the need for co-ordination and co-operation with these organizations. The study will, then, consist of five parts:

- (i) Part I will contain a general outline of the main procedures existing in international organizations;
- (ii) Part II will study the different categories of communications concerning human rights, classified according to the type of action to which they are intended to give rise;
- (iii) Part III will contain a comparative study of the various stages in the procedure for examining these communications;
- (iv) Part IV will restate existing procedures within Unesco, but from the standpoint of the general schema suggested by the study of existing procedures in other international organizations;
- (v) In Part V certain considerations and certain questions will be formulated on the basis of which it should be possible to take appropriate steps to achieve the General Conference's aim, that of making Unesco's action more effective in examining cases and questions concerning the exercise of human rights in the Organization's spheres of competence.



**I. OUTLINE OF THE MAIN EXISTING PROCEDURES IN  
INTERNATIONAL ORGANIZATIONS**

10. Several international organizations which have competence as regards human rights have drawn up, either by means of a convention, or under the provisions of appropriate decisions taken by their organs, procedures providing for the examination of questions and cases concerning human rights. These procedures are, basically, the following:

**A. Within the context of the United Nations**

1. The procedure pursuant to ECOSOC resolution 728 F, complemented by the procedures provided for in ECOSOC resolutions 1235 and 1503;
2. The procedure provided for in the International Covenant on Civil and Political Rights and the relevant Protocol;
3. The procedure instituted by the International Convention on the Elimination of All Forms of Racial Discrimination;

**B. Within the context of the International Labour Organisation**

1. The representations and complaints procedures established by the Constitution of the International Labour Organisation in Articles 24 and 26;
2. The special procedure in regard to freedom of association;

**C. Within the context of regional organizations**

1. Within the Council of Europe, the procedure provided for in the European Convention on Human Rights of 4 November 1950;
2. Within the Organization of American States, (i) the procedure before the Inter-American Commission on Human Rights established in 1959 and (ii) the procedure provided under the American Convention on Human Rights, San José de Costa Rica, 22 November 1969.

**A. UNITED NATIONS**

11. After taking a number of preliminary measures (see paragraphs 25-26 below), the Economic and Social Council adopted, in 1959, resolution 728 F (XXVIII) whereby the Secretary-General is requested, first, to distribute to members of the Commission on Human Rights, (a functional Commission set up by ECOSOC in 1946), a non-confidential list of the communications received by the Secretary-General which deal with the principles involved in the promotion of universal respect for, and observance of, human rights and, second, a confidential list containing a brief indication of the substance of complaints or denunciations concerning violation of human rights. The confidential list is furnished to members of the Commission, in private meeting, without divulging the identity of the authors unless they have no objection to this being done. It will be recalled that Unesco's present procedure is largely based on resolution 728 F.

12. In order to strengthen the means available to the United Nations for putting a stop to the violation of human rights, the Economic and Social Council, in its resolution 1235 (XLII) of 1967, authorized the Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities to examine information received pursuant to ECOSOC resolution 728 P. Furthermore, the Commission was authorized to undertake a thorough study of situations which reveal a consistent pattern of violations of human rights. In 1970 this procedure was further spelt out in ECOSOC resolution 1535 (XLIII), whereby the Council authorized the Sub-Commission to appoint a working group composed of five of its members to consider the communications - and the replies, if any, of the governments concerned - with a view to determining whether, in the view of a majority of the members of the working group, they appeared to reveal a consistent pattern of gross and reliably attested violations and, if so, drawing them to the Commission's attention. The procedure of this working group was governed by resolution 1 (XXIV) of the Commission (for further details, see paragraphs 54-55 below).

13. United Nations procedures concerning human rights also include machinery provided under international conventions. This is the case more especially of the International Convention on the Elimination of All Forms of Racial Discrimination, adopted and opened for signature by the General Assembly by resolution 2106 A (XX) of 21 December 1965. This Convention, which entered into force on 4 January 1969, provides for the establishment of a Committee on the Elimination of Racial Discrimination consisting of independent experts elected by the States Parties. The Committee, which examines reports addressed to the Secretary-General in accordance with the Convention, may also receive communications, first, from any State Party that considers that another State Party is not giving effect to the provisions and, secondly, from individuals within the jurisdiction of one of the States having recognized, by special declaration, the competence of the Committee in this domain (see paragraphs 37-41 below).

14. Other international instruments adopted under the auspices of the United Nations which deserve mention here are the two International Covenants on Human Rights - together with the Protocol to one of them - adopted and opened for signature by the General Assembly by resolution 2200 (XXI) of 16 December 1965. Whereas the implementation machinery laid down in the International Covenant on Economic, Social and Cultural Rights consists in a system of reports which the Contracting States have to submit to ECOSOC, the International Covenant on Civil and Political Rights and the relevant Protocol provide for a communications procedure. This Covenant, which entered into force on 23 March 1976, allows any State Party to recognize the competence of the Human Rights Committee, established by the Covenant, and consisting of eighteen eminent persons, nationals of the States Parties and serving in their personal capacity, to receive and consider communications to the effect that a State Party claims that another State Party is not observing the Covenant. The members of the Committee were elected on 20 September 1976 and the Committee held its first meeting from 21 March to 1 April 1977. It is, however, not yet competent to receive such communications from States, for a prerequisite is that at least ten States Parties should have made the declaration of acceptance. This procedure is described in detail in paragraphs 32-34 below and is set out in graphic form in the comparative schema at the end of this section.

15. The Optional Protocol, which entered into force at the same time as the Covenant, gives the Human Rights Committee competence to receive and consider communications from individuals subject to the jurisdiction of States Parties to the Protocol. The Committee brings the communication to the attention of the State Party concerned and formulates its views on the matter, which it forwards to the State in question and to the individual, as well as referring to them in its report to the General

Assembly. This procedure too is analysed below (paragraphs 35 and 36) and set out in the following comparative schema.

### B. INTERNATIONAL LABOUR ORGANISATION

16. As will be seen below (paragraphs 29-38), the ILO has instituted two series of procedures, one based on its Constitution, the other established by its deliberative organs.
17. Under Article 24 of the Constitution, an industrial association of employers or of workers may make a representation to the Director-General of the International Labour Office against a State Party to an ILO Convention which the appellant considers has not been observed by that State. This procedure, of which very little use has been made, operates under the authority of the Governing Body of the ILO (see paragraphs 44-45 below). The other constitutional procedure is the complaints procedure, referred to in Article 26 of the Constitution. It entitles any Member of the ILO to file a complaint against another Member on the grounds that it is not securing the effective observance of any Convention which both have ratified. The Governing Body determines the procedure to be followed; it has, in particular, the power to appoint a Commission of Inquiry to which the Member State against whom the complaint is made is under an obligation to provide all the relevant information in its possession (see paragraphs 46-48 below).
18. In the specific area of freedom of association, the Governing Body of the ILO set up, in 1950, a Fact-Finding and Conciliation Commission on Freedom of Association which has competence to examine not only communications concerning States which have ratified the conventions relating to freedom of association but also those directed against any ILO Member State and even a non-Member State of the ILO which is, however, a member of the United Nations, in accordance with a referral procedure approved by ECOSOC in 1950. A Committee on Freedom of Association was set up in 1951 to carry out a preliminary examination of complaints (see paragraphs 49-51 below).

### C. REGIONAL ORGANIZATIONS

19. Although the importance of the Arab Permanent Committee on Human Rights, set up in 1968 by the Council of the League of Arab States, and the human rights activities of the Organization of African Unity should not be overlooked, the main regional organizations which have instituted procedures for the examination of communications concerning human rights are the Council of Europe and the Organization of American States.
20. Under the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed on 4 November 1950, Member States of the Council of Europe have taken "the first steps for the collective enforcement of certain of the Rights stated in the Universal Declaration" (Preamble). To this end they have established a procedure for the examination of petitions, both individual (optional jurisdiction) and from States (compulsory jurisdiction), by a fact-finding and conciliation organ - the European Commission of Human Rights - and by one of the two decision-making organs - the European Court of Human Rights and the Committee of Ministers of the Council of Europe. Fuller details concerning the procedures of the European Convention are set out below in paragraphs 59 to 63; they are also shown in the comparative schema at the end of this section.

21. Within the framework of the Organization of American States, the procedure currently in force has to be distinguished from that which will become effective only following the entry into force of the American Convention on Human Rights adopted in San José de Costa Rica in 1969.

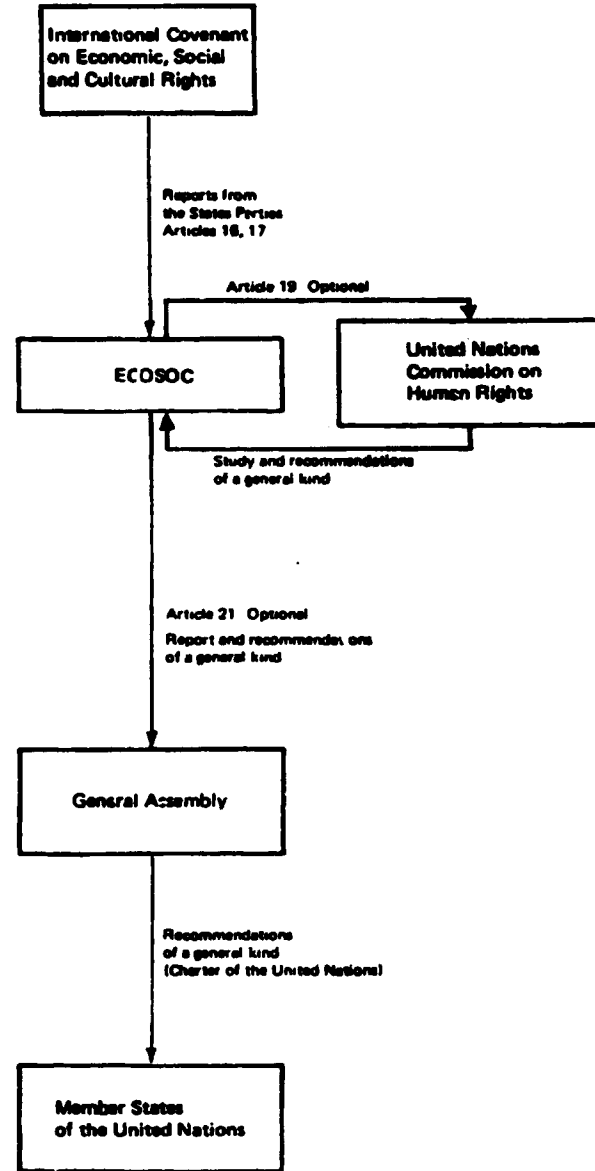
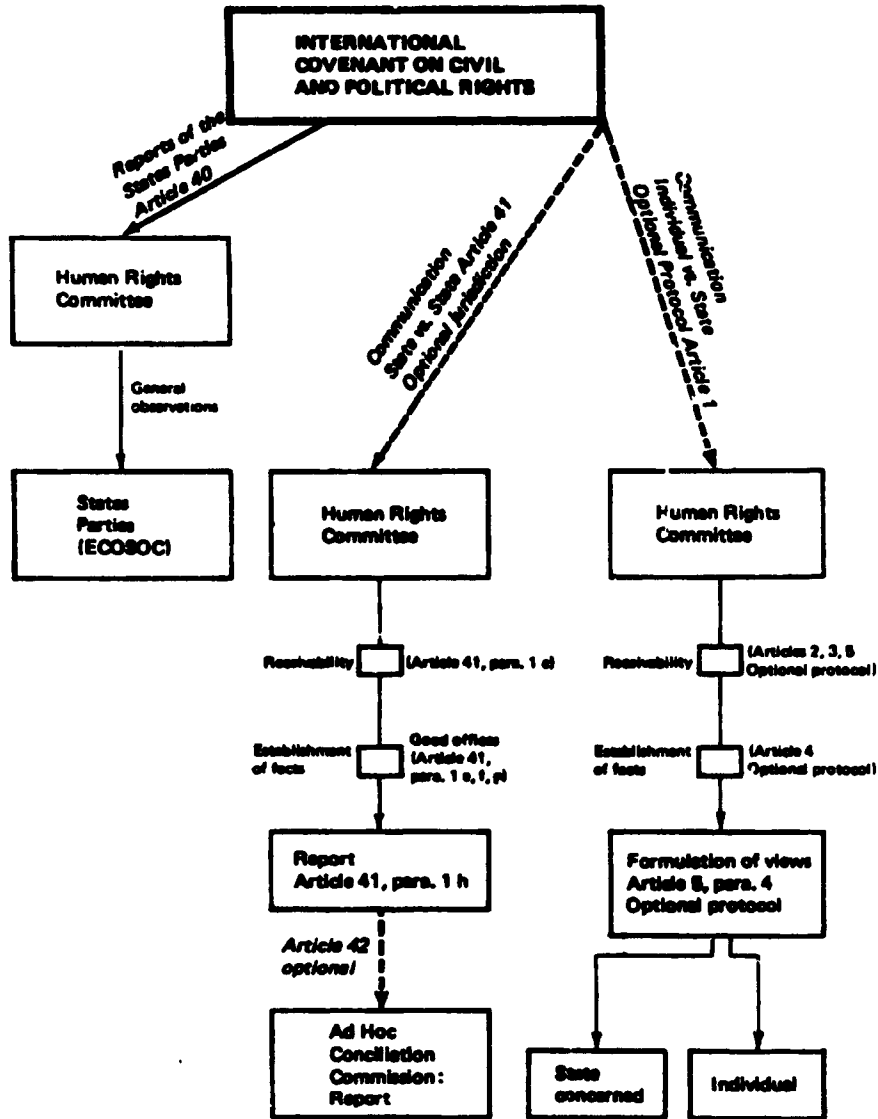
The current procedure involves the Inter-American Commission on Human Rights, established by the Fifth Meeting of Consultation of Ministers of Foreign Affairs of the OAS in August 1959 in Santiago de Chile, and incorporated within the OAS by the Council of the Organization in 1970. From being originally responsible for promoting human rights, the Commission has been led in practice to assume responsibility for their protection. A more detailed description of the Commission's workings is given below in paragraphs 56 and 57.

The American Convention on Human Rights, unlike the European Convention on which it is, nevertheless, based, provides for the compulsory jurisdiction of the Inter-American Commission on Human Rights (whose terms of reference would be broadened for this purpose) in receiving petitions lodged by persons or groups of persons; on the other hand its competence to examine communications presented by one State against another State is subject to a declaration by both States recognizing this procedure. The procedure is described in paragraph 64 and is shown on the comparative schema.

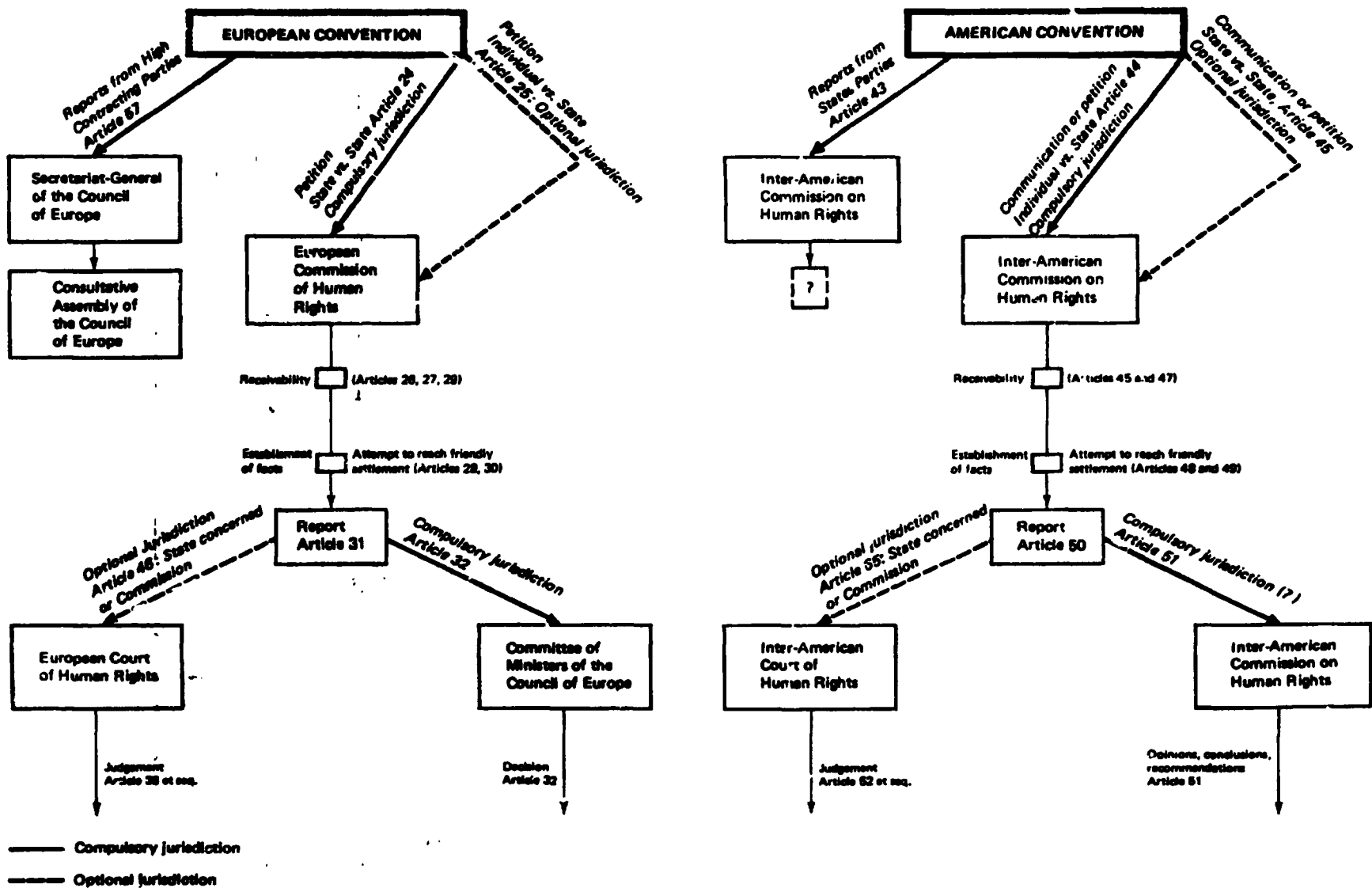
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22. These procedures will now be studied in the following section according to the way in which they enable communications to be handled. This will bring out more clearly the range of procedures that might be contemplated by Unesco in order to make its action more effective in regard to human rights which fall within its competence.

**COMPARATIVE SCHEMA OF THE IMPLEMENTATION MACHINERY OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**



**COMPARATIVE SCHEMA OF THE IMPLEMENTATION MACHINERY OF THE EUROPEAN CONVENTION AND THE AMERICAN CONVENTION ON HUMAN RIGHTS**



**II. THE VARIOUS TYPES OF ACTION TO WHICH COMMUNICATIONS  
ARE INTENDED TO GIVE RISE**

23. Communications concerning human rights constitute, both for the State and for the individual,<sup>(1)</sup> the means of implementing such rights at the international level, particularly by denouncing their violation. The nature of the communications naturally varies according to the types of action to which they give rise, and on this basis communications addressed to international organizations may be placed in four categories:

- A. those constituting a non-contentious appeal;
- B. those constituting an appeal of mixed character;
- C. those constituting a source of information on the state of human rights;
- D. those which have the effect of initiating judicial proceedings.

**A. COMMUNICATIONS CONSTITUTING A NON-CONTENTIOUS APPEAL**

24. Designed as a non-contentious appeal, the communication is, for its author, a means of denouncing, before an international organization, a violation of human rights or of drawing the attention of the organization, or one of its organs, to a case, a question or a situation concerning the exercise of human rights. The author of the communication may at most expect a reaction or a reply from the State involved, which it is not obliged to give any more than it is obliged to take any action whatsoever in regard to the communication.

**1. United Nations: the procedure pursuant to ECOSOC resolution 728 F**

25. As far back as its first session, in January 1947, the United Nations Commission on Human Rights<sup>(2)</sup> set up a Sub-Commission responsible for submitting recommendations to it on the establishment of procedures for examining petitions concerning human rights received by the Commission or by other United Nations organs. In its report, this Sub-Commission recommended that the Commission make a statement to the effect that it "recognizes that it has no power to take any action in regard to any complaints concerning human rights". The Commission unanimously endorsed this position and the Economic and Social Council approved this statement in its resolution 75 (V) of 5 August 1947.

On 30 July 1959, the Council, which on several occasions had amended the provisions it had initially adopted, adopted resolution 728 F (XXVIII) regrouping all these provisions. This resolution still serves today as a basis for examination of communications concerning human rights, although such examination now goes considerably further by virtue of ECOSOC resolution 1503, as will be seen below (paragraph 54).

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- (1) Individual is taken to mean any private person, any group of private persons and any national or international non-governmental organization, as opposed to States.
  - (2) For the terms of reference, functions and composition of the Commission, see ECOSOC resolutions 1/5 of 16 February 1946 and 2/9 of 21 June 1946.



26. In its original version, resolution 728 F distinguishes between two categories of communications and the action to be taken in regard to them:

(a) Communications dealing with the principles involved in the promotion of universal respect for, and observance of, human rights: The Secretary-General is requested to compile a non-confidential list of such communications, containing a brief indication of the substance of each communication, however, addressed, and divulging the identity of their authors unless they indicate that they wish their names to remain confidential, and to distribute this before each session to members of the Commission on Human rights who may, upon request, consult the originals of these communications. Resolution 728 F suggested, for this purpose, that the Commission appoint, at each session, an ad hoc committee to meet shortly before the Commission's following session for the purpose of reviewing the list of non-confidential communications and of recommending which of these, in original, should be made available to members of the Commission on request. The Commission followed this suggestion at its third, fifth and sixth sessions, but has not done so since then. It should be noted that communications dealing with the principles of human rights have always been very limited in number - fewer than some ten each year - and are even tending to disappear entirely.

(b) Other communications concerning human rights: These are complaints or denunciations concerning violations of human rights. The Secretary-General is requested to compile, before each session of the Commission, a confidential list of such communications, containing a brief indication of their substance, and to furnish this list to members of the Commission, in private meeting, without divulging the identity of the authors of the communications except in cases where the authors state that they have already divulged or intend to divulge their names or that they have no objection to their names being divulged. Writers of all communications concerning human rights, however addressed, are informed that their communications will be handled in accordance with resolution 728 F and that the Commission has no power to take any action in regard to their communication. The Secretary-General is requested to furnish each Member State concerned with a copy of any communication which refers explicitly to that State or to territories under its jurisdiction, without divulging the identity of the author. The Secretary-General also asks governments sending replies to communications brought to their attention whether they wish their replies to be presented to the Commission in summary form or in full. It is to be noted that replies received from States are not passed on to the authors of the communications. Confidential lists of communications and the replies from governments to the communications brought to their notice are distributed to members of the Commission on the opening day of each session,<sup>(1)</sup> with a document containing a summary of a statistical nature.<sup>(2)</sup> As regards communications referring to discrimination and minorities, members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities have the same facilities as members of the Commission. At its fourteenth session, the Economic and Social Council, in its resolution 454 (XIV) of 28 July 1952, approved the recommendation of its Committee on Non-Governmental Organizations to the effect that all communications containing complaints made by non-governmental organizations in consultative status relating to alleged violations of human rights should in future be examined in accordance with resolution 75 (V) as modified - that is to say, in accordance with resolution 728 F - so that they are included in the confidential lists of communications. Between 1951 and 1971 - the year when the procedure under ECOSOC resolution 1503 (see paragraph 54 below) was applied for the first time - the Commission is reported to have had over 120,000 communications submitted to it concerning human rights.

(1) Cf. resolution 15 (XV) of the Commission on Human Rights.

(2) Cf. resolution 14 (XV) of the Commission on Human Rights.

2. Petitions concerning human rights addressed to international parliamentary assemblies

27. Petitions seem to have figured in English political life as far back as the thirteenth century. Subsequently, in 1689, the Bill of Rights proclaimed the right of every subject to present a petition to the King. In the nineteenth century, the right to present a petition to Parliament is a feature of virtually all European Constitutions. At that time petitioners played a considerable rôle in European constitutional and parliamentary activities.

Following the Second World War, European parliamentary assemblies (the Assembly of the Council of Europe and the European Parliament of the Communities) have endeavoured to ensure the continuity of this practice at the international level, and their Rules of Procedure include provisions concerning the receiving and examination of petitions. Although only a small number of these are received, it is not uncommon for them to refer to human rights.

Petitions declared receivable are normally transmitted by the Bureau of the Assembly, for examination, to the competent parliamentary commissions. After examination, the commission concerned informs the President of the Assembly of its conclusions and, if appropriate, of the action that it seems advisable to take with regard to the petition.

3. Intercession on humanitarian grounds by heads of State and Secretaries-General and Directors-General of international organizations

28. First of all a distinction has to be made between the concept of intercession and that of intervention. Under both the Charter of the United Nations (Article 2 (7)) and the Constitution of Unesco (Article I, paragraph 3), international organizations are prohibited from intervening in matters which are essentially within the domestic jurisdiction of Member States. The same applies as regards relations between States where, according to a principle reaffirmed in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (resolution 2625 (XXV)), "no State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State".

Considering, however, that it is also a constitutional principle of the United Nations as well as of Unesco that Member States should act, together and individually, in order to further universal respect for, and observance of, human rights and fundamental freedoms, such action cannot be unaffected by what occurs within States. It is, then, within the context of respect for the two principles of non-intervention and the promotion of human rights that the concept of intercession should be viewed, a concept that reflects the idea of request and entreaty on behalf of someone, an idea which is in no way implied by the concept of intervention.

29. According to a very widespread diplomatic practice a head of State - or another State authority - may intercede, either on his own initiative or at the behest of a third party or organization, with his counterpart in another State in order to draw his attention to the desirability of improving the lot of any individual or group. The extent to which he is entitled to press the matter may vary considerably between one State and another and between one case and another. As long as the interest taken does not exceed the limits of intercession, it is firmly established and accepted practice in relations between States.

30. The situation is not basically different in regard to the major international organizations. It is common knowledge that the Secretary-General of the United Nations uses the right of intercession in his conversations and correspondence with heads of State and government and their representatives, on humanitarian grounds. The action of the Director-General of Unesco has always been inspired by the same concern, and the General Conference has had occasion, in one particular case, to encourage him to act along these lines.<sup>(1)</sup> Following these efforts by the Director-General, the Executive Board reiterated "its entire confidence in the continuation of the Director-General's actions to ensure that human rights are better known and observed throughout the world..."<sup>(2)</sup> It is with this in mind that the Director-General, in his introduction to the general policy debate of the General Conference at its nineteenth session,<sup>(3)</sup> asked that he might in future be given the necessary moral means to enable him to act more effectively in safeguarding human rights within Unesco's spheres of competence. The General Conference noted this request in its resolution on the subject.<sup>(4)</sup>

#### B. COMMUNICATIONS CONSTITUTING AN APPEAL OF MIXED CHARACTER

31. Some communications, while not designed to initiate judicial proceedings properly speaking, enable a procedure to be instituted which, borrowing as it does certain features from legal, administrative and diplomatic procedures, may, without going into greater detail, be termed "mixed" in character. This vague term covers a variety of action which may be taken on the communications under very different systems (United Nations and ILO).

##### 1. Human Rights Committee of the International Covenant on Civil and Political Rights

32. By resolution 2200 (XXI) of 16 December 1966, the General Assembly of the United Nations adopted and opened for signature, ratification and accession the International Covenant on Civil and Political Rights and the Optional Protocol to it, wherein provision is made for two procedures in respect of communications concerning human rights.

The procedure provided for by the Covenant concerns communications from States whilst the procedure laid down in the Protocol concerns individual communications. The body responsible for dealing with these two categories of communications is the Human Rights Committee established by Article 28 of the Covenant.

##### (a) Communications from States

33. Under Article 41 of the Covenant, which came into force on 23 March 1976, a State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant. The Committee does not receive any communication from a State Party which has not

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- (1) See 18 C/Resolution 11.3, paragraph 3 and 19 C/Resolution 14.1, paragraph 3. The Executive Board has also expressed itself similarly, for example in its 93 EX/Decision 8.2, paragraph 13.
- (2) 100 EX/Decision 9.1.
- (3) 19 C/INF.12.
- (4) 19 C/Resolution 12.1, Part II, final paragraph of the Preamble.

made a declaration recognizing the Committees' competence as provided for in Article 41. It should further be noted that for the Committee to be able to begin to assume its responsibilities as laid down in Article 41, these provisions must have been accepted by ten States, and this is not yet the case.

34. In an initial stage of the procedure laid down in Article 41, if a State Party considers that another State Party is not giving effect to the provisions of the Covenant, it may, by a written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication, the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter.

In a subsequent stage, if the matter is not adjusted to the satisfaction of both States Parties within six months, either shall have the right to refer the matter to the Committee by notice given to the Committee and to the other State.

If the Committee finds the communication receivable, it makes its good offices available to the States Parties concerned with a view to a friendly solution of the matter. Within twelve months after the date of receipt of the notice, the Committee must submit a report confined to a brief statement of the facts and of the solution reached or, if it has not been possible to find a solution, to a brief statement of the facts, the written submissions and record of the oral submissions made by the States Parties concerned attached to the report. The report is communicated to the States Parties concerned.

Under Article 42 of the Covenant, if a matter referred to the Committee in accordance with Article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of those States, appoint an ad hoc Conciliation Commission composed of five members sitting in an individual capacity, which makes its good offices available to the States with a view to an amicable solution of the matter on the basis of respect for the Covenant.

(b) Communications from individuals

35. Under Article I of the Optional Protocol which came into force at the same date as the Covenant, any State Party to the Covenant that becomes a party to the Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. The Committee does not receive any communication if it concerns a State Party to the Covenant which is not a party to the Protocol.

Provided it is competent to receive it, the Committee brings any communication submitted to it to the attention of the State Party in question, which within six months must submit to the Committee written explanations or statements clarifying the matter and indicating what remedial action, if any, it has taken.

In examining the communications received, the Committee takes account of all written information which the individual or State concerned has made available to it.

The Committee informs the State Party concerned and the individual of its findings and includes in its annual report, prepared under Article 45 of the Covenant, a summary of its activities under the Protocol.

It should be added that the provisions of the Protocol in no way restrict the right of petition accorded to colonial countries and peoples by the United Nations Charter and other international conventions and instruments concluded under the auspices of the United Nations or its Specialized Agencies.

36. Although the Protocol has come into force, it has so far been ratified by only a very small number of States.<sup>(1)</sup> It is only for these States that the question arises of the "coexistence" of the Protocol procedure with other procedures for examining individual communications, such as the procedure laid down in ECOSOC resolution 1503 or the procedures in effect within regional organizations (Council of Europe and Organization of American States).

2. Committee on the Elimination of Racial Discrimination established by the 1965 International Convention on the Elimination of All Forms of Racial Discrimination

37. By resolution 2106 (A) (XX) dated 21 December 1965, the General Assembly of the United Nations adopted and opened for signature and ratification the International Convention on the Elimination of All Forms of Racial Discrimination. This Convention provides for two procedures in respect of communications, one relating to communications from States, the other to communications from individuals or groups of individuals.

The body empowered to receive and consider these communications is the Committee established by Article 8 of the Convention.

(a) Communications from States

38. Under Article 11 of the Convention, which came into force on 4 January 1969, if a State Party considers that another State Party is not giving effect to the provisions of the Convention, it may bring the matter to the attention of the Committee. The Committee then transmits the communication to the State Party concerned which, within three months, submits to the Committee written explanations or statements clarifying the matter and indicating what remedial action, if any, it has taken.

If, within six months, the matter is not adjusted to the satisfaction of both States, either by bilateral negotiations or by any other procedure, either State has the right to refer the matter again to the Committee by notifying the Committee and also the other State.

When the Committee is examining any matter arising out of Article 11, the States Parties concerned are entitled to send a representative to take part in the proceedings of the Committee, without voting rights, while the matter is under consideration. After the Committee has obtained and collated all the information it deems necessary, the Chairman appoints an ad hoc Conciliation Commission.

The Commission is composed of five persons who may or may not be members of the Committee and are appointed with the unanimous consent of the parties to the dispute. The Commission makes its good offices available to the States concerned with a view to an amicable solution to the matter on the basis of respect for the Convention. The members of the Commission serve in a personal capacity and must not be nationals of either of the States Parties to the dispute or of a State not party to the Convention.

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(1) At 1 January 1977, the following States were parties to the Protocol: Barbados, Canada, Colombia, Costa Rica, Denmark, Ecuador, Finland, Jamaica, Madagascar, Mauritius, Norway, Surinam, Sweden, Uruguay and Zaire.

When the Commission has fully considered the matter, it prepares and submits to the Chairman of the Committee a report embodying its findings on all questions of fact relevant to the issue between the parties and containing such recommendations as it may think proper for the amicable solution of the dispute. The Chairman of the Committee communicates the report of the Commission to each of the States Parties to the dispute. These States, within three months, inform the Chairman of the Committee whether or not they accept the recommendations contained in the Commission's report. Once this period has expired, the Chairman of the Committee communicates the Commission's report and the declarations of the States Parties concerned to the other States Parties to the Convention.

39. It should be stressed that the Committee on the Elimination of Racial Discrimination has so far received no communication from any State Party directed against another State Party to the Convention.

(b) Communications from individuals

40. Under Article 14 of the Convention, a State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by the State Party of any of the rights set forth in the Convention. The Committee receives no communication concerning a State Party which has not made such a declaration.

Any State Party which has made a declaration recognizing the competence of the Committee may "establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in the Convention and who have exhausted other available local remedies". This body must keep a register of petitions, and certified copies of the register are to be filed annually with the Secretary-General on the understanding that the contents are not publicly disclosed. In the event of failure to obtain satisfaction from the body so established or indicated, the petitioner has the right to send the Committee, within six months, a communication to that effect.

On a confidential basis, the Committee brings any communication referred to it to the attention of the State Party alleged to have violated any provision of the Convention. The Committee does not receive anonymous communications but the identity of the individual or groups of individuals concerned is not revealed without his or their express consent.

Within three months, the State in question submits to the Committee written statements or explanations clarifying the matter and indicating what remedial action, if any, it has taken. In considering the communication the Committee takes into account all information made available to it by the petitioner and by the State Party concerned.

The Committee forwards its suggestions and recommendations, if any, to the State Party concerned and to the petitioner. It includes in its annual report a summary of such communications and, where appropriate, a summary of the explanations and statements of the States Parties concerned and of its own suggestions and recommendations.

The provisions of the Convention in no way restrict the right of petition granted to colonial countries and peoples by other international instruments or by the



United Nations or its Specialized Agencies. The Committee also receives copies of the petitions from, and submits expressions of opinion and recommendations on these petitions to, the bodies of the United Nations which deal with matters directly related to the principles and objectives of the Convention in their consideration of petitions from the inhabitants of Trust and Non-Self-Governing Territories and all other territories to which General Assembly resolution 1514 (XV) applies, relating to matters covered by the Convention which are before those bodies.

41. It should be noted that for the Committee to be able to take action as provided for under Article 14 of the Convention, its competence must first be recognized by ten States Parties to the Convention, which is not yet the case.

### 3. ILO procedures

42. The human rights enshrined in the ILO Constitution and in this Organization's Conventions and Recommendations are protected by a series of procedures of which some are laid down by the Constitution whilst others have developed in an empirical way. These form what is probably the most varied and perhaps the most effective system for supervising the application by States of the undertakings to which they have subscribed. Parallel with the permanent supervision which consists in examining the reports that Member States are obliged to communicate to the Director-General of the International Labour Office, contentious procedures based on the submission of complaints make it possible to maintain a check on and promote the application of ILO's standards. Side by side with the general system of complaints laid down in the ILO Constitution, a special system has developed concerned exclusively with protection of the freedom of association.

#### (a) The communications procedure laid down in the ILO Constitution

43. The ILO Constitution has made provision for two kinds of complaint relating to the application of ILO's Conventions. As is shown in the report of the Commission on International Labour Legislation set up in 1919 by the Paris Peace Conference, these complaints procedures constitute an "ultima ratio" and were provided "in order to avoid the imposition of penalties, except in the last resort, when a State has flagrantly and persistently refused to carry out its obligations under a convention"<sup>(1)</sup>.

#### Representations

44. Article 24 of ILO's Constitution authorizes an industrial association of employers or of workers to make a representation to the Director-General of the International Labour Office concerning any State which, in the opinion of the association, has failed to secure the effective observance of any Convention to which it is a party. The Governing Body may forward this representation "to the government against which it is made and may invite that government to make such statement on the subject as it may think fit".

At each stage of the procedure, the Governing Body reserves the freedom to act in whatever way it considers to be in conformity with observance of the rights guaranteed by ILO. Once it has been accepted by the Governing Body, a communication becomes an ILO activity performed in the general interest of the application of the conventions and loses its character of a "personal action" brought by an industrial association against a State. This "public" nature of the representation was emphasized in 1938 when the Governing Body declared that the withdrawal of a

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(1) See ILO Official Bulletin, Volume I, 1919-1920, p. 266.

representation by the plaintiff association did not automatically mean that the affair was closed.<sup>(1)</sup>

In the words of Article 25, "if no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it".<sup>(2)</sup> Seeing that the right to submit representations was granted very liberally to trade union organizations, and faced with the possibly serious consequences which might arise from a decision taken by the Governing Body following the provisions of Article 25, ILO was led to draw up "Standing Orders concerning the procedure for the Discussion of Representations"<sup>(3)</sup> which were adopted on 8 April 1932 and slightly modified on 5 February 1938.<sup>(4)</sup>

As soon as a representation is received, the Director-General immediately transmits it to all members of the Governing Board for consideration at the next session (Rule 2, paragraph 1 of the Standing Orders, together with all the information available to him concerning its admissibility whilst not yet initiating any procedural measures (Rule 2, paragraph 2). In practice, the Director-General also transmits, for information, the text of the representation to the government against which it is made. When the matter is brought before it, the Governing Board appoints a committee of three of its members to submit to it, before any decision is made, proposals concerning the steps to be taken at each stage of the procedure (Rule 2, paragraph 3).

So that it should not itself have to examine the various procedural matters, the Governing Body decided to entrust to the "Committee of Three" all the functions exercised by the Governing Body under the 1932 Standing Orders.<sup>(5)</sup>

If a matter is declared admissible according to the requirements of the Standing Orders, the Committee of Three may declare the representation groundless, or else transmit it to the government without asking it to make a statement in reply, and recommend that the Governing Body declare the procedure terminated. On the other hand, it may defer a decision until it obtains further information or a statement from the government to which it transmits the representation. If the statement received is satisfactory, the Governing Body terminates the procedure and informs the parties. In the opposite event, after further information has been obtained, the Governing Body may either begin deliberations concerning the application of Article 25 (complaints procedure) or may apply the complaints procedure without further discussion. If the government concerned is not represented on the Governing Body, it may nominate a delegate to the various sessions who is allowed to speak but has no right to vote. If the Governing Body does not have recourse to the complaints procedure as laid down in Article 26 of the ILO Constitution, it may either

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- (1) Representation submitted by an organization of workers from Mauritius concerning the application of certain International Labour Conventions in the islands of Mauritius, in ILO Official Bulletin, Volume XXIII, No. 2, p. 60.
  - (2) Governing Body, Minutes of the 56th session (January 1932, pp. 164-166).
  - (3) Governing Body, Minutes of the 57th session (April 1932, p. 70).
  - (4) Governing Body, Minutes of the 82nd session (February 1938, pp. 73 and 124).
  - (5) Report of the Committee on the representation submitted by the Association of Federal Servants of the State of São Paulo concerning the application of the Labour Inspection Convention, 1947, (No. 81), in Brazil, in ILO Official Bulletin, Volume L, No. 2, p. 267.

terminate the procedure, or order the investigation to continue, or declare the representation to be justified and state the form and date of the publication provided for in Article 25 of the Constitution.

45. Since its foundation, ILO has received only some 10 representations and only two have been made during the last 20 years.

### Complaints

46. Under Article 26 of the ILO Constitution, any ILO member has the right to file a complaint with the International Labour Office "if it is not satisfied that any other member is securing the effective observance of any Convention which both have ratified". The action of the State is seen as an "actio popularis" since it is taken in the general interest of human rights, independently of any prejudice suffered by the State itself or by one of its nationals. The possibility given to the Governing Board to make a complaint on its own initiative or on receipt of a complaint from a delegate to the Conference (Article 26, paragraph 4) and the "case law" in respect of withdrawals - initially applied by the Governing Board with regard to representations - confirm that this is indeed "a public action taken on the initiative of one of the world community".

47. Articles 26-29 and 31-34 lay down the steps in the procedure and confer in this respect considerable freedom on the Governing Body, thus giving the system an undoubted flexibility. The Governing Body may, to begin with, invite the government in question to make a statement, following the procedure used in the case of representations. If the Governing Body does not consider this to be necessary or if it feels the reply to be unsatisfactory, it may, in the words of Article 26, paragraph 3, "appoint a Commission of Inquiry to consider the complaint and to report thereon". Then begins a rather complex and lengthy procedure which may go as far as the International Court of Justice but which always remains in the hands of the Governing Body.

Every Member State is bound to make available to the Commission of Inquiry all the information in its possession regarding the complaint, so that at this stage of the procedure we again meet the idea that the complaint, as stressed above, is definitely an appeal in the general interest. "When the Commission of Inquiry has fully considered the complaint, it shall prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken to meet the complaint and the time within which they should be taken" (Article 28).

The Director-General of the International Labour Office communicates this report to the Governing Body and to the governments parties to the dispute, and causes it to be published. The governments have three months in which to indicate whether or not they accept the Commission's recommendations and, if not, whether they wish to refer the dispute to the International Court of Justice - whose decision is final (Article 31).

If a government fails to carry out the recommendations of the Committee of Inquiry or the International Court of Justice within the time specified, "the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith" (Article 33).

In the case of complaints, unlike that of representations, the need for procedural regulations has not made itself felt since, as we have seen, the complex

procedure involved has tended to act as a deterrent, and for a long time the permanent supervision based on the reports submitted by Member States was enough to ensure application of ILO Conventions. In 1961, however, Ghana submitted a complaint against Portugal concerning Portugal's observance, within its territories, of the 1957 Convention (No. 105) on the abolition of forced labour,<sup>(1)</sup> and on that occasion a certain number of rules and principles were laid down for consideration of the matter. This was due to the Commission of Inquiry set up by the Governing Body, which, following the instructions given it by the Governing Body, laid down its rule of procedure bearing several requirements in mind, such as respect for the judicial character of its task, the necessity to take all steps enabling it to have complete and objective information, and the need to act rapidly. The decisions taken in this regard constituted a precedent for the other commissions of inquiry set up in accordance with Article 26, although this did not undermine the essential advantage of the system, its flexibility, since the ad hoc commissions so established themselves determine on each occasion their own rules of procedure, having regard to the requirements of the case before them.

48. As mentioned above, the complaints procedure was set in motion for the first time on the initiative of a State in 1961. It should be noted that in all, fewer than 10 complaints have been submitted to ILO bodies.

(b) The special procedure before the Committee on Freedom of Association

49. Side by side with the general procedures for litigation summarized above (paragraphs 44-48) there is a special procedure in the particular field of freedom of association. This system is original from two points of view.

To begin with, the system was not laid down by the ILO Constitution but arose out of a realization by ILO and the United Nations Economic and Social Council that special protection was required for the fundamental principle of freedom of association recognized by the United Nations Charter, the ILO Constitution and the Philadelphia Declaration annexed to it. The ILO Governing Body decided in January 1950 to establish a Fact-Finding and Conciliation Commission on Freedom of Association. It also decided to submit certain suggestions to the Economic and Social Council for the establishment of machinery enabling that Commission's services to be made available to the United Nations. On 17 February 1950, during its 10th session, the Economic and Social Council approved the Governing Body's decision, decided to accept the services of ILO and the Fact-Finding and Conciliation Commission and established a procedure for referring to ILO complaints received by the United Nations concerning members of the United Nations who were also members of ILO.<sup>(2)</sup> Finally, in November 1951, at its 17th session, the ILO Governing Body set up a Committee on Freedom of Association responsible for the preliminary examination of complaints.

(1) Report of the Commission appointed under Article 26 of the Constitution of ILO to examine the complaint filed by the Government of Ghana concerning the observance by the Government of Portugal of the Abolition of Forced Labour Convention, 1957 (No. 105). ILO Official Bulletin, Volume XLV, No. 2, supplement No. 2.

(2) Resolution 277 (X) dated 17 February 1950 on trade union rights (freedom of association).

The second special feature of the system, and it is an essential one, resides in the fact that it can be used even against States which have not ratified the Conventions on freedom of association since it is binding on them by the simple fact that their membership of ILO is, as we have seen, an endorsement of the principle of such freedom. This second feature explains why the Government of the Republic of South Africa, in particular, challenged the constitutional nature of this procedure. The reply given on that occasion was that Article 10 of ILO's Constitution gives broad powers to the Governing Body to ensure the "collection and distribution of information on all subjects relating to the international adjustment of (...) labour and (...) the conduct of such special investigations" as may be necessary for that purpose. The reply also stated that ILO's objectives should be carried out, even by States which had not ratified the individual labour conventions, by means, in particular, of fact-finding and conciliation bodies. The procedure agreed to by the United Nations and the ILO Governing Body was described as follows in the first report of the Committee on Freedom of Association:<sup>(1)</sup>

"19. All allegations regarding infringements of trade union rights received by the United Nations from governments or trade union or employers' organizations against ILO Member States will be forwarded by the Economic and Social Council to the Governing Body of the International Labour Office for consideration as to referral to the Commission.

20. Such allegations received by the United Nations regarding any member of the United Nations which is not a member of the ILO will be transmitted to the Commission through the Governing Body when the Secretary-General of the United Nations, acting on behalf of the Economic and Social Council, has received the consent of the Government concerned, and if the Council considers these allegations suitable for transmission.

It should be noted that the procedure envisaged provides that the Secretary-General of the United Nations will seek the consent of the government concerned before any consideration of the allegation by the Economic and Social Council. If such consent of the government is not forthcoming, the Economic and Social Council will give consideration to such refusal with a view to taking any appropriate alternative action designed to safeguard the rights relating to freedom of association involved in the case.

21. If the Governing Body of the International Labour Office has before it allegations regarding infringement of trade union rights against a member of the United Nations which is not a member of the ILO, it will refer such allegations in the first instance to the Economic and Social Council.

22. The Commission's reports on cases regarding States Members of the United Nations not members of the ILO will be transmitted to the Economic and Social Council by the Director-General on behalf of the Governing Body.

23. An account of the work of the Commission will be included in the annual report of the ILO to the United Nations."

It was the Governing Body's responsibility to lay down certain procedural rules and this it did at its 123rd (November 1953), 132nd (June 1956), 140th (November 1958), 144th (March 1960), 175th (May 1969) and 184th (November 1971)

(1) First report of the Committee on Freedom of Association, paragraphs 19-23, published in the 6th Report of the International Labour Organisation to the United Nations, pages 173-174.

sessions, but in this respect, "case-law" elaborated by the two bodies responsible for the preparation and consideration of complaints is of vital importance.(1)

50. The procedure thus established is applied by the two bodies mentioned above, the Committee on Freedom of Association and the Fact-Finding and Conciliation Commission. Its principal feature is its flexibility. For the investigation stage, semi-judicial methods have been adopted, whereas at the conciliation stage the more flexible method of consultation is predominant.

The Committee on Freedom of Association, established in 1951 by a decision of the Governing Body, was considered to begin with as an examining body. At the same session the Governing Body laid down the composition of the Committee and its terms of reference.(2) Its task was then to make a preliminary examination of the complaint, to take account of the observations submitted within a reasonable length of time by the government in question, and to inform the ILO Governing Body whether the matter should be presented to the Fact-Finding and Conciliation Commission. In actual practice, the referral of complaints in this way very quickly encountered difficulties, seeing that the consent of the State was needed for the matter to be put before the Commission. Accordingly the Committee on Freedom of Association itself proceeded to examine the substance of the complaints and submitted reports to the Governing Body in which were suggested conclusions and, occasionally, recommendations to the government in question.

Consideration of a complaint by the Committee on Freedom of Association may in fact lead to three kinds of decision. Either the Committee is of the opinion that the matter should not be pursued, or it considers that the complaint is justified and proposes that comments should be addressed to the government concerned, or it suggests that the matter should be taken before the Fact-Finding and Conciliation Commission.

It is for the Committee to decide itself on its rules of procedure and receivability, while bearing in mind the provisions already adopted by the Governing Body with regard to the Fact-Finding and Conciliation Commission. The Committee has thus gradually developed a jurisprudence in this matter, observing in this way the principle which it laid down for itself at the start which was "to come to an opinion about each particular case put before it". It has, for example, laid down a special procedure for urgent cases, i.e. cases in which the life or liberty of individuals is at stake, cases in which new circumstances affect the freedom of a trade union movement as a whole and cases relating to a permanent state of emergency or involving the dissolution of an organization. In cases like these, everything must be done so that the complaints are dealt with urgently and with all due diligence.(3)

The Fact-Finding and Conciliation Commission was established in 1950 by a decision of ILO's Governing Body which laid down the Commission's composition and terms of reference and decided on the main features of its procedure, giving it the

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- (1) The current procedure for the examination of complaints about the violation of freedom of association was the subject of a statement made to the ILO Governing Body (reproduced in: International Labour Office, Minutes of the 161st session of the Governing Body, pages 124-126).
  - (2) First Report of the Committee on Freedom of Association, op. cit., paragraph 25, page 174.
  - (3) Twenty-ninth Report of the Committee on Freedom of Association, paragraphs 12 to 13, page 80.

power to adopt its own rules of procedure.<sup>(1)</sup> It is essentially responsible for investigating the problems submitted to it, with the consent of the State in question, either by ILO's Governing Body or, where Member States of the United Nations which do not belong to ILO are concerned, by the Economic and Social Council. It must report to the Governing Body on its work and it is for the Governing Body to decide what action shall be taken on the matter. For many years, the requirement that the State concerned should give its consent hindered application of the system, and it was only in 1964 that it became possible to see how it would operate in practice. In that year the Japanese Government agreed to a matter being referred to the Commission which concerned the exercise of trade union rights in the public sector in Japan.

This provided the Commission with an opportunity for deciding on its procedure which is based on that followed in the case of complaints (Article 26 of the ILO Constitution) and for laying down a few principles to which recourse was again had when the Commission had to deal with other matters.

51. It is interesting to note that since 1951, the Committee on Freedom of Association had some 870 cases brought before it (33 in 1973; 35 in 1974; 15 in 1975 and 34 in 1976) but that only four have been brought before the Fact-Finding and Conciliation Commission. The Committee on Freedom of Association thus clearly plays the major part in considering communications on violations of such freedom.

#### 4. Unesco procedures

52. At the present time, there are two procedures which enable Unesco to take action on communications concerning alleged violations of human rights in its fields of competence. Both procedures can be placed in the category of mixed procedures. There is, to begin with, the machinery established by the Convention against Discrimination in Education and its related protocol and, secondly, the procedure provided for by the Executive Board which has given special instructions in this connexion to one of its committees. Both these procedures are examined in detail below in Part IV of this study.

### C. COMMUNICATIONS WHICH CONSTITUTE A SOURCE OF INFORMATION

53. In some cases, the communication is used by the organization to which it is submitted as an item of information enabling it to draw up a report on the general situation with regard to human rights in the country concerned. Individual initiation of the procedure thus has a collective bearing.

#### 1. United Nations: procedure under ECOSOC resolutions 1235 and 1503

54. In pursuance of General Assembly resolution 2144 (XXI) inviting the Commission on Human Rights to give urgent consideration to ways and means of improving the capacity of the United Nations to put a stop to violations of human rights wherever they might occur, the Commission, in its resolution 8 (XXIII), requested the Economic and Social Council to authorize it, together with the Sub-Commission on Prevention of Discrimination and Protection of Minorities, to examine the information concerning gross violations of human rights contained in the communications appearing on the list drawn up in pursuance of ECOSOC resolution 728 F (XXVIII).

(1) First Report of the Committee on Freedom of Association, op. cit., paragraphs 12 to 17, pages 172-173.



In its resolution 9 (XXIII) the Commission expressed the hope that it would be empowered under its terms of reference to recommend and adopt general and special measures to deal with violations of human rights.

In its resolution 1235 (XLII) of 6 June 1967, the Council authorized the Commission and the Sub-Commission to examine the information mentioned, and decided that the Commission, after careful consideration of it, might make a thorough study of situations which revealed a consistent pattern of violations of human rights.

On the basis of proposals by the Commission and the Sub-Commission, the Council adopted, on 27 May 1970, its resolution 1503 (XLVIII) concerning "procedure for dealing with communications relating to violations of human rights and fundamental freedoms".

55. Resolution 1503 authorizes, as a first stage, the Sub-Commission to appoint a working group consisting of not more than five of its members to meet once a year in private meetings, immediately before the sessions of the Sub-Commission, to consider all communications, including replies of governments thereon, received by the Secretary-General under Council resolution 728 F (XXVIII) with a view to determining, by a majority of votes, which communications appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms, and to bring them to the attention of the Sub-Commission, together with replies of governments, if any. But before considering their substance, the working group of the Sub-Commission has to examine the admissibility of communications received under resolutions 728 F and 1235, checking whether the conditions of admissibility set forth in its resolution 1 (XXIV) are fulfilled.

It is then for the Sub-Commission itself to consider in private meetings the communications brought before it, and any replies of governments relating thereto and other relevant information, with a view to determining whether to refer to the Commission particular situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights. The communication is therefore regarded as a mere item of information on a situation relating to human rights.

Lastly, the Commission is requested to determine whether a situation referred to it requires a thorough study and the preparation of a report and recommendations thereon to the Council, or the establishment of an ad hoc committee to investigate the situation in question provided that the State concerned gives its express consent to such an investigation and it is conducted in constant co-operation with that State and under conditions determined by agreement with it. The ad hoc committee is to strive for friendly solutions before, during and even after the investigation. It is to include in its report to the Commission any appropriate observations and suggestions.

Until such time as the Commission may decide to make recommendations to the Economic and Social Council, all actions envisaged by it and by its Sub-Commission in pursuance of resolution 1503 will remain confidential. The procedure set out in that resolution should be reviewed in the event of any new organ entitled to deal with such communications being established within the United Nations or by international agreement: the reference here is to the Human Rights Committee of the International Covenant on Civil and Political Rights which is to come into effect in 1977.

The procedure outlined above began functioning in 1971, and in 1972 the working group of the Sub-Commission submitted to it its first report in which it had singled out a number of situations which appeared to reveal a "consistent pattern of gross ... violations" of human rights. In 1973 the Sub-Commission notified the Commission of several situations and it added fresh ones in 1974. The Commission,

which has held numerous discussions on its rôle, its working methods and what action it could undertake in accordance with the procedure laid down in resolution 1503, has not yet decided whether, with regard to one or more situations brought before it, it should organize a thorough study and investigation. Accordingly, no situation has to date been referred to the Economic and Social Council, so that all the documents concerning the implementation of this procedure are still confidential.

2. "Ordinary" procedure for examining communications relating to human rights within the framework of the Inter-American Commission on Human Rights

56. The Inter-American Commission on Human Rights, established under resolution VIII of the Fifth Meeting of Consultation of OAS Ministers for Foreign Affairs, was embodied in the institutional machinery of OAS by the Buenos Aires Protocol modifying the OAS Charter. However, even before this change of status from "autonomous agency" to "OAS organ", the Commission had begun its rôle with regard to the promotion and protection of human rights, over and beyond its statutory responsibilities.

Being responsible under Article 1 of its Statute for promoting respect for human rights, it was to make every effort to become in addition an investigating body as far as respect for human rights was concerned. From its original weak position - it came into being as a result of an internal OAS instrument and not a separate formal treaty - it was to gather strength by winning for itself in practice the function of human rights protection originally denied it. For on the strength of a judicious interpretation of Article 9 of its Statute, it claimed the power to examine communications or petitions alleging violations of human rights submitted to it, and it was also to take advantage of the fact that Article 15 of its Statute empowered it to prepare and adopt its own Rules and Regulations in order to affirm its right to take cognizance of such communications and petitions for information purposes "for the most effective fulfilment of its functions" (Article 33 of the first version of the Regulations). It stresses, however, that it is not empowered to reach any decision on its own authority regarding the communications or petitions it receives concerning any violations of human rights in an American State.

In 1965, finally, resolution XII of the Second Special Inter-American Conference amended the Statute of the Inter-American Commission by extending its powers as it had constantly urged, and by instituting for the examination of certain communications a "special procedure". For other communications, the "ordinary" investigation procedure gradually developed by the Commission applies. This procedure is described in Articles 37 to 51 of the present Regulations.

57. According to Article 37 of the Regulations, "The Commission shall take cognizance ... of signed communications that contain denunciations or complaints of violations of human rights within the American States", and the Secretariat has to acknowledge receipt of them, indicating that they will be considered "in accordance with these Regulations" (Article 41, paragraph 1).

Communications declared admissible are notified by the Commission - which, unless the originators of the communication so request, does not reveal their identity - to the State concerned, which is asked for relevant information and the necessary co-operation. The Standing Sub-Committee carries out a preliminary examination of communications and makes appropriate recommendations to the Commission regarding suitable follow-up action. After doing all in its power to obtain all the factual information for it to determine whether a communication is justified, the Commission itself then examines the facts of the case. It will presume to be confirmed the "occurrence of the events on which information has been requested" if the government referred to has not supplied such information within

the stipulated time "provided always that the invalidity of the events denounced is not shown by other elements of proof" (Article 51 of the Regulations). This concludes examination of individual communications as such. But the fact that the individual has, by his communication, provided the Commission with an item of information on the situation with regard to human rights in the country concerned will enable the Commission to carry out its duty to promote respect for human rights in that country.

If indeed it sees that a State is the subject of a large number of admissible communications, that it does not provide sufficient explanations and that, accordingly, the allegations of violations of human rights appear to be justified, it instructs its Secretariat to prepare a general study on the situation with regard to human rights in that State. This study, which remains confidential, is the starting point for the collective procedure which culminates in a report by the Commission in accordance with the authority granted it under Article 9c of its Statute to "prepare such studies or reports as it considers advisable in the performance of its duties". It has also affirmed its right, embodied in Article 52 of its Regulations, to "make recommendations when it deems it proper ... to the Member States ... to the end that they adopt, in accordance with their constitutional provisions, appropriate means to promote the faithful observance of those rights; without prejudice to the preparation and publication of the reports that the Commission may consider proper in accordance with Article 9c of its Statute".

True, such reports indicate whether the established facts are or are not in conformity with the provisions of the American Declaration of the Rights and Duties of Man, but they are communicated to the Council of OAS for information only and the State remains free to take or not to take appropriate measures to remedy violations of human rights. The outcome of the procedure is therefore in line with the successive steps taken and confirms its informative character.

#### D. COMMUNICATIONS WHICH HAVE THE EFFECT OF INITIATING JUDICIAL PROCEEDINGS

58. In very rare cases, the communication is a veritable remedy at law giving rise to full judicial proceedings after which judgement may sometimes be passed. The innovatory character of this procedure and the willingness it implies to relinquish sovereignty account for the fact that it has as yet developed only at the "regional" level.

##### 1. The European Convention on Human Rights

59. The European Convention on Human Rights was signed on 4 November 1950 in Rome and is original less on account of the list of rights it protects than for the collective guarantee machinery intended to secure respect for them. While it is a treaty which lays the basis of the competence of the supervisory bodies and determines their membership and the way in which they operate, the rules of procedure and jurisprudence of the European Commission and Court of Human Rights have played an essential part in the manner in which they perform their duties.

##### Investigation and conciliation: the European Commission of Human Rights

60. The Commission is responsible under the Convention for ensuring "the observance of the engagements undertaken by the High Contracting Parties" as a result of their ratification of the Convention. It is an investigative and conciliatory body which, in practice, performs distinct tasks at all stages of the procedure, changing in character from one stage to the next.

The Commission has compulsory jurisdiction to consider any petition submitted by a State Party to the Convention alleging a "breach of the provisions of the Convention by another High Contracting Party" (Article 24). Each Contracting State thereby exercises a remedy in the general interest, being, by virtue of the collective guarantee system, the guarantor of the rights recognized under the Convention. The aim is thereby to protect not just its own nationals but, also and above all, victims who are not its nationals, as is proved by the various petitions lodged by States to date.

Conversely, the competence of the Commission to consider individual petitions is subject to acceptance by the State of the optional clause in Article 25. This competence of the Commission came into force on 5 July 1955 in respect of 16 European States. The significance of this right extended to individuals to refer a matter to an international body and the originality of the measure justify the safeguards that have accompanied it from the outset. The petitioner - an individual, a non-governmental organization or a group of private persons - must allege that he has been the victim of an instance of violation of guaranteed rights. But the individual does not act solely in defence of his rights; in accordance with the spirit of the Convention, confirmed by the jurisprudence of the Commission and of the Court, particularly with regard to withdrawal (cf. for instance the De Becker case), he takes part in enforcing the collective guarantee of human rights at the European level.

61. Any petition submitted on the basis of Articles 24 and 25 must be addressed to the Secretary-General of the Council of Europe. It is transmitted, with the relevant supporting material, to the President of the Commission prior to registration in the Secretariat and assignment of a number, which is notified to the applicant. From that point on, the proceedings are under way.

The Commission then considers the admissibility of the petition, and this process differs according to whether the petition is from a State or from an individual. While in the former case the petition is immediately communicated to the government in question, which has to present observations on admissibility, an individual petition is submitted to a Rapporteur on the Commission, who carries out a preliminary examination of its admissibility.

Once the petition has been declared admissible, the Commission becomes the "examining magistrate" in order to ascertain the facts of the case, and it enjoys all necessary freedom in this respect. When the Commission feels it is sufficiently informed, it places itself "at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for Human Rights" (Article 28 (b)). Only if this attempt at conciliation fails does the Commission "draw up a report on the facts and state its opinion as to whether the facts found disclose a breach by the State concerned of its obligations" (Article 31, paragraph 1), the report being transmitted to the Committee of Ministers and to the States concerned, who are not at liberty to publish it. This restriction is justifiable since no final decision has yet been reached this being beyond the competence of the Commission.

The decision: the Council of Ministers and the Court.

62. The decision regarding violation of the rights guaranteed under the Convention belongs, as the case may be, to a political body, the Council of Ministers of the Council of Europe, or to a judicial body, the European Court of Human Rights.

The Court has principal jurisdiction inasmuch as only if the case has not been brought before it within three months after the date of transmission of the report of the Commission is the Committee of Ministers empowered to take the matter up. But, from another point of view, the jurisdiction of the Court is optional since it may be exercised only in regard to States which have formally accepted it, under the terms of Article 48.

The instrument initiating proceedings should contain the information needed by the Court to check the admissibility of the case brought before it. Having the report of the Commission in its possession, the Court, though not bound by its content, will be principally guided by the report in passing a judgement, with a statement of reasons, as to whether the alleged occurrences constitute a violation of the Convention.

Should the Court not be competent, under Articles 46 and 48, to hear a case or should the case not be brought before it within three months from the transmission of the report, it is for the Committee of Ministers to decide "whether there has been a violation of the Convention" and, in the affirmative, to "prescribe a period during which the Contracting Party concerned must take the measures" entailed by this decision (Article 32 of the Convention).

63. Between 1955 and 1976, over 8,500 individual petitions and 13 petitions by States were brought before the European Commission of Human Rights. Only 153 of these petitions were declared admissible.

## 2. The American Convention on Human Rights

64. This Convention was adopted on 22 November 1969 by the Special Inter-American Conference meeting in San José, Costa Rica, and its institutional machinery is based on the provisions of the European Convention. It has not, to date, entered into force since only two States have ratified it, and its study can only be partial and limited owing to the fact that no regulations have been drawn up for its organs; yet such regulations are, as we have seen, essential in order to understand the functioning of the system governing communications.

It is worth noting, however, that the most characteristic element is the automatic recognition of the right of any "person or group of persons, or any non-governmental entity legally recognized in one or more Member States of the Organization" to "lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party" (Article 44). Conversely, the Commission may only examine communications from States if they are presented by a State that has recognized the optional competence of the Commission in the matter and are lodged against a State that has made a similar declaration (Article 45, paragraphs 1 and 2).

The Commission may, before considering the facts of the case, request the government of the State in question to provide it with all necessary information, within a reasonable period of time, and communicate to it for the purpose the relevant passages of the petition. After considering the facts, the Commission places itself at the disposal of the parties in order to reach a friendly settlement and, failing such settlement, it draws up a report and transmits it to the States concerned, which are not at liberty to publish it. The matter may be brought before the American Court within three months from the date of transmittal of the report, provided that the States in question have recognized its jurisdiction (Articles 51 and 62), and the Court then passes a judgement as to whether the right or the freedom in question has been violated. The judgement is binding. If the Court is not

competent, or if the case has not been referred to it, it is for the Commission to "set forth its opinion and conclusions concerning the question submitted for its consideration" (Article 51, paragraph 1).

### III. THE VARIOUS STAGES IN THE CONSIDERATION OF COMMUNICATIONS

65. The comparative study of procedures for consideration of communications, analysed in Part I, shows that these procedures nearly always comprise three stages, namely:

the first stage is that of consideration of the admissibility of the communication, when an organ checks whether or not the conditions of admissibility have been met in the case of the communication in question;

the second stage is that of consideration of the substance of the communications deemed admissible, with a view to reaching, if possible, a friendly settlement;

the third stage then marks the outcome of the case in the form of a report, findings, a decision or a judgement.

The respective importance of each of these stages may vary from one set of proceedings to another but, generally speaking, the "consideration of admissibility" stage practically always occupies a predominant place, because, apart from anything else, that is when those communications that do not deserve the attention of the organization in question have to be rejected and the States incriminated notified only of those communications which, prima facie, appear to be justified.

#### A. CONSIDERATION OF THE ADMISSIBILITY OF COMMUNICATIONS

66. Consideration of the admissibility of communications constitutes the first stage on which the entire proceedings will depend. It is therefore appropriate to consider not only the conditions governing admissibility but the membership of the organs responsible for assessing them, and to determine the part played by the author of the communication when its admissibility is under consideration.

##### 1. Conditions governing admissibility

67. Whatever the origin of the right to lodge a communication (constitutional provisions or internal instrument of the organization dealing with the case), exercise of the right is always subject to conditions of admissibility intended to prevent the responsible organs from being flooded with work and hence to facilitate consideration of the facts of the case. Being closely bound up with the "international" character of the communication, the rule whereby all domestic remedies must first be exhausted will be analysed separately, as will the notion of "prima facie" owing to the ambiguity inherent in its obvious "functional" character.<sup>(1)</sup>

##### (a) Comparative study

68. Established under the relevant instruments or stemming from the jurisprudence of the bodies responsible for considering them, some conditions of admissibility constitute a "common stock" applicable to all communications. But depending on the action taken on them and the status of their authors, a number of additional conditions have developed around this common stem. For example, it is normally the case that communications from individuals are more thoroughly sifted than those lodged by States.

(1) For the conditions of admissibility applicable to communications lodged with Unesco and considered under the procedure laid down in 77 EK/Decision 8.3 of the Executive Board, see below in Part IV, paragraph 109 et seq.



The wide variety of conditions of admissibility resulting from this state of affairs does not facilitate comparative study of the subject. To this difficulty is added the yet more considerable problem of the great variety of circumstances covered by the notion of admissibility since it is often hard to draw a clear distinction between competence and admissibility and between admissibility and substance.

(1) The communication must be in writing

69. The rule that the communication must be in writing is generally due to the actual wording of the instruments establishing competence in this matter in so far as the communications are to be addressed to the appointed body or deposited with it.

(ii) The communication must not be anonymous and its author must be concerned in the matter

70. An individual communication must not be anonymous and it must be signed by its author or his representative. This condition is essential not only for practical reasons but also as sanctioning the need for a concern in the matter which is, in one form or another, embodied in all procedures for considering communications. In most cases, the author of the communication must be the presumed victim of the alleged violation and he must mention the rights supposedly violated (this applies to Article 2 of the Optional Protocol to the Covenant; resolution 1 (XXIV) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which also requires the communication to contain an account of the facts; Article 38 of the Regulations of the Inter-American Commission; Article 40 of the Rules of Procedure of the European Convention; etc.).

This requirement regarding concern in the matter is of special importance under ILO procedures since it determines the categories of persons authorized to submit the communication. Article 24 concerning representations specifies that they must be made "by an industrial association of employers or of workers". The Committee on Freedom of Association goes further by emphasizing that allegations are not admissible unless submitted by a national association directly concerned in the matter, by international associations of employers or of workers in consultative relations with ILO, or by other international associations of employers or of workers where such allegations relate to questions of direct concern to the member associations of such international associations.

(iii) The communication must not be incompatible with the basic texts invoked by the author

71. A communication must not be incompatible with the instruments on which the procedures for considering the communication are based. This means that it must in the first place conform to the rules of jurisdiction - ratione materiae, ratione personae, ratione temporis and ratione loci - applicable to the body responsible for considering it.

This is very clear in the procedure followed by the Committee on Freedom of Association since, apart from the requirement that the communication must be in writing, the conditions of admissibility are identical with the conditions governing jurisdiction (First Report of the Committee on Freedom of Association, paragraph 24; 29th Report, paragraph 9). As regards the European Commission and the Inter-American Commission, it is the jurisprudence of these bodies which has interpreted what the texts say about incompatibility as tantamount to endorsing the rules of jurisdiction.

Most other international instruments dwell rather on the content of the communication, which must be in conformity with the subject-matter of the text invoked. Thus the representations and complaints provided for in the ILO Constitution must concern the non-observance of a Convention; and communications submitted to the Committee on Freedom of Association must refer to actual cases of breach of trade union rights. Likewise, communications received by the Human Rights Committee and the Committee on Racial Discrimination must specify to what violations of commitments entered into by the States under the relevant conventions they refer.

- (iv) The communication must not be offensive or constitute an abuse of the right to present communications

72. A communication must not be offensive (see, for instance, Article 39a of the Regulations of the Inter-American Commission; Article 27, paragraph 2, of the European Convention). Although it is difficult to narrow down this notion, an attempt can be made to find a number of relevant points for analysis.

The notion of abuse may first of all relate specifically to the wording of the communication. Thus Article 39a of the Regulations of the Inter-American Commission and Article 3, paragraph (b), of resolution 1 (XXIV) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities refer to communications written in offensive language. In the latter case, however, the effect of this is only to "suspend" admissibility since, if the communication meets the other criteria for admissibility, it may be considered once the offensive language has been deleted. Secondly it seems that the notion of abuse must also be extended to any communication if it "has manifestly political motivations and its subject is contrary to the provisions of the Charter"; according to Article 3, paragraph (c), of the Sub-Commission's resolution, any such communication must be declared inadmissible. A third point for guidance may be the attitude of the author of the communication. For example, according to the same resolution, communications originating from non-governmental organizations may be declared admissible provided they are "acting in good faith ..., not resorting to politically motivated stands contrary to the provisions of the Charter of the United Nations ..." (Article 2, paragraph (a)).

- (v) The communication must not be the same as another communication already considered or under consideration by another authority

73. Several provisions are designed to prevent repeated communications being lodged with the same body, by making it possible to declare inadmissible communications that substantially duplicate a matter already examined (Article 27 of the European Convention on Human Rights; Article 39b of the Regulations of the Inter-American Commission on Human Rights; see also resolution 1 (XXIV) of the Sub-Commission, Article 4 (c)). In the case of a communication relating to protection of the freedom of association, concerning the same violations as those upon which the Committee has already pronounced, it is for the Committee to decide whether or not to take action on it (9th Report of the Committee, paragraph 24).

74. The problem of "duplication" also arises when a communication is submitted simultaneously to two international authorities. This situation is liable to arise increasingly often on account of the entry into force, in particular, of the Covenant on Civil and Political Rights and the Protocol thereto. For example, the European Convention on Human Rights specifies that a communication already pending before another procedure of international investigation or settlement must be declared inadmissible. The Optional Protocol to the Covenant is more restrictive since it rules that no communication shall be considered by the Human Rights Committee unless it has ascertained that the same "matter" is not being examined under

another procedure of international investigation or settlement (Article 5, paragraph 2 (a)).

(vi) The communication must be lodged within a certain period

75. Efficiency of the system governing communications requires, in some cases, that the communication be lodged within a reasonable period. This is laid down as six months following the exhaustion of all domestic remedies in the European (Article 26) and American (Article 46, paragraph 1b) Conventions on Human Rights. According to the Regulations of the Inter-American Commission communications "shall be addressed to the Commission within a reasonable period of time, in the judgement of the Commission", and under ECOSOC resolution 1503 the communication must be lodged within a reasonable period after the exhaustion of all domestic remedies.

(b) The previous exhaustion of all domestic remedies

76. The rule whereby all domestic remedies must previously be exhausted restricts the right of international organizations to deal with communications incriminating a State, by recognizing that it is in the first place the State's own responsibility to put right the alleged violation by means of its own judicial processes. Hence this rule tends to protect the sovereignty of the State against unwarranted attacks.

This rule normally applies to communications which may be brought before an international judicial authority able to redress the alleged grievances. Its application is more disputed in the case of non-contentious appeals and in that of the procedure intended only to provide the international body with information on the situation with regard to human rights in a particular country. It is noteworthy however - and this points to the force of general international law - that the exhaustion of all domestic remedies is a prerequisite for the admissibility of the communications provided for in ECOSOC resolution 1503, though these merely contribute to making information available to the Economic and Social Council.

77. The requirement that the domestic remedies should have been previously exhausted is, as is well known, a rule derived from general international law, as is shown by the fact that all the international instruments on human rights which adopt this rule stipulate that it should be applied "in conformity with the generally recognized principles of international law" (Covenant on Civil and Political Rights, Article 41, paragraph 1 (c); Convention on Racial Discrimination, Article 11, paragraph 3; American Convention, Article 46, paragraph 1; European Convention, Article 26).

78. In the field of human rights it is specifically at the stage where the admissibility of communications on human rights is being examined that the rule is applied less categorically. For example, the rule is not applied where domestic legislation does not afford due process of law for protection of the rights that have allegedly been violated; if the appellant cannot make use of normally available remedies; if there has been unwarranted delay in reaching a decision (American Convention, Article 46, paragraph 2; Regulations of the Inter-American Commission, Article 55); or if it appears that such remedies would be ineffective or unreasonably prolonged (resolution 1 (XXIV) of the Sub-Commission on Prevention of Discrimination, Article 4 (b)). In other cases it is the sharing of the onus of proof which makes it possible to apply the rule less rigorously; under Article 5, paragraph 1, of the Optional Protocol to the Covenant, the Human Rights Committee could examine the question of the exhaustion of domestic remedies in the light of information made available to it by the individual and by the State concerned. And by virtue of Article 11, paragraph 3, of the Convention on the Committee on the Elimination of Racial Discrimination is in a similar position.

Again, the principle that domestic remedies must first be exhausted has been set aside de jure or de facto in regard to the procedure for communications relating to protection of the rights covered by International Labour Conventions and the freedom of association; in such cases the examination of admissibility does not require that domestic remedies be first exhausted. The regulations governing the procedure to be followed in the event of representations (Article 24 of the ILO Constitution) makes no reference to this rule, and in particular the Committee on Freedom of Association, instituted in November 1951, expressed the view that in the light of its responsibilities it cannot be bound thereby. It did however acknowledge that where a case brought before it is under examination by an independent jurisdiction presenting the necessary guarantees, it may stay its proceedings. The rule thus becomes the exception, to the benefit of the injured party and in the interests of justice being properly done.

(c) The need for a "prima facie case", or the communication must not be manifestly groundless

79. The idea of a "manifestly groundless" communication is intermediate between examination of the admissibility of a communication and its examination in substance, and this lack of precision naturally makes it an instrument whose flexibility has notable advantages for bodies responsible for examining communications. It does however also make it possible to reject the substantive examination of a communication without thorough justification.

80. Only the European Convention (Article 27, paragraph 2), the American Convention (Article 47 (b) and (c)) and the Regulations of the Inter-American Commission (Article 39 (c) and (d)) formally mention this as a cause of inadmissibility. However, even if the expression "manifestly groundless" is not to be found in other international instruments, the situation to which it refers is none the less real, as is proved on the one hand by the requirement laid down in some texts that factual details should be submitted in support of the allegations referred to, and on the other hand by the requests for additional information addressed by the body responsible for examining communications to the authors of the communications and to the States against which they are directed. For example, under resolution 1 (XXIV) of the Sub-Commission on Discrimination, communications are admissible only if there are reasonable grounds to believe that they may reveal a consistent pattern of gross and reliably attested violations (Article 1 (b)); similarly, the Committee on Freedom of Association declares representations admissible only if accompanied wherever possible by evidence in support of the allegations concerning specific cases of violations of trade union rights (9th Report of the Committee, paragraph 20).

2. Body competent to decide on admissibility

81. While the bodies competent to decide on admissibility are of different origins, they have all been established with a view to functioning permanently. Some further similarities may be noted between the Human Rights Committee and the Committee on Racial Discrimination: both were established by conventions drawn up within the United Nations and adopted by the General Assembly within a short time of each other (1966 and 1965): thus it is not surprising that the relevant provisions of the Covenant and Convention are fairly similar. In the same way, at regional level, the European Commission and the Inter-American Commission have certain similarities.

The Inter-American Commission, which was established in 1960 by resolution of a Conference of Ministers, is however a special case, since while it was originally conceived as an autonomous entity operating under the Organization of American States, it has become, under Article 51 of the revised Charter of the OAS, one of the Organization's main organs.

The body competent to decide on admissibility may be a subsidiary body of a main organ of an organization. This is the case with the Committee on Freedom of Association, established in 1951 by the Governing Body of the ILO. As for the Sub-Commission on Prevention of Discrimination and Protection of Minorities, this is a subsidiary body established by a functional commission (the Commission on Human Rights) coming under one of the main organs (ECOSOC) of the United Nations; the Sub-Commission is moreover itself assisted in the examination of communications by a subsidiary body, its working group, established under resolution 1503 (XIVIII).

It will be noted that all these bodies, some of which were originally merely bodies for promoting human rights, have gradually adopted quasi-judicial procedures to examine communications.

In Unesco it is the Secretariat which examines the admissibility of communications, but the question may also be taken up by the Executive Board's Committee on Conventions and Recommendations.

82. The number of members of these bodies, the conditions governing their appointment and the qualifications required are very varied. The Inter-American Commission consists of seven members, chosen for their high moral character and their recognized competence in the field of human rights; the same applies to the 18 members of the Human Rights Committee of the Covenant. The members of the Committee on the Elimination of Racial Discrimination, who are also 18 in number, must be experts known for their high moral character and impartiality. The 26 members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities are chosen by the Commission on Human Rights in consultation with the Secretary-General of the United Nations and subject to the agreement of their governments. The nine members of the Committee on Freedom of Association, who are chosen from among the members of the Governing Body, reflect the tripartite composition of the International Labour Organisation.

The term of office of the members of these bodies may vary from two years, for the Sub-Commission, to four years, for the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and the Inter-American Commission. The members of the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and the European Commission of Human Rights serve in their individual capacity. The seven members of the Inter-American Commission are appointed personally and represent all the member countries of the Organization of American States.

### 3. Rôle of the author of the communication in the examination of admissibility

83. It is difficult to carry out a detailed study of the rôle of the individual in the procedure for examining the admissibility of communications, since it is the actual regulations and rules which are essential in this respect rather than the international instruments themselves. And a number of these are lacking, for example the rules of procedure of the Human Rights Committee of the Covenant on Civil and Political Rights, which are currently being drawn up; the rules of procedure of the American Commission on Human Rights, as it will function once the Convention of the same name enters into force, and the working rules for the examination of petitions by the Committee on the Elimination of Racial Discrimination, which are grouped together in a confidential document. Only in limited cases does the individual play an active rôle when the admissibility of a communication is examined. It is true that he is always required to present his arguments for the admissibility of his communication: this he does either at the time of filing the communication (with the Committee on Freedom of Association or the European Commission of Human Rights) and (or) at the request of the competent body, in reply to comments by the government, within a period of time which is usually limited. This

possibility accorded to the individual obviously corresponds to practical needs; it is necessary for the bodies concerned to have the maximum amount of information before taking a decision on admissibility and testing the weight to be attached to the communications.

The actual decision on admissibility is an entirely different matter. In most cases the procedure is confidential (Committee on the Elimination of Racial Discrimination, Human Rights Committee of the Optional Protocol of the Covenant, the procedure followed under resolution 1503, the procedure followed for representations in accordance with Article 24 of the ILO Constitution). In some cases the individual is informed of the decision, but not always.

It should be noted that this confidential nature is a necessity in those cases where the final sanction is the publication of a report and where it is therefore necessary to avoid confusing a preliminary investigation with a sanction.

84. In some cases the author of the communication is required to play a more active part. For example, the decision of the European Commission of Human Rights regarding admissibility is taken during the equivalent of legal proceedings, in which the procedure for hearing both sides of the case, and both parties, contributes to providing effective protection for the individual. The decisions of the Commission on admissibility have moreover the form and content of a judicial decision.

The procedures followed by the Commissions of Inquiry instituted under Article 26 of the ILO Constitution, and by the Committee on Freedom of Association, also afford valid safeguards for the author of the communication. The absence of any precise distinction between the admissibility and the substance of the case, already underlined above, makes it possible for the Commissions and the Committee, with a view to having full and objective information on the questions under consideration, to have recourse not only to the written materials traditionally submitted by the parties, but also to inquiries on the spot, and to a hearing of the parties in the course of which the arguments are set forth on both sides. This latter possibility is, in the case of the procedure followed by the Committee on Freedom of Association, subject to authorization by the Governing Body of the ILO. The "modulated" use of these various possibilities, the fact that it is not obligatory to have recourse to them and the purely administrative nature of the decision on admissibility mean, however, that it is not possible to speak of a "judgement" on admissibility as in the case of the European Commission.

#### B. EXAMINATION OF A COMMUNICATION CONSIDERED AS ADMISSIBLE, WITH A VIEW TO AN AMICABLE SOLUTION

85. Only communications considered as admissible are examined to determine whether the allegations they contain regarding violations of human rights are substantiated. This substantive examination usually resembles an inquiry, in the conduct of which the State against whom the allegations are directed is invited to participate. This inquiry may be purely a written one, but it may also be conducted orally by hearing both sides; sometimes the competent body carries out a veritable inquiry on the spot, always with the consent of the State concerned. But in all cases the substantive examination will be so conducted as to make possible, and facilitate, an amicable solution to the case thus investigated.

An amicable solution with regard to human rights questions varies both in its forms and in its terminology: in this field all the various strands seem to be brought together in the Covenant on Civil and Political Rights where, under Article 42, the Conciliation Commission makes its good offices available to the States Parties concerned with a view to an amicable solution of the matter.

Some texts make extensive provision for recourse to consultation. For example, in the United Nations, the Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Racial Discrimination provide that a dispute between two States regarding the way in which one of them applies human rights may in the first place, be settled, in the case of the Covenant by the good offices of the Human Rights Committee (Article 41, paragraph 1); and in the case of the Convention on Racial Discrimination by bilateral negotiations or by "any other procedure" (Article 11, paragraph 2), which seems to open the way to conciliation. If no solution has been found in this manner, the committees respectively responsible for the application of the Covenant and the Convention may appoint an ad hoc conciliation commission, with the agreement of the parties concerned.

Similarly, under the procedure in ECOSOC resolution 1503, the Commission on Human Rights may, with the consent of the State concerned, set up an ad hoc committee of investigation working in close co-operation with that State, and empowered to seek out all the possibilities for an amicable solution before, during or after the investigation.

86. However, over and above the texts, the spirit of conciliation genuinely imbues the procedures for the examination of communications on human rights: the length and complexity of these procedures do in fact allow of numerous attempts at conciliation at all stages. For example, while Article 28 (b) of the European Convention is the only one which mentions an "amicable settlement", practice has shown that recourse is had to it at all times where the Commission considers it desirable and satisfactory. Similarly, in the ILO, the only procedure described as a conciliation procedure is that which takes place before the Fact-Finding and Conciliation Commission established, as we have seen, following on an agreement with the United Nations Economic and Social Council for the protection of freedom of association. In this case it is incumbent on the Governing Body of the ILO to try to obtain the agreement of the government concerned to bringing the matter before the Fact-Finding and Conciliation Commission. The Commission, consisting of ten independent members designated by the Governing Body of the ILO on the proposal of the Director-General, establishes its rules of procedure, is entirely free in the exercise of its functions and draws up a report in which it makes proposals for settling the difficulties by agreement. Even the conditions under which the Commissions of Inquiry established under Article 26 of the ILO Constitution exercise their powers are reminiscent of a conciliation mission.

87. This extensive recourse to conciliation - in a pure or diluted form - may create a problem in that it may be feared that conciliation will lead to a kind of bargaining on human rights, and that human rights may be sacrificed in return for financial compensation or other forms of satisfaction awarded to the injured person. In fact, the relevant texts show that the concept of human rights "reacts" on the traditional conciliation procedures, to the extent possibly of depriving them of their essential asset, which is flexibility: thus it is laid down that conciliation must be based "on respect for human rights as recognized in the present Covenant" (Article 42, paragraph 7 (b)), or that the amicable solution must be governed by "respect for human rights as defined in this Convention" (European Convention, Article 28 (b)) or founded on "respect for the human rights recognized in the American Convention" (Article 48, paragraph 1 (f)).

### C. SOLUTION STEMMING FROM THE FACT OF COMMUNICATION

88. The normal solution stemming from the fact of communication is the establishment of a report, either when the communication comes from an individual or when it comes from a State. The effectiveness and credibility of the report vary depending on several elements, which include the remedies as a whole generally

available to the organization with which the communication is lodged, the more or less specific, and more or less precise, nature of the report, and whether the organization is empowered to publish it.(1)

All the procedures followed in respect of United Nations bodies or bodies established by conventions adopted within the United Nations conclude with a report, but a report established under conditions which vary from one procedure to another.

Under the procedure instituted by resolution 1503, the Commission on Human Rights itself establishes a report which it submits to the Economic and Social Council (unless it has decided, in agreement with the States concerned, to establish an ad hoc committee which will itself report to the Commission, whatever the source of communications); this report, forwarded to ECOSOC, then becomes public.

The Covenant on Civil and Political Rights and the Convention on the Elimination of all Forms of Racial Discrimination make a distinction depending on whether the communication comes originally from an individual or a State. In the case of State communications, the ad hoc conciliation commission, or the committee established by each convention, prepares a report on the case for submission to Member States. Where it is an individual who has submitted the communication, there is no special report, but each committee merely includes in the annual report presented to the United Nations General Assembly a summary of its activities in connexion with individual communications (Article 6 of the Optional Protocol; Article 14, paragraph 8, of the Convention on the Elimination of all Forms of Racial Discrimination).

In the same way, before the Inter-American Commission, each case concludes with a report, but as far as the "ordinary procedure" is concerned, the report is not specific to the case, since it constitutes an overall report on the human rights situation in the State in question.

In the ILO the value of the report is increased by the publicity given to it, whatever the procedure adopted. Thus the complaints procedure leads to the preparation of a report by the Commission of Inquiry (Article 28), which the Director-General of the International Labour Office "shall communicate ... to the Governing Body and to each of the governments concerned in the complaint, and shall cause ... to be published" (Article 29).

89. The rôle played by the publication of the report in the effectiveness of the procedure is underlined by the practice followed by the Committee on Freedom of Association and by the Fact-Finding and Conciliation Commission established in 1950. It has been seen that, as the latter commission can only be seized of a case with the agreement of the State in question, the Committee on Freedom of Association adopted the habit of examining cases in substance, and making recommendations to the Governing Body on "any other appropriate measures" which the Governing Body might take. These measures consist primarily in giving publicity to the analysis of the allegations made by the author of the communication, to the commentary of the State in question, and to the conclusions drawn by the Committee.

In certain respects the publicity given to the report is also an element in solutions reached under the European Convention on Human Rights. In certain cases it is incumbent on the Committee of Ministers of the Council of Europe to take "a decision on whether there has been a violation of the Convention" (Article 32, paragraph 1), a decision which is taken by a majority of two-thirds of the members

(1) As regards Unesco, see Part IV, paragraph 124 below.



entitled to sit on the Committee. While this is in fact the ultimate solution, obviously a political one, it may, in cases in which there has been a violation of human rights, be accompanied by the means of pressure represented by publication of the report, in the manner provided for in Article 32, paragraphs 2 and 3 of the Convention.

90. The solution which most seldom arises is that adopted by the European Convention on Human Rights: a judgement delivered by the European Court on Human Rights, which may in certain cases afford just satisfaction to the injured party (Article 50). As this possibility gives the protection of human rights the advantages of public proceedings, it has been hedged in by safeguards for States, since the jurisdiction of the Court applies only to those States which have subscribed to the optional clause in Article 46.

#### IV. UNESCO AND COMMUNICATIONS ON HUMAN RIGHTS

91. In the light of the foregoing, and before studying "the procedures which should be followed in the examination of cases and questions which might be submitted to Unesco..." in accordance with resolutions 6.113 and 12.1 adopted by the General Conference at its nineteenth session, it is appropriate to examine the procedures and practices followed by Unesco to date in this matter. For this purpose we must first review present procedures, and then analyze them from a legal point of view, setting them in the framework of the co-operation between Unesco and other bodies in the United Nations system.

The present procedures whereby the Organization takes action on communications relating to alleged violations of human rights within the spheres of its competence consist of those for which provision is made in conventions adopted under the auspices of Unesco, and those laid down by the Executive Board, which has given specific terms of reference to one of its committees for this purpose.

92. It should be noted that, generally speaking, it is always possible for a State to bring a case concerning human rights before the Unesco authorities by requesting, in accordance with Rule 10 (d) of the Rules of Procedure of the General Conference, the inclusion on the agenda of a question concerning respect for human rights in a given situation. This is an unusual method, but is sometimes used by States in practice for the purpose of lodging a complaint against another State for a violation of human rights. The main method however which exists in the Organization for complaints as between States remains that instituted on the basis of a convention.

93. It should be recalled that most of the 23 conventions, agreements and protocols, and of the 22 recommendations adopted by the General Conference or by special intergovernmental conferences, involve questions of human rights; as far as these instruments are concerned, implementation machinery is laid down in the Constitution: "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" adopted by it (Article IV, paragraph 6). Member States submit these reports to the Organization "at such times and in such manner as shall be determined by the General Conference" (Article VIII). This procedure is spelt out in Part 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", adopted by the General Conference at its fifth session and modified at its seventh and seventeenth sessions (Articles 16 to 20). In accordance with these Rules, the report in which the General Conference embodies its comments shall be transmitted not only to Member States but also to the United Nations, to National Commissions and "to any other authorities specified by the General Conference" (Article 19).

94. Two Unesco conventions make provision for a specific procedure whereby action can be taken on communications concerning respect for human rights within the spheres of competence of Unesco: these are, on the one hand, the Convention against Discrimination in Education and its related Protocol, and, on the other, the Convention for the Protection of Cultural Property in the Event of Armed Conflict.

##### A. PROCEDURES LAID DOWN IN CONVENTIONS

##### 1. Machinery of the Convention against Discrimination in Education and its related Protocol

95. At its eleventh session, the General Conference adopted on 14 December 1960 a Convention and a Recommendation against discrimination in education. The

Convention entered into force on 22 May 1962, and has been ratified or accepted by 64 States. The Organization's examination of the measures taken by States to apply these two instruments, as with any other Unesco convention or recommendation, is carried out in the first place by means of the system of reports referred to in Article IV, paragraph 4 and Article VIII of the Constitution, and, in the case of the Convention, laid down in Article 7 thereof. A similar provision is contained in the Recommendation.

96. As the Executive Board and the Director-General are invited by 19 C/Resolutions 6.113 and 12.1 to study "the procedures which should be followed in the examination of cases and questions which might be submitted to Unesco concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective", this system of reports may be regarded as a procedure for the examination of the exercise of human rights. Moreover the Executive Board recognized at its 100th session the need to continue work on improving the standard-setting action of the Organization, and the General Conference invited the Director-General to study the possibility of improving the method used in drawing up standard-setting instruments (19 C/Resolution 6.112). The same resolution appeals to Member States "to assist in the application and observance of existing instruments". The Secretariat considers that an improvement in the application of the system of reports provided for in the Constitution would in fact be one way of making the Organization's action "more effective" in so far as such instruments concern the exercise of human rights.

97. At the present time the reports by the States Parties to the aforementioned Convention are drawn up on the basis of a detailed questionnaire, prepared by the Committee on Conventions and Recommendations in Education and adopted by the General Conference. The replies received by the Secretariat are analysed by the Secretariat and examined by the above-mentioned Committee (1). After examining the reports the Committee itself draws up a report for submission to the Executive Board, which transmits it with its comments to the General Conference.

This procedure does not however concern "cases" or "questions" relating to human rights. Admittedly Article 8 of the Convention allows for bringing before the International Court of Justice, "at the request of the parties", any dispute between two or more States Parties to the Convention concerning the interpretation or application of the Convention. This procedure, which is dependent on the will of the parties and takes place outside the Organization, has never been used.

98. Another procedure has been established by the 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. This Protocol was adopted in 1962, and entered into force in 1968. Unlike Article 8 of the Convention, the Protocol makes the powers of the Commission mandatory. The Commission is a permanent one, and consists of eleven members elected by the General Conference from among candidates nominated by the States Parties to the Protocol. The members serve in their personal capacity, but an ad hoc member may be designated when no member is a national of one of the States Parties to the dispute.

99. In accordance with Article 13 of the Protocol, from the sixth year after its entry into force, i.e. October 1974, the Commission may also be made responsible for seeking the settlement of any dispute between States which are parties to the

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(1) Decisions 70 EX/5.2.1 and 98 EX/9.6, paragraph 12 (a).

Convention but not necessarily parties to the Protocol, provided that these States agree. Referral to the Commission is thus open to all States Parties to the Convention and to them only, after domestic remedies have been exhausted. Once a matter has been referred to it, the Commission is bound to ascertain the facts and make its good offices available to the States concerned in the dispute with a view to a solution based on respect for the Convention. If an amicable solution is reached, the Commission makes a brief report stating the facts and the solution reached; otherwise it makes recommendations. For example, it may recommend that the Executive Board or the General Conference, as the case may be, request the International Court of Justice to give an advisory opinion on any legal question connected with the matter.

100. It will be seen that the procedure under the Protocol is limited to disputes between States, as there is no provision for complaints by individuals. To date, no question within the meaning of paragraph 1 of Article 12 of the Protocol has been submitted to the Commission.

## 2. Machinery of the Convention for the Protection of Cultural Property in the Event of Armed Conflict

101. As at 15 March 1977 this Convention, and its Regulations, adopted in The Hague on 14 May 1954, has been ratified by 67 States. To the extent that the protection, during a period of armed conflict, of cultural property belonging to the cultural heritage of mankind is a prerequisite for the exercise of human rights in the cultural field, it can be considered that the machinery for the implementation of this Convention is relevant to the present study of procedures concerning the exercise of human rights. It should however be noted that we have here not a procedure for examining communications as such, but rather machinery for supervising the application of an instrument which concerns the exercise of a human right coming within the competence of Unesco.

102. Summed up briefly, supervision of the application of this Convention is the responsibility of Commissioners-General for Cultural Property, who are chosen from an international list drawn up by the Director-General of Unesco and consisting of persons nominated by the High Contracting Parties. A Commissioner-General is appointed from the outset of hostilities to each of the States engaged in conflict, by common agreement between the government of the country in which he is to carry out his mission and the Protecting Power acting for the other Party, or in the absence of such a Protecting Power, by a neutral State. Each belligerent appoints a representative for cultural property situated in its territory, and the Protecting Power acting for each Party, where such Powers have been designated, appoints delegates accredited to the other Party. The delegates of the Protecting Power may have recourse to the Commissioner-General in the event of violation of the Convention, and in all cases they keep him informed of their activities with a view to ensuring observance of the Convention. The Commissioner-General may make representations with a view to the application of the Convention and, with the agreement of the State to which he is accredited, has the right to order an investigation or to conduct it himself. He may appoint inspectors or experts and charge them with specific missions. He draws up reports on the application of the Convention, which he communicates to the parties concerned and to their Protecting Powers. He sends copies thereof to the Director-General, who may make use only of their technical contents.

103. This machinery has been set up in only one single case, in 1967, at the time of the hostilities in the Middle East. Though the reports established by the Commissioners under the Regulations for the Execution of the Convention, reports

which they communicate to the parties concerned and of which the Director-General receives a copy, were not brought to the knowledge of the Board, the Commissioners nevertheless kept the Director-General regularly informed of their action. The Director-General in turn reported periodically to the Executive Board and the General Conference on developments which had taken place in the application of the Convention.

104. At its fifteenth session, the General Conference adopted a resolution on the application of this Convention, in which it addressed a recommendation to Member States to comply with the obligations of the Convention and also with the recommendation adopted by the General Conference at its ninth session (New Delhi, 1956) on archaeological excavations<sup>(1)</sup>. This resolution, together with others on the same problem, has since been recalled on several occasions by the Executive Board and the General Conference, without necessarily referring to the 1954 Convention<sup>(2)</sup>.

#### B. PROCEDURES ESTABLISHED BY THE EXECUTIVE BOARD OR THE GENERAL CONFERENCE

105. Alongside these procedures laid down in conventions, certain procedures have been established by the Executive Board or the General Conference to provide for the study of specific cases or questions concerning the exercise of human rights in Unesco's fields of competence. The main such procedures are those used by the Joint ILO/Unesco Committee of Experts on the Application of the Recommendation concerning the Status of Teachers and the one based on decision 8.3 adopted by the Executive Board at its 77th session.

##### 1. Joint ILO/Unesco Committee of Experts on the Application of the Recommendation concerning the Status of Teachers

106. The decision to set up this Committee was taken at the fourteenth session of the General Conference of Unesco (Paris, October-November 1966) and the 167th session of the Governing Body of ILO (Geneva, November 1966). The Committee's terms of reference are to examine the reports received from governments on action taken by them on the Recommendation concerning the Status of Teachers (adopted at Paris on 5 October 1966 by a special intergovernmental conference) and to report thereon to the two bodies which set it up. In accordance with a decision taken by the Governing Body of ILO (170th session) and the Executive Board of Unesco (77th session), the Joint Committee consists of 12 members sitting in their personal capacities and chosen on the basis of their competence in the principal domains covered by the Recommendation, each organization designating six members for the domains falling mainly within its province.

107. Three sessions of the Committee have been held (Geneva, 1968; Paris, 1970; Geneva, 1976). In determining its methods of work, the Committee decided that it could take into consideration information on implementation of the Recommendation which might be received from national organizations representing teachers or their employers, and from international teachers' organizations having consultative status with Unesco, without excluding information from other authoritative sources<sup>(3)</sup>.

(1) Resolution 15 C/3.342.

(2) See 82 EX/4.4.2, 88 EX/4.3.1, 89 EX/4.4.1, 90 EX/4.3.1 and 17 C/3.42.

(3) Since no definition was given of "other authoritative sources", the Secretariat of the Joint Committee has not considered itself entitled to pass on to the Committee reports from organizations, particularly research organizations, that did not fall into the other categories mentioned, nor communications from individuals. In principle, the latter are handled in accordance with the procedure laid down by 77 EX/Decision 8.3, which will be examined below.

Information concerning a particular country is communicated to it for any observations it may wish to make. The Committee also drew up a questionnaire with a view to obtaining information on the application of the main provisions of the Recommendation by the Member States of both organizations. Apart from these sources, the Committee makes use only of official information contained in United Nations, ILO and Unesco documents.

The Committee's Secretariat (provided by Unesco and the International Labour Office) undertakes a preliminary analysis of all information received, and this analysis is then examined by a working group of the Committee. After studying the information provided, the Committee, in its report, adopts conclusions and recommendations concerning any studies it may consider necessary on situations where it feels that the application of the Recommendation is unsatisfactory. The Committee's report is then submitted to the governing bodies of the two organizations. In the case of Unesco, the report is first studied by the Committee on Conventions and Recommendations in Education, after which it is transmitted, together with the latter Committee's recommendations, to the Executive Board, which in turn, transmits it to the General Conference with the Board's recommendations.

108. Several of the Recommendation's provisions are directly connected with the exercise of human rights, particularly those relating to non-discrimination in the training and employment of teachers, the right of association of teachers, etc. Particular mention may be made of Article 80, which stipulates that "Teachers should be free to exercise all civic rights generally enjoyed by citizens". From this point of view, the Joint Committee's report constitutes a valuable source of information which can influence the evolution of law and practice in these matters. The Joint Committee has observed, however, that the number of Member States replying to the questionnaire is diminishing and that the replies are often not sufficiently detailed <sup>(1)</sup>. The report has nevertheless enabled the Executive Board <sup>(2)</sup> and the General Conference <sup>(3)</sup> to make fairly detailed recommendations on the improvements needed in regard to application of the Recommendation.

## 2. Procedures for the examination of communications by the Committee on Conventions and Recommendations in Education

109. The procedure currently in use in Unesco has already been set out for the Executive Board at its 100th session in the Secretariat's note on "Procedure for handling communications on specific cases involving human rights in education, science and culture" (100 EX/CR/2, reproduced as Annex II to the present document). Reference should be made to this document for the historic background to the procedure and a description of the practice followed in applying it. It will be noted that the procedure adopted by the Executive Board at its 77th session (77 EX/Decision 8.3) and confirmed at its 98th session (98 EX/Decisions 9.4, 9.5 and 9.6) is analogous - but not identical - to that set out in resolution 728 of the Economic and Social Council <sup>(4)</sup>.

(1) 19 C/23 and CEART/III/1976/10, paragraph 171.

(2) 100 EX/Decision 5.2.1, based on documents 100 EX/13 and 19 C/23, containing the Joint Committee's report, and document 100 EX/14, containing the report of the Committee on Conventions and Recommendations in Education.

(3) 19 C/Resolution 1.171.

(4) This procedure is described above in paragraphs 25 et seq.

110. In accordance with paragraph 6 of 77 EX/Decision 8.3, the Director-General was required to bring the communications in question to the notice of the Special Committee on Discrimination in Education, whose terms of reference were enlarged for this purpose by paragraph 7 of the same decision. It will be noted that the Executive Board expressed the hope "that the study of procedures at present being carried out by the United Nations and its Specialized Agencies will lead in the near future to a satisfactory solution" (77 EX/Decision 8.3, paragraph 8). Since then, the United Nations has developed or put into effect various procedures described in Part I of the present document, whereas the Unesco procedure has remained essentially unchanged, the only alteration being that the committee responsible for examining communications has become the Committee on Conventions and Recommendations in Education (99 EX/Decision 9.6, paragraph 12, confirmed by 99 EX/Decision 9.5)<sup>(1)</sup>.

111. The procedure as it is currently applied on the basis of decisions by the Executive Board consists of six phases:

(a) First phase: receivability

112. In accordance with a practice which has been adopted in the Secretariat, in order to be considered receivable (admissible), a communication received by Unesco must fulfil four sets of conditions:

(1) Ratione personae

113. The author of the communication must be identifiable. A letter, therefore, that states the name of the author but is not signed by him cannot be considered receivable. Similarly, a communication signed by the author but received by the Secretariat in the form of a photocopy in which even the signature is photocopied cannot be regarded as a document emanating from that author and may, for this reason, be considered irreceivable. A circular letter, a fortiori, is not receivable. It is also essential for the address to be shown. One method of verifying the authenticity of the address and the fictitious character or otherwise of the author consists in writing to him to ask him whether he wishes the established procedure to be applied to his communication and whether he has no objection to his name and that of his organization being divulged. This precaution is taken even when the first communication furnishes an answer to these two questions in advance.

The author may himself be the victim of an alleged violation or may simply denounce a violation committed against a third person; in the latter case, the Secretariat examines the profession of the victims named in the communication: they must be engaged in an activity which falls within Unesco's spheres of competence, and the activity must be specified for each name cited if the case is to be considered as "a specific case involving human rights in education, science and culture". Hence, a communication that referred to prisoners belonging to several categories of which some came within Unesco's spheres of competence, but did not specify the profession of each person named, would be regarded as irreceivable. A communication

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(1) Throughout the remainder of this study, except where otherwise stated, the term "Committee" means the Special Committee on Discrimination in Education, which was previously competent to receive communications covered by 77 EX/Decision 8.3, and the Committee on Conventions and Recommendations in Education, since its terms of reference had given it authority to do so under the terms of 98 EX/Decisions 9.4, 9.5 and 9.6.

regarded as vague in that it does not refer to a specific case but denounces a general human rights situation is not receivable, even when the rights in question come within Unesco's spheres of competence. A communication containing a copy of documentation on specific cases, the original of which is intended for another organization - e.g. the Commission on Human Rights - is also irreceivable. When it is possible to separate the parts of a communication dealing with specific cases from the rest of the communication denouncing a general situation, these parts may be considered receivable.

(ii) Ratione materiae

114. The author of the communication must invoke, either implicitly or explicitly, one of the human rights set out in the Universal Declaration of Human Rights or in one of the International Covenants on Human Rights. The Secretariat will then have to establish whether the human right invoked is generally considered as being of direct concern to Unesco.

If, for example, a violation of human rights has been committed against a teacher, an artist, a scientist or a journalist, no further details being stated, a communication reporting such violation may be considered receivable since it is possible that there is a connexion between the victim's profession and the violation allegedly committed.

If the communication states the reason for the violation and that reason does not come within Unesco's fields of competence, the communication is considered irreceivable. Such is the case, for example, when a communication states that a teacher has been imprisoned or tortured on account of his political activities.

In some cases, the alleged victim's sphere of activity clearly comes within Unesco's competence but, in the opinion of the Secretariat, the human right invoked is not generally considered to do so: thus a complaint concerning a student who has been deprived of the right to leave his country, which is recognized by Article 13, paragraph 2, of the Universal Declaration, is not regarded as receivable. Similarly, the view has been taken that a communication complaining of the entry of troops into a university, following a strike by non-teaching staff, related to a labour conflict and did not come into one of Unesco's fields of competence. The right to life (Article 3) has also been held not to be within Unesco's fields of competence. The same goes for freedom of religion (Article 18), the right to work (Article 23) and the right to respect for family life (Article 16).

115. Among the specific cases submitted to the Committee and so far regarded as receivable, it can be seen that the majority concern individuals having a connexion with Unesco's fields of competence who have been the subject of measures such as arrest, conviction, detention, harsh treatment while in detention, torture, execution, murder, shooting, "disappearance", exile, dismissal, suspension or acts of repression, or of other acts involving the closure or search of premises, the burning or confiscation of books and the denial or deprivation of legal status.

(iii) Ratione temporis

116. The accepted practice does not reveal any criterion setting a time limit, following the occurrence of the facts alleged, within which a communication concerning them must be sent to Unesco. The Committee has noted, for example, that "by reason of the procedure involved and the calendar established for the sessions



of the Committee, some of the allegations presented in these various communications unavoidably go back to more than a year" (1). A communication may nevertheless be considered irreceivable if the victim of the alleged violation was not engaged, at the time of the facts in question, in an activity falling within one of Unesco's fields of competence. If a person communicates to the Secretariat information capable of constituting a receivable communication under the terms of 77 EX/Decision 8.3, but does not reply, at least one month before the opening of the Committee's session, to the letter asking him if he wishes his communication to be examined in accordance with that decision, the communication is not placed before the Committee until the following session. The purpose of this deferment is to allow the government concerned time to prepare any observations it may wish to make.

(iv) Ratione loci

117. This condition may relate either to the place to which the communication is addressed or to the place where the alleged facts took place.

In order to be receivable, communications must not only reach Unesco but must also be addressed to it. Even if this is the only condition not fulfilled, no action is taken on the communication apart from formal acknowledgement. Hence, photocopies of communications addressed to other organizations are not receivable. A communication concerning specific cases that are clearly within one of Unesco's fields of competence may be considered receivable if the envelope, rather than the communication itself, is addressed to Unesco. It sometimes happens that complaints are addressed not to the Director-General or simply to Unesco, but to the Executive Board, the General Conference or an official in the Secretariat: this has not been held to render such a communication irreceivable.

When the facts complained of supposedly occurred on the territory of a State which is not a Member of Unesco, no action can be taken. The place from which the request originates, however, does not necessarily have any bearing on the place where the facts complained of are said to have taken place.

118. There are no regulations setting out these conditions in detail: to date they have resulted from the way in which the Secretariat and the Committee have interpreted the terms of 77 EX/Decision 8.3. The Secretariat's decision concerning the receivability of a communication must be regarded as of a preliminary nature since it in no way prejudices the criteria that the Committee itself may apply for the receivability of communications.

119. When the Secretariat considers that one of the conditions for receivability has not been fulfilled, a brief acknowledgement is sent to the author, stating only that the Secretariat is not competent to take any action concerning the communication.

(b) Second phase: notification to the author of a communication regarded as receivable

120. The second phase of the procedure consists in the Secretariat's sending the author of a communication it regards as receivable a letter, enclosing the

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(1) 99 EX/53, paragraph 50 (c).

text of 77 EX/Decision 8.3, describing the procedure established by that decision and asking him if he wants the procedure to be applied in respect of his communication. The letter also makes it clear that the procedure in question can be applied only if he has no objection to his name and, if appropriate, that of his organization, being divulged <sup>(1)</sup>.

(c) Third phase: transmission of a receivable communication to the government concerned

121. When an affirmative reply is received from an author, the Director-General writes to the government concerned to send it a copy of the communication and of 77 EX/Decision 8.3 and to inform it that the communication will be brought to the notice of the Committee and that any reply from the government will, if it so desires, also be transmitted to the Committee, either in summary form or in full, whichever it prefers <sup>(2)</sup>.

(d) Fourth phase: transmission to the Committee of the dossier on the communication

122. A communication considered receivable and any reply from the government against whom it is directed are brought to the notice of the Committee in the form of confidential documents. In practice, care is taken to ensure that the government concerned has been allowed a period of approximately one month between the date when the communication was sent to it and the opening date of the session at which the Committee is to examine the communication. If this is not possible, the communication is not put before the Committee until the following session: nowhere, however, is this practice laid down in writing.

(e) Fifth phase: the Committee's examination of the dossier on the communication

123. The procedure to be followed by the Committee in examining dossiers on communications is not clearly set out either in 77 EX/Decision 8.3 or in any other document. From its very first session, which took place during the 79th session of the Executive Board, the Committee has met in private, and, since then, it has always preserved the confidential nature of its examination of communications. <sup>(3)</sup>

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- (1) The text of a specimen letter to the author of a communication to be brought to the attention of the Committee under the terms of 77 EX/Decision 8.3 is reproduced as Annex II to document 100 EX/CR/2. It should be noted that this letter is sent even when the author states in his communication that he wants the procedure to be applied and that he has no objection to his name or that of his organization being divulged. This provides a means of ascertaining whether the author has used an authentic address. By virtue of a decision adopted by the Committee at the time of the Board's 99th session (99 EX/53, paragraph 46), the Secretariat, in its letter to the author, stresses "the importance of supplying the Committee with as detailed information as possible on the allegations contained in his communication".
- (2) The text of a specimen letter to a Member State against whom a complaint under the terms of 77 EX/Decision 8.3 is directed is reproduced as Annex III to document 100 EX/CR/2.
- (3) This practice was confirmed by the Committee at the 94th session of the Executive Board (94 EX/50, paragraph 13).

At the 94th session of the Executive Board, the Chairman of the Board ruled that all Board members, including those who were not members of the Committee, could have access to the documents of the Committee and attend its meetings or be represented thereat<sup>(1)</sup>. Any government which is represented on the Board can therefore put its point of view to the Committee in respect of communications directed against it. As for countries not represented either on the Committee or on the Board, the Committee decided that their representatives could be given a hearing if they so requested<sup>(2)</sup>. In connexion with its examination of communications the Committee has had occasion to state that "its terms of reference were limited to the examination of the contents of the communications transmitted to it... and that it was not incumbent to take into consideration or to seek out further information, or to carry out verifications or enquiries"<sup>(3)</sup>.

(f) Sixth phase: submission of reports by the Committee to the Executive Board<sup>(4)</sup>

124. The last phase of the procedure consists of submission of the Committee's reports to the Executive Board<sup>(4)</sup>. Until the 94th session of the Executive Board, the Committee merely stated very briefly, in its general report to the Board, the number of communications and replies from governments of which it had taken note, without giving further details<sup>(5)</sup>. Since that session the Committee has submitted a separate report to the Board on communications examined, giving the name of the author of each communication and of the government against whom it is directed, together with any information provided by the latter<sup>(6)</sup>.

The reports submitted by the Committee to the Board since its 94th session, unlike the documents relating to communications examined by the Committee, are not of a confidential nature and are examined by the Board in public session. In view of the fact that this practice creates certain difficulties, the Committee proposed, in its report adopted on 7 October 1976, "that it be recommended to the Executive Board to examine in private session the Committee's report relating to communications submitted to the Committee in accordance with 77 EX/Decision 8.3, the Committee's report itself being in such a case a restricted document"<sup>(7)</sup>.

(1) Ibid, paragraph 5.

(2) 99 EX/53, paragraph 10.

(3) 94 EX/50, paragraph 14.

(4) The Executive Board invited the Committee "to review its current procedure, including methods of work and of reporting to the Executive Board, with a view to making recommendations for improvement where necessary" (99 EX/Decision 9.5, paragraph 8). The report presented by the Committee pursuant to this request is to be found in document 100 EX/PRIV.50.

(5) 79 EX/13, paragraph 15; 84 EX/6, paragraph 32; 89 EX/13, paragraphs 17 - 19; 94 EX/11, paragraphs 22 - 23.

(6) 94 EX/50, 97 EX/36, 99 EX/53 and 100 EX/41. It should be noted that the first of these reports states that the Committee considered the documents to have been brought to its notice on the basis of paragraph 11 of 93 EX/Decision 8.2, which refers to "complaints regarding the violation of human rights", representing a broader criterion than the one contained in 77 EX/Decision 8.3" (94 EX/50, paragraph 15).

(7) 100 EX/PRIV.50, paragraph 18.

**V. CONSIDERATIONS THAT MIGHT SERVE AS A BASIS FOR DISCUSSION  
BY THE EXECUTIVE BOARD**

125. In expressing a desire that Unesco's action in the field in question become more effective, the General Conference probably had in mind the following two considerations:

- (i) First of all, Unesco should take account of the changes that have taken place in this area since the adoption of 77 EX/Decision 8.3. That decision, of course, was based on Economic and Social Council resolution 728 F (XXVIII), even if it did not follow it practically word for word. Now that resolution, which merely brought together in a single text a series of earlier resolutions, was supplemented in 1965 and 1967 by ECOSOC resolutions 1235 and 1503, which are additional to it without, however, replacing it. An initial step, therefore, might be for Unesco to take note of the Economic and Social Council's progression from resolution 728 F to resolution 1503 and, if necessary, to supplement 77 EX/Decision 8.3 similarly. It would be equally legitimate, however, to consider whether there should not be specific procedures corresponding to Unesco's specific rôle in the sphere of human rights, which is limited to human rights coming within its fields of competence and does not cover all human rights; in other words, to consider whether, in striving to make its action more effective, the Organization should not model itself less on the United Nations, which is competent in the entire field of human rights, than on other Specialized Agencies - in particular, the International Labour Organisation, whose rôle in the sphere of human rights is equally specific.
- (ii) Secondly, it is also desirable that attempts to increase the effectiveness of Unesco's action in this area should make it possible to consolidate, while at the same time clarifying, the practice that has become established. The practical application of 77 EX/Decision 8.3 has in fact served to round out the provisions of that decision on some important points. It is certain, moreover, that a more precise definition of the limits of Unesco's competence in the sphere of human rights would enable it to make its activity more effective and would at the same time prevent a dispersal of effort on the part of the organizations of the United Nations system.

126. The following considerations, therefore, are directed, firstly, towards clarifying and consolidating the existing procedures and, secondly, towards reinforcing and extending them.

**A. LEGAL CONSIDERATIONS**

**1. Legal basis for Unesco's competence in the matter**

127. The fundamental, albeit indirect, basis for any activity by the Organization in the sphere of human rights is Article 1, paragraph 3 of the Charter of the United Nations, which declares that one of the purposes of the United Nations is "to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all...". In accordance with Article 56, moreover, the Member States of the United Nations pledge themselves to take action in co-operation with the Organization for the achievement

of the purposes set forth in Article 55, including "universal respect for, and observance of, human rights and fundamental freedoms for all...". As a Specialized Agency brought into relationship with the United Nations in accordance with Article 63 of the Charter, Unesco pursues the same aims.

128. The Constitution of Unesco, which is the direct legal basis for its competence in the matter of human rights, states that the purpose of the Organization is "to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms ... for the peoples of the world, without distinction of race, sex, language or religion..." (italics added). The Preamble to the Constitution stresses Unesco's specific rôle in the sphere of human rights inasmuch as the Member States declare themselves to believe in "full and equal opportunities for education for all, in the unrestricted pursuit of objective truth, and in the free exchange of ideas and knowledge...". Article I states, inter alia, that, to that end, the Organization will recommend "such international agreements as may be necessary to promote the free flow of ideas by word and image". Within the framework of its standard-setting activity towards the realization of this objective, Unesco has convened special intergovernmental conferences or has submitted draft texts for adoption by the General Conference, and thus it is the Member States in concert which have adopted all the Organization's Conventions and Recommendations, many of which involve human rights, as is the case, for example, with the Convention against Discrimination in Education.

129. Apart from the Constitution and these Conventions and Recommendations, a further basis for Unesco's competence in the matter consists in the decisions of the General Conference and the Executive Board. The General Conference has frequently made declarations concerning Unesco's rôle in the sphere of human rights. Among the objectives of Unesco, as defined by the General Conference at the conclusion of the general policy debate at the eighteenth session, for example, is the following:

"The defence and promotion of human rights and fundamental freedoms and the struggle against incitement to war, colonialism, neo-colonialism, racialism, apartheid and all other forms of oppression and discrimination are an essential duty for Unesco, because infringements of human rights are a source of conflict and consequently a threat to international peace and security, and because one of the Organization's tasks is to foster respect for human dignity."<sup>(1)</sup>

The Conference also expressed the view:

"that Unesco and its Member States should redouble their efforts on behalf of human rights and international peace and security by condemning and eliminating all anti-humanistic practices stemming from fascism in view of their adverse effect on the development of friendly relations and mutual respect among nations, ..."<sup>(2)</sup>

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- (1) 18 C/Resolution 9.1, paragraph 4.  
(2) 18 C/Resolution 11.31.

At the same session, the General Conference called upon:

"Member States to ratify as soon as possible the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights and to take a decision concerning the Optional Protocol relating thereto;" and invited

"the Director-General to give the widest possible publicity to the entry into force of these Covenants and to their implementation in the fields of Unesco's competence;"<sup>(1)</sup>

At its nineteenth session, among other decisions relating to human rights, the General Conference made a point of stating, in connexion with the Medium-Term Plan, that it considered

"that the Organization's work to further human rights is linked with all those activities through which Unesco aims at supplying an answer to the major problems existing today in its fields of competence, and should take account of the new context created by the recent entry into force of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights;"<sup>(2)</sup>

It was in the same spirit that it adopted resolution 12.1 which, together with resolution 6.113, constitutes the basis for the present study. In that resolution, the General Conference noted "that violations of human rights in Unesco's fields of competence are increasingly frequent and are the subject of numerous complaints sent to the Organization".<sup>(3)</sup> Paragraph 10 of the resolution defines the terms of reference assigned to the Director-General and the Executive Board in this sphere: these no longer relate exclusively to "specific cases" but to "the general situation with regard to respect for human rights throughout the world, in Unesco's fields of competence", and to "cases and questions" concerning "the exercise of human rights in the spheres to which its competence extends".

130. The provisions cited above, confirm, if confirmation be needed, that the legal basis for Unesco's competence in the sphere of human rights is first and foremost its Constitution. In order to conform to the Constitution of Unesco, the search for new procedures for examining communications relating to cases and questions concerning human rights must be conducted with respect for all the relevant provisions of the Constitution, and must therefore also take account of Article I, paragraph 3, whereby the Organization is prohibited from "intervening in matters which are essentially within the domestic jurisdiction" of Member States. This provision undeniably sets limits to the Organization's action in this sphere. To be sure, in so far as a specific question of human rights has become the subject of a standard-setting instrument drawn up under the auspices of the Organization, that question is no longer exclusively within the domestic jurisdiction of Member States that are parties to such a legal instrument. Furthermore, if we have regard to Article I, paragraph 2 of the Constitution, concerning the methods by which the Organization is to realize its purpose, we find that these methods consist essentially in promoting: the Organization must "collaborate in the work of advancing the mutual knowledge and understanding of peoples", "give fresh impulse to ... the spread of culture" and "maintain, increase and diffuse knowledge". Promotion methods of this

(1) 18 C/Resolution 11.1, paragraphs 24 and 25.

(2) 19 C/Resolution 100, paragraph 7.

(3) 19 C/Resolution 12.1, Part II, Preamble.

kind could be considered equally appropriate in the sphere of human rights in Unesco's fields of competence and therefore in the procedures for examining communications relating to human rights. The act of promoting human rights within Unesco's fields of competence, even though it cannot transform the Organization into an international tribunal, could nevertheless enable it to act by means of study, examination, investigation and conciliation. The Organization should therefore seek primarily to put its services at the disposal of Member States to help them to overcome the difficulties revealed by communications on human rights; but, in doing this, it does not impose measures of any kind, since it cannot in the event take any binding decision relating to an alleged violation of human rights without intervening in the domestic jurisdiction of Member States.

## 2. Human rights falling within Unesco's spheres of competence

131. As defined by its Constitution, Unesco's competence extends to the fields of education, science and culture, and also to that of communication, and it is by reference to these fields that the human rights which fall within the Organization's sphere of competence must be defined.

(a) They are, firstly, the human rights which constitute the very source and mainspring of human activities in the fields of education, science, culture and communication, namely, the following, as expressed in the Universal Declaration of Human Rights: the right to education (Article 26), the right to share in scientific advancement (Article 27), the right freely to participate in the cultural life of the community (Article 27), and the right to information, which includes, in particular, freedom of opinion and expression (Article 19).

(b) These human rights - which are the foundation of Unesco's competence - are necessarily compounded by other human rights, namely, inter alia, freedom of thought and conscience, freedom to seek, receive and disseminate information and ideas, and the right to intellectual property.

(c) Finally, the question arises whether, in order to ensure respect for the human rights which are the mainspring of Unesco's competence, it may not be necessary to provide personal protection for those through whom these rights are actualized; whether, in other words, Unesco should not contribute to the personal protection of teachers and educators, scientists, writers and artists, journalists in the widest sense of the term, etc., by calling for observance, in particular, of the prohibition of torture and inhuman and degrading treatment, of procedural safeguards in lawsuits, and, in particular, of the rights of defence and freedom of association claimed by the cultural organizations of artists, teachers, students, writers, scientists, journalists, etc.

132. Although there can be no hesitation about human rights in the first category, nor, probably, about those in the second category, one might well inquire just how far Unesco's competence should extend in covering human rights in the third category. Since human rights form a whole, does it not follow that, in seeking to protect those through whom rights in the first category are actualized, Unesco will ultimately include all human rights in its fields of competence, which would place the Organization in competition with the United Nations and with certain Specialized Agencies, such as the ILO? One may also wonder whether this tendency does not harbour a risk of Unesco's being transformed into an organization for the defence of certain categories of people who would, as a result, enjoy special privileges in comparison with other categories.

The same question arose in similar terms for the International Labour Organization, concerning freedom of association, which is to ILO what human rights in the above-mentioned first category are to Unesco. In this connexion, it will be noted that the organs of ILO are tending more and more to emphasize the intrinsic bond between human rights which belong specifically to its sphere of competence and other human rights, without thereby turning itself into an organization for the protection of certain categories. For example, ILO will adjudge itself concerned and competent in the event of the arrest and torture of a trade union member, if, and to the extent that, such violations of human rights have been inflicted on him in his capacity as a trade union member.

### 3. Rules of law applicable in the consideration of communications

133. Since the immediate legal basis of Unesco's competence in the field of human rights rests on its Constitution, it is in the Constitution itself that a definition should be sought of the rules of law applicable in the consideration of communications. In this connexion, Article I of the Constitution merely stipulates that human rights must be respected, without giving a more detailed definition of these rights. It is accordingly in the major instruments elaborated within the United Nations system, to which Unesco belongs, that the applicable rules of law might be sought, and firstly in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, since these instruments contain principles to whose fulfilment the Organization is called on to contribute. The action of the Organization in considering communications might also be guided by the instruments enacted by its own organs, and in particular its Conventions and Recommendations; however, these will then have to be interpreted, not as binding rules (where the State concerned has not ratified the convention in question) but as principles capable of contributing to the interpretation of human rights falling within Unesco's sphere of competence.

#### B. PROCEDURE TO BE FOLLOWED

##### 1. Sources of communications

134. Communications concerning human rights in Unesco's fields of competence may originate either from a State, or from a private individual, a group of individuals or a non-governmental organization.

135. No restriction can be imposed on the right of a Member State to raise before the Executive Board a case or a question connected with human rights. In particular, it will not have to demonstrate the existence of any legitimate interest in so acting, since its communication is justified by the fact that it is a member of the Organization. In thus referring to the competent organs of the Organization a case or a question in the field of human rights which concerns another State, the first State is in no sense assuming the rôle of an accuser, such as would oblige it, in the proceedings which follow, to act in any way like an attorney general.

136. Where a private individual is concerned, his interest in submitting a communication to the Organization concerning a case or question in the field of human rights may be more or less direct. In this connexion it will be for the Executive Board to decide how far it intends to recognize the capacity of private individuals to act, and hence to refer a case or question to the Organization in due form. In this connexion, the following gradations might be considered:



- (i) the right of a direct, immediate victim of an alleged violation of human rights to refer the matter to the Organization will probably not be contested;
- (ii) an indirect victim or a potential victim could probably also furnish proof of his interest in so acting;
- (iii) the question arises chiefly in the case of private organizations which, apart from situations in which they are themselves direct, indirect or potential victims of violations of human rights, believe that they should place before the Organization cases and questions relating to respect for human rights. In one sense, respect for human rights throughout the world is everyone's business, and therefore everyone should be able to refer a case or question concerning human rights to the Organization in due form, without having to prove the existence of an interest in so acting.

Between such "popular" action and action confined to victims alone, a whole range of solutions is possible. Common sense, together with standard practice in most Member States, suggest that the possibility of submitting communications to the Organization should be open to private individuals and non-governmental organizations that furnish evidence that they have a legitimate interest in so acting. Such a legitimate interest exists, for example, when the communication concerns the case of an individual who is a member of the organization in question, or when the objective of that organization is precisely the defence of those human rights whose violation is alleged by the communication.

## 2. Consideration of receivability

### (a) Conditions governing receivability

137. There is at present a sort of consensus on the conditions which a communication concerning human rights must fulfil in order to be regarded as "receivable" (admissible), and hence eligible for consideration in respect of the substance of its allegations. As indicated in paragraph 68 et seq. above, such conditions are basically that:

- (i) the communication must not be anonymous;
- (ii) the communication must not be the same as another communication which is already pending, or which has been submitted to another international authority;
- (iii) the communication must not be incompatible with the fundamental principles of the Organization, the Charter of the United Nations, the Universal Declaration of Human Rights and the other instruments which are applicable in the field of human rights;
- (iv) the communication must not be manifestly ill-founded;
- (v) the communication must not be offensive, nor must it be an abuse of the right to submit communications;
- (vi) the communication must be submitted within a reasonable time-limit following the facts which constitute its subject-matter.

138. However, the question arises whether the authors of communications concerning cases and questions connected with human rights should be required to observe the rule, standard in general international law, that all available domestic remedies must first be exhausted. The table contained in Annex I shows that this rule, which is central to general international law, is not enforced by all international agencies for human rights. Indeed, even those agencies which do enforce it take account of the exceptions provided for by international law: non-existence of effective remedies, excessive length of the procedure, remedies which are not commensurate with the subject of the communication, etc. It may be thought that the formal introduction of the rule concerning prior exhaustion of domestic remedies into the new procedure would have the effect not only of weakening the Organization's ability to act, but above all of stamping the new procedure with a certain judicial character. However - and resolution 12.1 emphasizes this - Unesco is not, and cannot become, an international human rights tribunal.

(b) Organ competent to decide on the receivability of communications

139. The table contained in Annex I shows that hitherto Unesco has been alone in entrusting its Director-General with sole responsibility for deciding whether the conditions in regard to receivability have been fulfilled. Admittedly, this takes place under the supervision of the Committee on Conventions and Recommendations, but the latter intervenes only in the event of uncertainty, and, in any case, in no sense to endorse the Director-General's decision concerning the receivability of the communication in question. It is open to question, whether, in this field too, Unesco should not draw on the rules in force in other organizations, and entrust the power to consider the receivability of communications not to the Secretariat, but to another organ of the Organization. In that event, which organ might be chosen? One possibility would be for this rôle to be entrusted to the Committee on Conventions and Recommendations, or, preferably, to a small working group set up by that Committee.

(c) Procedure for consideration of receivability

140. Since only receivable communications should be considered in substance in co-operation with the States concerned, it is important to ensure that they are not bothered with communications which do not fulfil all the conditions governing receivability. The organ competent to take a decision on this subject should therefore be in a position to supplement the dossier on each communication with any relevant information which enables it to make a full check on the receivability of that communication. In practice, if that organ were independent of the Secretariat, it should be able to instruct the latter to collect additional information concerning the conditions of receivability, both from the author of the communication and, if necessary and in exceptional cases, from the State concerned. Similarly, it should be able to give a hearing for that purpose, and, if the occasion arises, for that purpose alone, to the author of the communication and, if it so desires, to the representative of the State concerned.

3. Consideration of receivable communications

141. The resolutions of the General Conference suggest, without necessarily stipulating, that different procedures should be established for the consideration of communications relating to cases, on the one hand, and questions, on the other, concerning the exercise of human rights. This distinction is not new, since it appears in ECOSOC resolution 728 F (see paragraphs 25 *et seq.* above). The same criterion distinguishes ECOSOC resolutions 1235 and 1503, which supplement the above-mentioned resolution 728 F. Before the Inter-American Commission on Human Rights,

the division into "cases" and "questions" concerning human rights makes it possible to distinguish between the individual stage of the procedure - during which individual communications are considered as such - and the collective stage, during which consideration is given to the general human rights situation in the country concerned. The precedents which have just been recalled show, moreover, that the procedure for cases has more legal, and fewer political, aspects than the procedure for questions. It is in the light of this experience that the following considerations are put forward.

(a) Procedure to be followed for the consideration of cases concerning the exercise of human rights

142. The communications in question will, by definition, be those which have been declared receivable and which concern individual cases relating to human rights falling within Unesco's fields of competence. It seems that their consideration should be conducted not in a spirit of penal law, as if it were a matter of judging, and hence of acquitting or condemning the State presumed guilty, but bearing in mind the responsibility for the advancement and promotion of human rights which is incumbent on Unesco by virtue of its Constitution. In other words, the aim should doubtless be to enter into a dialogue with the State concerned in order to help it, by appropriate means, to surmount those obstacles to ever greater respect for human rights which are constituted by the particular cases regarded as receivable.

143. The methods to be used to that end are probably not susceptible of rigorous definition; it should be left to the competent organ to decide how the substance of each particular case should be considered, in the light of its attendant circumstances; thus, direct contacts might be established with the competent authorities of the State, for example, by a good offices mission undertaken by a representative of the Director-General or by one or more members of the competent organ. The spirit of good offices and conciliation which would necessarily inspire the action of the competent organ might perhaps lead the Executive Board, should these direct contacts prove of no avail, to entrust a specific conciliation mission to the Conciliation and Good Offices Commission which is provided for in the Protocol to the Convention against Discrimination in Education, and which would examine the case, mutatis mutandis, under the terms of the Protocol. To make this possible, it would doubtless be advisable in every case to obtain the prior agreement of the State concerned, as well as, in a general manner, the agreement of the Commission itself and of the General Conference, to such a broadening of the Commission's competence.

144. As regards the organ competent to enter into and develop a dialogue with the State concerned, as outlined above, the experience acquired in this field by the Committee on Conventions and Recommendations in Education appears to militate in favour of such a broadening of that Committee's terms of reference. It would perhaps be desirable to make a suitable amendment to the name of the Committee, e.g. the Committee on Human Rights and Conventions and Recommendations in Education. In any case, it would be for the Committee to work out suitable rules of procedure for the performance of its duties, subject to approval by the Executive Board.

145. It is obvious that none of the foregoing can or should weaken the authority of the Director-General when he intercedes personally with any particular Member State concerning a case or a question relating to the exercise of those human rights which fall within the sphere of competence of Unesco (in this connexion, see paragraphs 28 et seq. above). The implementation of the new procedures must in any case take account of this intercessory rôle which falls to the Director-General. It might even be asked whether it would not be in keeping with the spirit

of conciliation which might guide them if these new procedures were to lay greater weight on the Director-General's rôle.

(b) Procedure to be followed for the consideration of questions concerning human rights

146. The proper forum in which to discuss "questions" concerning human rights would doubtless be the Executive Board itself, meeting in private. The Board's task would be for example to consider any reports on the general human rights situation in Unesco's fields of competence which the Committee on Conventions and Recommendations was led to prepare on the basis of its examination of individual cases. It would thus be for the body with competence to examine individual cases to correlate them and refer them, where necessary, to the Executive Board in synoptic form as a "question" relating to human rights.

147. A second category of questions would be those which a Member State felt it its duty to submit to the Executive Board for consideration. Nothing should hinder the Executive Board from referring such questions to the Committee on Conventions and Recommendations for a decision on whether they do not really involve a series of individual cases (in which event they should be examined along the lines described above), or for the Committee's opinion on what procedure to follow in considering them.

148. Generally speaking, the procedure to be followed in regard to these categories too should be infused with the desire to initiate a dialogue so as to overcome the obstacles to co-operation between Unesco and the State in question raised by questions relating to human rights.

4. Settlement of the affair

149. Whether it is a "case" or a "question" concerning human rights in Unesco's fields of competence, consideration of the affair cannot terminate in a binding decision since the Organization has no competence to act in this way. On the other hand, there is no provision in its Constitution which bars it from preparing and publishing reports and studies on matters which fall within its purview. This may accordingly apply also to "cases" and "questions" concerning human rights. Here again, the practice of, and the rules in force in, other international organizations, summarized in the table in Annex I, could give a lead to Unesco.

150. In "cases" concerning human rights, it is open to question whether the Committee on Conventions and Recommendations should not, in the event of its offer of good offices and attempts at conciliation proving of no avail, inform both the government in question and the author of the communication of its findings and observations, at the same time formulating, where appropriate, suitable recommendations to the government. These confidential documents could be summarized, in a form to be decided, in the general report which the Committee would make each year to the Executive Board.

In the case of "questions" concerning human rights, it would no doubt be the responsibility of the Executive Board to decide in each particular instance if, and to what extent, the report prepared on the subject, following consideration in private meeting, could be made public.

5. Co-ordination of Unesco's procedures with other procedures for the examination of communications

151. In 19 C/Resolution 12.1, the General Conference invited the Executive Board and the Director-General to continue to establish, as part of the procedures

which might be introduced for examining cases and questions concerning the exercise of human rights, "close co-operation and co-ordination with the relevant United Nations organs so as to take advantage of their work and the lessons that can be learnt from them in this field" (paragraph 10(c)). The problem thus raised is not a new one for Unesco, but because of the many procedures which now exist within the United Nations system (see Annex I), it takes on a new dimension, in theory if not in actual practice.

(a) Unesco's present practice

(1) "Cases"

152. The procedure laid down in 77 EX/Decision 8.3 does not oblige Unesco to inform the United Nations or other Specialized Agencies of communications received by the Organization concerning the exercise of human rights. Accordingly, communications received by the Organization, or information collected by it in this field, have never been officially transmitted to the Secretary-General of the United Nations unless the Director-General has been invited to do so by an ad hoc decision.

153. This occurred in the case of decision 8.2 adopted by the Executive Board at its 93rd session concerning Chile. In paragraph 14, this decision invites the Director-General to inform the Secretary-General of the United Nations of communications received both by the Executive Board and by himself, and to co-operate fully with the Secretary-General in any steps which he might take to investigate those complaints. This decision was subsequently confirmed by decision 10.1, adopted by the Executive Board at its 95th session.

In accordance with this decision, the Director-General has transmitted communications containing complaints about Chile to the Secretary-General of the United Nations on fourteen occasions (14 February 1974, 2 April 1974, 10 May 1974, 20 June 1974, 19 July 1974, 10 September 1974, 20 October 1974, 30 December 1974, 13 January 1975, 26 April 1975, 12 September 1975, 12 December 1975, 23 April 1976 and 7 September 1976).

To date, none of these letters of transmittal has been the subject of comment by the Secretary-General of the United Nations nor has their receipt even been acknowledged by him.

154. Communications addressed to Unesco which do not come under the procedure established by 77 EX/Decision 8.3, but which are the responsibility of another organization in the United Nations system, do not seem to be covered by any clearly defined practice. The principle followed by the Secretariat in this instance, and with very few exceptions, is to inform the author of the communication that the violation brought to its attention does not fall within Unesco's purview but within that of another United Nations body, without stating, however, which body this might be. It does not seem, in fact, that the Organization feels itself able to assume the right to attribute or even suggest competence in this field.

155. A similar practice seems to be followed by United Nations agencies with regard to Unesco since it is a fact that Unesco has never received from the United Nations or any of its Specialized Agencies communications relating to its fields of competence.

156. As regards regional intergovernmental authorities for the protection of human rights, no arrangements have been made for co-operation with Unesco in this field.

(11) "Questions"

157. The procedure for the examination of questions, which involves action by the Organization's decision-making bodies, i.e. the Executive Board and General Conference, has been used, to date, in two instances viz. that of Chile and that of the occupied Arab territories. These two "questions" have been the subject of the usual exchange of documentation between the various agencies of the United Nations system, this documentation including, in particular, the decisions and resolutions on these matters adopted by their governing bodies.

The Secretariat of Unesco has also communicated to the Director of the United Nations Division of Human Rights the reports prepared on these "questions" for the Executive Board and the General Conference, together with the relevant decisions and resolutions adopted by them. A special exchange of documents was also arranged in this connexion with the International Labour Office.

158. Unesco's contacts with regional intergovernmental organizations have likewise been limited to specific "questions". The question of Chile, for example, gave rise to an exchange of documentation with the Organization of American States (OAS), whilst the League of Arab States and the Arab Educational, Cultural and Scientific Organization sent the Director-General communications relating to the question of the occupied Arab territories.

(b) Provisions for the co-ordination of procedures

159. Despite the existence of numerous procedures for examining communications relating to cases and questions concerning human rights, duplication of effort and situations in which there has been conflicting competence in this field have so far been rare. As far as "questions" are concerned, at most only three such questions have arisen: there was the situation in the Dominican Republic in 1965 when three bodies, from differing legal starting-points, all found themselves involved in action for protection of human rights, viz. the Inter-American Commission on Human Rights, the personal representative of the Secretary-General of the United Nations and the delegate of the International Committee of the Red Cross; there was the "Greek affair" arising out of the coup d'état in April 1967, which set in motion nearly all the international procedures for the examination of communications; lastly, there was the "Chilean affair" of 1974 which was of particular concern to the United Nations Commission on Human Rights, the constitutional bodies of ILO (complaints procedure) and the Inter-American Commission on Human Rights.

Where communications concerning "cases" are concerned, overlapping of competence has occurred in very rare instances (mention might be made, for example, of practically the same complaints concerning violation of the freedom of association being examined simultaneously by the bodies of the European Convention on Human Rights and ILO's Committee on Freedom of Association), but this has not raised any problems and, above all, has been in no way prejudicial to the interests of the authors of those complaints, but in fact quite the reverse.

160. It should further be stressed that most of the regulations laying down the various procedures for examining communications themselves provide ways of avoiding the simultaneous examination of one and the same communication by two or even more international bodies. Article 5, paragraph 2 of the Optional Protocol to the International Covenant on Civil and Political Rights for example states that "The Committee shall not consider any communication from an individual unless it has ascertained that...the same matter is not being examined under another procedure of international investigation or settlement". A similar provision is to be found in

the regional human rights conventions (European Convention, Article 27, paragraph 1 b; American Convention, Article 46, paragraph 1 c).

161. Unesco's procedures for examining communications could reasonably be supposed to conflict at the very most either with the procedure established by the Optional Protocol to the Covenant or with the procedure outlined in ECOSOC resolution 1503. In the first instance, however, the provision in Article 5, paragraph 2 of the Protocol mentioned above seems to provide a satisfactory solution, whilst in the second case, any conflict would seem to be avoided by paragraph 4(a) in resolution 1(XIV) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities which states: "Communications shall be inadmissible if their admission would prejudice the functions of the Specialized Agencies of the United Nations system".

162. Nevertheless, although these legal provisions make it possible, basically, to avoid conflict between organizations in the examination of communications, they do not provide for co-operation between these organizations in the field covered by the present study. Organization of such co-operation between Unesco and the bodies of the United Nations system with competence for communications could form part of the implementation of paragraph 10 (a) of resolution 12.1, adopted by the General Conference at its nineteenth session, which invites the Executive Board and the Director-General "to examine with particular attention the general situation with regard to respect for human rights throughout the world, in Unesco's fields of competence".

Specific proposals for the establishment of co-operation in this matter could perhaps be examined at the first meeting of directors of human rights departments and divisions from the secretariats of the various international organizations, which Unesco intends to organize on 30 June and 1 July next to co-ordinate activities relating to the teaching of human rights. Precise measures for co-ordination and co-operation in the matter under discussion could be proposed by the Director-General to the Executive Board after this meeting and also in the light of the rules which the Human Rights Committee of the International Covenant on Civil and Political Rights is going to draw up very shortly for implementation of the Optional Protocol to the Covenant.

ANNEX I

COMPARATIVE TABLE SHOWING THE PRINCIPAL PROCEDURES FOR  
EXAMINING INDIVIDUAL COMMUNICATIONS RELATING TO HUMAN RIGHTS

Procedure	Immediate legal basis for the procedure	Human rights under consideration	Source of communication (alleged victim, other person, NGO)	Competent bodies composed of governments (G) or experts (E)	Body having competence to consider the admissibility of the communication	Need for available domestic remedies to have been exhausted first (yes or no)	Settlement of the affair (excluding any political examination and settlement)	Number of communications per year (average)
(1) UN Covenant on Civil and Political Rights, 1966, and Optional Protocol	<u>treaty</u> (in force but not yet applied)	Civil and political rights (Articles 6 to 27 of the Covenant)	Victim	- Human Rights Committee (E) - <u>ad hoc</u> conciliation commission (E)	Human Rights Committee	Yes	Findings concerning the affair	Not yet known
(2) Procedure as laid down by ECOSOC resolution 1503	ECOSOC resolution	"Human rights and fundamental freedoms"	Victim Other person NGO	- Sub-Commission on Prevention of Discrimination and Protection of Minorities (E) - UN Commission on Human Rights (G) - ECOSOC (G)	Sub-Commission's Working Group	Yes	Report on whether a "consistent pattern of gross violations" exist in the country concerned	20,000 - 30,000
(3) Convention on the Elimination of All Forms of Racial Discrimination (1965) (Article 14)	<u>treaty</u>	Racial discrimination in the enjoyment of human rights and fundamental freedoms (Articles 1 and 5 of the Convention)	Victim	- Committee on the Elimination of Racial Discrimination (E) - Conciliation Commission (E)	Committee on the Elimination of Racial Discrimination	Yes	Suggestions and recommendations by the Committee	Article 14 is not yet in force
(4) Special ILO procedure for the protection of the freedom of association	- ECOSOC resolution - Decisions of the ILO Governing Body	Freedom of association (as defined in the ILO Constitution and Philadelphia Declaration)	Associations of workers or employers, victims or international organizations of which the aggrieved organizations are members	- Governing Body's Committee on Freedom of Association (Tripartite) - Fact-Finding and Conciliation Commission on Freedom of Association (E)	Committee on Freedom of Association	No	Reports by the Committee and (where appropriate) report by the Commission	30 to 40



Procedure	Immediate legal basis for the procedure	Human rights under consideration	Source of communication (alleged victim, other person, NGO)	Competent bodies composed of governments (G) or experts (E)	Body having competence to consider the admissibility of the communication	Need for available domestic remedies to have been exhausted first (yes or no)	Settlement of the affair (excluding any political examination and settlement)	Number of communications per year (average)
(5) Procedure before the OAS Inter-American Commission on Human Rights	- Resolutions of the meeting of consultation of the Ministers for Foreign Affairs of the OAS and of the Inter-American Conference - Resolutions of the OAS Council	Human rights listed in the 1948 American Declaration of the Rights and Duties of Man	Victim Other person NGO	Inter-American Commission on Human Rights (E)	Inter-American Commission on Human Rights	(a) ordinary procedure - no (b) special procedure - yes	(a) report on the human rights situation in the country concerned (b) report on the affair in question and resolution by the Commission in both cases	300-400
(6) European Convention on Human Rights of 1950	treaty	Civil and political rights (Articles 2 to 18 of the Rome Convention)	Victim	- European Commission of Human Rights (E) - Committee of Ministers of the Council of Europe (G) - European Court of Human Rights (E)	European Commission of Human Rights	Yes	- Decision (binding) by the Committee of Ministers of the Council of Europe - Judgement (binding) by the European Court of Human Rights	300-400
(7) American Convention on Human Rights of 1969	treaty	Civil and political rights (Articles 3 to 25 of the Convention of San José, Costa Rica)	Victim	- Inter-American Commission on Human Rights (E) - Inter-American Court of Human Rights (E)	Inter-American Commission on Human Rights	Yes	- Report by the Inter-American Commission on Human Rights - Judgement (compulsory) by the Inter-American Court of Human Rights	Not known Convention not yet in force
(8) Unesco procedure	Decision of the Executive Board	Human rights in the fields of education, science, culture and communication	Victim Other person NGO	Committee on Conventions and Recommendations in Education	Secretariat	No	- Report by the Executive Board's Committee on Conventions and Recommendations	About one hundred

ANNEX II

UNITED NATIONS EDUCATIONAL,  
SCIENTIFIC AND CULTURAL ORGANIZATION

EXECUTIVE BOARD

Hundredth Session

COMMITTEE ON CONVENTIONS AND RECOMMENDATIONS IN EDUCATION

PROCEDURE FOR HANDLING COMMUNICATIONS ON SPECIFIC CASES INVOLVING  
HUMAN RIGHTS IN EDUCATION, SCIENCE AND CULTURE

Note prepared by the Secretariat

SUMMARY

At its 99th session, the Executive Board invited the Committee on Conventions and Recommendations in Education to review its current procedure, including methods of work and of reporting to the Executive Board, with a view to making recommendations for improvement where necessary.

This document has been prepared by the Secretariat, at the request of the Chairman of the Committee, in order to assist the Committee in its examination of this question.

Introduction

1. The Executive Board, at its 99th session, adopted a decision under items 9.4 and 9.5 of the agenda whereby, in paragraph 8, it "Invites the Committee on Conventions and Recommendations in Education to review its current procedure, including methods of work and of reporting to the Executive Board, with a view to making recommendations for improvement where necessary". Although not explicitly stated in this paragraph, it is clear from the context of the decision that the procedure in question is the procedure for handling communications on individual cases involving human rights in education, science and culture, as laid down by 77 EX/Decision 8.3 adopted by the Board.

2. In order to assist the Committee in its examination of this question, the Secretariat, at the request of the Chairman of the Committee, has prepared the following document, which is in five parts:

- I. Background to the question, up to the adoption of 77 EX/Decision 8.3.
- II. Implementation of 77 EX/Decision 8.3 by the Director-General.
- III. The Committee's practice and methods of work.
- IV. The Committee's methods of reporting to the Board.
- V. Comments and suggestions:
  - (a) submission of reports and examination of them by the Board;
  - (b) time taken by the procedure;
  - (c) content of communications;
  - (d) confidential nature of the Committee's deliberations.

I. Background

3. The Executive Board took its first decisions on this matter at its 29th and 30th sessions. Both these decisions were based on recognition of the facts of the situation and of the legal position.

4. The facts of the situation were that the Organization was receiving communications alleging violation of certain human rights and that this raised the question of the procedure to be adopted for handling such communications. 29 EX/Decision 11.3 contains the following preambular paragraph:

"Considering that the Chairman of the Board and the Director-General receive communications from private persons or associations alleging violations by States, members or non-members of Unesco, of certain human rights and, in particular, of educational and cultural rights."

5. In 30 EX/Decision 11 the Executive Board noted "that the Organization frequently receives communications from private persons or non-governmental organizations complaining of certain acts which appear to them to be contrary to the aims and principles of Unesco".

6. Recognition of the legal position was expressed in the following terms in 29 EX/Decision 11.3:

"Noting that, having regard to the present provisions of the Constitution and regulations of the Organization, no cognizance can be taken of communications from private persons or associations alleging violations by States, members or non-members of Unesco, of certain human rights and, in particular, of educational and cultural rights".<sup>(1)</sup>

7. Having examined a study on this subject prepared by the Director-General (30 EX/22), the Executive Board took the following decisions:

"1. The Director-General will transmit to the Chairman of the Executive Board complaints received by the Organization drawing attention to acts which appear to be contrary to the aims and principles of Unesco, having first acknowledged receipt of them and informed the senders that he was forwarding them to the Chairman of the Executive Board;

2. The Chairman of the Executive Board will examine these complaints in consultation with the Bureau;

3. The Chairman will submit to the Executive Board those complaints which seem to him to call for some action by the Organization;

Decides to review this procedure in the light of experience at the next session."

8. The Board further took note at the same session of two complaints addressed to the Director-General by an international non-governmental organization, but declared itself "incompetent to take any action regarding them".

9. Despite the implication in the final paragraph of 30 EX/Decision 11 that the Board would shortly re-examine the question, the situation created by that decision remain unchanged. The Bureau of the Board, however, gradually ceased to take cognizance of communications received by the Director-General and transmitted to the Chairman of the Board.

10. At its 34th session the Executive Board invited the Director-General to study "the possibility of proposing measures... to provide machinery for appeal to an international authority in the event of violations of educational and cultural rights". This study (37 EX/12) was submitted to the Executive Board, which, at its 38th session, while reaffirming the importance of this matter decided to postpone any decision on the matter pending adoption by the General Assembly of the draft international covenants on human rights (38 EX/Decision 6.2).

11. The question was not examined further until the 77th session of the Executive Board, in 1967, when Decision 8.3 was adopted. Figures prepared at that time showed that, between 1960 and 1967, 52 complaints had been transmitted to the Chairman of the Board in accordance with 30 EX/Decision 11. These complaints were made up as follows:

18 were based on Article 19 of the Universal Declaration on Human Rights, dealing with the right to information and freedom of expression;

25 were based on Article 26, dealing with the right to education;

- (1) This statement of the position is reiterated, with certain variations, in the following subsequent resolutions of the Board concerning this matter: 77 EX/Decision 8.3, paragraph 4 (see Annex); 93 EX/Decision 8.2, paragraph 7; 98 EX/Decisions 9.4, 9.5 and 9.6, paragraph 11.

5 were based on Article 27, dealing with the right to participate freely in the cultural life of the community; one complaint was based simultaneously on Articles 19, 26 and 27.

12. During the same period, 20 other complaints had also been transmitted to the Chairman for information, referring to facts which appeared to be contrary to the aims and principles of Unesco, although the rights involved were not those defined in Articles 19, 26 and 27 of the Universal Declaration.

13. At the 77th session of the Executive Board, the Chairman brought to its attention a study prepared by the Secretariat in accordance with a request expressed by the Board at its 76th session following a proposal that the matter be included in the Board's agenda.

14. In this study, entitled "Procedure for handling communications on individual cases involving human rights in education, science and culture" (document 77 EX/29), the Secretariat, having briefly described the background to the question, informed the Executive Board of the adoption by the United Nations General Assembly of the Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights, the former dealing, in its Articles 13, 14 and 15, with the right to education and culture and the latter, in its Article 19, guaranteeing freedom of expression and the right to information<sup>(1)</sup>. In this study the Secretariat also described the procedure followed by the United Nations Commission on Human Rights for handling communications involving human rights.

15. Having examined this study, the Board adopted 77 EX/Decision 8.3, the full text of which is reproduced in Annex I.

16. That decision is still in force. Notwithstanding the fact that the Executive Board later adopted other decisions concerning communications involving human rights<sup>(2)</sup>, the Board, at its 98th session<sup>(3)</sup>, decided that the terms of reference of the Committee on Conventions and Recommendations in Education should include the examination of "communications addressed to Unesco in connexion with specific cases alleging a violation of human rights in education, science and culture (77 EX/Decision 8.3)" and also reaffirmed "that the Committee's procedure shall continue to be that laid down in 77 EX/Decision 8.3, which was based on the procedure defined in resolution 728 (XXVIII) of the Economic and Social Council".

## II. Implementation of 77 EX/Decision 8.3 by the Director-General

17. 77 EX/Decision 8.3 is addressed in the first instance to the Director-General. Paragraph 6 of the decision requests the Director-General "in accordance with the said procedure" /as stipulated in Economic and Social Council resolution 728/ "to bring the communications in question to the notice of the Special Committee on Discrimination in Education", whose terms of reference were extended for this purpose.

18. Communications to be transmitted to the Committee in accordance with this procedure were stated, in paragraph 5 of the decision, to be those "addressed to Unesco in connexion with individual cases alleging a violation of human rights in education, science and culture...".

19. The Director-General is therefore responsible in the first place for deciding whether a communication received comes within the scope of Decision 8.3 and,

(1) These Covenants came into force on 3 January 1976 and 23 March 1976 respectively.

(2) 93 EX/Decision 8.2, 95 EX/Decision 10.1, 96 EX/Decision 8.2. See Note 2 to paragraph 30 below.

(3) 98 EX/Decisions 9.4, 9.5, 9.6.

in order to do so, for determining: (a) whether the communication relates to one or more individual cases<sup>(1)</sup>, (b) whether human rights are involved and (c) whether the human rights involved are rights "in education science and culture"<sup>(2)</sup>.

20. The Director-General is therefore required to carry out a preliminary analysis of each communication received. The decision arrived at is not final. In one case, where the Director-General's decision was questioned, the matter was put to the Committee, and the result of the vote confirmed the Director-General's interpretation<sup>(3)</sup>.

21. If the Director-General is of the opinion that all or part of the matter contained in a communication fulfils the conditions laid down by Decision 8.3, he must then move on to the second stage of the procedure.

22. Paragraph 5 of the decision stipulates that communications shall be handled in accordance with the prescribed procedure "except in cases where the author of the complaint does not wish that his name should be mentioned", which means, in practice, that the Director-General has to engage in correspondence with the author (or authors) of the communication in order to ascertain the position on that point. The Director-General draws attention, in such a case, to the terms of Decision 8.3, the full text of which he encloses with his letter, indicates the stages of the procedure and asks the author whether he wishes the procedure to be applied to his communication.

23. For it is important that the author of the communication should be fully informed at this stage of the procedure which will ensue, since Decision 8.3 merely states that the procedure shall be the same as that stipulated in Economic and Social Council resolution 728. The procedure in question requires the Secretary-General (and hence the Director-General) "to furnish each Member State concerned with a copy of any communication concerning human rights which refers explicitly to that State... and to ask governments sending replies to communications brought to their attention whether they wish their replies to be presented to the Commission in summary form or in full"<sup>(4)</sup>.

24. The consequences of this procedure are twofold. Forwarding a communication to the State concerned implies that the State concerned will be informed not only of the author's identity but also of the details of the "individual cases" in question, including, in most cases, the identity of persons referred to in the communication as having suffered the alleged violations.

25. When the author has given his assent, the communication is transmitted to the State concerned and brought to the notice of the Committee. Any reply from that State is also passed to the Committee<sup>(5)</sup>.

- (1) The English version of 77 EX/Decision 8.3 refers to "individual cases". In a later decision of the Executive Board (98 EX/Decisions 9.4, 9.5, 9.6) the term "individual" is replaced by "specific".
- (2) The practice has invariably been to treat communications involving human rights in information as coming within the scope of the decision.
- (3) See 94 EX/50, paragraph 3.
- (4) Attached as annexes are a specimen letter to the author of the communication and a specimen letter to the Government concerned.
- (5) In practice, a communication is brought to the Committee's notice at a given session only if a period of approximately one month has elapsed between the date when the communication was sent to the Government of the State concerned and the date of the meeting. If this period cannot be allowed, the communication and any reply from the Government are put before the Committee at the next session.

**III. The Committee's practice and method of work**

26. The Committee met to examine communications brought to its notice under the terms of 77 EX/Decision 8.3 (or of other decisions relating to that decision during the following sessions of the Executive Board. (The number of communications placed before the Committee is shown against each session)<sup>(2)</sup>:

79th session (July 1968)	3 communications
84th session (March 1970)	5 communications
94th session (April 1974)	17 communications
94th session (May 1974)	3 communications
97th session (May 1975)	16 communications
99th session (April 1976)	29 communications

27. No indication is to be found, either in 77 EX/Decision 8.3 or in the Board's later decisions, as to the procedure to be followed by the Committee itself in respect of the communications referred to it under the terms of that decision.

28. At its first meeting, the Committee took certain decisions relating to procedure. It met privately in order to take note of communications, and stated that it proposed "should it be necessary, to meet once a year, while the Executive Board was in session, to take cognizance of any communications that might be addressed to the Director-General of Unesco". Finally, although not explicitly required to do so by 77 EX/Decision 8.3<sup>(3)</sup>, it included in a report which it made to the Executive Board on another matter<sup>(4)</sup> the following brief statement:

"At 5.15 p.m. on 23 July<sup>(5)</sup>, the Committee met privately to take note, in accordance with Executive Board's decision (77 EX/Decision 8.3) of three communications on individual cases involving human rights in education, science and culture and of the replies received from the Member States involved."

29. A similar passage appears in another report submitted to the Executive Board in 1970<sup>(6)</sup> and again in one of the two reports submitted in 1974<sup>(7)</sup>.

30. Following Decision 8.2 taken by the Executive Board at its 93rd session, the Committee, meeting in April 1974 to examine communications transmitted to it in accordance with paragraph 12 of that decision, submitted a more detailed

(1) See note to paragraph 16 above.

(2) When the Committee met in June 1972, during the 89th session, it was informed that no communications had been brought to its notice under the terms of 77 EX/Decision 8.3. See 89 EX/15, paragraphs 17 to 19.

(3) It was only in 98 EX/Decisions 9.4, 9.5, 9.6, paragraph 14 and 99 EX/Decision 9.4, 9.5, paragraph 7(c) that the Executive Board asked the Committee to report to it.

(4) 79 EX/13, paragraph 15.

(5) 1968.

(6) 84 EX/6, para. 32. The Committee also stated, in a third report (89 EX/13), that no communication under the terms of 77 EX/Decision 8.3 had been referred to it.

(7) 94 EX/11, paras. 22-23.

report<sup>(1)</sup> to the Board, listing all communications received and giving the names of their authors together with details of the information provided by the Government concerned, which was also mentioned by name<sup>(2)</sup>. No mention was made in this report, however, of the identity of the persons named in the communications received. The conclusions reached by the Committee after it had completed its deliberations were included at the end of the report.

31. The same practice was continued in subsequent reports (97 EX/36 and 99 EX/53). This procedure, however, was discussed during the 99th session of the Board, and 99 EX/Decisions 9.4, 9.5 expressly invites the Committee to review, amongst other things, "its methods of reporting to the Executive Board".

32. In addition to the procedural decisions mentioned in paragraph 26 above and the practice just described concerning the Committee's reports, during its sessions the Committee has taken a number of other decisions concerning its procedure.

33. The Committee's report 94 EX/50 states in particular that "the Chairman of the Executive Board ruled that Board members who were not members of the Committee...might attend its meetings", that "their deputies could attend in their stead if properly designated under Rule 11 of the Rules of Procedure of the Executive Board" and that "members or their deputies could also have access to the documents of the Committee"<sup>(3)</sup>. This report also states that after one member of the Committee had expressed the opinion that the Committee should meet in public session, the Committee decided that it was preferable to keep to the previous practice in that matter<sup>(4)</sup>.

34. In the same report, the Committee stated that it had noted that "its terms of reference were limited to the examination of the contents of the communications transmitted to it... and that it was not incumbent on it to take into consideration or to seek out further information, or to carry out verifications or inquiries"<sup>(5)</sup>.

35. In its report 97 EX/36, the Committee stated that it had been emphasized "that the procedure currently prescribed led to rather long delays and that in most cases the Committee was not in a position to act quickly in respect of communications received"<sup>(6)</sup>.

36. The same report also stated that it had been suggested "that in future the communications transmitted to the Committee should be accompanied by brief notes prepared by the Secretariat and giving indications with regard to the content and scope of each communication"<sup>(7)</sup>.

(1) It was only from this session onwards that the Committee submitted to the Board specific reports dealing solely with communications received involving human rights and excluding other matters falling within its terms of reference, which have since then been the subject of separate reports.

(2) Document 94 EX/50. This report contained the following statement (paragraph 15):

"The Committee also noted that paragraph 11 of 93 EX/Decision 8.2 referred to 'complaints regarding the violation of human rights' and that the communications contained in the documentation before it had been brought to its notice on the basis of that criterion, which was broader in scope than the one contained in 77 EX/Decision 8.3, which concerned 'individual cases alleging a violation of human rights in education, science and culture'".

(3) 94 EX/50, paragraph 5.

(4) Ibid. paragraph 13. See also paragraph 28 above.

(5) Ibid. paragraph 14.

(6) 97 EX/36, paragraph 13.

(7) Ibid. paragraph 19



37. However, the Committee examined its methods of work at greatest length in its report 99 EX/530. This report contains the following passage:

"43. The Committee was also informed that the Secretariat was still receiving communications, some of which after study seemed to come within the competence of the Committee, but which because of procedural time requirements could not be submitted to the Committee at its present session, either because the authors had not indicated their agreement or because those communications which had received such agreement had not been forwarded to the Government concerned in sufficient time to allow it to prepare a reply which could be communicated to the Committee at its present session.

44. The examination of the communications corresponding to the terms of reference of the Committee thus constituted a continuing process, albeit subject to the urgent need to prepare documentation for a particular session of the Committee. Bearing in mind the foregoing considerations and the fact that the Chilean Government had during the session deposited further documents which are listed in paragraph 42 above but which the Committee had not been able to study, the Committee considered that it should keep on its agenda the communications which had been submitted at the present session and that they would be further examined as necessary at its next session.

.....

46. The Committee considered that this procedure of examining certain communications twice would give it the opportunity, if necessary, of asking for additional information either from the authors of the communication or from the Government concerned"<sup>(1)</sup>.

38. The Committee also decided on the same occasion, firstly, "that in its correspondence with the authors the Secretariat should be authorized to stress the importance of supplying the Committee with as detailed information as possible on the allegations contained in their communications"<sup>(2)</sup>, and secondly, to invite the Secretariat "to transmit, from now on, to the authors of communications submitted to the Committee, copy of its reports after examination of such reports by the Executive Board"<sup>(3)</sup>.

39. The Committee furthermore decided, as regards communications concerning States not represented either on the Committee or on the Executive Board, that "it would hear their representatives, should it receive a request to that effect"<sup>(4)</sup>.

#### IV. The Committee's methods of reporting to the Board

40. It was not until the 95th and subsequent sessions of the Executive Board that the Committee's reports, which, as indicated above, dealt separately from that time on with communications received involving human rights, began to be discussed by the Board and to be the subject of its decisions.

41. It should be mentioned, in this connexion, that these reports have not until now been examined in isolation, but at the same time as other related questions on the Board's agenda, that these questions have been discussed as a whole and that the decisions taken by the Board reflect this procedure<sup>(5)</sup>.

(1) Ibid.

(2) Ibid. paragraph 46.

(3) Ibid. paragraph 49.

(4) Ibid. paragraph 10.

(5) See 95 E/Decision 10.1, 93 EX/Decisions 9.4, 9.5, 9.6 and 99 EX/Decisions 9.4, 9.5.

42. It was at the Board's 99th session in particular, however, that the Committee's methods of reporting led to problems which prompted the Executive Board to adopt the decision inviting the Committee to review the matter<sup>(1)</sup>.

V. Comments and suggestions

43. The foregoing details show that there has been a progressive change in the way in which communications involving human rights addressed to the Organization have been handled within the Organization. This evolution, which appears to have resulted from certain decisions taken by the Committee itself, as indicated above, and also from decisions taken by the Executive Board, is analysed below.

44. Recognizing the fact that more and more communications were reaching Unesco, and also aware of the constitutional and legal limitations regarding action which the Organization could take in respect of those communications<sup>(2)</sup>, the Board devised a procedure whereby it merely defined the conditions in which some of these communications would be brought to the notice of a smaller body - the Bureau of the Board and later a Board Committee - but without laying down terms of reference for that body.

45. At first the Bureau, and later the Committee, merely took cognizance of the communications transmitted to them without taking any action in the matter.

46. Although 30 EX/Decision 11 stated that the Chairman might submit certain communications to the Board itself, 77 EX/Decision 8.3 contained no such provision, and, in the absence of directives on this point, the Committee merely reported to the Board at intervals on the accomplishment of the task it had been given.

47. Until the 93rd session, neither the Chairman nor, subsequently, the Committee, placed any communication or any proposal or recommendation concerning communications before the Executive Board. Nor has the Committee or the Executive Board taken any decisions in this respect.

48. The circumstances which prompted the Executive Board to adopt 93 EX/Decision 8.2 caused the Committee, as previously stated, to modify its procedure. These circumstances also led to a change in the Executive Board's manner of dealing with the Committee's reports.

(a) Submission of reports and examination of them by the Board

49. The first of these changes concerns the form and submission of the Committee's reports. At the 94th session, for the first time, the Committee submitted a separate report to the Board dealing only with communications concerning individual cases and involving human rights. This detailed report consisted basically of two parts: firstly, a brief summary of the Committee's examination of each communication, giving the name of its author and of the State concerned and, secondly, conclusions of a general nature.

50. The difficulties inherent in the first part of this procedure gradually became apparent. One difficulty was that the Committee had to include in a report<sup>(\*)</sup> which was a public document the results of its examination, in a private meeting, of communications which were not themselves made available to the Board. Another was that the Board had to examine such a report in a public meeting.

(1) See 99 EX/SR.12, 13 and 14 (prov.).

(2) See paragraph 6 above. This matter was again discussed recently during the 99th session of the Executive Board. See 99 EX/SR.14 (prov.), paragraph 3.1 et seq.

51. While the Committee appears to have overcome its difficulty to a certain extent, the difficulty faced by the Board seems to present a more delicate problem. For how can one ensure that members of the Board, whether members of the Committee or not, do not continue in a public meeting the examination of individual cases submitted to the Committee? Furthermore, how can one ensure that no reference is made at meetings of the Board to individual cases which have not been examined by the Committee but which could have been under the procedure laid down?
52. The difficulty faced by the Board is aggravated when, as has been the case since the 95th session, the Committee's report is examined at the same time as other related questions, which do not fall within the terms of reference of the Committee and on which the Board has full documentation that is not of the same confidential nature as the communications examined by the Committee<sup>(1)</sup>. For then the question arises of the application of Rule 29 of the Rules of Procedure of the Executive Board which states that "qualified persons may be invited by the Board to address it on matters within their competence", seeing that these same persons, firstly, are not admitted to the Committee's meetings and, secondly, can send to the Organization communications which, provided the required conditions are met, will be transmitted to the Committee for examination.
53. In this connexion, it has been suggested that the Executive Board should examine the Committee's report in a private meeting and that the report would then be a confidential document containing more information. Disregarding the private nature of the entire procedure, the situation would then be analogous to that obtaining when the Board examines reports by its commissions or its other committees. The question would then arise whether the documentation made available to the Committee should not also be made available to the Board.
54. A more important question which would arise is whether, in view of the nature of the Committee's tasks, the Board could in fact re-examine all or some of the communications brought to the notice of the Committee, as it does in the case of the other committees and commissions. In view of the nature of the communications in question, which relate solely to individual cases, there may be some doubt as to whether such a procedure should be adopted.
55. Without returning completely to the procedure used before the 93rd session, another solution might possibly be to omit from the Committee's report the part relating to the examination of each complaint, while retaining, where appropriate, the part relating to conclusions of a general nature. In other words, the Committee could perhaps merely inform the Board of the number of communications examined and the number of States concerned, and would formulate any conclusions of a general nature which the situation called for<sup>(2)</sup>.
56. These conclusions could deal in particular with the action which, in the opinion of the Committee, the Board might if necessary undertake, not so much in connexion with any particular communication (the Board having always recognized that Unesco can take only limited action in this respect) but in order to deal with some general situation revealed by the communications and which, in the Committee's opinion, might call for action of some kind on the part of the Executive Board or even, should the Board think fit, on the part of the General Conference, to which the Board would refer the matter.

(1) In this connexion see 99 EX/SR.13 (prov.).

(2) It should be noted that the Committee has to date formulated general conclusions in respect of communications concerning only one Member State.

57. This procedure would have the advantage of avoiding the examination of individual cases in public meetings of the Board, whether of cases already examined by the Committee or of others, and the Board could point out that the latter category should be examined by the Committee. Under this arrangement, the Board would merely consider the conclusions and proposals of a general nature that the Committee had seen fit to submit to it. In this way, the confidential nature of the Committee's work would also be preserved.

58. The question then arises whether the examination of the Committee's report in isolation and separately from other questions on the agenda should have the effect of restricting the discussion to Board members and to the States concerned if they are not represented on the Board. A decision would also have to be taken as to whether "qualified persons" who are not Board members could invoke Rule 29 of the Rules of Procedure of the Board with a view to being authorized to speak. Should such persons be authorized to address the Board, or should they be invited to submit in writing any information they might possess on specific cases, so that they could be considered by the Committee in accordance with the procedure laid down? They might perhaps be authorized to make oral statements to the Committee.

59. The Committee itself has considered a number of questions concerning its procedure and methods of work. These questions were concerned mainly with the time taken by the procedure, the information to be included in communications and the confidential nature of discussions within the Committee.

(b) Time taken by the procedure

60. In its report 94 EX/50, the Committee noted that a member of the Committee had emphasized "that many of the communications before the Committee had been received prior to ... the date on which the Executive Board had adopted 93 EX/Decision 8.2, that a number of other communications had been received shortly after that date and that consequently the Committee was not in possession of recent information on the present situation"<sup>(1)</sup>.

61. This remark reflected a relatively new attitude on the part of the Committee, which had until then proposed to meet "should it be necessary" only once a year. The Committee referred to this problem again in its report 97 EX/36 (see paragraph 35 above)<sup>(2)</sup> and, in report 99 EX/53, it noted in its conclusions that "by reason of the procedure involved and the calendar established for the sessions of the Committee, some of the allegations presented in these various communications unavoidably go back to more than a year"<sup>(3)</sup>.

62. It cannot be denied that the procedure applied involves some delay. Each communication has to be examined by the Secretariat in order to determine whether it is admissible under the terms of 77 EX/Decision 8.3. If found to be admissible, the communication is forwarded to the interested party and, if the reply is in the affirmative, the communication is then sent to the Government concerned, which must be allowed a reasonable time in which to prepare its reply. (See paragraph 19 and following paragraphs above.)

63. It would appear to be difficult to diverge from this procedure, especially as far as the authors of communications are concerned, in view of the safeguards it provides. For such authors must be fully informed of the fact that, if they opt for the procedure that is available to them, their names and the names of all persons mentioned in their communication (who are usually living in

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(1) 94 EX/50, paragraph 25.

(2) In its conclusions, the Committee noted that "a large number of the allegations presented in these various documents go back to more than a year".

(3) 99 EX/53, paragraph 50, sub-paragraph (c).

the country concerned) will as a result become known to the authorities of that country. It is worth noting, in this connexion, that a number of individuals and even associations to whom the usual letter is sent either do not reply or reply in the negative<sup>(1)</sup>.

64. The calendar of meetings, which also gives rise to delay, is drawn up by the Executive Board itself. It should be noted, incidentally, that on two occasions the Executive Board referred reports submitted to it by the Committee to a subsequent session for examination<sup>(2)</sup>, which caused a corresponding delay in the calendar of the Committee's meetings, since, under the system then in force, the Committee was unable to meet until the Board had taken certain decisions based on those reports.

65. In view of the time needed to prepare the constantly increasing body of documentation and the Secretariat's resources, it would seem to be difficult for the Committee to meet more than twice a year, as it will do in 1976. This periodicity of meetings, which coincides with that of the principal sessions of the Board itself, would seem to be the most suitable for the sessions of the Committee, assuming that the nature and number of communications received continue to justify it.

(c) Content of communications

66. In one of its conclusions in its report 94 EX/50, the Committee pointed out that "the contents of the complaints did not permit the Committee, within its terms of reference, to make recommendations to the Executive Board".

67. The Committee referred again to this question in its report 99 EX/53, stating that "in its correspondence with the authors the Secretariat should be authorized to stress the importance of supplying the Committee with as detailed information as possible on the allegations contained in their communications". In the same report the Committee also mentioned the fact that the procedure of examining certain communications twice, which it advocated (see paragraph 37 above), would enable it, if necessary, to ask either the authors of the communication or the government concerned to supply additional information.

68. These statements appear to reflect an important evolution in the Committee's conception of its rôle. From the beginning, the procedure in force was concerned only with unsolicited communications received by the Organization and, following 77 EX/Decision 8.3, with any replies sent by the governments concerned. Even recently, in its report 94 EX/50, the Committee noted that its terms of reference "were limited to the examination of the contents of the communications transmitted to it" and that it was not incumbent on it "to take into consideration or to seek out further information, or to carry out verifications or inquiries" (see paragraph 34 above).

69. The implications of the evolution which has been set in motion merit careful examination, since they appear likely to lead in the end to a change in the very nature of the Committee's terms of reference.

70. Noting, as it did in its report 94 EX/50, that the contents of the communications (or of some of them) did not permit it to make recommendations to the Board, the Committee nevertheless drew certain conclusions from the overall situation as revealed by its examination of these communications, and these conclusions were such as to enable the Executive Board, in its turn, to decide upon its position.

(1) In other cases the communication received, although signed, bears no precise identification of the originator and no address for reply. In yet other cases the Secretariat is explicitly requested either not to enter into correspondence with the author or to do so through a third person.

(2) See 54 EX/Decision 9.1 and 97 EX/Decisions 9.2, 9.3, 9.4.

71. The idea now being suggested - that the Committee should be able to seek additional information, in accordance with rules which would have to be drawn up, providing either for both sides to state their cases in writing, following the procedure adopted for the original communications, or for the hearing of the oral testimony of witnesses, or, again, for on-the-spot investigations, etc. - would entail making substantial changes in the Committee's terms of reference and methods of work and probably increasing the means at its disposal as regards frequency and length of sessions, secretarial support, etc.

(d) Confidential nature of the Committee's deliberations

72. The present procedure appears to provide sufficient safeguards as far as Committee meetings and the preparation of documentation are concerned. It would seem, however, that the confidential nature of the Committee's work might be compromised at two later stages in the proceedings: when a report which constitutes a public Board document is being prepared and when that report is being discussed by the Board in a public meeting - which could lead to the disclosure of certain facts or statements made during a private meeting of the Committee.

73. These two stages in the procedure have been examined above, and it is important that a decision should be taken, if necessary, as to solutions which would protect the confidential nature of the Committee's deliberations more effectively.

ANNEX I

**8.3 Procedure for handling communications on individual cases involving human rights in education, science and culture (77 EX/29)**

The Executive Board,

1. Having considered document 77 EX/29 concerning the procedure for handling communications on individual<sup>(1)</sup> cases involving human rights in education, science and culture,
2. Bearing in mind the resolutions adopted by the Executive Board at its 30th session (1952) and at its 37th session (1954) postponing any final decision to a later date,
3. Having considered the procedure at present followed by the United Nations Commission on Human Rights, in accordance with Economic and Social Council resolution 723 F (XXVIII) of 30 July 1959,
4. Finds that Unesco is not authorized under its Constitution to take any measures in connexion with complaints regarding human rights, which can be entertained only in accordance with the Covenants and Protocols subscribed to by Member States;
5. Decides, therefore, that communications addressed to Unesco in connexion with individual cases alleging a violation of human rights in education, science and culture shall be handled by it in the same manner as is stipulated in Economic and Social Council resolution 728, except in cases where the author of the complaint does not wish that his name should be mentioned;
6. Requests the Director-General, in accordance with the said procedure to bring the communications in question to the notice of the Special Committee on Discrimination in Education;
7. Decides to extend the terms of reference of the Committee for this purpose;
8. Expresses the hope that the study of procedures at present being carried out by the United Nations and its Specialized Agencies will lead in the near future to a satisfactory solution.

(1) In Decisions 98 EX/9.4, 9.5, 9.6, the term "individual" in the English version is replaced by "specific".

ANNEX II

Specimen letter to the author of a communication to be  
brought to the attention of the Committee  
under the terms of 77 EX/Decision 8.3

Sir,

Upon instructions from the Director-General, I wish to acknowledge receipt of the letter dated.....which you addressed to him concerning, in part, specific cases involving human rights in Unesco's fields of competence.

The only action which could be taken by Unesco in respect of this part of your communication is that indicated under the terms of decision 77 EX/8.3 adopted by the Executive Board of Unesco at its 77th session. The text of this decision is annexed hereto.

By virtue of this decision, your communication could, after having been communicated to the government concerned, be brought to the notice of the Executive Board's Committee on Conventions and Recommendations in Education, provided you have no objection to your name (and that of your organization) being divulged.

I draw your attention to the fact that by virtue of the above-mentioned decision, only the parts of your communication relating to specific cases and involving human rights in the Organization's fields of competence will be taken into consideration by the Committee.

In this connexion, the Committee at its last meeting stressed the importance of supplying it with as detailed information as possible on allegations contained in communications.

Any reply from the government will also be laid before the Committee which is scheduled to meet at the Headquarters of the Organization in Paris on.....

I should be grateful to you if you would let me know as soon as possible whether you want the procedure described above to be applied in respect of your communication.

Yours sincerely,



ANNEX III

Specimen letter to a Member State implicated by a complaint  
under the terms of 77 EX/Decision 8.3

Sir,

I have the honour to transmit to you herewith a copy of a communication dated....., which was addressed to me by..... in connexion with, inter alia, specific cases involving human rights in the Organization's fields of competence.

In accordance with decision 77 EX/8.3, adopted by the Executive Board of Unesco at its 77th session, concerning the procedure for handling communications on specific cases involving human rights in education, science and culture, the above-mentioned communication will be brought to the notice of the Board's Committee on Conventions and Recommendations in Education. The text of this decision is annexed hereto.

In conformity with the aforesaid decision, only the parts of the communication which relate to specific cases involving human rights in the Organization's fields of competence may be taken into consideration by the Committee.

In accordance with this decision, any reply which you may wish to address to me on the communication concerned will, if you so desire, be also transmitted either in summary form or in full, whichever you prefer, to the Committee.

The next meeting of the Committee is scheduled to take place at the Headquarters of the Organization in Paris on.....

Accept, Sir, the assurances of my highest consideration.

Amadou-Mahtar M'bow  
Director-General

# Chapter 3: Discussion in the Executive Board

The Executive Board examined the study of the Director-General (document 102 EX/19) from Tuesday 3 May 1977 to Thursday 5 May 1977 at the fifth and tenth meetings of its 102nd session (Section 1: Discussion in the Executive Board).

At the end of its discussions, the Executive Board decided, on the proposal of its Chairman (102 EX/Decision 5.6.2), to set up a Working Party of 13 members to carry out an in-depth examination of the study of the Director-General in order to draw up a report containing suggestions regarding the procedures to be followed in future (Section 2: Setting up of the Working Party).

## Section 1: Discussion in the Executive Board



Executive Board Consejo Ejecutivo

EX

Conseil exécutif Исполнительный совет

執行局 المجلس التنفيذي

102nd session/102e session/102a. reunión/102-я сессия/第102届大会/ الدورة الثانية بعد المائة

Paris, 1977 25 April - 12 May 25 de abril - 12 de mayo ٢٥ أبريل/نيسان - ١٢ مايو/أيار 102 EX/SR.1-17  
25 avril - 12 mai 25 апреля - 12 мая 4月25日 - 5月12日 Paris, septembre 1977

Summary Records

Comptes rendus analytiques

Actas resumidas

Краткие отчеты

المحاضر المختصرة

摘要记录

## PARTICIPANTS

President of the  
General Conference:

Mr. Taaitta Toweett

Chairman:

Mr. Leonard C. J. Martin (United Kingdom of Great Britain and Northern Ireland)

Vice-Chairmen:

Mrs. Estefania Aldaba-Lim (Philippines)  
Mr. Paulo E. de Berrêdo Carneiro (Brazil)  
Mr. Marcel Ibinga-Magwangu (Gabon)  
Mr. Leonid N. Kutakov (Union of Soviet Socialist Republics)  
Mr. Hassan Muraywid (Syrian Arab Republic)  
Mr. Hugh Philp (Australia)

Members:

Mr. Gonzalo Abad Grijalva (Ecuador), Mr. Reginald S. G. Agiobu-Kemmer (Nigeria), Mr. Paul Yao Akoto (Ivory Coast), Mr. Arthur Bagunywa (Uganda), Mr. Werner Bahner (German Democratic Republic), Mr. Walter Arthur Burke (Barbados), Mr. Horacio J. Bustamante (Panama), Mr. Chams Eldine El-Wakil (Egypt), Mr. Gunnar Garbo (Norway), Mr. Dismas Gashegu (Rwanda), Mr. Sarvepalli Gopal (India), Mr. Advertus A. Hoff (Liberia), Mr. Charles Hummel (Switzerland), Mr. Keharsingh Jagatsingh (Mauritius), Mr. Robert B. Kamm (United States of America), Mr. Ali Fahmi Khushaim (Libyan Arab Jamahiriya), Mr. Joseph Ki-Zerbo (Upper Volta), Mrs. Eugenia Krassowska (Poland), Mr. Julio Le Riverend (Cuba), Mr. Valentin Lipatti (Romania), Mr. Vittorio Mathieu (Italy), Mr. Mahmoud Messadi (Tunisia), Mr. Porfirio Muñoz Ledo (Mexico), Mr. Timothée Ngakoutou (Chad), Mr. Jens Petersen (Federal Republic of Germany), Mrs. Maria de Lourdes Pintasilgo (Portugal), Mr. Arthur T. Porter (Sierra Leone), Mr. Majid Rahnema (Iran), Mr. Khalil Salim (Jordan), Mr. Kiyoshi Sukanuma (Japan), Mr. Sjarif Thajeb (Indonesia), Mr. Trailokya Nath Upraity (Nepal), Mr. Arturo Usler-Pietri (Venezuela), Mr. Michel Van Ussel (Belgium), Mr. Alberto Wagner de Reyna (Peru), Mrs. Yang Yun-yu (China)

Deputies:

Mr. Augustine A. Ibegbulam, for Mr. Reginald S. G. Agiobu-Kemmer (Nigeria), Mr. Michel Ahoua Kangha, for Mr. Paul Yao Akoto (Ivory Coast), Mr. Edmundo Libid, for Mrs. Estefania Aldaba-Lim (Philippines), Mr. Joachim Maser, for Mr. Werner Bahner (German Democratic Republic), Miss Ruth M. Decerega, for Mr. Horacio J. Bustamante (Panama), Mr. John Bfornebye, for Mr. Gunnar Garbo (Norway), Mr. Maheshwar Dayal, for Mr. Sarvepalli Gopal (India), Mr. Gaudenz Ruf, for Mr. Charles Hummel (Switzerland), Mr. Joseph Kumba Munguengui, for Mr. Marcel Ibinga-Magwangu (Gabon), Mr. Baboo Ranjitsingh Goordyal, for Mr. Keharsingh Jagatsingh (Mauritius), Mr. Donald R. Toussaint, Mr. William B. Jones, Mr. Constantine Warvariv, Mr. Russell C. Heater and Mr. Louis G. Sleeper, for Mr. Robert B. Kamm (United States of America), Mr. Mohamed El-Wafi, for Mr. Ali Fahmi Khushaim (Libyan Arab Jamahiriya), Mr. Joseph Bouyain, for Mr. Joseph Ki-Zerbo (Upper Volta), Mr. Czeslaw Wisniewski and Mr. Marian Ejma-Multanski, for Mrs. Eugenia Krassowska (Poland), Mrs. Rita Solis Ferreiro, Mr. Miguel Alfonso and Mrs. Gladys Martín Heredia, for Mr. Julio Le Riverend (Cuba), Mr. Paul Sararu, for Mr. Valentin Lipatti (Romania), Mr. Ludovico Carducci Artenisio, for Mr. Vittorio Mathieu (Italy), Mr. Adnen Zmerli and Miss Hayet Boussefara, for Mr. Mahmoud Messadi (Tunisia), Mr. Arturo Muñoz Ledo, Mr. Ismael Yañez, Miss María de los Angeles Lopez-Ortega and Mr. Mariano Flores Castro, for Mr. Porfirio Muñoz Ledo (Mexico), Mr. Mohamed Mahmoud Mohamedou, for Mr. Ahmed Ould Sidi Baba (Mauritania), Mr. Hermann Gründel

and Mr. Uwe Bake, for Mr. Jens Petersen (Federal Republic of Germany), Mrs. Barbara Barry de Longchamp, for Mr. Hugh Philp (Australia), Mr. Luis Sousa Lobo and Mr. Alberto de Melo, for Mrs. Maria de Lourdes Pintasilgo (Portugal), Mr. Magaji Henry and Mr. Alpha Turay, for Mr. Arthur T. Porter (Sierra Leone), Mr. Hamid Rahnema, Mr. Ghassem Khatib-Shahidi and Mrs. Soussan Raadi-Jalili, for Mr. Majid Rahnema (Iran), Mr. Abdallah Nsour, for Mr. Khalil Salim (Jordan), Mr. Chiyuki Hiraoka, for Mr. Kiyoshi Suganuma (Japan)\*, Mr. Soedjana Saplie, for Mr. Sjarif Thajeb (Indonesia), Mr. Rafael Angel Insausti and Mr. José L. Silva Méndez, for Mr. Arturo Uslar-Pietri (Venezuela), Mr. Georges-Henri Dumont and Mr. Piet Steel, for Mr. Michel Van Ussel (Belgium), Mr. Julio Ramón Ribeyro, for Mr. Alberto Wagner de Reyna (Peru), Mr. Hu Sha, Mrs. Sheng Yu, Mr. Chou Chi-chi and Mrs. Li Chia-chao, for Mrs. Yang Yun-yu (China)

Representatives  
and observers:

United Nations:

Mr. Salah Cherif  
Mrs. Manuela d'Arcy  
Mr. Santiago Quijano-Caballero  
Mrs. Henriette Taviani (Office of the United Nations High  
Commissioner for Refugees)  
Miss Jacqueline J. Granger (United Nations Development  
Programme)

International Labour Organisation:

Mr. Gerald Larrue

Council of Europe:

Mr. Roland Müller

World Bank:

Mrs. Maria Gradvohl

Ibero-American Bureau of Education:

Mr. Rémolo Botto

Arab Educational, Cultural and Scientific Organization:

Mr. Ahmed F. Sorour

Also took the floor:

Mr. Ahmed F. Sorour, Permanent Delegate for the Arab  
Educational, Cultural and Scientific Organization  
Mr. João Frank da Costa, Secretary-General of the United  
Nations Conference on Science and Technology for Development

Secretariat:

Mr. Amadou-Mahtar M'Bow (Director-General), Mr. John E.  
Fobes (Deputy Director-General), Mr. Sioma Tanguiane  
(Assistant Director-General for Education), Mr. Jacques Rigaud  
(Assistant Director-General for Programme Support and  
Administration), Mr. Abdul-Razzak Kaddoura (Assistant  
Director-General for Natural Sciences and their Application to  
Development), Mrs. Martha Hildebrandt (Assistant Director-  
General for Social Sciences and their Applications),  
Mr. Dragoljub Najman (Assistant Director-General for Co-  
operation for Development and External Relations), Mr. Jean  
Knapp (Director, Bureau of Studies and Programming),  
Mr. Claude Lussier (Legal Adviser), Mr. Manuel Jiménez  
(Inspector-General), other members of the Secretariat,  
Mr. Vladimir Stepanek (Secretary of the Executive Board)

\* For Mr. Keitaro Hironaga (Japan), until acceptance of his resignation by the Executive Board, on 25 April 1977 in the afternoon.

FIFTH MEETING

Tuesday, 3 May 1977, at 10.15 a.m.

Item 5.6 - EXECUTION OF THE PROGRAMME: INTERNATIONAL STANDARDS AND LEGAL AFFAIRS

Item 5.6.2 - STUDY OF THE PROCEDURES WHICH SHOULD BE FOLLOWED IN THE EXAMINATION OF CASES AND QUESTIONS WHICH MIGHT BE SUBMITTED TO UNESCO CONCERNING THE EXERCISE OF HUMAN RIGHTS IN THE SPHERES OF ITS COMPETENCE, IN ORDER TO MAKE ITS ACTION MORE EFFECTIVE (102 EX/19)

4.1 The CHAIRMAN said that although some members would be unable to take a definite stand on this matter at the present session owing to the late appearance of document 102 EX/19, the Bureau nevertheless felt that an exchange of views would be useful. He appealed to members to restrict themselves to consideration of procedures, as there would be other opportunities to discuss other aspects of the problem of human rights.

4.2 He invited Mrs. Hildebrandt, Assistant Director-General for Social Sciences and their Applications, and Mr. Vasak, Director of the Division of Human Rights and Peace, to introduce the item.

5.1 La Sra. HILDEBRANDT (Subdirectora General para las Ciencias Sociales y sus Aplicaciones) recuerda, al presentar el documento 102 EX/19, el contenido de algunos de los párrafos de las partes dispositivas de las resoluciones 12.1 y 6.113, aprobadas por la Conferencia General en su 19a. reunión, relacionadas con la promoción de los derechos humanos y, en particular, los apartados a) y b) del párrafo 10 (Sección II) de la resolución 12.1. También recuerda el conteni-

do del párrafo 8 de la decisión 9.4 - 9.5, aprobada por el Consejo en su 99a. reunión, en el que se invitaba al Comité de Convenciones y Recomendaciones en la Esfera de la Educación "a revisar su procedimiento actual, incluyendo sus métodos de trabajo y de presentación de informes al Consejo Ejecutivo, a fin de formular recomendaciones tendientes a introducir mejoras en caso necesario". Recuerda asimismo que, con ese fin, la Secretaría preparó el documento 100 EX/CR/2, en el que recapitulaba los antecedentes de la cuestión, es decir, las primeras decisiones aprobadas por el Consejo sobre el problema que planteaban las comunicaciones en que se denunciaban las violaciones de los derechos humanos, hasta la decisión 8.3 de la 77a. reunión, relativa al procedimiento aplicable al trámite de las comunicaciones sobre casos particulares, en las que se invoquen los derechos humanos en las esferas de la educación, la ciencia y la cultura. Recuerda, por último, que el Comité examinó ese documento en sus sesiones del 20 y 21 de septiembre de 1976, pero que no llegó a ninguna conclusión y pidió a la Secretaría que preparara un documento sobre los procedimientos que aplican las Naciones Unidas y algunos organismos especializados competentes en la esfera de los derechos humanos. Por consiguiente, el estudio que el Director General somete al Consejo es consecuencia, a la vez, de decisiones tomadas por el Consejo y la Conferencia General y de la petición formulada por el Comité de Convenciones y Recomendaciones en la Esfera de la Educación.

5.2 Indica la Sra. Hildebrandt que el estudio que el Director General somete al Consejo, comprende una primera parte en la que figura un bosquejo general de los principales procedimientos seguidos en las organizaciones internacionales; la segunda parte se refiere a las diferentes categorías de procedimientos aplicables al trámite de las comunicaciones y la tercera a las diferentes etapas del examen de estas comunicaciones; en la cuarta parte se recuerdan los procedimientos aplicables en la Unesco y, por último, en la quinta parte se formulan algunas consideraciones que podrán servir de base a las discusiones del Consejo Ejecutivo sobre el tema que se examina.

5.3 Hace observar la Sra. Hildebrandt que si el problema de las comunicaciones relativas a los derechos humanos se ha tratado hasta el presente en relación con casos particulares, las resoluciones aprobadas por la Conferencia General se refieren de una manera más general a los "casos" y a los "asuntos" que se podrán someter a la Organización en relación con el ejercicio de los derechos humanos. Por consiguiente, el estudio que la Conferencia encargó al Director General y al Consejo Ejecutivo abarca el examen de los procedimientos relativos a todas las comunicaciones que se relacionen con el ejercicio de los derechos humanos, ya sean éstas de procedencia gubernamental o no, y ya se refieran a casos particulares o a asuntos generales que guarden relación con los derechos humanos.

5.4 Refiriéndose a la cuestión de la coordinación entre los procedimientos de la Unesco y los demás procedimientos de examen de las comunicaciones aplicados por otros organismos u órganos de las Naciones Unidas, cuestión que se trata al final de la parte quinta del estudio, señala a la atención del Consejo que, a pesar de los acuerdos de representación recíproca vigentes, los representantes de la Unesco no pueden ni siquiera asistir como observadores a las sesiones privadas de la Comisión de Derechos Humanos y de los demás órganos que examinan cuestiones de índole similar. Por lo mismo, se pregunta si no sería oportuno negociar un acuerdo menos restrictivo, habida cuenta de que la presencia de los representantes de la Unesco en esas reuniones permitiría evitar en el futuro que se examinaran dos veces las mismas comunicaciones y conseguir en ese terreno una buena coordinación entre todas las organizaciones del sistema de las Naciones Unidas.

5.5 Señala la Sra. Hildebrandt que el Director General no ha querido propugnar, en el documento 102 EX/19, ninguna solución particular que pudo parecerle que estaba en armonía con las intenciones de la Conferencia General, sino que se ha limitado a formular algunas consideraciones que estimó adecuadas para que el Consejo Ejecutivo pueda definir, si lo estima conveniente, nuevos procedimientos que acrecienten la eficacia de la acción de la Unesco en la esfera de los derechos humanos. Tres son las preocupaciones primordiales que han guiado al Director General al formular esas consideraciones. La primera es que los "casos" y "asuntos" que se puedan someter a la Organización, habrán de considerarse como otros tantos obstáculos levantados en la vía de la cooperación entre la Organización y sus Estados Miembros. Para que esa cooperación pueda mantenerse y desarrollarse de una manera armoniosa, será necesario suprimir esos obstáculos, pero no en detrimento de los derechos humanos. Por lo mismo, piensa que convendría inclinarse, en todo lo posible, por soluciones de arreglo amistoso, de buenos oficios y de conciliación. Dicho de otros modo, piensa que conviene, sobre todo, procurar que el diálogo se instaure y desarrolle en un marco tan flexible e informal como las situaciones y las posibilidades lo permitan.

5.6 La segunda preocupación es la necesidad de que la Unesco mantenga su actuación dentro de los límites de su competencia. En efecto, en este campo de los derechos humanos, sólo las

Naciones Unidas tienen una competencia general que se extiende al conjunto de esos derechos. Sin embargo, para no ser meramente "residual" la competencia de la Unesco en esa materia ha de ser claramente "complementaria", es decir, "sectorial"; sólo así podrá la acción de la Unesco complementar y reforzar la de las Naciones Unidas.

5.7 La tercera preocupación, subyacente en la labor de la Secretaría, es que los derechos humanos que son competencia específica de la Unesco figuran entre los más importantes que enuncia la Declaración Universal de Derechos Humanos, puesto que se relacionan con la "vida del espíritu" y son, por lo mismo, la condición previa de una toma de conciencia universal en ese campo. Desde este punto de vista, que se podría denominar "cualitativo", la competencia de la Unesco supera ampliamente el marco cuantitativo de la competencia delimitada como "sectorial".

5.8 Termina diciendo la Sra. Hildebrandt que el documento que la Secretaría ha preparado y que el Director General somete al Consejo, no tiene, en última instancia, más que una ambición: que los miembros del Consejo puedan pronunciarse sobre la cuestión tan importante que examinan, en posesión de todos los elementos de información que se han considerado importantes.

(5.1) Mrs. HILDEBRANDT (Assistant Director-General for Social Sciences and their Applications) referred, in presenting document 102 EX/19, to the content of certain of the operative paragraphs of resolutions 12.1 and 16.113, approved by the General Conference at its nineteenth session, which related to human rights and, more especially, to subparagraphs 10 (a) and (b) in Part II of resolution 12.1. She also recalled the content of paragraph 8 of decision 9.4-9.5, adopted by the Board at its 99th session, in which the Committee on Conventions and Recommendations in Education was invited "to review its current procedure, including methods of work and of reporting to the Executive Board, with a view to making recommendations for improvement where necessary". She also explained that the Secretariat had, in pursuance of the above aim, prepared document 100 EX/CR/2, which recapitulated the background to the question, from the first decisions approved by the Board concerning the problem raised by communications alleging violations of human rights to decision 8.3 taken at its 77th session concerning the procedure for handling communications on individual cases involving human rights in education, science and culture. She recalled, finally, that the Committee had examined that document at its meetings on 20 and 21 September 1976, but had not come to any conclusion and had asked the Secretariat to prepare a document on the procedures applied by the United Nations as well as by certain Specialized Agencies having competence in human rights matters. The study submitted by the Director-General to the Board was thus the result both of decisions taken by the Board and the General Conference and of the request made by the Committee on Conventions and Recommendations in Education.

(5.2) She explained that Part I of the study submitted by the Director-General contained a general outline of the main procedures followed by the international organizations; Part II referred to the different categories of procedures applicable to the handling of communications and Part III to the various stages in the consideration of such communications; Part IV restated existing procedures within Unesco and, finally, in Part V certain considerations were formulated which might serve as a basis for the Executive Board's discussions on the subject under examination.

(5.3) She pointed out that, whereas the problem of communications concerning human rights had so far been dealt with on the basis of individual cases, the resolutions approved by the General Conference referred in more general terms to "cases" and "questions" which might be submitted to the Organization concerning the exercise of human rights. The study which the Conference had instructed the Director-General and the Executive Board to make thus covered examination of the procedures in regard to all communications concerning the exercise of human rights, whether governmental or not and whether they referred to individual cases or general questions concerning human rights.

(5.4) Referring to the question of co-ordination between Unesco's procedures and the other procedures for the examination of communications applied by other United Nations organizations or organs, a matter that was dealt with at the end of Part V of the study, she drew the Board's attention to the fact that, despite existing reciprocal representation agreements, representatives of Unesco could not even attend as observers at the private sessions of the Commission on Human Rights and other organs which examined questions of a similar kind. She wondered, therefore, if it would not be opportune to negotiate a less restrictive agreement, in view of the fact that the presence of Unesco representatives



at such meetings would avoid the same communications being examined twice in future and result in effective co-ordination in that domain between all the organizations of the United Nations system.

(5.5) She stated that the Director-General had not wished to advocate, in document 102 EX/19, any particular solution which might have seemed to him in keeping with the intentions of the General Conference, but had confined himself to formulating certain considerations which he believed were sufficient for the Executive Board to be able to define, if it so deemed appropriate, new procedures which would increase the effectiveness of Unesco's action in the sphere of human rights. In formulating those considerations, the Director-General had been guided by three basic concerns. The first was that the "cases" and "questions" that might be submitted to the Organization should be regarded as so many obstacles placed in the way of co-operation between the Organization and its Member States. In order that such co-operation might be maintained and developed harmoniously, those obstacles had to be removed, but not at the expense of human rights. He believed, therefore, that preference should be given, wherever possible, to solutions based on amicable arrangement, good offices and conciliation, in other words that an endeavour should be made to ensure the establishment and development of dialogue in a context which should be as flexible and informal as circumstances allowed and as was possible.

(5.6) The second concern was for Unesco to keep its action within the limits of its sphere of competence. In fact, in human rights the United Nations alone had general competence extending over all such rights. Unesco's competence in that matter, if it was not to be merely "residual", must be clearly "complementary", that is to say, "sectoral"; only in that way could Unesco's action complement and strengthen that of the United Nations.

(5.7) The third concern underlying the work of the Secretariat was that the human rights which lay within Unesco's specific competence were among the most important set out in the Universal Declaration on Human Rights, since they related to the "life of the spirit" and were, for that reason, a prerequisite for a universal awakening of consciousness in that domain. From that point of view, which could be termed a "qualitative" one, Unesco's competence largely exceeded the quantitative framework of competence marked out as "sectoral".

(5.8) In conclusion, she stated that the document prepared by the Secretariat which the Director-General was submitting to the Board had, ultimately, only one aim: to enable the members of the Board to come to a decision on the very important question they were examining with all the information that had been regarded as important before them.

6.1 M. VASAK (Secrétariat) voudrait apporter au Conseil quelques éléments d'information complétant le document 102 EX/19.

6.2 Il observe, tout d'abord, que le débat qui va s'ouvrir a eu des précédents, notamment celui au terme duquel le Conseil a adopté la décision 8.3 de sa 77e session définissant la procédure qui a été appliquée ces dernières années pour donner suite aux communications adressées à l'Unesco au sujet de cas particuliers et invoquant les droits de l'homme dans les domaines de l'éducation, de la science et de la culture. Cette décision était elle-même fondée sur la résolution 728 F (XXVIII) adoptée en 1955 par le Conseil économique et social des Nations Unies. Ce dernier a d'ailleurs réexaminé la question depuis lors et adopté, à la suite d'échanges de vues fort intéressants, la résolution 1235 (XLII) en 1967 et la résolution 1503 (XLVIII) en 1970. Tout aussi digne d'être pris en considération, et particulièrement instructif pour l'Unesco en raison du caractère sectoriel des problèmes traités, est le précédent de l'OIT qui a adopté, dans les années 1950, à la suite d'un débat nourri au cours duquel on s'est souvent référé à la Constitution de cette Organisation, une procédure spéciale pour la protection de la liberté syndicale.

6.3 Les trois premières parties du document présenté au Conseil traitent de différents aspects des procédures existant dans les organisations internationales pour l'examen des communications relatives à des violations des droits de l'homme.

6.4 La première partie donne un aperçu des principales procédures actuellement en vigueur, aperçu non exhaustif d'un certain point de vue puisque, dans la section consacrée aux organisations régionales, par exemple, il n'est fait mention ni des organes des droits de l'homme d'organisations comme la Ligue des Etats arabes et l'Organisation de l'Unité africaine ni du système appliqué par les pays du groupe socialiste.

6.5 La deuxième partie passe en revue les différentes catégories de suites susceptibles d'être données aux communications concernant aussi bien des cas particuliers que des questions générales. Ces suites n'ont pas fait l'objet d'un classement selon leur efficacité, notion qui, en la matière, revêt un caractère assez subjectif. Il apparaît certain, en tout cas, que les procédures formelles comme celles établies par voie de conventions ou de traités, qui ont souvent la préférence des juristes, ne sont pas forcément les plus efficaces.

6.6 La troisième partie du document retrace les étapes successives de l'examen des communications. Leur nombre peut sembler considérable, mais on se souviendra qu'un double but est visé : d'une part, écarter les communications mal fondées pour ne retenir que les plaintes dignes d'intérêt, notamment celles qui ont trait à un ensemble de violations flagrantes et systématiques des droits de l'homme ; d'autre part, multiplier les occasions de règlement amiable puisqu'une décision ayant force exécutoire ne saurait être prise par l'Organisation. Toutefois, le grand nombre des étapes fait que l'ensemble du processus d'examen est très long : il s'étend en général sur plus d'une année.

6.7 Si long qu'il puisse paraître, le document soumis au Conseil n'épuise pas le sujet. Ainsi, il n'analyse pas les procédures appliquées par certains organes spécialisés comme le Conseil de tutelle ou ceux qui traitent de problèmes en relation avec la décolonisation, de l'apartheid et de la condition des femmes. On ne trouve pas non plus dans le document d'indications sur les raisons pour lesquelles telle ou telle procédure a bien fonctionné, telle autre étant restée lettre morte. Ce sont d'ailleurs souvent les procédures mises en place à titre provisoire qui sont appliquées avec un certain succès pendant une longue période, alors que des procédures conçues pour être durables ne sont pas appliquées ou même tombent en désuétude. D'autre part, le nombre des procédures existantes peut sembler élevé, mais cela permet aux Etats et aux individus - pour ces derniers dans la mesure où leur est reconnue la faculté de saisir une organisation internationale - de choisir le type de recours le plus approprié en l'espèce.

6.8 Les procédures que la Conférence générale a invité le Conseil et le Directeur général à étudier viendraient donc s'insérer dans un ensemble de procédures déjà en vigueur. C'est ainsi qu'elles complèteraient, sans pour autant devoir être considérées comme secondaires, les voies de recours offertes par les Etats eux-mêmes, lesquels ont une responsabilité primordiale pour ce qui est de la protection des droits de l'homme sur leur territoire. Dans cet esprit, on peut se demander si, lorsqu'une organisation reçoit une communication, elle ne devrait pas s'assurer que les voies de recours internes ont été au préalable épuisées. Les procédures en question auraient également un caractère complémentaire dans la mesure où elles s'ajouteraient aux voies de recours offertes par les instruments internationaux existants dans le domaine des droits de l'homme, et d'abord par les pactes internationaux relatifs aux droits civils et politiques et aux droits économiques, sociaux et culturels et par la Convention internationale sur l'élimination de toutes les formes de discrimination raciale.

6.9 Le document indique qu'à l'heure actuelle de 30.000 à 40.000 communications relatives aux droits de l'homme parviennent chaque année aux organisations internationales. Le chiffre peut paraître impressionnant, mais on notera qu'une grande partie de ces communications ont pour origine une campagne organisée et qu'une proportion comprise entre le quart et le tiers émane d'individus déséquilibrés. En revanche, nombreuses sont les communications qui concernent un cas individuel illustrant en réalité un problème plus général. En ce qui concerne ce type de problèmes, l'expérience montre d'ailleurs que, quelle que soit la procédure employée, ils sont plus difficiles à régler que les cas individuels.

7. The CHAIRMAN said that document 102 EX/19 provided a valuable background for discussion of an inexhaustible subject. He was only sorry it had not appeared earlier. Mr. Vasak might rest assured that the Board would not be daunted by its length.

8.1 M. CARNEIRO est reconnaissant au Directeur général d'avoir effectué une étude des procédures suivies pour l'examen des cas et des questions concernant les droits de l'homme, étude dont le besoin se faisait depuis longtemps sentir. Le document soumis au Conseil présente un caractère novateur qui donne à espérer que les Etats membres parviendront à un accord sur les procédures en question.

8.2 Le document contient, notamment dans sa cinquième partie, un ensemble d'idées de nature à guider le Conseil dans sa recherche de solutions adéquates. C'est ainsi qu'il est précisé au paragraphe 130 que la recherche de nouvelles procédures d'examen des communications relatives aux droits de l'homme "devrait être menée dans le respect de toutes les dispositions pertinentes de l'Acte constitutif", en particulier de celles du paragraphe 3 de l'article premier par

lequel l'Organisation "s'interdit d'intervenir en aucune matière relevant essentiellement de la juridiction des Etats membres", et de celles du paragraphe 2 du même article concernant les modes d'action à employer par l'Organisation pour atteindre ses buts. Ces modes d'action, ainsi qu'il est judicieusement souligné dans le document, sont essentiellement des méthodes de promotion qui "pourraient également trouver leur place dans le domaine des droits de l'homme relevant de la compétence de l'Unesco". En l'occurrence, l'Organisation, pour ne pas risquer de se transformer en "tribunal international" agirait "par voie d'étude, d'examen, d'enquête et de conciliation". De même, il est rappelé avec raison que l'Unesco ne pourrait "prendre en l'espèce aucune décision exécutoire au sujet d'une violation des droits de l'homme sans intervenir dans la juridiction intérieure des Etats membres". M. Carneiro rapproche cette phrase de ce qui est dit au paragraphe 142 au sujet de l'esprit dans lequel devrait être mené l'examen des communications. Il s'agirait effectivement pour l'Organisation d'engager un dialogue avec l'Etat intéressé afin de l'aider, par des moyens appropriés à régler "les cas particuliers considérés comme recevables". A cet effet, comme le précise le paragraphe 143, "des contacts directs pourraient être établis avec les autorités compétentes de l'Etat, par exemple par une mission de bons offices de représentants du Directeur général, ou d'un ou de plusieurs membres de l'organe compétent". Il est suggéré que l'organe en question soit le Comité des conventions et recommandations dans le domaine de l'éducation du Conseil exécutif, dont le mandat se trouverait élargi et qui pourrait prendre le nom de "Comité des droits de l'homme et des conventions et recommandations dans le domaine de l'éducation". M. Carneiro souligne que, comme il est spécifié au paragraphe 145, le Directeur général devrait conserver la possibilité d'intercéder personnellement auprès des Etats membres. Evoquant enfin la procédure envisagée au paragraphe 148 pour l'examen des questions générales concernant les droits de l'homme, M. Carneiro pense qu'elle devrait effectivement "être empreinte de la volonté de nouer le dialogue afin que puissent être surmontés les obstacles qu'elles soulèvent sur la voie de la coopération entre l'Unesco et l'Etat en question".

8.3 D'une manière générale, M. Carneiro reconnaît que l'Unesco doit se prévaloir de son autorité morale pour intercéder auprès des Etats membres, quel que soit leur régime politique, en vue de contribuer à assurer le respect des droits de l'homme. Toutefois, elle doit veiller à ne pas compromettre cette autorité et donc renoncer aux jugements outranciers et aux vains débats à l'allure de règlements de comptes, qui ont été monnaie courante ces dernières années. Il lui faut, au contraire, procéder à une étude approfondie des cas signalés et vérifier les faits avant, le cas échéant, d'intervenir auprès des autorités compétentes. C'est seulement si l'Organisation suit consciencieusement cette démarche que les gouvernements, rassurés, accepteront de dialoguer avec elle.

8.4 On peut se demander, d'autre part, si le Comité des conventions et recommandations dans le domaine de l'éducation est bien l'organe le plus approprié pour remplir les fonctions que l'on veut lui confier. En effet, ses membres dépendant étroitement de leur gouvernement, il est fatal que les considérations politiques influent lourdement sur les décisions prises par le Comité. Rappelant que le Comité des droits de l'homme du Pacte international relatif aux droits civils et politiques adopté par l'Assemblée générale des Nations Unies, comprend dix-huit experts élus à titre personnel au scrutin secret, M. Carneiro se déclare favorable à une telle formule. Toutefois, la nature de l'organe compétent pour examiner les plaintes comptera moins que l'esprit qui animera ses travaux et que les directives que lui donnera le Conseil.

8.5 M. Carneiro souhaite enfin que l'Unesco lance un appel pour qu'un terme soit mis à toutes les formes de violence et de terreur dans le monde.

9.1 El Sr. WAGNER DE REYNA rinde homenaje al Director General por el notable estudio que somete al Consejo en el documento 102 EX/19 y pasa de inmediato a fijar su posición respecto de la cuestión de que se trata, en su calidad de representante del Gobierno peruano en el Consejo.

9.2 La Unesco tiene, entre otras, la función de promover el respeto universal de los derechos humanos, de acuerdo con lo estipulado en el artículo I de su Constitución, dentro de los límites de su competencia y con arreglo a medios compatibles con sus fundamentos constitucionales. La promoción de los derechos humanos ha llevado a la Unesco a establecer convenciones y recomendaciones que concuerdan con otros instrumentos semejantes, aprobados en el plano internacional o regional. Esta labor, muy laudable y necesaria, se ha de alentar, subrayando su contenido moral y espiritual e insistiendo en la importancia de la creación y el fortalecimiento de una conciencia universal favorable a los fines que se persiguen en ese terreno de tanta trascendencia. Ahora bien, en el caso concreto de la Unesco, su actuación está condicionada por lo estipulado en el párrafo 3 del artículo I de la Constitución, en el que la Organización se prohíbe toda intervención en materias que correspondan esencialmente a la jurisdicción interna de los Estados, no-

ción completada por la decisión 8.3 aprobada por el Consejo Ejecutivo en su 77a. reunión, en cuyo párrafo 4 de la parte dispositiva el Consejo "comprueba que la Organización no está autorizada por su Constitución a adoptar medida alguna sobre reclamaciones relativas a los derechos humanos, reclamaciones que no pueden dar lugar a un recurso sino conforme a las Convenciones y Protocolos suscritos por los Estados Miembros".

9.3 Por consiguiente, la Unesco no puede tomar ninguna medida que pueda asimilarse a una interferencia en el dominio propio de la soberanía nacional de un Estado Miembro. Tal es la opinión de su país y tal ha sido la posición invariable del Perú en las Naciones Unidas, en las que sus delegaciones se han abstenido siempre de tomar parte activa en los debates y las votaciones relativos a cuestiones similares a las que se refiere el punto del orden del día que se examina.

9.4 Siguiendo la misma línea de conducta, el Sr. Wagner de Reyna se abstendrá, pues, de participar en el debate relativo a las diferentes posibilidades de acción a que se refiere el documento 102 EX/19 y no participará tampoco en la votación a que pueda procederse sobre un proyecto de resolución relativo a la cuestión. Dicho esto, aclara que esta actitud responde únicamente a razones de carácter jurídico y no ha de interpretarse como una toma de posición en favor o en contra de cualquier caso o cuestión concretos que se someta a estudio de la Organización.

(9.1) Mr. WAGNER DE REYNA paid tribute to the Director-General for the remarkable study that he had submitted to the Board in document 102 EX/19 and then immediately went on to define his position with regard to the question concerned, in his capacity as representative of the Peruvian Government on the Board.

(9.2) One of Unesco's functions was to further universal respect for human rights, in accordance with the terms of Article I of its Constitution, within the limits of its competence and in accordance with methods in keeping with its constitutional principles. The promotion of human rights had led Unesco to establish conventions and recommendations that were consonant with other similar instruments, approved at the international or regional levels. That highly praiseworthy and necessary work needed to be encouraged, emphasizing its moral and spiritual content and stressing the importance of the creation and strengthening of universal feeling in support of the ends that were being pursued in that vital domain. In the specific case of Unesco, its action was governed by the provisions of Article I, paragraph 3, of the Constitution whereby the Organization was prohibited from any intervention in matters which were essentially within the domestic jurisdiction of States, a principle complemented by decision 8.3 taken by the Executive Board at its 77th session, paragraph 4 of which stated that the Board "finds that Unesco is not authorized under its Constitution to take any measures in connection with complaints regarding human rights, which can be entertained only in accordance with the Covenants and Protocols subscribed to by Member States".

(9.3) Unesco could not, therefore, take any measure that might be deemed to be trespassing upon the national sovereignty of a Member State. Such was his country's view and such had been the constant position of Peru in the United Nations, where its delegations had always abstained from taking an active part in debates and votes concerning questions similar to those referred to in the agenda item under discussion.

(9.4) Following the same line of conduct, he would, then, abstain from taking part in the debate concerning the different possibilities of action referred to in document 102 EX/19 and would not take part in the vote which might be taken on a draft resolution concerning the matter. Having made that point, he explained that that attitude was governed solely by reasons of a legal character and should not be interpreted as adoption of a position for or against any specific case or question that was submitted for the Organization's consideration.

10.1 Г-н КУТАКОВ выражает благодарность Генеральному директору, г-же Хильдебрандт и г-ну Вазаку за подготовку документа 102 EX/19, в котором дается обзор различных процедур рассмотрения проблемы прав человека в организациях системы ООН, а также в некоторых отдельных межправительственных организациях.

10.2 Он говорит, что, руководствуясь уставными положениями и соответствующими резолюциями Генеральной конференции, ЮНЕСКО внесла и продолжает вносить достойный вклад в дело международного сотрудничества в интересах обеспечения прав человека в областях образования, науки и культуры.

10.3 Он напоминает принятую по инициативе СССР Конвенцию 1960 года о борьбе с дискриминацией в области образования; резолюции, принятые по инициативе развивающихся и социали-

стических стран на четырнадцатой, пятнадцатой и шестнадцатой сессиях Генеральной конференции, в которых были решительно осуждены глубокие и массовые нарушения прав человека, являющиеся результатом существования колониальных режимов и практики апартеида, а также все другие формы расовой дискриминации; решение "не представлять никакой помощи правительствам Португалии, Южно-Африканской Республики и незаконному режиму Южной Родезии в области образования, науки и культуры, в том числе не приглашать их на соответствующие конференции и другие мероприятия ЮНЕСКО до тех пор, пока власти этих стран не откажутся от своей политики колониального господства и расовой дискриминации" (15 С/Рез.9.12,п.5); резолюции восемнадцатой и девятнадцатой сессий по поводу массовых нарушений основных прав и свобод в Чили (18 С/Рез.11.31, 19 С/Рез.14.1), на оккупированных арабских территориях (18 С/Рез.13.1 и 19 С/Рез.15.1), в Намибии, ЮАР и Родезии и т.д.

10.4 Г-н Кутаков говорит, что такой подход к проблеме защиты прав человека, полностью соответствующий решениям ООН и действующим нормам международного права, находит полное понимание и самую активную поддержку со стороны Советского Союза. Именно в социалистических странах сделан самый большой прогресс в области развития прав человека. Гражданам этих стран обеспечиваются среди прочих самые широкие права в областях образования, науки и культуры.

10.5 Он отмечает, что позиция Советского Союза относительно рассмотрения в ЮНЕСКО вопросов, связанных с правами человека, остается неизменной и основывается как на положениях Устава ООН, так и Устава ЮНЕСКО, предусматривающих рассмотрение в системе ООН только таких вопросов, которые касаются массовых и грубых нарушений прав человека, ставящих под угрозу международный мир и безопасность и представляющих собой преступление против человечества.

10.6 Пункт 7 статьи 2 Устава ООН ни в коей мере не дает ООН права вмешательства в дела, входящие во внутреннюю компетенцию государства. Однако этот принцип не затрагивает принятия принудительных мер на основе главы VII Устава ООН. Исключения составляют те случаи, которые подпадают под действие этой главы, т.е. "Действия в отношении угрозы миру, нарушений мира и актов агрессии" (статьи 39, 41 и 42 Устава). Именно на этой основе приняты решения о санкциях в отношении ЮАР, Родезии, а также осуждающие политику Израиля на оккупированных арабских территориях и нарушение прав человека в Чили.

10.7 Все другие вопросы и тем более отдельные случаи, согласно Уставу ООН и действующим соглашениям в области прав человека, относятся исключительно к внутренней компетенции государств. Это положение зафиксировано в политической резолюции девятнадцатой сессии Генеральной конференции ЮНЕСКО (19 С/Рез.12.1), где говорится, что "ЮНЕСКО не является международным судебным органом и в соответствии с пунктом 3 статьи I своего Устава она должна избегать всякого вмешательства во внутренние дела государств-членов".

10.8 Г-н Кутаков говорит, что принципиальный характер позиции СССР по этому вопросу подтверждается соответствующими резолюциями ЮНЕСКО и 33-й сессии Комиссии ООН по правам человека (Женева, 7 февраля-11 марта с.г.), в которых борьба за обеспечение социально-экономических и культурных прав человека рассматривается в сочетании с борьбой за укрепление мира, за разоружение, за окончательную ликвидацию колониализма, за новый экономический и социальный порядок. В резолюции 12.1 девятнадцатой сессии Генеральной конференции ЮНЕСКО подчеркивается, что "разрядка международной напряженности и мирное сотрудничество, а также усилия, направленные на установление нового международного экономического порядка открывают новые горизонты для успешного решения проблем развития и социального прогресса для обеспечения и защиты прав человека". Организация исходила из того, что "защита и содействие уважению прав человека и основных свобод и борьба с разжиганием войны, колониализмом, неоколониализмом, расизмом, апартеидом и всеми другими формами угнетения и дискриминации являются основным долгом ЮНЕСКО, поскольку нарушение прав человека является источником конфликтов и, следовательно, угрозой международному миру и безопасности и поскольку одной из задач Организации является содействие уважению человеческого достоинства" (18 С/Рез.9.1, п.4). Признанием правильности со стороны ЮНЕСКО именно такого подхода к вопросу о правах человека является объединение в действующей программе ЮНЕСКО в одном разделе (3.17) вопросов укрепления международного мира и обеспечения прав человека.

10.9 Г-н Кутаков указывает, что в резолюциях ЮНЕСКО и 33-й сессии Комиссии ООН по правам человека сформулировано важное положение о взаимозависимости всех прав человека и основных свобод. В резолюции 33-й сессии Комиссии ООН по правам человека отмечается, что "полное претворение в жизнь экономических, социальных и культурных прав имеет решающее значение для действительного и подлинного осуществления гражданских и политических прав". Тем самым подчеркнута первостепенная ответственность государств за выполнение таких тре-

бований статьи 55 Устава ООН, как повышение уровня жизни, полная занятость населения, условия для экономического и социального прогресса и развития. В политической резолюции девятнадцатой сессии Генеральной конференции подчеркивается, что "серьезным препятствием на пути реализации человеческих прав на достойную жизнь и свободу являются колониализм, неоколониализм, расизм во всех его формах и проявлениях, апартеид и политика агрессии и вмешательства во внутренние дела государств (19 С/Рез.12.1, ч. I). Следовательно, ЮНЕСКО должна заниматься не отдельными единичными случаями, а проявлять широкий, комплексный подход к этой проблеме. Как говорится в этой резолюции, она должна стремиться "путем изучения условий исторического, философского, социологического и юридического характера, от которых зависят права человека, содействовать осуществлению и обеспечению гражданских и политических прав, равно как и экономических, социальных и культурных прав, подкрепляющих друг друга как в принципе, так и при их осуществлении (19 С/Рез.12.1, ч. II).

10.10 Ссылаясь на Устав ООН и Устав ЮНЕСКО, г-н Кутаков говорит, что в них речь идет не о международной защите прав человека, а о развитии международного сотрудничества в интересах обеспечения всеобщего уважения справедливости, законности и прав человека, а также основных свобод, провозглашенных в Уставе ООН для всех народов без различия расы, пола, языка и религии. Эффективность усилий по обеспечению прав и свобод человека зависит прежде всего от того, насколько последовательно сами государства-члены ООН и ЮНЕСКО стремятся к наиболее полному осуществлению целей и обязательств, провозглашенных в уставах этих организаций, во Всеобщей декларации прав человека и в международных пактах об этих правах, и насколько их внутренняя и внешняя политика отвечает этим целям и обязательствам, что в конечном счете определяется социально-экономическим и политическим строем государства. Г-н Кутаков отмечает, что сотрудничество между государствами по вопросам, касающимся прав человека, может быть успешным лишь в том случае, если оно осуществляется в русле процесса разрядки, способствует росту доверия между государствами и народами.

10.11 Г-н Кутаков напоминает, что изучение Исполнительным советом процедур рассмотрения вопросов прав человека имеет давнюю историю. В результате глубоких исследований сделан ряд принципиальных выводов и заключений, важнейшим из которых является констатация того обстоятельства, что "Устав Организации не позволяет ей принимать никаких мер в отношении жалоб, касающихся прав человека, поскольку такого рода жалобы могут рассматриваться лишь на основе соответствующих Конвенций и Протоколов, подписанных государствами-членами" (77 EX/Реш.8.3, п. 4). В свете указанного принципиального заключения становится совершенно очевидным, что сведения о процедурах, принятых другими межправительственными организациями (как системы ООН, так и не относящимися к ней), содержащиеся в документе 102 EX/19, не могут рассматриваться ни как образец, ни как пример, ни как прецедент для ЮНЕСКО, так как все они основаны либо на уставах этих организаций, либо на относящихся к ним статьях и положениях международных конвенций, обязательных только для их участников. Г-н Кутаков считает, что в представленном документе неоправданно много места уделяется процедурам организаций, не входящих в систему ООН, как, например, Европейский совет, объединяющий лишь узкую группу западноевропейских стран и не представляющий интересов других стран Европы. Организация американских государств и ее Американская конвенция о правах человека 1969 г. да, которая не вступила в силу и ратифицирована лишь двумя государствами.

10.12 Что касается Международных пактов о гражданских и политических правах и об экономических, социальных и культурных правах, которые подписаны и ратифицированы 42 государствами и вступили в силу в 1976 году, в документе говорится, главным образом, о процедурах факультативного, т. е. не имеющего обязательного характера, Протокола к первому пакту, подписанного лишь 16 государствами-участниками и являющегося, таким образом, частным, а не общим инструментом.

10.13 Г-н Кутаков с сожалением констатирует, что в документе 102 EX/19 слишком много места уделено процедурам рассмотрения частных жалоб отдельных лиц, по которым Организация некомпетентна принимать никаких мер. Он указывает, что некоторые из предлагаемых вариантов нередко граничат с введением почти следственных или квази-судебных процедур. Например, в пункте 140 говорится о том, что предлагаемый в документе некий новый "компетентный орган", независимый от Секретариата, должен иметь возможность дополнять свое досье любой полезной информацией, позволяющей ему полностью проверить приемлемость данного сообщения и что он должен иметь полномочия заслушивать с этой целью, если необходимо, представителя заинтересованного государства с оговоркой, правда, "если оно этого пожелает". Далее в документе поясняется, что в функции "компетентного органа" входит практически процедура расследования национального судопроизводства путем послышки в страну представителя Генерального директора, либо одного или нескольких членов "компетентного органа" (пункты 142-143). Это может привести к прямому вмешательству во внутренние дела государств, поскольку может трактоваться как создание некоего верховного апелляционного трибунала, вопреки Уста-

ву ЮНЕСКО и резолюциям Генеральной конференции. Это противоречит, в частности, пункту 9 резолюции 19 С/12.1, в котором подчеркивается, что ЮНЕСКО не может быть судебным органом и обязана избегать вмешательства во внутренние дела государств.

10.14 Г-н Кутаков говорит, что ни ЮНЕСКО, ни государства-члены не получают никакой пользы, если Организация начнет оспаривать правильность национальных законодательств и судопроизводства и заниматься рассмотрением жалоб отдельных лиц из 144 государств-членов. Эти жалобы могут исходить не только от лиц, осужденных национальными судебными органами, а также от разного рода подставных и просто подкупленных элементов. Пункт 136 документа представляет такую возможность, говоря, что защита прав человека является "чьим угодно делом". Представитель Генерального директора здесь говорил, что от четверти до трети жалоб поступает от ненормальных или неуравновешенных лиц. Предлагаемая процедура может лишь увеличить число таких жалоб, что вызовет ненужные затруднения в работе Организации. Все это приведет лишь к созданию атмосферы взаимного недоверия и подозрительности в отношениях между государствами-членами Организации, к нарушению тех основных принципов сотрудничества, ради которых государства вступали в ЮНЕСКО.

10.15 Несмотря на кажущиеся ограничения условий подачи жалоб, определенные в пунктах 137-139 документа 102 EX/19, возможности представления жалоб фактически не ограничены для лиц, которые бы вздумали представить их наказания за конкретные уголовные преступления как "мечь" по отношению к ним со стороны официальных властей. Это могло бы привести к тому, что любой уголовный преступник поспежит обзавестись, так сказать "собственной политической доктриной", непременно расходящейся с общепринятой, для того, чтобы под видом "диссидента" уйти от наказания за конкретное уголовное деяние. Все это открыло бы дверь для использования ЮНЕСКО в узкоэгоистических целях отдельными индивидуумами и террористическими экстремистскими группами, которые в целях саморекламы могли бы вести злостную клевету на отдельные государства-члены и на организации, надеясь создать атмосферу сенсационности, истеричности и нервозности в ЮНЕСКО и оказать давление на исполнение ее своего долга.

10.16 Г-н Кутаков считает, что документ 102 EX/19 уделяет недостаточно внимания процедуре рассмотрения "вопросов", под которыми, по смыслу резолюции 12.1, принятой на девятнадцатой сессии Генеральной конференции, следует понимать массовые, систематические и грубые нарушения прав человека в областях компетенции ЮНЕСКО. Он говорит, что резолюции, принятые Генеральной конференцией по вопросу прав человека, ориентируют Организацию в сферах ее компетенции на борьбу с массовыми и грубыми нарушениями прав человека, являющимися результатом проведения политики неокolonизма, расизма и империалистической агрессии. Именно здесь находится ключ к повышению эффективности деятельности Организации, на что нацеливают ее резолюции последних сессий Генеральной конференции.

10.17 Совершенно неоправданным является предложение о создании нового специального органа - рабочей группы (пункт 139), призванного заменить Генерального директора в решении вопроса о приемлемости сообщений. Такого рода предложение еще можно было бы понять, если бы оно диктовалось сомнениями в объективности и беспристрастности Секретариата и его высшего должностного лица - Генерального директора. Г-н Кутаков выражает уверенность, что для этого у членов Совета нет ни малейших оснований, и надеется, что все разделяют его точку зрения. Принятие этого предложения привело бы, вместо требуемого повышения эффективности, к дополнительным затратам времени и средств.

10.18 Неприемлемым, с его точки зрения, является и предложение о переименовании Комитета Исполнительного совета по конвенциям и рекомендациям в области образования в "Комитет по правам человека и по конвенциям и рекомендациям в области образования" (пункт 144). Такое название могло бы лишь породить ошибочные представления относительно действительных функций Комитета и его полномочий, вызвать поступление обращений, не относящихся к компетенции ЮНЕСКО, и тем самым создать ненужные дополнительные трудности в работе Организации. Если за последние 8 лет Комитет по конвенциям и рекомендациям рассмотрел 73 сообщения, а сама ЮНЕСКО в среднем получает около 100 сообщений в год, то Комиссия ООН по правам человека рассматривает до 20-30 тысяч сообщений. Она имеет большой аппарат, состоящий из специалистов, и проводит свои ежегодные совещания в течение длительного времени. Новый комитет на деле дублировал бы работу Комиссии ООН и других компетентных организаций и привел бы к большим затратам времени и средств, что помешало бы Организации выполнять ее задачи, определенные Уставом.

10.19 Г-н Кутаков указывает, что девятнадцатая сессия Генеральной конференции в резолюции 12.1 поручила Исполнительному совету "изучить" процедуру рассмотрения сообщений, поступающих в ЮНЕСКО, и доложить о выполнении части II этой резолюции, касающейся прав

человека, двадцатой сессии Генеральной конференции. Генеральная конференция не поручала ему создавать новую процедуру. Это не случайно: сообщения отдельных индивидуумов с жалобами на свои государства касаются не только 45 стран, представленных в Исполнительном совете, они прямо затрагивают государственные интересы и тех 99 государств, которые не представлены в этом органе. Г-н Кутаков считает, что такие вопросы можно решать лишь при консультации с остальными 99 государствами-членами, так как они непосредственно затрагивают их интересы.

10.20 Он указывает, что документы, подобные документу 102 EX/19, предлагающие новые мероприятия и процедуры, которые могут потребовать изменения формы и методов работы ЮНЕСКО, а также, возможно, и структуры ее Секретариата, необходимо рассматривать в самой тесной консультации с государствами-членами, с тем чтобы дать им возможность заблаговременно и глубоко изучить вносимые предложения и внести все необходимые поправки. На настоящей сессии Исполнительного совета его члены ограничатся, как было условлено, лишь обменом мнениями по основным, принципиальным аспектам обсуждаемой проблемы. С учетом высказанных в общей дискуссии замечаний, Секретариат смог бы тогда подготовить новый документ, который послужил бы ориентацией в дальнейшей работе над этим вопросом для Комитета Исполнительного совета по конвенциям и рекомендациям в области образования. Представляется необходимым, чтобы в этот документ были включены обзоры процедур ряда конвенций и соглашений в областях компетенции ЮНЕСКО, такие, например, как Конвенция о ликвидации всех форм расовой дискриминации, Международная конвенция о преступлениях апартеида и др.

10.21 Г-н Кутаков напоминает, что на своей 99-й сессии Исполнительный совет в решениях 9.4-9.5 просил Комитет по конвенциям и рекомендациям в области образования "вновь рассмотреть свою нынешнюю процедуру, включая методы работы и представления докладов Исполнительному совету, для того, чтобы подготовить рекомендации в целях улучшений там где это необходимо". Во исполнение этого решения Комитет по конвенциям и рекомендациям в области образования занялся на своем совещании 20 и 21 сентября 1976 года рассмотрением применяемой в настоящее время процедуры, включая методы работы и представления докладов Исполнительному совету. Однако Комитет не смог завершить изучение этого вопроса, которое, будучи начато таким образом, должно в принципе быть продолжено. По завершении своей работы Комитет мог бы соответственно доложить Исполнительному совету свои предложения по процедуре, как это и предлагается в документе 102 EX/19.

10.22 Подытоживая вышесказанное, г-н Кутаков говорит, что первое и самое главное, чем должна заниматься ЮНЕСКО в области прав человека, это, прежде всего, более эффективное выполнение основных резолюций Генеральной конференции, касающихся грубых и массовых нарушений прав человека в результате политики колониализма, неоколониализма, расизма и апартеида, социального и национального угнетения. Это, во-вторых, беспрекословное выполнение положений международно-правовых актов, принятых ЮНЕСКО в части, касающейся прав человека: Конвенции о борьбе с дискриминацией в области образования, которую на сегодня подписали меньше половины государств-членов, Рекомендации о положении учителей, которая выполняется далеко не всеми государствами-членами, Конвенции о защите культурных ценностей, Рекомендации об образовании взрослых и т.д. Надо, чтобы все государства стали участниками этих соглашений и выполняли на деле эти международные акты.

10.23 Г-н Кутаков отмечает, что именно на этих вопросах, определенных резолюциями Генеральной конференции, и должна концентрироваться деятельность ЮНЕСКО в области развития международного сотрудничества в интересах обеспечения прав человека.

(10.1) Mr. KUTAKOV thanked the Director-General, Mrs. Hildebrandt and Mr. Vasak for document 102 EX/19, which gave an account of various procedures for the examination of problems connected with human rights followed in other United Nations agencies and also in some intergovernmental organizations.

(10.2) In accordance with its Constitution and the corresponding resolutions of the General Conference, Unesco had made and was continuing to make a worthy contribution to international co-operation to safeguard human rights in the fields of education, science and culture.

(10.3) He referred to the Convention against Discrimination in Education, which had been adopted in 1960 on the initiative of the Soviet Union; to resolutions adopted on the initiative of the developing and the socialist countries at the fourteenth, fifteenth and sixteenth sessions of the General Conference which had strongly condemned the flagrant and large-scale infringements of human rights resulting from the existence of colonial regimes and the practice of apartheid and all other forms of racial discrimination; to the decision "to



withhold assistance from the Governments of Portugal, the Republic of South Africa and the illegal regime of Rhodesia in matters relating to education, science and culture, and not to invite them to attend conferences or take part in other Unesco activities, until such time as the authorities of these countries abandon their policy of colonial domination and racial discrimination" (15 C/Resolution 9.12, paragraph 5); and to the resolutions adopted at the eighteenth and nineteenth sessions of the General Conference regarding the widespread violation of fundamental rights and freedoms in Chile (18 C/Resolution 11.31 and 19 C/Resolution 14.1), in the occupied Arab territories (18 C/Resolution 13.1 and 19 C/Resolution 15.1), Namibia, the Republic of South Africa, Rhodesia etc.

(10.4) Such an approach to the defence of human rights, which was fully in accordance with the decisions of the United Nations and with established standards of international law, had the full understanding and most active support of the Soviet Union. It was, indeed, in the socialist countries that the greatest progress had been made in the development of human rights. The citizens of those countries enjoyed, among other things, the most comprehensive rights in education, science and culture.

(10.5) The Soviet Union's position on the question of the examination by Unesco of questions connected with human rights was inimitable, being based on the provisions both of the Charter of the United Nations and of the Constitution of Unesco, which provided for the consideration within the United Nations system only of questions relating to large-scale and flagrant infringements of human rights which constituted a threat to international peace and security and a crime against humanity.

(10.6) Article 2, paragraph 7, of the Charter of the United Nations specified that nothing in the Charter authorized the United Nations to intervene in matters which were within the domestic jurisdiction of any State. That principle did not, however, apply to measures of compulsion taken under Chapter VII of the Charter: cases which fell within the scope of Chapter VII, i.e. "Action with respect to threats to the peace, breaches of the peace, and acts of aggression" (Articles 39, 41 and 42), constituted exceptions. It was on that basis that decisions had been taken regarding sanctions against the Republic of South Africa and Rhodesia and condemning Israel's policies in the occupied Arab territories and the violation of human rights in Chile.

(10.7) All other matters, and a fortiori individual cases, were, in accordance with the Charter of the United Nations and existing agreements in the field of human rights, a matter exclusively for the domestic jurisdiction of States. That position was enshrined in the policy resolution (19 C/Resolution 12.1) adopted at the nineteenth session of the General Conference, which recalled that "Unesco is not an international judicial body and that, in conformity with paragraph 3 of Article I of its Constitution, it must avoid any interference in the domestic affairs of Member States".

(10.8) Confirmation for the Soviet Union's stand on that point of principle was to be found in the relevant resolutions of Unesco and the 33rd session of the United Nations Commission on Human Rights, held in Geneva from 7 February to 11 March 1977, in which the battle to safeguard the socio-economic and cultural rights of man was considered in conjunction with the struggle for the strengthening of peace, for disarmament, the final elimination of colonialism and the establishment of a new economic and social order. Resolution 12.1, adopted by the General Conference of Unesco at its nineteenth session, stressed that "relaxation of international tension and peaceful co-operation, and the efforts aimed at establishing a new international economic order, open up new prospects for the satisfactory solution of the problems of development and social progress, and for the guaranteeing and protection of human rights". The Organization proceeded from the premiss that "the defence and promotion of human rights and fundamental freedoms and the struggle against incitement to war, colonialism, neo-colonialism, racialism, apartheid and all other forms of oppression and discrimination are an essential duty for Unesco, because infringements of human rights are a source of conflict and consequently a threat to international peace and security, and because one of the Organization's tasks is to foster respect for human dignity" (18 C/Resolution 9.1, paragraph 4). The correctness of just such an approach by Unesco to the question of human rights was acknowledged by the combining of the questions of peace and human rights under the same section (3.17) in the Organization's current programme.

(10.9) The resolutions adopted by Unesco and by the 33rd session of the United Nations Commission on Human Rights set forth an important proposition concerning the interdependence of all human rights and fundamental freedoms. A resolution adopted at the

33rd session of the United Nations Commission on Human Rights stated that "the full implementation of economic, social and cultural rights is of crucial importance for the real and meaningful enjoyment of civil and political rights". It thus emphasized that it was the primary responsibility of States themselves to fulfil the requirements of Article 55 of the United Nations Charter, which included the promotion of higher standards of living, full employment, and conditions of economic and social progress and development. The policy resolution adopted at the nineteenth session of the General Conference underlined that "colonialism, neo-colonialism, racialism in all its forms and manifestations, apartheid, and the policy of aggression and interference in the domestic affairs of States are serious obstacles to the exercise of man's right to lead his life in dignity and freedom" (19 C/Resolution 12.1, Part I). Unesco should not, therefore, concern itself with separate, individual cases, but should take a broad, all-round approach to that question. In the words of the same resolution, it must "by study of the historical, philosophical, sociological and legal conditions on which human rights are dependent, seek to promote and safeguard civil and political rights as well as economic, social and cultural rights, which are interdependent both in theory and in practice" (19 C/Resolution 12.1, Part II).

(10.10) The Charter of the United Nations and the Constitution of Unesco were not concerned with the defence of human rights at international level, but with the development of international co-operation with a view to ensuring universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for all peoples, without distinction of race, sex, language or religion, by the Charter of the United Nations. The success of efforts to guarantee such rights and freedoms depended above all on how consistently the individual Member States of the United Nations and Unesco strove to achieve the aims and fulfil the obligations laid down in the Charter and Constitution of those Organizations, in the Universal Declaration of Human Rights and in international covenants on such rights, and on the extent to which their domestic and foreign policies corresponded to those aims and obligations, and that was determined in the last analysis by their socio-economic and political structures. International co-operation on matters concerning human rights could only be successful if it was conducted along the lines of the process of détente and helped to create greater trust between States and nations.

(10.11) The Executive Board's study of procedures for the consideration of matters concerning human rights had a long history. Detailed research had led to the formulation of a series of deductions and conclusions of principle, the most important of which was the finding that "Unesco is not authorized under its Constitution to take any measures in connection with complaints regarding human rights, which can be entertained only in accordance with the covenants and protocols subscribed to by Member States" (77 EX/Decisions, 8.3, paragraph 4). It was quite clear, in the light of that statement of principle, that the information given in document 102 EX/19 on procedures adopted by other international bodies, whether or not they belonged to the United Nations system, could not be regarded as providing models, examples or precedents to be followed by Unesco, as they were all based either on the constitutions of those organizations or on the relevant articles and provisions of international conventions, which were binding only on the parties thereto. Too much space had been devoted in the document submitted to the Board to procedures followed by organizations which did not belong to the United Nations system, such as the Council of Europe, which consisted only of a small group of Western European States and did not represent the interests of other European countries, the Organization of American States and its American Convention on Human Rights of 1969, which had not yet come into force and had been ratified by only two States.

(10.12) The international Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights had been signed and ratified by 42 States and had come into force in 1976, but document 102 EX/19 dealt mainly with the procedures of the optional protocol to the first of those Covenants, which was not binding and had been signed by only 16 States and was therefore a particular and not a general instrument.

(10.13) It was to be regretted that too much space had been devoted in the document to procedures for the examination of complaints from private individuals, on which the Organization was not competent to take any action. Some of the proposed variants frequently bordered on investigatory or quasi-judicial procedures. For example, paragraph 140 stated that the new "competent organ", independent of the Secretariat, proposed in the document should be in a position to supplement its dossier with any relevant information which enabled it to make a full check on the receivability of a communication and that it should be able to give a hearing for that purpose, if the occasion should arise, to the representative of the State concerned, but with the proviso "if it so desires". It appeared

from subsequent paragraphs in the document that the functions of the "competent organ" were to include what amounted to investigation of a country's legal procedures by a mission to the country concerned undertaken by a representative of the Director-General or by one or more members of the competent organ (paragraphs 142-143), which could result in direct interference in the domestic affairs of States in so far as it could be interpreted as creating a kind of supreme court of appeal, in contravention of the Constitution of Unesco and of resolutions of the General Conference and, in particular, in contradiction of 19 C/Resolution 12.1, paragraph 9, which stressed that Unesco could not be a judicial body and must avoid any interference in the domestic affairs of Member States.

(10.14) Neither Unesco nor its Member States stood to gain if the Organization were to begin contesting the propriety of national legislative and judicial systems and taking upon itself the examination of complaints from individuals in its 144 Member States. Such complaints might be lodged not only by those who had been convicted by national judicial bodies, but also by various individuals put up to doing so or simply bribed into doing so. That possibility was left open by the statement in paragraph 136 of the document that respect for human rights was "everyone's business". The Director-General's representative had said that between a quarter and a third of complaints were made by abnormal or unbalanced people. The proposed procedure could only increase the number of such complaints, causing unnecessary difficulties in the work of the Organization. All that could only create an atmosphere of mutual distrust and suspicion in relations between Unesco's Member States, and would undermine all the basic principles of co-operation which had led them to join the Organization.

(10.15) Although limitations on the receivability of complaints appeared to be laid down in paragraphs 137-139 of document 102 EX/19, there were virtually unlimited opportunities for individuals who took it into their heads to present their punishment for specific criminal offences as "revenge" against them on the part of the authorities. As a result, any criminal offenders could hasten to adopt a "political doctrine of their own", obviously different from the generally accepted one, in order, by posing as a "dissident", to avoid the retribution for their crimes. Unesco could thus be used to serve the narrow, selfish purposes of private individuals and terrorist extremist groups, which could make vicious and slanderous allegations against particular Member States or organizations in order to obtain publicity and in the hope of creating an atmosphere of sensationalism, hysteria and unrest in Unesco, and exerting pressure on it in the fulfilment of its duties.

(10.16) Document 102 EX/19 did not devote sufficient attention to procedure for the consideration of "questions", a term which, according to the sense of resolution 12.1, adopted at the nineteenth session of the General Conference, should be understood as meaning large-scale, systematic and flagrant infringements of human rights in the spheres of Unesco's competence. That resolution, adopted by the General Conference on the question of human rights, oriented the Organization towards combating large-scale flagrant infringements of human rights in its spheres of competence which were the result of the policy of neo-colonialism and racism and of imperialist aggression. That was the key to the improvement of the Organization's effectiveness towards which resolutions of recent sessions of the General Conference had directed it.

(10.17) The proposal to create a special new body - a working group to decide on the receivability of communications in the place of the Director-General (paragraph 139) was quite unjustified. Such a proposal might be understandable if it had been dictated by doubts as to the objectivity and impartiality of the Secretariat and its chief executive, the Director-General. The speaker expressed his confidence that there were not the slightest grounds for any such doubts among the members of the Executive Board, and hoped that they all shared his opinion. Instead of resulting in the desired increase in effectiveness, the adoption of such a proposal would lead to increased expenditure of time and resources.

(10.18) From the same viewpoint, the proposal contained in paragraph 144 regarding the renaming of the Executive Board's Committee on Conventions and Recommendations in Education as the Committee on Human Rights and Conventions and Recommendations in Education was unacceptable. It would only give rise to misconceptions regarding the Committee's actual functions and terms of reference and cause appeals to be submitted which did not come within Unesco's sphere of competence, thus creating unnecessary additional difficulties in the work of the Organization. While the Committee on Conventions and Recommendations in Education had examined 73 communications over the last eight years and Unesco itself received an average of about 100 communications a year, the United Nations Commission on Human Rights examined as many as 20 to 30 thousand

communications. It had a large staff of specialists and its yearly sessions were lengthy proceedings. A new committee would in fact duplicate the work of the United Nations Commission and that of other competent bodies and involve great wastage of time and money, preventing the Organization from performing its constitutional functions.

(10.19) In resolution 12.1, adopted at its nineteenth session, the General Conference had invited the Executive Board to "study" procedures for the examination of communications received by Unesco and to report on the implementation of Part II of the resolution, which concerned human rights, to its twentieth session. It had not invited the Board to devise a new procedure, and with good reason: the lodging of complaints against their own countries by private individuals was a matter which concerned not only the 45 States which were represented on the Executive Board, but also directly affected the State interests of the 99 which were not. Such questions could only be decided on in consultation with the other 99 Member States, as their interests were also directly affected.

(10.20) Documents such as document 102 EX/19, which proposed new measures and procedures that might involve changes in the forms and methods of Unesco's work and also, possibly, in the structure of its Secretariat, must be considered in the closest consultation with the Member States, allowing them time to consider the proposals they contained in detail and to make any modifications which might prove necessary. Members of the Board would confine themselves at the present session, as had been agreed, to an exchange of views on the basic principles involved. The Secretariat would then be able to prepare a new document, bearing in mind the comments made in the general discussion, which would provide guidance in further work on those questions for the Executive Board's Committee on Conventions and Recommendations in Education. Such a document must include surveys of the procedures applied in the case of various conventions and agreements in the spheres of Unesco's competence, such as the Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid, etc.

(10.21) At its 99th session the Executive Board had invited the Committee on Conventions and Recommendations in Education in decision 9.4-9.5 to "review its current procedure, including methods of work and of reporting to the Executive Board, with a view to making recommendations for improvement where necessary". The Committee had, in pursuance of that decision, devoted its meetings of 20 and 21 September 1976 to a consideration of the procedure at present in use, including methods of work and the presentation of reports to the Executive Board, but it had been unable to complete its examination of that question, which having thus been begun should in principle be continued. On the completion of its work the Committee could accordingly submit to the Executive Board its proposals on the question of procedures, as was suggested in document 102 EX/19.

(10.22) In conclusion, the primary and most important matters with which Unesco should concern itself in the field of human rights should be, firstly, the more effective implementation of the basic resolutions of the General Conference concerning flagrant and large-scale infringements of human rights resulting from the policy of colonialism, neo-colonialism, racism and apartheid and social and national oppression; and, secondly, the unquestioning implementation of the provisions of international legal instruments adopted by Unesco as they related to human rights: the Convention against Discrimination in Education, which had so far been signed by less than half the Member States, the Recommendation concerning the Status of Teachers, which was far from being implemented by all Member States, the Convention for the Protection of Cultural Property, the Recommendation on the Development of Adult Education, etc. All States should become parties to those international conventions and see that they were implemented.

(10.23) It was on precisely those questions, which had been defined by resolutions of the General Conference, that Unesco's activity to promote international co-operation for the safeguarding of human rights should be concentrated.

11.1 Le DIRECTEUR GENERAL désire répondre aux critiques que M. Koutakov a formulées au sujet du contenu du document 102 EX/19, lequel notamment ne traiterait que de certains des problèmes évoqués dans la résolution 19 C/12.1.

11.2 Il souligne que ce document, comme l'ont indiqué Mme Hildebrandt et M. Vasak, a été établi en pleine conformité avec les dispositions des résolutions 19 C/6.1.13 et 19 C/12.1 invitant le Conseil exécutif et le Directeur général "à étudier les procédures qu'il conviendrait de suivre dans l'examen des cas et des questions dont l'Unesco pourrait être saisie en ce qui con-

cerne l'exercice des droits de l'homme dans les domaines relevant de sa compétence, afin de rendre son action plus efficace". L'étude de ces procédures fait précisément l'objet du document présenté au Conseil et on ne saurait donc reprocher au Secrétariat de ne pas s'être acquitté de la tâche qui lui était confiée. Le Directeur général fait observer incidemment que la Conférence générale a implicitement reconnu que l'action menée jusqu'ici par l'Unesco dans le domaine des droits de l'homme était justifiée puisqu'elle a demandé que son efficacité soit accrue. Quant aux considérations figurant dans la cinquième partie du document au sujet des procédures, le Conseil est libre de prendre à leur sujet la décision qu'il jugera la plus appropriée.

11.3 Au paragraphe 10 (a) de la résolution 19 C/12.1, le Conseil exécutif et le Directeur général sont invités "à examiner avec une attention particulière la situation générale en ce qui concerne le respect des droits de l'homme dans le monde, dans les domaines de compétence de l'Unesco" et au paragraphe 10 (c) "à continuer d'établir... une coopération et une coordination étroites avec les organes compétents des Nations Unies, afin de tirer profit de leurs efforts et de leurs enseignements dans ce domaine". En ce qui concerne ce dernier point, le Directeur général fait observer que la coordination des procédures de l'Unesco avec les autres procédures d'examen des communications fait l'objet des paragraphes 151 à 162 du document. Par exemple, il est fait allusion, au paragraphe 157, aux échanges de documentation entre les différentes institutions du système des Nations Unies auxquels ont donné lieu certaines questions touchant les droits de l'homme.

11.4 Le Directeur général fait valoir que le document 102 EX/19 a essentiellement trait aux procédures d'examen des communications relatives aux droits de l'homme et qu'il s'inscrit dans le prolongement du débat qui a eu lieu à ce sujet à la 100e session du Conseil. Aussi, les autres problèmes soulevés dans la résolution 19 C/12.1, notamment la situation de certains pays et territoires, feront-ils l'objet d'un document distinct qui sera présenté au Conseil exécutif à une prochaine session et dans lequel le Directeur général abordera également divers points sur lesquels il croit bon d'attirer l'attention du Conseil. Le Directeur général sera ainsi en mesure de soumettre à la Conférence générale, à sa vingtième session, un rapport sur l'application de la résolution 19 C/12.1 qui portera aussi bien sur les procédures d'examen des cas et des questions concernant les droits de l'homme que sur la situation générale en ce qui concerne le respect de ces droits dans le monde. Bien entendu, les avis que le Conseil pourrait vouloir donner sur la manière dont ces documents devraient être établis seraient pris en considération par le Secrétariat.

12.1 Mr. GARBO said that important though the civil and political liberties of the individual were, attention should first be given to ensuring that all were provided with the basic necessities of life. There was a need to even out the distribution of resources between the industrialized and the developing nations: recent research indicated that the death rate in Guinea could be reduced by 78,000 a year if that country enjoyed the living standards of a country such as Sweden, and that a more even distribution of basic goods and services throughout the world could prevent 14 million deaths each year. Internal inequalities also existed: in France those working in the liberal professions lived on average to the age of 73-75, whereas the life expectancy of industrial workers was only 53 years. Similarly, daily calorie intakes measured in Brazil had shown a range of over 4,000 down to 1,240, a level which if sustained over long periods could effectively prohibit all human activity. Unesco could, therefore, make a useful contribution towards the promotion of human rights by sharing in the efforts of the United Nations to secure a fairer distribution of world resources.

12.2 Unesco's paramount task was to foster international relations conducive to the securing of basic rights for the individual: the right to live, to exercise one's human creativity and to be protected against cruel and degrading treatment and persecution for political reasons. Two preconditions must be fulfilled if this state of affairs was to be achieved: firstly, as he had already made clear, such basic necessities as food, shelter, health and education, without which no individual or group could be expected to show much interest in the question of political rights, must be made available to all through a redistribution of economic resources both between and within the different States, and secondly a halt must be called to the arms race, which not only threatened to deprive the very concept of human rights of all meaning, but furnished supplies of weapons which might well be used for the purpose of domestic repression.

12.3 Unesco had been founded by its Member States in order to further universal respect for "the human rights and fundamental freedoms ... for the peoples of the world, without distinction of race, sex, language or religion", and the Organization had concentrated its attention on the promotion of human rights within its own fields of competence. Although it was not easy to give a clear definition of Unesco's responsibilities in that field, the Secretariat had made a good start

in paragraph 131 (a) and (b) of document 102 EX/19, by specifying the right to education, to share in scientific advancement and to participate in cultural life and the right to information. An exclusive concern with the rights of those working in the fields of education, science, culture and communication would, as the Secretariat rightly pointed out, risk creating privileged groups in that respect.

12.4 Examination of the implementation of conventions and recommendations was a useful way of reviewing the exercise of human rights within Unesco's fields of competence, but the present system, which relied on reports from Member States, did not give a true picture of the situation. Unesco should, however, be ready to co-operate if called upon by the Human Rights Committee of the International Covenant on Civil and Political Rights to supply it with additional information on the exercise of human rights within the Organization's spheres of competence.

12.5 The military coup in Chile and the relative international isolation of the Junta had resulted in a mass of complaints being submitted to the Board's Committee on Conventions and Recommendations in Education and a general political willingness to examine them seriously. Those complaints had been followed up, and in some cases it was felt that the Committee might have been able to improve the situation regarding human rights in Chile. Complaints were now being lodged, however, regarding the exercise of human rights in other countries, and, pending the adoption by the Board of a more effective and satisfactory approach, they would have to be dealt with in accordance with existing procedures.

12.6 Document 102 EX/19 was useful and instructive and, although there were some minor faults of which he might inform the Secretariat, he concurred in general with the conclusions expressed from paragraph 125 onwards regarding the need for the Committee to continue investigating specific cases brought to the attention of the Organization and in particular regarding the importance of detailed examination of the complaints lodged and efforts at conciliation. It was his considered opinion that the members of the Committee, as representatives of their own governments, were not qualified to act as prosecuting council, still less as judges, in the matter of human rights, but rather that what was required was a willingness to understand and to help to solve the problems submitted to them.

12.7 That was not the time to comment in detail on the procedural changes proposed by the Secretariat or on the criteria on which they were based, but in general the proposals, although moderate, might be expected to bring about some improvement. The proceedings of the Committee should be confidential, with reference to the Board of questions upon which that organ should express an opinion.

12.8 Although it would not be possible for the Board to reach a decision on the procedural changes at its present session, the Committee itself had been invited by the Board to review its procedures in 99 EX/Decision 9.4-9.5 which had been noted by the General Conference at its nineteenth session. It might, therefore, be asked to study the question further in order to assist the Board's final consideration of the procedures observed in that field or, alternatively, a special working group might be appointed for that purpose.

12.9 It would be no easy task to devise procedures which met with general approval. What was required was a way of expressing concern at individual violations of human rights without causing a deterioration in international relations. For although a lasting peace could not be based on the acceptance of exploitation and repression, the individual's ability to enjoy his civil and political rights was in turn dependent on the maintenance of international peace and co-operation.

The meeting rose at 12.55 p.m.

SIXTH MEETING

Tuesday, 3 May 1977, at 3.45 p. m.

**Point 5.6.2 - ETUDE DES PROCEDURES QU'IL CONVIENT DRAIT DE SUIVRE DANS L'EXAMEN DES CAS ET DES QUESTIONS DONT L'UNESCO POURRAIT ETRE SAISIE EN CE QUI CONCERNE L'EXERCICE DES DROITS DE L'HOMME DANS LES DOMAINES RELEVANT DE SA COMPETENCE, AFIN DE RENDRE SON ACTION PLUS EFFICACE (102 EX/19) (suite)**

1.1 M. VAN USSEL exprime le souhait que le document 102 EX/19 fasse l'objet d'une publication qui serait largement diffusée. Ce document lui paraît remarquable en ce sens qu'on y trouve à la fois un tableau historique des activités de la Commission des droits de l'homme de l'ONU et des organes compétents en matière de droits de l'homme des institutions spécialisées, une étude comparative des procédures en vigueur dans les organisations intergouvernementales et des considérations pertinentes sur le rôle que l'Unesco devrait jouer, dans le domaine en cause, pour accomplir les missions qui lui sont assignées par son Acte constitutif. M. Van Ussel souligne, à cet égard, que dans la résolution 12.1 adoptée à sa dix-neuvième session, la Conférence générale a estimé que le respect des droits de l'homme et des libertés fondamentales est une condition indispensable du développement et de l'instauration d'un nouvel ordre économique international.

1.2 C'est, rappelle M. Van Ussel, l'article 55 de la Charte des Nations Unies qui donne à celles-ci mandat de veiller au respect universel et effectif des droits de l'homme et des libertés fondamentales. Aux termes de l'article 56 de la Charte, les Etats membres des Nations Unies "s'engagent", en vue d'atteindre les buts énoncés à l'article 55, "à agir, tant conjointement que séparément, en coopération avec l'Organisation". Cet article constitue le fondement juridique du devoir qui incombe aux Etats membres dans le domaine des droits de l'homme. A un tel devoir, il ne saurait être question d'opposer le respect du principe de la non-intervention dans les affaires intérieures des Etats, tel qu'il est énoncé au paragraphe 7 de l'article 2 de la Charte des Nations Unies et au paragraphe 3 de l'article premier de l'Acte constitutif de l'Unesco, principe dont M. Van Ussel ne conteste pas pour autant l'importance. D'autre part, M. Van Ussel rappelle que l'article 68 de la Charte des Nations Unies a prévu la création, en tant qu'organe subsidiaire du Conseil économique et social, d'un organe "chargé de veiller au progrès des droits de l'homme" : c'est en application de cette disposition qu'a été créée la Commission des droits de l'homme.

1.3 Cette Commission, souligne M. Van Ussel, a toujours tenu à respecter les compétences des institutions spécialisées, en particulier celles de l'OIT et de l'Unesco. A cet égard, il approuve sans réserve les conclusions formulées aux paragraphes 125 et suivants du document 102 EX/19 concernant la spécificité de la mission de l'Unesco dans le domaine des droits de l'homme ; cette spécificité devrait être réaffirmée dans la résolution que le Conseil exécutif pourrait adopter à l'issue du débat.

1.4 La mission de l'Organisation paraît s'exercer sur un triple plan. Elle consiste, tout d'abord, en une action de promotion et d'éducation. Reconnaissant que les programmes de l'Unesco ont constamment prévu des activités importantes, notamment en matière d'enseignement relatif aux droits de l'homme, M. Van Ussel demande au Directeur général quelles mesures il compte prendre en vue de la mise en oeuvre de la résolution de la Commission des droits de l'homme invitant l'Unesco à prévoir pour 1978, à l'occasion du trentième anniversaire de la Déclaration universelle des droits de l'homme, un certain nombre d'activités dans ce domaine.

1.5 Le deuxième aspect de la mission de l'Unesco, d'une importance égale, est son action normative ; cette action devrait se développer dans les années à venir, s'agissant, par exemple, des droits de la femme et de l'enfant.

1.6 La troisième mission de l'Unesco est de garantir et de défendre les droits fondamentaux de la personne humaine. C'est pour rendre cette action plus efficace que le Conseil est invité à se pencher sur les procédures d'examen des cas et des questions dont l'Organisation est saisie en ce qui concerne les droits de l'homme. Sa compétence à cet égard étant établie, il n'en est pas moins évident que, dans l'état actuel des textes, l'Unesco ne saurait se transformer en tribunal international habilité à prononcer des condamnations. L'idéal serait de mettre en place une juridiction universelle analogue à la Cour de justice instituée par la Convention européenne des droits de l'homme, à laquelle la souveraineté des Etats ne peut plus être opposée dès lors que ceux-ci en ont reconnu la compétence. Dans le même esprit, il faut espérer que les Etats qui ont ratifié le Pacte international relatif aux droits civils et politiques accepteront la procédure prévue par l'article 41 de cet instrument, aux termes duquel tout Etat partie peut déclarer

qu'il reconnait la compétence du Comité des droits de l'homme institué par le Pacte pour recevoir et examiner des communications dans lesquelles un Etat partie prétend qu'un autre Etat partie ne s'acquitte pas de ses obligations au titre du Pacte.

1.7 Pour définir les droits de l'homme relevant de la compétence de l'Unesco, il faut, selon M. Van Ussel, tenir compte, d'une part, des domaines de compétence réservés tels qu'ils sont énoncés dans la Charte des Nations Unies, d'autre part, de la possibilité de mettre en place à l'Unesco des mécanismes susceptibles de garantir efficacement le respect des droits de l'homme. En effet, il est inutile de se mettre d'accord sur une définition large des droits de l'homme si n'existe pas la volonté politique de mettre en place les moyens et le cadre institutionnel nécessaires. Aussi M. Van Ussel serait-il enclin à ne retenir, aux fins de la définition des droits de l'homme relevant de la compétence de l'Unesco, que les droits énoncés à l'alinéa (a) du paragraphe 131 du document 102 EX/19 et une partie de ceux qui sont énoncés à l'alinéa (b). De toute manière, une telle définition devrait être envisagée avec souplesse et réalisme et éventuellement révisée à la lumière de l'action normative menée par l'Unesco et de la volonté des Etats membres telle qu'elle s'exprime dans les résolutions de la Conférence générale ou dans les notes d'orientation concernant le Plan à moyen terme.

1.8 Sur la question des procédures, le Conseil exécutif devrait adopter une position qui, compte tenu de l'expérience acquise, devrait allier le pragmatisme à la fermeté. Il faut avant tout veiller à ce que les difficultés rencontrées ne soient le prétexte d'un refus de reconnaître même les droits fondamentaux.

1.9 A propos des paragraphes 134, 135, 136, qui traitent des sources des communications, M. Van Ussel se borne à souligner la nécessité pour les organisations non gouvernementales d'avoir un caractère réellement représentatif.

1.10 A propos de l'examen de la recevabilité des communications relatives aux droits de l'homme, M. Van Ussel estime que les communications anonymes ne doivent pas être systématiquement écartées, car leurs auteurs - qui ont de bonnes raisons de ne pas les signer - peuvent parfois être identifiés. Il souscrit, d'autre part, au critère de la litispendance (par. 137 (ii)), encore que l'article 103 de la Charte des Nations Unies dispose qu'en cas de conflit entre les obligations des membres des Nations Unies en vertu de la Charte et leurs obligations en vertu de tout autre accord international, les premières prévaudront.

1.11 En venant à la question de l'organe compétent pour se prononcer sur la recevabilité des communications, M. Van Ussel considère que le Secrétariat doit conserver sa compétence en ce qui concerne l'instruction des communications, mais qu'un comité du Conseil ou un groupe de travail *ad hoc* devrait être chargé d'examiner, dans un premier temps, la recevabilité des communications et, dans un second temps, de se prononcer sur cette recevabilité. Dans l'intervalle entre la phase d'examen et la phase de décision pourrait avoir lieu une tentative de conciliation ou de négociation ; une telle procédure viserait à heurter le moins possible les susceptibilités des Etats membres, tout en créant les meilleures conditions pour l'examen des plaintes. Si le recours à la conciliation ne donnait pas les résultats escomptés, la communication pourrait être déclarée recevable et il appartiendrait au comité de se prononcer sur son bien-fondé et de faire les recommandations appropriées ; M. Van Ussel approuve, à ce sujet, les suggestions formulées aux paragraphes 142, 143, 144 et surtout 145 du document 102 EX/19.

1.12 S'agissant de la procédure à suivre pour l'examen des "questions" concernant les droits de l'homme, M. Van Ussel estime que, normalement, il appartiendrait à la Conférence générale de saisir le Conseil exécutif de telles questions. C'est seulement à titre exceptionnel que le Conseil pourrait lui-même déclarer qu'un ensemble de cas particuliers constitue une "question" ; en effet, il n'est pas un organe politique autonome, mais un organe de gestion au service des Etats membres représentés à la Conférence générale. Aussi M. Van Ussel n'est-il pas en mesure de donner son approbation au paragraphe 147 du document 102 EX/19. D'autre part, si la communauté internationale veut réellement promouvoir le respect des droits de l'homme et des libertés fondamentales partout où ceux-ci sont bafoués, il est urgent de dépolitiser les débats ; c'est le sort de l'individu ou, dans certains cas, celui d'une collectivité qui doit déterminer l'action d'une organisation internationale.

1.13 Pour ce qui est de l'organe du Conseil exécutif qui aurait à examiner les communications et les questions, M. Van Ussel estime que l'actuel Comité sur les conventions et recommandations dans le domaine de l'éducation a accompli un travail utile et important et qu'on peut se demander si, à l'avenir, il ne conviendrait pas de confier à ce comité l'étude de tous les problèmes posés par l'action normative de l'Unesco. Le Comité pourrait se réunir une fois par an ou tous les deux ans pour examiner les rapports des Etats membres sur l'application de tous les instruments internationaux adoptés sous les auspices de l'Unesco et non plus seulement ceux qui relèvent



du Secteur de l'éducation. Cela permettrait à un comité ad hoc de se pencher exclusivement sur les questions relatives à la garantie des droits de l'homme et des libertés fondamentales ; cet organe pourrait d'ailleurs créer un groupe de travail restreint chargé d'examiner la recevabilité des communications. Le comité en question pourrait éventuellement comprendre des personnalités indépendantes connues pour leur attachement au respect des droits de l'homme. La formule suggérée par M. Van Ussel aurait l'avantage d'assurer indépendance et continuité à l'action de l'Unesco dans ce domaine, tout en contribuant à sa dépolitisation. De plus, des personnalités indépendantes connues pour leur intégrité et leur probité intellectuelle seraient peut-être plus facilement entendues par les Etats membres que des représentants de gouvernements.

1.14 M. Van Ussel s'opposerait à la suggestion de M. Garbo consistant à charger le présent Comité sur les conventions et recommandations dans le domaine de l'éducation de poursuivre l'étude des procédures d'examen des communications et de formuler des recommandations à ce sujet. C'est, en effet, au Conseil exécutif que la Conférence générale a confié cette tâche que M. Van Ussel espère, pour sa part, voir rapidement mener à bien, étant donné l'urgence et l'importance des problèmes en cause.

2.1 Mr. HIRAOKA pointed out that respect for human rights was the very basis of democracy in any country in the world. On the other hand, by their very nature, human rights issues were closely linked to each country's political situation, its official policy and its political structures. Consequently, Unesco, which was prohibited from intervening in the domestic affairs of its Member States, had to proceed most carefully in dealing with human rights cases and questions. If it failed to exercise sufficient caution, there was a danger of accentuating political tension within the Organization, which would interfere with its constructive task of furthering international co-operation through collaboration among Member States.

2.2 While basically supporting the proposals contained in Part V of the study, whose purpose was to strengthen the procedure for examination of human rights issues in Unesco, he felt that care should be taken to ensure that the criteria adopted were appropriate to Unesco and as practical as possible. In particular, the scope of such criteria should not be extended to a degree that might lead to Unesco's involvement in political antagonism.

2.3 Paragraph 139 of document 102 EX/19 suggested that the Committee on Conventions and Recommendations in Education, or preferably a small working group set up by that Committee, should be responsible for deciding on the receivability of communications. He entirely agreed with that suggestion and recalled, in that connection, the somewhat bitter remarks made by Mr. Carneiro about his experiences as Chairman of the Committee. In his view, the members of the examining body should base their recommendations not so much on the position of their respective governments as on their own individual judgement. In that way the body would function more smoothly, without heated debate or political bias.

3.1 El Sr. BUSTAMANTE felicita al Director General por el estudio que somete al Consejo y a la señora Hildebrandt y al Sr. Vasak por su clara presentación del tema. Se declara pesimista, porque en todas las organizaciones internacionales se habla mucho de los derechos humanos y se aprueban instrumentos sobre el particular mientras que estos derechos se siguen violando en el mundo. Sugiere que el Comité de Convenciones y Recomendaciones en la Esfera de la Educación se denomine en adelante Comité de los Derechos Humanos.

3.2 Estima el Sr. Bustamante que el procedimiento seguido hasta la fecha es demasiado lento, habida cuenta de la urgencia de ciertos casos y que conviene agilizarlo. Añade que lo más importante es que los casos examinados sean estrictamente competencia de la Unesco, es decir, que se relacionen con la educación, la ciencia y la cultura y cita al respecto los párrafos 114 y 115 del documento 102 EX/19. Piensa que un caso patente que requiere la intervención de la Unesco es el de la discriminación racial que se aplica en las escuelas de algunos países, a diferencia de otras cuestiones que la Unesco ha examinado, que no eran de su competencia y que han hecho perder mucho tiempo.

3.3 En lo que se refiere a los informes que el Comité someta al Consejo Ejecutivo, considera que no deberfan presentarse por separado, sino en relación con otros puntos del Orden del Día y que tendrían que citar los Estados interesados, el número de comunicaciones y las conclusiones generales, sin dar lugar a largos debates en el Consejo.

3.4 Después de subrayar la lentitud y la poca eficacia del procedimiento seguido y el requisito de no injerencia en los asuntos internos de los Estados y en la esfera de competencia de otras organizaciones, el Sr. Bustamante estima que el procedimiento que se aplica en la Unesco, al igual que en otras organizaciones, ha de acompañarse con una campaña de información que movilice a

la opinión mundial. No se trata de denigrar a un Estado a través de los medios de información, sino de tener informada a la opinión pública, ya que la sanción de la opinión pública es la que puede obligar a reflexionar a los países que violan los derechos humanos.

3.5 Al terminar su intervención, el Sr. Bustamante pregunta al Director General por qué los representantes de la Unesco en las Naciones Unidas no tienen derecho a participar en las sesiones privadas de la Comisión de Derechos Humanos.

(3.1) M. BUSTAMANTE félicite le Directeur général de l'étude qu'il a présentée au Conseil, ainsi que Mme Hildebrandt et M. Vasak de leurs lumineux exposés. Il déclare éprouver un certain pessimisme en constatant que si, dans toutes les organisations internationales, la question des droits de l'homme fait l'objet de nombreux débats qui aboutissent à l'adoption d'instruments divers, ces droits continuent d'être violés un peu partout dans le monde. Il suggère que le Comité sur les conventions et recommandations dans le domaine de l'éducation s'intitule désormais Comité des droits de l'homme.

(3.2) Pour M. Bustamante, la procédure suivie jusqu'ici est trop lente vu l'urgence de certains problèmes, et il convient de l'alléger ; en outre, il importe au plus haut point que les cas examinés relèvent strictement de la compétence de l'Unesco, c'est-à-dire qu'ils concernent l'éducation, la science et la culture, et M. Bustamante se réfère, à ce propos, aux paragraphes 114 et 115 du document 102 EX/19. Un cas qui requiert manifestement l'intervention de l'Unesco est celui de la discrimination raciale pratiquée dans les écoles de certains pays ; en revanche, d'autres questions que l'Unesco a examinées et qui n'étaient pas de sa compétence ont fait perdre beaucoup de temps.

(3.3) En ce qui concerne les rapports soumis au Conseil exécutif par le Comité, ils devraient être présentés non pas séparément, mais en liaison avec d'autres points de l'ordre du jour, et se borner à mentionner les Etats intéressés, le nombre de communications et les conclusions générales, sans donner lieu à des débats prolongés au sein du Conseil.

(3.4) Ayant souligné la lenteur ainsi que le peu d'efficacité de la procédure en vigueur et la nécessité de la non-ingérence dans les affaires intérieures des Etats et dans la sphère de compétence des autres organisations, M. Bustamante déclare que la procédure appliquée à l'Unesco, comme dans les autres organisations, doit s'accompagner d'une campagne d'information propre à mobiliser l'opinion mondiale. Il ne s'agit pas de dénigrer un Etat par l'intermédiaire des moyens d'information, mais de renseigner l'opinion publique dont les réactions peuvent faire réfléchir les pays qui violent les droits de l'homme.

(3.5) M. Bustamante demande enfin au Directeur général pourquoi les représentants de l'Unesco aux Nations Unies n'ont pas le droit de participer aux séances privées de la Commission des droits de l'homme.

4.1 M. MATHIEU souligne que la résolution 19 C/12.1 adoptée par la Conférence générale à l'unanimité donne au Conseil exécutif un mandat dont la nature et les limites sont clairement définies. La multiplication des violations des droits de l'homme sur tous les continents est un des phénomènes les plus tragiques de l'époque actuelle. Ces violations portent atteinte à la dignité de la personne humaine et, si on se place du point de vue des domaines de compétence de l'Unesco, au droit de chaque individu à l'éducation, au progrès social, scientifique et technique, à la culture et à l'information. Aussi l'Organisation a-t-elle le devoir de les dénoncer avec la plus grande fermeté. Toutefois, elle n'a pas vocation à se transformer en tribunal international et à condamner ou sanctionner tel ou tel gouvernement. Cela ne signifie pas pour autant que toute intervention soit vouée à l'inefficacité, car il est possible d'agir discrètement et fermement en vue du règlement des cas et des questions dont l'Unesco est saisie, avec le concours de l'Etat intéressé et dans le cadre d'une procédure acceptée par tous. N'exigeant pas un épuisement préalable des voies de recours internes, une telle façon de faire facilite la conciliation.

4.2 M. Mathieu estime qu'une double attitude peut être prise face aux violations des droits de l'homme. On peut constater l'existence d'une violation dans un domaine relevant de la compétence de l'Unesco ; on peut ensuite étudier les moyens à mettre en oeuvre pour empêcher d'une manière générale des violations du même genre. Pour une institution comme l'Unesco ces deux approches sont inséparables. Elle doit examiner les cas particuliers à la lumière des principes universels

énoncés dans les textes fondamentaux qui régissent son action et partir de ces cas pour mieux déterminer les moyens de protéger les droits de l'homme. En ce sens, chaque "cas" doit devenir une "question". Toutefois, si les principes généraux de l'action de l'Unesco doivent être proclamés, les interventions ayant pour but d'aider des individus doivent conserver un caractère confidentiel ; le dialogue entre le comité du Conseil auquel sera confiée l'étude des cas et le gouvernement mis en cause aura d'autant plus de chances d'aboutir à des résultats positifs qu'il se déroulera à l'abri des pressions dont s'accompagnerait inévitablement un débat public.

4.3 M. Mathieu est favorable à une définition plutôt restrictive des droits de l'homme relevant de la compétence de l'Unesco et partage à cet égard le point de vue exprimée aux paragraphes 131 et 132 du document 102 EX/19. Il faut, en effet, éviter d'empiéter sur la compétence des autres institutions du système des Nations Unies et un élargissement de celle de l'Unesco nuirait à l'efficacité de son action. M. Mathieu est également convaincu de la nécessité de décharger le Secrétariat de l'examen de la recevabilité des communications relatives aux droits de l'homme pour le confier à un organe restreint composé de membres du Conseil exécutif, comme l'ont fait d'autres institutions du système des Nations Unies. L'organe en question pourrait être le Comité sur les conventions et recommandations dans le domaine de l'éducation ou un comité plus restreint et fonctionnant de manière différente.

4.4 M. Mathieu estime que, tant qu'une nouvelle procédure n'est pas entrée en vigueur, le Comité sur les conventions et recommandations dans le domaine de l'éducation doit être maintenu en fonctions. Il doit poursuivre dès maintenant l'examen des communications parvenues à l'Unesco et le Secrétaire doit prendre les mesures nécessaires pour que le Comité se réunisse à cette fin avant la clôture de la session.

4.5 Quant à l'étude des procédures demandée au Conseil par la Conférence générale, M. Mathieu a conscience qu'une décision hâtive pourrait nuire au prestige de l'Organisation. Peut-être pourrait-on charger, à la fin du débat, un groupe de travail restreint de rédiger un rapport rendant compte des opinions exprimées sur cette question d'une grande complexité. Ce document serait soumis au Conseil et servirait de base à la suite de ses travaux.

5.1 Mr. GOPAL pointed out that the question of human rights had to be considered in the broad context of development, standards of living and the intellectual climate in general. Therefore the Board should not restrict its study to remedial measures, but should search for more effective procedures for promoting human rights in Unesco's spheres of competence, in particular by encouraging education in human rights viewed against the political, economic and social background.

5.2 There was an obvious need to strike a proper balance with regard to the procedures. Without trespassing on the domestic jurisdiction of Member States, a way must be found of dealing with human rights cases and questions, which would not be in the spirit of penal law: an approach in such a spirit would be self-defeating. Instead, each case should be dealt with in the way that seemed most suitable. Unesco must work out its own procedures, accepting the facts of international life and aiming at achieving practical progress. In that connection, the procedures followed by interregional organizations were inappropriate.

5.3 It was important that the criteria for receivability should not be too rigid and legalistic. In his view the bias should be in favour of the victim. It would be better to receive complaints from persons appearing to be mentally disturbed, for instance, rather than to reject a single genuine case on formalistic grounds.

5.4 Careful consideration should be given to the question of co-operation with other United Nations bodies, many of which, and particularly the Commission on Human Rights, were already deeply involved in the subject. While there was an obvious danger of duplication, he wondered what harm there could be in an application going to two United Nations organizations at the same time. But there was clearly scope for improvement in the field of co-operation, as evidenced by the fact reported in paragraph 153 of document 102 EX/9 that the Secretary-General of the United Nations had never even acknowledged receipt of the communications concerning human rights transmitted to him by the Director-General. Unesco's relations with other United Nations bodies should be clarified in that respect.

6.1 El Sr. USLAR-PIETRI se adhiere a los que le han precedido en el uso de la palabra para elogiar el documento preparado por el Director General y sus colaboradores, que representa una síntesis de mucha utilidad para todos. Estima que la cuestión considerada es sumamente importante y presenta dos aspectos principales que constituyen el nudo del problema.

6.2 En primer lugar, ¿cómo desempeñar funciones de juez sin tener sus atribuciones? Se pide a la Unesco que intervenga como juez en conflictos entre Estados, o entre personas privadas y el Estado al que pertenecen, sobre la interpretación de los derechos humanos. El Consejo se ha reunido para examinar exclusivamente el procedimiento que conviene aplicar, pero, en derecho, la noción de procedimiento es inseparable de la de justicia. Dados los instrumentos existentes y la calidad de los juristas que hay en la Unesco, el procedimiento sería de fácil aplicación, pero el escollo reside en que la Organización no es un tribunal, que no hay acusador ni acusado y que esta situación anómala es la que plantea la mayor dificultad.

6.3 El segundo aspecto es el de la competencia de la Unesco, que se determina en función de la especificidad de la Organización. Si se considera que esta especificidad se relaciona con la educación, la ciencia, la cultura y la comunicación, cabe reconocer que abarca prácticamente todos los derechos humanos y que, por tanto, es difícil en este caso de hablar de especificidad.

6.4 Observa que hay casos especialmente graves en que un organismo de derecho público o un Estado puede denunciar violaciones en otro Estado u otros Estados. Estos son precisamente los casos más peligrosos, porque tienen repercusiones en el equilibrio de las relaciones políticas mundiales y es muy difícil que haya objetividad. Por tanto, la Unesco sería, quizá, el organismo menos apropiado para resolverlos. Estima, en cambio, que la Unesco sí puede intervenir, aunque en forma limitada, en casos particulares que entren en el terreno de su relativa especificidad y que el procedimiento establecido permitirá examinar esas quejas particulares, mientras que las relativas a los Estados pueden resolverse por otros cauces.

6.5 Pone de manifiesto el conflicto entre el concepto de soberanía nacional y el de cumplimiento universal de los derechos humanos y estima que es difícil trazar una frontera entre ambos, por lo cual es conveniente actuar con mucha prudencia. Recalca que el actual es un mundo eminentemente pluralista, en que conviven sistemas políticos totalmente opuestos y que no se puede tratar de cambiar el sistema de un país o sus bases ideológicas, porque ello constituiría un acto de injerencia. Por otra parte, el mundo tiende a internacionalizarse y a fijar normas supranacionales y ésta es la razón de ser de las Naciones Unidas. En consecuencia, considera que habiendo una comunidad internacional y obligaciones internacionales, a pesar de los principios de soberanía nacional, la Unesco tiene el derecho y la obligación de intervenir en la defensa y promoción de los derechos humanos y de asegurar su más amplia difusión.

6.6 Estima que el procedimiento para la tramitación de las quejas tendría que ser simple, porque la Unesco no es un tribunal sino un foro internacional que representa en cierta medida la conciencia universal. El solo hecho de que se admita una queja, constituye una sanción pública suficiente, y quizás más eficaz que un procedimiento de carácter judicial. Considera que si bien el estandarte de los derechos humanos no se ha de enarbolar para atacar a otros países, los Estados Miembros de la Unesco pueden trabajar unidos dentro de un espíritu de paz y de entendimiento, para que estos principios se apliquen y defiendan en la realidad.

(6.1) M. USLAR-PIETRI joint sa voix à celle des autres membres du Conseil qui ont déjà fait l'éloge du document rédigé par le Directeur général et ses collaborateurs, il s'agit là d'une synthèse très utile pour tout le monde. La question à l'étude est des plus importantes et comporte deux aspects majeurs.

(6.2) En premier lieu, on peut se demander comment il est possible d'exercer les fonctions de juge sans en avoir les attributions. On invite l'Unesco à arbitrer des conflits, portant sur l'interprétation de la notion de droits de l'homme, entre des Etats ou entre des particuliers et l'Etat dont ils sont ressortissants. Le Conseil est chargé d'examiner exclusivement la procédure à suivre mais, en droit, la notion de procédure est inséparable de celle de justice. Eu égard aux instruments existants et à la qualité des juristes qui travaillent à l'Unesco, la procédure serait facile à appliquer ; mais en fait l'Organisation n'est pas un tribunal, il n'y a ni accusateur ni accusé et la difficulté majeure résulte de cette anomalie.

(6.3) Le deuxième aspect de la question est celui de la compétence de l'Unesco, laquelle est liée à la spécificité de sa mission. Si l'on considère que celle-ci concerne l'éducation, la science et la culture et la communication, il faut reconnaître qu'elle englobe pratiquement tous les droits de l'homme, de sorte qu'il est difficile de parler d'une véritable spécificité.

(6.4) Il est des situations particulièrement graves où un organisme de droit public ou un Etat peut dénoncer des violations commises dans un ou plusieurs autre(s) Etat(s). Il s'agit précisément des cas les plus périlleux car ils influent sur l'équilibre des rapports

politiques mondiaux et l'objectivité est très difficile en l'occurrence. Aussi l'Unesco serait-elle peut-être l'organisme le moins apte à les résoudre. En revanche, elle peut intervenir, à l'intérieur de certaines limites, dans des cas particuliers qui relèvent de sa spécificité - si relative que soit celle-ci - et la procédure établie doit permettre d'examiner de telles plaintes, alors que celles qui ont trait aux Etats peuvent être instruites par d'autres voies.

(6.5) Rappelant le conflit qui existe entre les concepts de souveraineté nationale et de respect universel des droits de l'homme, M. Uslar-Pietri estime qu'il est difficile d'établir une frontière entre les deux, si bien qu'une grande prudence s'impose. Le monde d'aujourd'hui est éminemment pluraliste, et des systèmes politiques totalement opposés y coexistent. Il ne saurait être question de changer le système politique d'un pays ou ses bases idéologiques, car ce serait là un acte d'ingérence. D'autre part, le monde tend à s'internationaliser et à fixer des normes supranationales - ce qui est la raison d'être des Nations Unies. Aussi, compte tenu du fait qu'il existe une communauté internationale et des obligations internationales, et en dépit des principes de la souveraineté nationale, l'Unesco a le droit et le devoir d'intervenir pour défendre et promouvoir les droits de l'homme et de les faire respecter plus largement.

(6.6) De l'avis de M. Uslar-Pietri, la procédure applicable aux plaintes devrait être simple, car l'Unesco n'est pas un tribunal, mais une instance internationale qui représente d'une certaine façon la conscience universelle. Le seul fait qu'une plainte soit jugée recevable constitue une sanction publique suffisante et plus efficace peut-être qu'une procédure judiciaire. Bien qu'il ne faille pas brandir l'étendard des droits de l'homme pour attaquer d'autres pays, les Etats membres de l'Unesco peuvent travailler de concert, dans un esprit de paix et de compréhension, pour que ces principes soient effectivement mis en oeuvre et défendus.

7.1 Le DIRECTEUR GENERAL indique, à l'intention de M. Bustamante, que ni l'Unesco, ni les autres institutions spécialisées, n'ont la faculté d'envoyer des observateurs aux séances privées de la Commission des droits de l'homme et des autres organes de l'ONU ayant à connaître de communications concernant les droits de l'homme, que ces organes soient composés de représentants de gouvernements ou d'experts. Si le Conseil juge souhaitable qu'un représentant de l'Organisation soit autorisé à assister aux travaux des organes en question, le Directeur général est prêt à faire part de ce vœu au Secrétaire général de l'Organisation des Nations Unies, mais il lui semble qu'une telle démarche devrait précéder d'une décision du Conseil exécutif.

7.2 A l'adresse de M. Mathieu, le Directeur général fait observer qu'une décision du Conseil serait nécessaire pour que le Comité sur les conventions et recommandations dans le domaine de l'éducation puisse se réunir avant la fin de la présente session.

8.1 M. BAHNER déclare qu'il faut replacer la question des procédures d'examen des communications relatives aux droits de l'homme dans la perspective des tâches fondamentales assignées à l'Unesco en la matière par la Charte des Nations Unies et par son Acte constitutif. Il se demande si on ne risque pas de détourner quelque peu l'attention de ces tâches, appelées aux paragraphes 127 et 128 du document 102 EX/19, en mettant excessivement l'accent sur les procédures en cause, qui ne sont qu'un des éléments du problème général de la défense des droits de l'homme et des libertés fondamentales. Pour M. Bahner, l'Unesco devrait plutôt redoubler d'efforts pour lutter contre les violations, massives et brutales, des droits de l'homme que constituent le racisme, l'apartheid, le colonialisme, le néo-colonialisme et le fascisme. D'autre part, elle devrait axer ses efforts sur la garantie des droits de l'homme qui relèvent plus spécialement de sa compétence, comme le droit à l'éducation et à l'information et le droit de bénéficier du progrès scientifique et d'accéder librement à la vie culturelle.

8.2 M. Bahner juge minime le nombre - une centaine - de communications invoquant les violations des droits de l'homme que l'Unesco reçoit chaque année, en regard des millions de violations de ces droits ou des multiples obstacles objectifs en empêchant l'exercice, qui sont actuellement observés dans une grande partie du monde. Pour l'examen d'un nombre aussi faible de cas, l'Unesco n'a nullement besoin de se doter de moyens plus importants que le mécanisme dont elle dispose actuellement et qui a fait ses preuves. On voit mal, du reste, comment elle pourrait faire face à une situation dans laquelle des violations massives des droits de l'homme se traduiraient par l'envoi de centaines de milliers de communications concernant des cas particuliers. L'adoption de nouvelles procédures paraît d'autant moins justifiée que des débats vont avoir lieu dans le cadre de l'Organisation des Nations Unies pour trouver des moyens d'assurer plus efficacement le respect des droits de l'homme.

8.3 M. Bahner fait observer qu'en examinant des cas et des questions concernant l'exercice des droits de l'homme, l'Organisation risque de déroger aux articles 55 et 56 de la Charte des Nations Unies et au paragraphe 3 de l'article premier de son Acte constitutif. Ces articles prévoient que le respect des droits de l'homme doit être assuré avant tout grâce à la coopération entre les Etats et excluent toute intervention dans leurs affaires intérieures. Le risque est particulièrement net pour certaines des procédures nouvelles proposées dans le document 102 EX/19.

c. Pour M. Bahner, il ne fait aucun doute que la manière dont sont garantis les droits de l'homme dépend au premier chef de la politique de l'Etat en cause, des bases sociales et économiques de cette politique et du respect accordé aux principes fondamentaux du droit international. Aussi serait-il intéressant, pour savoir dans quelle mesure les Etats respectent réellement les droits de l'homme, d'obtenir des informations précises sur leur adhésion aux instruments des Nations Unies concernant ces droits ainsi qu'aux instruments spécialisés adoptés par l'Unesco, comme la Convention concernant la lutte contre la discrimination dans le domaine de l'enseignement et la Convention pour la protection des biens culturels en cas de conflit armé. Il n'est pas indifférent de noter que moins de la moitié des Etats membres de l'Organisation ont adhéré à ces deux derniers instruments.

8.5 Tout en estimant que la responsabilité première de la défense des droits de l'homme appartient aux Etats, M. Bahner n'en pense pas moins que les violations massives et systématiques de ces droits justifient une action internationale dans la mesure où elles menacent la paix mondiale. Les résolutions 18 C/9.1 et 11.31 et 19 C/12.1 lui paraissent offrir de grandes possibilités à l'Unesco à cet égard.

8.6 En conclusion, il constate que la coopération entre les Etats dans le domaine des droits de l'homme a abouti à l'adoption de différentes conventions internationales prévoyant des procédures qui devraient être strictement appliquées. La procédure en vigueur depuis la 77e session du Conseil pour l'examen des communications relatives aux droits de l'homme ne lui paraît pas devoir être modifiée, étant entendu que le Conseil poursuivrait son effort de réflexion à la lumière des solutions qui pourront être proposées dans un proche avenir par l'Organisation des Nations Unies.

9.1 M. HUMMEL se bornera à quelques observations préliminaires sur la question à l'étude. Comme M. Van Ussel, il estime que le document 102 EX/19, rédigé dans un esprit pragmatique louable, pourrait faire l'objet d'une publication appelée à une large diffusion. D'autre part, la protection des droits de l'homme lui paraît constituer une des responsabilités essentielles de l'Organisation comme de chacun de ses Etats membres et de chaque être humain : le présent débat présente donc un intérêt capital.

9.2 Le document 102 EX/19 appelle de la part de M. Hummel trois remarques principales. En premier lieu, il importe que soient définies, de façon aussi précise que possible, les limites de la compétence de l'Unesco, eu égard, d'une part, à la spécificité de la mission de l'Organisation et, d'autre part, à la coopération à établir avec les autres institutions du système des Nations Unies.

9.3 Evoquant, en deuxième lieu, le problème de la non-intervention dans les affaires intérieures des Etats membres, M. Hummel admet l'existence de positions différentes sur ce point, mais rappelle que tous les Etats membres ont signé l'Acte constitutif dans lequel l'attitude de l'Organisation en ce qui concerne les droits de l'homme est clairement définie. Quant à lui, il juge inconcevable de ne pas considérer les questions relatives aux droits de l'homme comme intéressant la communauté mondiale tout entière. On ne saurait à cet égard faire un critère du nombre de violations enregistrées, car chaque cas doit être tenu pour significatif. Cela dit, il n'appartient pas à une organisation comme l'Unesco de condamner un Etat membre ou de prononcer des sanctions à son encontre.

9.4 Faisant remarquer, enfin, que la Conférence générale a souhaité une amélioration de l'efficacité de l'action de l'Unesco en matière de droits de l'homme, M. Hummel croit que, pour parvenir à un tel résultat, il faut bannir tout recours à la rhétorique ou à la publicité au profit d'une approche discrète fondée sur le dialogue. A cet égard, il juge très important le rôle que joue actuellement - et que devrait continuer de jouer - le Directeur général.

9.5 En conclusion, M. Hummel observe que le Conseil doit dans l'immédiat répondre à deux questions concrètes. La première est de savoir comment mener à son terme l'examen de la question à la 103e session. Pour cela, les travaux devront se poursuivre entre les deux sessions dans le cadre du Comité sur les conventions et recommandations dans le domaine de l'éducation ou d'un groupe ad hoc. La seconde question consiste à se demander - pour M. Hummel, la réponse

est positive - s'il ne convient pas de permettre à l'actuel Comité de continuer sa tâche. Il paraît difficile de mettre fin subitement aux fonctions du Comité alors que l'Unesco continue de recevoir des communications invoquant des violations des droits de l'homme.

10.1 M. LIPATTI ne pourra faire sur le document soumis au Conseil que des commentaires préliminaires qui ne sauraient préjuger la position de son gouvernement sur une question aussi complexe.

10.2 Sa première observation aura trait à la compétence de l'Unesco en matière de droits de l'homme. Il lui semble évident que l'Organisation n'a pas à connaître de tous les droits de l'homme, mais seulement de ceux qui relèvent de l'éducation, de la science, de la culture et de l'information.

10.3 M. Lipatti observe, en deuxième lieu, que l'action de l'Unesco en la matière doit être avant tout dirigée contre les violations massives, flagrantes et systématiques des droits de l'homme que sont le colonialisme, le néo-colonialisme, le racisme et l'apartheid. D'autre part, elle doit lutter pour l'instauration d'un nouvel ordre économique international et pour le désarmement général qui, comme l'a souligné M. Garbo, auront les conséquences les plus bénéfiques pour l'exercice des droits de l'homme dans le monde. Plus précisément, il lui incombe, dans l'intérêt de tous les peuples, de promouvoir le droit à l'éducation, à la culture et à l'information et le droit d'accéder aux bienfaits de la science et de la technologie. M. Lipatti a pris note de la déclaration du Directeur général selon laquelle le Conseil sera saisi à une session ultérieure d'un document concernant cette action politique d'ensemble de l'Organisation.

10.4 Il n'en tient pas moins à rappeler que, dans le cadre de cette action, l'Unesco a déjà entrepris une action normative qui s'est concrétisée par l'adoption d'instruments internationaux tels que la Convention concernant la lutte contre la discrimination dans le domaine de l'enseignement, la Convention pour la protection des biens culturels en cas de conflit armé et la Recommandation concernant la condition du personnel enseignant. Ces instruments, auxquels ont adhéré une partie des Etats membres, ont une incidence sur certains aspects des droits de l'homme et, selon M. Lipatti, c'est dans le cadre de leur mise en oeuvre que devrait avoir lieu l'étude des cas relatifs aux droits de l'homme dont l'Unesco peut être saisie. Sa compétence, en l'occurrence, serait limitée aux droits évoqués dans l'instrument en question.

10.5 M. Lipatti note, à ce propos, que l'un des principaux rôles du Comité sur les conventions et recommandations dans le domaine de l'éducation est de recevoir et d'analyser les rapports des Etats membres sur l'application des instruments internationaux pour lesquels le Comité est compétent. La procédure utilisée à cette fin pourrait certainement être améliorée.

10.6 En ce qui concerne, d'autre part, l'examen des communications relatives à des cas de violations des droits de l'homme tombant sous le coup des instruments que M. Lipatti vient de mentionner, il est évident que le Comité ne peut agir sans en référer au gouvernement en cause. Il ne saurait se transformer en organisme de bons offices ou de conciliation, car il existe pour cela des procédures prévues notamment par l'article 33 de la Charte des Nations Unies relatif au règlement pacifique des différends entre Etats. L'Unesco, souligne M. Lipatti, ne peut être un organisme de médiation ou d'arbitrage entre ses Etats membres et leurs ressortissants, sous peine de créer un climat de méfiance et de tension internationales peu propice à la promotion des droits de l'homme. Il souhaite que le Secrétariat ne cède pas à la tentation d'assigner à l'Organisation un tel rôle, qui lui paraîtrait relever de la démagogie ou de l'utopie. Certaines suggestions formulées dans le document 102 EX/19 et tendant, par exemple, à ce que le Comité puisse mener des enquêtes ou effectuer des vérifications sur place et publier des rapports, paraissent donc tout à fait inacceptables. Une telle extension de ses attributions actuelles serait abusive et en ferait une instance concurrente des organes déjà créés à cet effet par l'Organisation des Nations Unies. Quant à la modification, envisagée dans le document 102 EX/19, de la compétence de la Commission de conciliation et de bons offices instituée par le Protocole de la Convention concernant la lutte contre la discrimination dans le domaine de l'enseignement, M. Lipatti souligne qu'elle exigerait la réunion d'une conférence d'Etats.

10.7 M. Lipatti a à valoir, par ailleurs, que l'examen de la recevabilité des communications concernant les droits de l'homme ne doit pas se transformer en une sorte d'enquête préliminaire et que des critères très clairs doivent être définis. Le premier est l'épuisement préalable de toutes les voies de recours internes. Le deuxième est que la communication devra avoir trait à une violation des droits de l'homme relevant de la compétence de l'Unesco et tombant sous le coup des instruments internationaux adoptés par elle. En troisième lieu, si les communications peuvent effectivement émaner d'individus ou d'Etats, il paraît difficile d'accepter des requêtes provenant d'organisations privées, car cela compliquerait considérablement la procédure. Enfin,

il convient d'exclure toute possibilité d'"action populaire" permettant à un individu de porter plainte au nom d'un autre : la compétence du Comité serait alors beaucoup plus étendue que celle des instances judiciaires des Etats membres.

10.8 Toutes ces considérations amènent M. Lipatti à constater que les solutions proposées dans le document 102 EX/19 tendent à élargir la compétence de l'Unesco et à modifier la nature de son action pour ce qui est des cas individuels de violation des droits de l'homme. Cette orientation ne lui paraît nullement répondre aux préoccupations exprimées par la Conférence générale dans sa résolution 19 C/12.1. La question doit être repensée dans une perspective conforme aux dispositions de l'Acte constitutif et aux principes du droit international. Au stade actuel, le Conseil et son Comité sur les conventions et recommandations dans le domaine de l'éducation devraient se borner à améliorer les méthodes de travail et les procédures en vigueur, sans en étendre le champ d'application. A cet égard, le Comité pourrait peut-être envisager la possibilité, en s'inspirant de l'exemple du Groupe de rédaction et de négociation de la dix-neuvième session de la Conférence générale, de prendre ses décisions par consensus, procédure démocratique particulièrement appropriée dans un domaine aussi délicat que les droits de l'homme.

10.9 En conclusion, M. Lipatti souhaite que la question fasse l'objet d'une étude plus approfondie lors d'une prochaine session du Conseil et que s'instaure à son sujet une concertation étroite entre le Directeur général et les Etats membres.

11. Le DIRECTEUR GENERAL donne à M. Lipatti l'assurance que le Secrétariat n'a jamais eu la tentation d'assigner à l'Unesco quelque rôle d'arbitre ou de médiateur que ce soit. Cependant, comme il l'a déclaré dans l'allocution qu'il a prononcée à la clôture de la dix-huitième session de la Conférence générale, si des Etats membres éprouaient des difficultés dans leurs rapports entre eux, il serait à leur disposition pour les aider à surmonter ces difficultés.

La séance est levée à 18 h.55.



SEVENTH MEETING

Wednesday, 4 May 1977, at 9.55 a.m.

**Point 5.6.2 - ETUDE DES PROCEDURES QU'IL CONVIENT DRAIT DE SUIVRE DANS L'EXAMEN DES CAS ET DES QUESTIONS DONT L'UNESCO POURRAIT ETRE SAISIE EN CE QUI CONCERNE L'EXERCICE DES DROITS DE L'HOMME DANS LES DOMAINES RELEVANT DE SA COMPETENCE, AFIN DE RENDRE SON ACTION PLUS EFFICACE (102 EX/19) (suite)**

- 1.1 Mme KRASSOWSKA se bornera à présenter un certain nombre d'observations préliminaires sur le document 102 EX/19, lequel est parvenu trop tard aux autorités polonaises pour qu'elles puissent prendre une position définitive au sujet des propositions qui y sont formulées. Elle traitera pour l'essentiel des limites de la compétence de l'Unesco dans le domaine des droits de l'homme et des principes qui doivent guider son action.
- 1.2 La mission de l'Unesco en matière de droits de l'homme doit viser à renforcer la coopération et la compréhension mutuelle entre les peuples. Son action dans ce domaine doit être menée en liaison étroite avec l'ensemble de ses activités, notamment avec ses efforts pour renforcer la paix, instaurer un nouvel ordre économique international et accélérer le progrès social, culturel et scientifique. Mme Krassowska souligne à ce propos que la résolution 19 C/12.1, comme de nombreuses résolutions antérieures de la Conférence générale, insistent sur les violations massives des droits de l'homme que constituent le racisme, le colonialisme, le néo-colonialisme et l'apartheid. L'action menée selon les principes qu'elle vient de rappeler s'est concrétisée dans de nombreuses conventions, recommandations et résolutions qui ont été adoptées par la Conférence générale ou par des conférences intergouvernementales et qui concernent la suppression de toute discrimination en matière d'éducation, de science, de culture et d'information.
- 1.3 Faisant observer que les principes fondamentaux énoncés dans ces textes ne peuvent être appliqués que dans le cadre des politiques et des législations nationales, Mme Krassowska souligne l'interdépendance existant entre les droits de l'homme et les libertés civiles, d'une part, et le progrès social et économique, de l'autre. Les différences qui existent dans l'exercice des droits de l'homme selon les structures socio-économiques des pays peuvent toutefois être atténuées grâce à la coopération internationale, aux échanges d'expérience et à l'étude des conditions historiques, sociologiques, philosophiques et juridiques de cet exercice.
- 1.4 Mme Krassowska estime, pour sa part, que l'Unesco doit poursuivre l'action qu'elle a entreprise pour défendre les droits de l'homme et qui est déjà considérable ; cette action doit surtout être dirigée contre les violations des droits de l'homme qui revêtent un caractère massif, c'est-à-dire celles qui se produisent par exemple en Afrique du Sud, en Rhodésie, au Chili et dans les territoires arabes occupés.
- 1.5 En ce qui concerne les résolutions, recommandations et conventions qui se réfèrent aux droits de l'homme, il lui semble que la procédure actuelle de présentation de rapports par les Etats membres est suffisante, mais que le Conseil exécutif devrait se préoccuper davantage de l'application des dispositions en cause.
- 1.6 Mme Krassowska en arrive au contenu même du document 102 EX/19. Plusieurs des propositions qui sont formulées dans ce document tendent, selon elle, à élargir et à institutionnaliser de manière excessive les procédures suivies par l'Organisation dans le domaine des droits de l'homme. Elle rappelle que l'Unesco s'est interdit, aux termes du paragraphe 3 de l'article premier de son Acte constitutif, d'intervenir en aucune matière relevant essentiellement de la juridiction des Etats membres, principe qui est aussi inscrit dans la Charte des Nations Unies. Les droits et libertés de l'individu relèvent précisément de la compétence propre de chaque Etat dans la mesure où ils sont précisés par les constitutions et les législations nationales. Il convient de rappeler que les droits de l'individu, qui sont aussi des droits économiques et sociaux, ont pour contrepartie nécessaire un certain nombre de devoirs envers la société et l'Etat. C'est pourquoi une grande prudence s'impose en ce qui concerne une modification des procédures d'examen de cas particuliers de violation des droits de l'homme qui risquerait d'aboutir à des ingérences dans les affaires intérieures des Etats dont pâtirait la coopération internationale.
- 1.7 A propos de la recevabilité des communications, Mme Krassowska souligne que doivent être rejetées les requêtes mal fondées ou abusives. Le document 102 EX/19 prévoit que l'examen

préliminaire des communications ne serait plus confié au Directeur général, mais à un groupe ad hoc indépendant du Secrétariat et habilité à mener, auprès des gouvernements, des enquêtes sur les faits incriminés. Une telle suggestion, dénuée de tout réalisme, paraît inacceptable à Mme Krassowska.

1.8 La deuxième observation de Mme Krassowska portera sur la procédure d'examen des communications considérées comme recevables, telle qu'elle est décrite au paragraphe 143. Elle est très réservée au sujet de la liberté qui serait laissée à l'organe compétent de fixer ses méthodes d'action et, notamment, d'avoir des contacts directs avec les autorités de l'Etat intéressé. Cette procédure serait lente et, surtout, elle reviendrait à exercer un contrôle sur les décisions prises par les instances nationales, ce qui constituerait une ingérence dans les affaires intérieures du pays. De plus, elle risquerait de coûter très cher, au détriment de l'exécution d'autres activités plus importantes de l'Unesco.

1.9. En troisième lieu, Mme Krassowska fait observer que la règle de l'épuisement préalable des voies de recours interne ne semble pas être retenue dans le document 102 EX/19 comme condition de la recevabilité des communications : une telle position paraît difficilement défendable pour une organisation intergouvernementale, d'autant qu'il est précisé au paragraphe 9 de la résolution 19 C/12.1 que l'Unesco n'est pas un organisme judiciaire international.

1.10 Enfin, Mme Krassowska fait remarquer que la suggestion tendant à rebaptiser le Comité des conventions et recommandations dans le domaine de l'éducation en Comité des droits de l'homme et des conventions et recommandations dans le domaine de l'éducation contredit le souci, manifesté dans le document, d'éviter la concurrence entre organisations du système des Nations Unies pour ce qui est de la protection des droits de l'homme. Le nouveau comité ferait en effet double emploi avec la Commission des droits de l'homme de l'ONU. Le Conseil devrait, au contraire, se préoccuper d'améliorer la coordination entre l'action de l'Unesco dans ce domaine et celle des organes compétents des Nations Unies.

1.11 Mme Krassowska rappelle que les Pactes internationaux relatifs aux droits civils et politiques et aux droits économiques, sociaux et culturels ont été ratifiés par tous les Etats socialistes, y compris la Pologne. La ratification et l'application de ces pactes lui paraît être de la part d'un pays un des plus sûrs témoignages de sa volonté de défendre les droits de l'homme. Les articles 13 à 15 du Pacte international relatif aux droits économiques, sociaux et culturels délimitent la compétence de l'Unesco en la matière et le Conseil économique et social a établi une procédure pour la présentation des rapports des Etats et des institutions spécialisées - dont l'Unesco - sur la mise en oeuvre du pacte en question. Mme Krassowska estime que l'Unesco doit, de son côté, mettre au point une procédure appropriée pour l'élaboration de rapports rendant compte des progrès accomplis dans les domaines de sa compétence sur la voie de l'application du pacte.

2.1 Mr. LIBID believed the present debate would prove most useful in clarifying the Board's ideas on how Unesco's action in dealing with human rights problems brought to its attention and lying within its sphere of competence might be rendered more effective in the future. The choice of procedures was extremely important for it was only through the following of well-thought-out and equitable procedures that all concerned might rest assured that Unesco dealt with human rights problems as it should do. Whatever procedure was selected, it must at all costs be designed to ensure respect for the rights of individuals seeking Unesco's help on the one hand and for those of Unesco's Member States on the other. When discussing human rights and fundamental freedoms, one could not fail to recall that, while human beings undoubtedly could and should enjoy certain rights, they also could and should fulfil certain civic duties and obligations. In his country, stress was laid on the need to balance the responsibilities incumbent on society and those incumbent on the individual. The Constitution, immediately following the article listing human rights, contained an article listing the duties of the citizens, including inter alia the duty to exercise his own rights responsibly and with due regard to others and the duty to engage in gainful work enabling his family to live decently.

2.2 Respect for human rights had been incorporated in the laws of the Philippines. His country's experience of problems connected with human rights was very far-reaching. It was a founder member of the United Nations Commission on Human Rights and its present Foreign Affairs Secretary was one of the authors of the Universal Declaration on Human Rights. As one of the signatories of the United Nations Charter it had championed the inclusion therein of provisions dealing with human rights and the self-determination of peoples. The Philippines was a State Party to the International Covenant on Economic, Social and Cultural Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of all Forms of Racial Discrimination, the Convention against Discrimination in Education and

numerous other conventions against all forms of discrimination adopted by the United Nations, Unesco or ILO. His country's interest in human rights was thus clearly demonstrated.

2.3 The Philippines consistently reaffirmed its moral and legal commitments to the international community in deed and in word. The action it took at the governmental level was in line with the ideals and traditional values of the people. The President had given priority to the ratification of the International Covenant on Economic, Social and Cultural Rights believing that civil and political rights were meaningless if they were not accompanied by economic, social and cultural rights. His Government was deeply committed to the promotion of human rights and keenly interested in the current debate aimed at discovering the best procedure likely to enable Unesco to deal with human rights problems as effectively as possible.

3.1 M. RAHNEMA félicite le Directeur général de la qualité du document qu'il a soumis au Conseil exécutif pour faciliter l'étude des procédures d'examen des cas et questions relatifs aux droits de l'homme, dont la Conférence générale l'a chargé au paragraphe (b) de sa résolution 19 C/12.1. Il remarque que le document traite de toutes les catégories de communications parvenant à l'Unesco au sujet des droits de l'homme, qu'elles émanent de gouvernements ou d'individus et qu'elles aient trait à des cas particuliers ou à des questions générales.

3.2 Compte tenu du caractère indivisible des droits de l'homme, il serait bon de profiter de la restructuration du secteur économique et social des Nations Unies pour confier un rôle central dans ce domaine à une instance unique qui pourrait être la Commission des droits de l'homme élargie. Dans la même optique globale, les institutions spécialisées devraient, de leur côté, examiner dans la perspective du respect des droits de l'homme tous les problèmes pour lesquels elles sont compétentes. C'est d'ailleurs ce que fait déjà l'Unesco en ce qui concerne l'éducation, la science et la culture.

3.3 M. Rahnema aborde, pour commencer, la question de la recevabilité des communications qui ne lui paraît pas poser de problème dans la mesure où elles émanent d'Etats. En ce qui concerne les requêtes provenant de personnes privées, il pense, à l'instar d'autres membres du Conseil et, en particulier, de M. Uslar-Pietri, qu'il importe de les admettre.

3.4 A propos du choix de l'organe compétent pour se prononcer sur la recevabilité des communications, trois principes semblent à M. Rahnema devoir être retenus : nécessité de limiter le nombre des cas soumis à cette instance afin d'en permettre l'étude approfondie, éviter de soumettre les communications à une censure de fait - politique ou bureaucratique -, veiller à ce que l'instance en question présente les qualités requises d'objectivité et de sérieux. N'ayant pas de pouvoir de décision, elle adresserait aux autorités compétentes des recommandations tendant à ce que les injustices commises soient réparées. Le prestige dont elle jouirait rendrait inutile de fixer d'autres conditions limitant la recevabilité des communications, telles qu'en prévoient les paragraphes 68 à 75 du document 102 EX/19.

3.5 Ni le Secrétariat, par essence apolitique, qui est actuellement chargé de cette tâche, ni un organe exclusivement politique - qui serait vite paralysé -, ne paraissent les mieux désignés pour remplir un tel rôle. L'idéal serait de faire appel à une instance qui allie le sens politique à l'impartialité, dont les membres soient réputés pour leur moralité et dont la légitimité ne puisse être contestée. Il pourrait s'agir, suggère M. Rahnema, d'un "comité des sages" comprenant au maximum cinq personnalités éminentes qui jouiraient de la confiance des Etats membres et qui seraient nommées, à titre personnel et *ès qualités*, soit par le Directeur général après consultation des Etats membres, soit par un jury constitué sur le modèle de celui qui a choisis les membres du Conseil de l'Université des Nations Unies. Le Directeur général pourrait d'ailleurs être membre *ex officio* du comité qui bénéficierait du concours du Secrétariat. L'organe ainsi désigné se prononcerait sur la recevabilité de toutes les communications et, si nécessaire, serait investi d'une plus grande autorité pour certaines affaires mineures.

3.6 A propos de l'organe qui serait chargé de l'examen des communications jugées recevables, M. Rahnema juge essentiel qu'il soit de nature politique. Ses attributions seraient nécessairement limitées, puisque l'Unesco n'est pas une instance judiciaire et que, comme plusieurs membres du Conseil l'ont rappelé, elle ne peut s'ingérer dans les affaires intérieures des Etats. Le rôle de l'organe en cause pourrait être double. D'une part, il essaierait d'obtenir des autorités nationales compétentes la cessation et la réparation des injustices et des abus constatés, tâche dont la difficulté n'échappe nullement à M. Rahnema. D'autre part, il s'efforcerait de sensibiliser l'opinion publique mondiale aux problèmes des droits de l'homme en dénonçant les violations systématiques de ces droits et les manifestations d'intolérance et d'injustice.

3.7 Au cas où l'accord ne pourrait se faire sur la mise en place au niveau du système des Nations Unies d'une instance unique, c'est au Conseil exécutif qu'il reviendrait, pour ce qui con-

cerne les domaines de compétence de l'Unesco, de prendre les décisions qui s'imposent. Il pourrait, à cette fin, être assisté d'un organe subsidiaire constitué par lui-même ou par la Conférence générale, ou même - mais cette solution n'a pas la préférence de M. Rahnema - déléguer ses pouvoirs à un comité des conventions et recommandations dont les fonctions seraient élargies.

3.8 Compte tenu de l'importance et de la complexité de la question à l'étude, M. Rahnema suggère qu'un groupe de travail restreint soit chargé de faire une synthèse des avis émis durant le débat, laquelle servirait de base à un rapport du Directeur général à la prochaine session du Conseil.

4.1 Mr. THAJEB congratulated the Director-General and the staff on the excellent document now under discussion. The importance of the question at issue called for extremely careful consideration of all the aspects involved. Unesco's position regarding human rights was based on moral principles, and any action it took in respect of violations of those rights could only be persuasive in character. It could not intervene in matters within the jurisdiction of Member States, but at the same time it must uphold human rights and the principle that human rights applied to all individuals wherever they might be. In fact Unesco drew its strength from that apparent contradiction.

4.2 Unesco could, of course, only take action in respect of human rights problems falling within its field of competence. In that connection he had read paragraph 131 of document 102 EX/19 with great attention and he believed the whole question required further thorough deliberation. He personally believed that a special committee should be set up to define as clearly as possible the extent of Unesco's competence in the field of human rights.

4.3 Unesco would obviously need some rules to conduct the action it took in respect of human rights problems, but in cases in which an organization's or an individual's intercessor was based solely on moral force, it was extremely difficult to work out suitable procedures. It would seem reasonable to draw on the experience already gained by the international community, and in that connection he found the information set out in paragraph 137 of document 102 EX/19 concerning the conditions governing receivability very useful and acceptable. He believed that further thought should be given to the organ which should decide on the receivability of communications. There were so many aspects to the question that he wondered if the Board could possibly be ready to take a decision on so important an issue at the current session. He suggested that it consider the matter again at the following session in a concrete and systematic manner in the light of its debate at the current session.

5.1 El Sr. LE RIVEREND declara que ha escuchado con interés la presentación del estudio que el Director General somete al Consejo, trabajo que le parece digno de encomio y que trata, a su juicio, de un problema principalísimo, vinculado con todas las grandes cuestiones que se plantean a la humanidad. Considera que es un documento extenso y útil, sobre un punto complejo, que no es fácil de estudiar, y que plantea numerosas preguntas y sugiere numerosas opciones posibles. Subraya el Sr. Le Riverend la dificultad de precisar, al término del estudio somero a que ha de proceder forzosamente el Consejo en esta ocasión, normas y criterios válidos, igualmente aceptables por todos los Estados Miembros, y señala, en nombre de su país y en el suyo propio, que estará siempre dispuesto a participar en esta labor común y a profundizar y perfilar el debate sobre los derechos humanos.

5.2 Abordando su primera observación relativa al contenido del documento, declara que sabe perfectamente que el actual debate del Consejo no se refiere al fondo de la cuestión de la promoción y la defensa de los derechos humanos, sino a la forma, es decir, al procedimiento que convendría seguir para examinar las comunicaciones que se dirijan a la Organización, pero piensa que el fondo habrá de repercutirse necesariamente en la forma. En efecto, hace observar que la finalidad que se persigue globalmente es asegurar el pleno ejercicio de los derechos humanos para todos los pueblos y naciones del mundo. Por otra parte, la competencia de la Organización se circunscribe a las esferas de la educación, la ciencia, la cultura y la comunicación; sin embargo, su actividad en este campo está necesariamente vinculada con la finalidad más general de garantizar a todos la plena disposición de los recursos humanos y naturales que permita satisfacer el desarrollo de todas las capacidades. Piensa, pues, que los derechos humanos en general y los específicos de la Unesco constituyen un todo y que cuanto se oponga a su ejercicio interesa a la Unesco y ha de preocuparle.

5.3 Su segunda observación se refiere a la terminología -"casos" y "asuntos"- utilizada en el documento que se examina. Ya sabe que fue aprobada por la Conferencia General, en su 19a. reunión y que por consiguiente se ha de atener a ella, pero se pregunta qué significado cabe atribuir a cada término. ¿Se refiere el término "casos" a los casos particulares y la palabra "asuntos" a

casos generales o al contrario? Declara que la pregunta que se hace no es puro ejercicio de semántica, sino que toca, a su juicio, a una cuestión de fondo. En efecto, advierte, por ejemplo, que según reza el párrafo 113 del documento 102 EX/19, una comunicación en la que figure una lista de maestros que comprenda asimismo nombres de personas ajenas a las esferas de competencia de la Unesco podría, por eso mismo, no ser tomada en consideración. En el párrafo 114 se dice, en cambio, que "si una violación de los derechos humanos afecta a un miembro del cuerpo docente, un artista, un científico, o un periodista, ... la comunicación ... podrá considerarse admisible, puesto que puede existir una relación entre la condición de la víctima y la violación que se alega".

5.4 Declara el Sr. Le Riverend que no pretende demostrar que el estudio de la Secretaría tiende hacia una u otra finalidad, ni que se contradice, sino que quiere hacer observar que, según el párrafo 113, no puede existir una presunción favorable ante casos numerosos, por razones de orden formal, y, según el párrafo 114, cada caso particular gozará de una presunción favorable. Estima que con esa actitud se podría llegar a crear una situación de privilegios personales, situación a que alude el apartado c) del párrafo 131, y que en el párrafo 132 se considera inapropiado, como es lógico.

5.5 Estima el Sr. Le Riverend que, por ese camino, en vez de reafirmar la unidad de los derechos humanos, se iría hacia una especie de federación de diferentes tipos de derechos humanos que estaría en contradicción con todas las ideas vigentes. No se opone a lo que se podría llamar un enfoque a escala microscópica de los derechos humanos, pero le parece más conforme al derecho que la presunción favorable recaiga en los casos numerosos.

5.6 En cuanto a la admisibilidad de las comunicaciones, conoce perfectamente cuanto se ha hecho hasta el presente por conducto del Comité de Convenciones y Recomendaciones en la Esfera de la Educación, por deficiente y artesanal que fuera el procedimiento seguido y piensa que si se establece un órgano encargado de examinar las comunicaciones, cualquiera que éste sea, le incumbirá pronunciarse sobre su admisibilidad, porque la responsabilidad de las decisiones que se tomen recaerá, finalmente, en los Estados Miembros. Además, le preocupa el agobio que las comunicaciones representan para el Director General y la Secretaría. No es que estime que el Director General y la Secretaría han de quedar excluidos del examen de las comunicaciones, pero piensa que se han de reservar sobre todo para actuar como intercesores e instrumentos de los buenos oficios de que se ha hablado en el curso del debate.

5.7 Refiriéndose al resumen de los procedimientos seguidos por diferentes órganos y organismos, considera el Sr. Le Riverend que se trata de un trabajo muy bien hecho. Este resumen pone de relieve que algunos de los mecanismos establecidos no pueden aportar a la Unesco ninguna experiencia, que la experiencia de otros no podría aplicarse válidamente a escala universal, y que los procedimientos variados y eficaces de algunos (como los de la OIT) se aplican en un marco muy particular y definido. Quedan, pues, los seguidos en las Naciones Unidas y en la Unesco. Los de la Unesco, inspirados primero en la resolución 728 F (XXVIII) del Consejo Económico y Social, siguieron luego por los cauces de la costumbre y el empirismo. Sin propugnar calco alguno, el Sr. Le Riverend se pregunta por qué la Unesco no podría seguir inspirándose en los procedimientos del Consejo Económico y Social -que los ha perfeccionado desde entonces-, como lo hizo el Consejo Ejecutivo en su 77a. reunión. En fin, ¿por qué no armonizar los procedimientos de la Unesco con los de las Naciones Unidas?

5.8 Estima el Sr. Le Riverend que la especificidad de la Unesco no justifica en modo alguno que se haya de inventar un órgano y un procedimiento complicados, ni exige que no se pueda sacar partido de la experiencia de las Naciones Unidas. Además, si se quiere que la Organización sea tan específica ¿cómo se podrá hablar en el futuro de la unidad de los problemas del mundo y de los derechos humanos? La especificidad sólo puede definirse dentro de un contexto general y no al margen de ese contexto.

5.9 Propone, por último, que el Director General consulte a los Estados Miembros no representados en el Consejo sobre el contenido del estudio, no sólo por lo que esta consulta podría aportar, con miras a las importantes decisiones que habrá de tomar la Conferencia General sobre una cuestión más compleja, sino también porque el Consejo no puede dejar de tener presente que está compuesto únicamente por representantes de 45 Estados Miembros.

(5.1) Mr. LE RIVEREND said that he had listened with interest to the presentation of the study which the Director-General was submitting to the Executive Board, a work which seemed to him to be deserving of praise and which dealt with what was in his opinion a front-ranking problem bound up with all the great questions facing mankind. He considered it a very full and useful paper on a complex point which was not easy to study. It

raised many questions and put forward many possible courses of action. He emphasized the difficulty of working out valid norms and criteria equally acceptable to all Member States after the cursory study which the Board would of necessity be making on the present occasion. On behalf of his country and for his own part he said that he would always be ready to participate in that common task and go more thoroughly into the question of human rights.

(5.2) Going on to his first remark concerning the content of the document, he said that he was well aware that the Board was not discussing the substance of the question of the promotion and defence of human rights, but a formal aspect, that is, the procedure to be followed when examining communications addressed to the Organization. He thought, however, that the formal aspect was inevitably affected by the substance, inasmuch as the ultimate purpose was to ensure the full exercise of human rights by all peoples and nations of the world. Although the Organization's competence was confined to the spheres of education, science, culture and communication, its activity in those spheres was inevitably bound up with the more general aim of ensuring that the human and natural resources required for the development of all potentialities were fully available to everyone. It accordingly seemed to him that human rights in general and those with which Unesco was particularly concerned formed a whole and that any interference with them was a matter of concern to Unesco.

(5.3) His second remark bore on the terms "cases" and "questions" used in the document under discussion. He realized that they had been approved by the General Conference at the nineteenth session and that they must therefore be maintained, but he wondered what meaning should be attached to each of those terms. Did the term "cases" refer to particular cases and the term "questions" to general cases, or vice versa? The matter was not one of purely academic interest; in his opinion it was a matter of substance. He had observed for instance that, as stated in paragraph 113, a communication containing a list of teachers, but also including the names of persons unconnected with Unesco's spheres of competence, might for that reason not be taken into consideration. In paragraph 114, on the other hand, it was stated that "if, for example, a violation of human rights has been committed against a teacher, an artist, a scientist or a journalist..... a communication..... may be considered receivable since it is possible that there is a connection between the victim's profession and the violation allegedly committed".

(5.4) He was not trying to prove that the Secretariat's study had any particular aim in view or that it was contradictory. He wished to observe, however, that according to paragraph 113 a favourable presumption seemed to be excluded for reasons of a formal nature, in respect of cases involving large numbers, whereas, according to paragraph 114, a favourable presumption would apply in respect of individual cases. It was his belief that such an attitude might lead to a situation of personal privileges - the situation alluded to in paragraph 131 (c) and described in paragraph 132 as inappropriate, as was logical.

(5.5) In his view, such a course would lead not to reaffirming the unity of human rights but to a kind of federation of the different categories of human rights, which would be contrary to current thinking. He was not opposed to looking at human rights at a microscopic level, but it seemed to him to be more in keeping with justice that a favourable presumption should apply in respect of cases involving large numbers.

(5.6) With regard to the receivability of communications, he was well aware how much had so far been achieved through the Committee on Conventions and Recommendations in Education, inadequate and makeshift though its procedure was. Whatever body was set up to examine communications, it would have to give a ruling as to their receivability, since the responsibility for the decisions taken would rest finally with the Member States. Furthermore, he was concerned about the burden which such communications placed on the Director-General and the Secretariat. It was not that he considered that the Director-General and the Secretariat should be excluded from the examination of the communications. He thought, however, that their role should be confined chiefly to acting as intermediaries and offering their good offices, in the manner alluded to in the discussion.

(5.7) With regard to the summary of the procedures followed by various organs and organizations, he considered that it was very well done. It brought out the fact that some of the machinery established could be of no practical value to Unesco, that experience gained by others could not validly be applied on a universal scale, and that the varied and effective procedures employed by certain bodies, such as those of ILO applied only in a particular setting. There remained then those of the United Nations and Unesco.

Those of Unesco, originally based on resolution 728 F (XXVIII) of the Economic and Social Council, had become routine and empirical. While not proposing any model, he wondered why Unesco could not continue to base itself on the machinery of the Economic and Social Council - which had since been improved - as the Executive Board had done at its 77th session. Finally, why could not Unesco's machinery be brought into line with that of the United Nations?

(5.8) In his opinion the specific role of Unesco by no means warranted introducing a new body and complicated machinery. Nor did it prevent Unesco from taking advantage of the experience of the United Nations. Moreover, if the Organization's role had to be so specific, how could one go on talking about the unity of world problems and human rights? Its specific role could be defined only within a general context and not outside that context.

(5.9) He concluded by suggesting that the Director-General consult those Member States not represented in the Board on the content of the study. Not only would such a consultation be helpful in view of the important decisions which the General Conference would have to take in so complex a matter; it had also to be borne in mind that the Board consisted solely of the representatives from 45 Member States.

6.1 El Sr. Arturo MUÑOZ LEDO declara que interviene en el debate a título personal, en sustitución del Sr. Porfirio Muñoz Ledo, miembro titular del Consejo, que se ha visto obligado a ausentarse. Señala que no ha recibido ninguna instrucción de su Gobierno respecto del punto del Orden del Día que se examina, pero considera útil indicar que la posición mantenida tradicionalmente por su país en materia de relaciones internacionales es el respeto de la soberanía nacional, la no intervención y la autodeterminación.

6.2 No cree que el Consejo Ejecutivo pueda, en el curso del presente debate, llegar a ninguna conclusión definitiva. Sin embargo, piensa que este debate es en extremo útil, como es útil la acción de todos los organismos especializados y de los órganos de las Naciones Unidas que señalan a la atención de la comunidad internacional los problemas que se plantean en el plano de los derechos humanos, aun cuando esa acción no conduzca a juicios y sanciones. Estima que si a partir de las meras promesas contenidas en los instrumentos internacionales se pueden obtener resultados positivos en el sentido de que, gracias a un debate público, se logra salvar la vida de un hombre o conseguir su libertad -cosa que ha tenido la ocasión de vivir personalmente-, la organización que pugna por alcanzar ese fin cumple una gran misión.

6.3 Como otros miembros del Consejo que le han precedido en el uso de la palabra, cree que convendría establecer un grupo de trabajo o un órgano subsidiario similar que analizara con detenimiento el estudio sometido al Consejo por el Director General, teniendo en cuenta las consideraciones que la Secretaría formula al final del documento, las opiniones expresadas por los miembros del Consejo y los comentarios y las observaciones que puedan hacer los Estados Miembros, y que presentara ulteriormente sus conclusiones, en forma de orientaciones o de propuestas concretas, en consonancia con los fines últimos que la Organización persigue en este campo.

(6.1) Mr. Arturo MUÑOZ LEDO said that as deputy for Mr. Porfirio Muñoz Ledo, titular member of the Board, who had been unable to attend, he was participating in the discussion in a personal capacity. He had received no instructions from his Government in regard to the item under discussion, but he thought it appropriate to point out that the traditional attitude of his country in regard to international relations was based on respect for national sovereignty, non-intervention and self-determination.

(6.2) He did not think the Board could arrive at any definitive conclusion at the current session. In his view the discussion was extremely useful, however, as was the action of all the Specialized Agencies and organs of the United Nations, which drew the attention of the international community to the problems existing in connection with human rights, even when such action did not lead to legal proceedings and penalties. If positive results could be obtained by virtue of the mere promises contained in international instruments, in that through public discussion, as he himself had experienced, a life could be saved or a detainee set free, an organization which strove towards that end would be fulfilling a great mission.

(6.3) He agreed with other members of the Board who had spoken before him that a working group or some such subsidiary body should be set up to go thoroughly into the study submitted to the Board by the Director-General, taking into account the considerations put forward by the Secretariat at the end of the document, the opinions expressed by Board members and any comments and observations Member States might make, and then to sub-

mit its findings in the form of guidelines or concrete proposals consonant with the ultimate aims pursued by the Organization in that connection.

7.1 Mr. TOUSSAINT expressed his appreciation of the excellent document submitted to the Board which provided a sound basis for its discussion on so critical an issue as that of human rights. His Government considered the promotion of human rights as a central feature of its foreign policy and welcomed any effort to strengthen existing machinery for the protection of those rights

7.2 President Carter had stated to the United Nations on 17 March: "All the signatories of the United Nations Charter have pledged themselves to observe and to respect basic human rights. Thus no member of the United Nations can claim that mistreatment of its citizens is solely its own business. Equally no member can avoid its responsibilities to review and to speak when torture or unwarranted deprivation occurs in any part of the world...". Such was his Government's response to those who invoked the escape clauses of "domestic jurisdiction" as a smokescreen to cover up practices inconsistent with their international obligations in respect of human rights.

7.3 Secretary of State Vance had given the following definition of human rights the previous week: "First there is the right to be free from governmental violation of the integrity of the person. Such violations include torture, cruel, inhuman or degrading treatment or punishment and arbitrary arrest or imprisonment. And they include denial of fair public trial and invasion of the home. Second there is the right to the fulfilment of such vital needs as food, shelter, health care and education. We recognize that the fulfilment of this right will depend, in part, upon the stage of a nation's economic development. But we also know that this right can be violated by a government's action or inaction - for example, through corrupt official processes which divert resources to an élite at the expense of the needy, or through indifference to the plight of the poor. Third, there is the right to enjoy civil and political liberties - freedom of thought; of religion; of assembly; freedom of speech; freedom of the press; freedom of movement both within and outside one's own country; freedom to take part in government".

7.4 His Government agreed that certain human rights indeed fell within Unesco's sphere of competence, particularly the right to education, to freedom of expression and to freedom of culture, which implied freedom to postulate theories and doctrines, to create and make discoveries and to increase one's level of education and culture. It supported most of the proposals to strengthen the existing Unesco machinery for dealing with communications relating to the violation of human rights.

7.5 It shared the view expressed in paragraph 96 that the system of reports, envisaged in 19 C/Resolutions 6.113 and 12.1, may be regarded as a procedure for the examination of the exercise of human rights.

7.6 However, it could not agree with the opinion expressed in the last subparagraph under paragraph 136 to the effect that private individuals and non-governmental organizations should furnish evidence that they had a "legitimate" interest in submitting a communication on a question relating to human rights.

7.7 With reference to paragraphs 112 to 117, of document 102 EX/19, the authorities of his country believed that the Secretariat should have a role concerning the receivability of communications but that it should not be a substantive one. Regarding paragraph 139, they considered that the screening of communications received by the Secretariat should be entrusted either to the Committee on Conventions and Recommendations in Education or, preferably, to a small working group set up by that Committee. As to the question of confidentiality in processing complaints, they considered public exposure to be important at least at some stage of the final report. As was rightly stated in paragraphs 17 and 46 to 48 concerning the ILO procedure, the Member States against whom complaints were lodged were under the obligation to provide all the relevant information in their possession.

7.8 To assist the Committee in fulfilling its functions more effectively, appropriate provision should be made for the necessary Secretariat services. Such provision would be essential once the procedures had been strengthened but was also important at the present stage.

7.9 His Government fully supported the proposal contained in paragraph 162 concerning a meeting of directors of human rights departments of Unesco and other bodies of the United Nations system



7.10 He suggested that the Secretariat formulate appropriate action proposals for human rights machinery based on document 102 EX/19 and the Board's debate on it, for circulation to Board members as soon as possible and consideration at the following Board session.

7.11 While the Board was considering how to improve Unesco procedures in the field of human rights, however, the existing machinery, namely the Committee on Conventions and Recommendations in Education, should continue its work. In that connection, he requested the Director-General to inform the Board of the number of complaints thus far received by the Secretariat which would be submitted to the Committee.

7.12 In searching for the means of strengthening Unesco's capabilities in the field of human rights, his Government had been led to wonder how the Organization's capabilities might be strengthened in other areas of its activity and in particular what steps could be taken to maintain and accelerate the momentum developed in Nairobi, at the nineteenth session of the General Conference. That session had produced a spirit which, if guarded carefully, could strengthen the Organization's capabilities, including as it did such ingredients as tolerance, a will to conciliation and a determination to avoid confrontations likely to detract from concentration on Unesco's activities in those areas which are its unique responsibility. In his Government's view, that was the essence of the valuable contribution made to the previous General Conference session by the Drafting and Negotiation Group - the existence of a buffer zone in which it was possible to deal effectively with some of the potentially explosive situations which might otherwise have prevented the Conference from focusing on its main work, the study of the Unesco programme. His country would welcome the opportunity of building upon the experience of the Drafting and Negotiation Group when the time came.

7.13 Following examination of the experience and the procedures of other organizations, in the field of human rights, it appeared that there was room for additional procedures or mechanisms to help Unesco deal in particular with strongly held differences between Member States, including charges of non-compliance with international instruments concerning matters within its competence in such a way that there was no undue diversion from the Organization's programmes and activities currently under way.

7.14 Unesco inevitably reflected the imperfections of the world it represented. Different Member States had different interests and Member States might at times hold divergent views on the role of Unesco and the course of action it should pursue. Such differences should not be disregarded or minimized but, when they became apparent in Unesco, it was incumbent upon all concerned to approach them in a spirit and by means of procedures likely to maximize objective and dispassionate information and minimize emotion and confrontation.

7.15 There appeared to be a need for a body such as the Drafting and Negotiation Group to work outside the framework of General Conference sessions, prior to and in preparation for sessions of the General Conference and the Executive Board. The main aim he had in mind was to protect Unesco's functions and tasks from diversion and distraction. There were many possible procedures which might be adopted to attain that aim, and his Government would welcome any suggestions regarding it. It had been favourably impressed by a practice followed elsewhere in the United Nations system whereby formal consideration of charges made by Member States against other Member States by the governing bodies of the organization concerned should be based not only upon the statements of the parties directly involved but also upon a thorough professional report prepared by experts serving in a personal capacity, possessed of qualifications and competence beyond challenge and possibly chosen from a list drawn up in advance by the Director-General with appropriate participation from the governing body.

7.16 As a step in that direction, he proposed that consideration be given to that general subject by the Board at its following session. That suggestion did not pre-empt the need for more effective handling of complaints in the human rights area but was intended to strengthen the capabilities, the image and the public support of the Organization by enabling Member States, when they came together in informal discussions or in formal meetings of Unesco's governing bodies, to concentrate on issues which fell directly within the Organization's sphere of competence and not on those which divided them and were sometimes more appropriately dealt with in other parts of the United Nations system.

The meeting rose at 12.30 p.m.

EIGHTH MEETING

Wednesday, 4 May 1977, at 4.30 p.m.

Item 5.6.2 - STUDY OF THE PROCEDURES WHICH SHOULD BE FOLLOWED IN THE EXAMINATION OF CASES AND QUESTIONS WHICH MIGHT BE SUBMITTED TO UNESCO CONCERNING THE EXERCISE OF HUMAN RIGHTS IN THE SPHERES OF ITS COMPETENCE, IN ORDER TO MAKE ITS ACTION MORE EFFECTIVE (102 EX/19) (continued)

1.1 Mr. PHILP considered that the most important procedural issues were raised in paragraph 125(i) of document 102 EX/19, where it was suggested either that Unesco might take note of the changes made by the Economic and Social Council in dealing with communications relating to violations of human rights and fundamental freedoms, and move in a similar direction as far as its own procedures were concerned; or that the Organization might model itself less on the United Nations than on other Specialized Agencies, whose role was more specific than that of ECOSOC.

1.2 Those options deserved the most careful and detailed study, pending which he himself was inclined to favour the second of the two, partly because ECOSOC's competence in the field of human rights was so much broader than Unesco's, and partly because he believed that Unesco, whose competence in the matter was limited - though not necessarily identical with that of the International Labour Organisation or of any other Specialized Agency - should undertake a limited number of tasks in the hope of accomplishing them well, rather than attempting to do too much, with the risk of unsatisfactory results.

1.3 Moreover, the adoption by Unesco of specific procedures to match its specific spheres of competence would be fully in keeping with the provisions of resolution 12.1 adopted by the General Conference at its nineteenth session.

1.4 The current procedures were certainly unclear, unwieldy and unsatisfactory - but that was no reflection on the Committee on Conventions and Recommendations, which had worked hard and faithfully and which must continue along the same lines until those procedures were changed. In terms which had sometimes been very moving, the General Conference had called for such change, as a matter of urgency, and the Secretariat had responded to that call by producing an analysis of the options which might be examined in that connection. Paragraphs 134-162 of document 102 EX/19 contained suggestions - rather than proposals - and they, together with many of the ideas advanced during the present discussion, should be studied very carefully by the Board, perhaps by an expert committee established for the purpose, and certainly by experts in the different Member States. One suggestion which had particularly impressed him was that by Mr. Toussaint, concerning the possible creation of a group of professional persons to examine charges levelled by one Member State against another; that suggestion was most relevant in connection with the thought-provoking contents of paragraph 135 of the document before the Board.

1.5 Generally speaking, the critical procedural questions were well expounded in that document, which certainly helped to clarify the issues involved. What was required before the next session of the Board was a continuation of the process of reflection and in-depth analysis, perhaps with the assistance of a specially created working group, both within the Secretariat and within the Member States. The best possible advice must be obtained, so that the Board might be in a position, at its 103rd session, to arrive, as was said in paragraph 125(ii) of document 102 EX/19, at "a more precise definition of Unesco's competence in the sphere of human rights [which] would enable it to make its activity more effective and would at the same time prevent a dispersal of effort ...".

1.6 He was - unlike Mr. Bustamante - optimistic about the outcome of the process, and believed that thoughtful progress along the lines which he had suggested would indeed make it possible to reach a consensus concerning procedures through which Unesco could protect and further human rights, as was no doubt desired by all its members.

2.1 Mme PINTASILGO pense qu'en raison même de la complexité de la question, le Conseil ne pourra prendre, à la présente session, de décision sur la nouvelle procédure à appliquer pour l'examen des communications relatives aux droits de l'homme. Elle appuie d'ailleurs la proposition formulée par quelques membres du Conseil, selon laquelle un groupe de travail restreint serait chargé de faire le point des perspectives ouvertes par le débat et aussi d'étudier les moyens

de donner suite au paragraphe 10 (a) de la résolution 19 C/12.1, relatif à l'examen de "la situation générale en ce qui concerne le respect des droits de l'homme dans le monde, dans les domaines de compétence de l'Unesco".

2.2 Se référant tout d'abord à la création, suggérée par M. Rahnema, d'un comité de sages, Mme Pintasilgo s'y déclare favorable, pour autant qu'un tel comité puisse fonctionner dans des conditions d'indépendance politique satisfaisantes.

2.3 Elle pense que le Comité du Conseil exécutif sur les conventions et recommandations dans le domaine de l'éducation devrait être maintenu en fonctions jusqu'à ce que le Conseil ait pu procéder à une étude approfondie des propositions formulées dans le document 102 EX/19. D'ici à la prochaine session, il importe d'examiner attentivement les améliorations à apporter aux méthodes d'examen, d'enquête et de consultation.

2.4 Se plaçant sur un plan plus général, Mme Pintasilgo voudrait situer la question des droits de l'homme relevant de la compétence de l'Unesco dans le contexte de l'affirmation - contenue dans le préambule de la partie II de la résolution 19 C/12.1 - selon laquelle les droits civils et politiques et les droits économiques, sociaux et culturels, sont "solidaires les uns des autres dans leur principe et dans leur exercice". Comme M. Garbo, elle souligne l'interdépendance entre les droits de l'homme et les libertés fondamentales d'une part, et la satisfaction des besoins essentiels que sont l'hygiène, la nourriture, le logement et l'emploi, d'autre part. De même, il existe un lien étroit entre les droits de l'homme en tant qu'individu et en tant que membre d'un groupe social.

2.5 Mme Pintasilgo fait valoir qu'une grande partie de l'humanité n'a pas, en fait, la possibilité de jouir pleinement de droits qui lui sont garantis. Il est permis de se demander, par exemple, ce que signifie le droit à l'éducation à une époque marquée par le fléau du chômage ou le droit à la culture pour le milliard d'analphabètes que compte le monde.

2.6 Passant à l'action de l'Unesco dans le domaine des droits de l'homme, Mme Pintasilgo rappelle que le Plan à moyen terme pour 1977-1982 a réaffirmé avec clarté la vocation de l'Unesco à cet égard. Le premier chapitre du document 19 C/4 est précisément intitulé "Promotion des droits de l'homme" et traite, notamment, du respect de l'identité culturelle, de l'amélioration de la condition de la femme et de l'aide aux réfugiés et aux mouvements de libération. Mme Pintasilgo fait observer que le document 19 C/4 se préoccupe du respect des droits de l'homme et des libertés fondamentales tant pour les individus que pour les groupes sociaux. C'est ainsi que le droit à l'éducation est envisagé, au chapitre V du document, dans l'optique de l'"Action éducative pour répondre aux besoins de l'individu et aux exigences de la société dans la perspective de l'éducation permanente et dans le cadre du développement économique, social et culturel". C'est ainsi aussi que le droit d'accéder aux bienfaits du progrès scientifique rentre dans le cadre de "l'application de la science et de la technique dans l'intérêt de l'homme et de la société" (chapitre IV), et, enfin, que le droit de participer à la vie culturelle est évoqué dans le chapitre consacré à "L'homme en tant que centre du développement" (chapitre III).

2.7 Selon Mme Pintasilgo, il convient de situer la question des droits de l'homme dans une perspective globale tenant compte de la dynamique sociale et culturelle du monde contemporain. Le Conseil devrait s'efforcer, au cours de l'exercice biennal, d'élaborer, à partir des grandes orientations fixées dans le document 19 C/4, une approche politique d'ensemble des problèmes des droits de l'homme.

2.8 Mme Pintasilgo revient au document 102 EX/19 et fait observer que la procédure d'examen des cas relatifs aux droits de l'homme, telle qu'elle est proposée au paragraphe 142, présente une certaine ambiguïté, même s'il est clair que toute décision de caractère judiciaire serait exclue. Un groupe de travail ad hoc, ou le comité de sages dont la création a été proposée, pourrait étudier de plus près cette question.

2.9 Pour ce qui est de la distinction entre les "cas" et les "questions", qui est faite au paragraphe 141 du document, Mme Pintasilgo estime que la "phase collective" ne doit pas être considérée comme le simple aboutissement d'une accumulation de cas individuels. La définition des "questions" devrait être repensée dans une optique résolument différente. Ainsi, dans le contexte du Plan à moyen terme, les "questions" ne porteraient pas exclusivement sur la situation des droits de l'homme dans un pays, mais sur des situations transnationales dont les Etats membres se sentiraient collectivement responsables. Pour donner suite à ces questions, l'Organisation pourrait agir non seulement par l'intermédiaire des Etats membres, mais aussi en faisant appel aux organisations non gouvernementales, à l'opinion publique, aux organisations de la collectivité.

2.10 A propos de la spécificité de la mission de l'Unesco dans le domaine des droits de l'homme, Mme Pintasilgo pense que l'Organisation ne saurait se limiter à protéger les droits de l'homme de certains groupes professionnels. Il y aurait contradiction entre une telle conception et la contribution générale qu'elle doit apporter au progrès des catégories sociales défavorisées. Mme Pintasilgo conclut en soulignant qu'en acroissant dans les conditions qu'elle vient d'indiquer l'efficacité de l'action de l'Organisation dans le domaine des droits de l'homme, on confèrera à l'Unesco l'autorité morale qui doit être la sienne au sein du système des Nations Unies et dans le monde.

3.1 El Sr. ABAD GRIJALVA expresa su satisfacción por el contenido del estudio que el Director General ha sometido al Consejo. Estima que sólo una minoría muy reducida del género humano goza del ejercicio de los derechos humanos y que en lo que atañe al derecho a la educación y a la participación en la cultura, son muchos los millones de personas que están privadas del ejercicio de esos derechos y otros muchos los millones de personas que corren el riesgo de perder su identidad cultural. Añade que lo mismo puede decirse de la participación en el desarrollo científico y tecnológico, a pesar de los importantes resultados que se han conseguido.

3.2 Considera el Sr. Abad Grijalva que conviene recalcar la importancia del papel que ha de desempeñar la Unesco respecto de la promoción de los derechos humanos, ya que éstos sólo protegen a una minoría. Subraya que cuando se habla de violación de los derechos humanos, los Estados interesados esgrimen inmediatamente el argumento de la soberanía nacional, soberanía que ha de respetarse siempre. Pero tampoco ha de olvidarse que estos mismos Estados han contraído ciertas obligaciones internacionales. Piensa que esta contradicción aparente entre la noción de soberanía nacional y las obligaciones internacionales, requiere una solución de transacción.

3.3 Estima que lo que dificulta la aplicación de los derechos humanos, no es la falta de interés de los Estados en aplicarlos, sino la complejidad del momento histórico en que el mundo vive hoy. A ese respecto, declara que es positivo el progreso actual de los medios de comunicación, ya que en todo lugar las personas pueden enterarse de lo que sucede en el resto del mundo. En cambio, es negativa la impaciencia de ciertos grupos que piden un cambio inmediato, lo que produce un estado de beligerancia permanente, promueve la violencia y el terrorismo y dificulta de hecho la aplicación de los derechos humanos.

3.4 En lo que se refiere al examen de las violaciones de los derechos humanos, el Sr. Abad Grijalva estima que es excelente la idea de establecer un comité de sabios para aplicar los procedimientos propuestos, pero se debería primero determinar a quién compete el asunto: a un órgano independiente, a la Secretaría o al Consejo. Añade que si bien es conveniente informar sobre los casos de violación de los derechos humanos, también lo es dar a conocer su aplicación progresiva. En efecto, hace muchos siglos que la humanidad viene luchando por esos derechos y el proceso de su aplicación es necesariamente lento.

3.5 Cree que se ha de actuar con mucha prudencia, porque los derechos humanos se confunden a menudo con los derechos políticos, y estima que la Secretaría de la Unesco habrá de encargarse exclusivamente de los primeros y un comité especial encargarse de recibir las quejas. Por último, el Sr. Abad Grijalva estima que, puesto que ya existe un procedimiento, éste ha de conservarse hasta que se sustituya por otro, que habrá de establecerse después de haber consultado a los Estados Miembros para que responda a un amplio consenso.

(3.1) M. ABAD GRIJALVA est satisfait du contenu de l'étude soumise au Conseil par le Directeur général. Il estime que seule une très faible minorité jouit de l'exercice des droits de l'homme et que le droit à l'éducation et à la culture est refusé à des millions d'êtres humains, tandis que des millions d'autres risquent de perdre leur identité culturelle. Il en va de même de la participation au progrès scientifique et technique malgré l'importance des résultats obtenus.

(3.2) Il convient de souligner, poursuit M. Abad Grijalva, que l'Unesco a un rôle important à jouer dans la promotion des droits de l'homme, puisque la protection qu'ils offrent est le privilège d'une minorité. Quand on parle de violation des droits de l'homme, les Etats en cause brandissent immédiatement l'argument de la souveraineté nationale, laquelle doit toujours être respectée. Mais il ne faut pas oublier que ces mêmes Etats ont contracté certaines obligations internationales. M. Abad Grijalva estime que cette contradiction apparente entre la notion de souveraineté nationale et les obligations internationales appelle une solution de compromis.

(3.3) La difficulté d'application des droits de l'homme ne tient pas selon lui, à ce que les Etats ne veulent pas les appliquer mais à la complexité de la période historique traversée par le monde actuel. A cet égard, il considère comme positif le progrès actuel des

moyens de communications, puisqu'en tout lieu il est possible d'être informé de ce qui se passe dans le reste du monde. Il déplore en revanche l'impatience de certains groupes partisans d'un changement immédiat, qui engendre un état de belligérance permanente, encourage la violence et le terrorisme et entrave en fait l'exercice des droits de l'homme.

(3.4) Pour ce qui est de l'examen des violations de ces droits, M. Abad Grijalva juge excellente l'idée de créer un comité de sages chargé d'appliquer les procédures proposées, mais il faudrait d'abord déterminer de qui relève cette question : d'un organe indépendant, du Secrétariat ou du Conseil. D'autre part, s'il convient en effet d'informer des cas de violation, il est bon aussi de faire connaître l'application progressive des droits de l'homme. En fait, il y a des siècles que l'humanité lutte pour ces droits et le processus de mise en oeuvre est nécessairement lent.

(3.5) Une grande prudence s'impose car les droits de l'homme se confondent souvent avec les droits politiques et, de l'avis de M. Abad Grijalva, le Secrétariat de l'Unesco devrait s'occuper uniquement des droits de l'homme, les autres droits relevant d'un comité spécial. Enfin, puisqu'il existe déjà une procédure, il convient de la maintenir jusqu'à ce qu'elle soit remplacée par une autre, qu'il faudra mettre au point après avoir consulté les Etats membres afin de dégager un large consensus.

4.1 Le DIRECTEUR GENERAL, en réponse à une question posée par M. Toussaint, indique que le Secrétariat a reçu 98 communications relatives à des cas particuliers, dont 85 ont été déclarées recevables et considérées comme pouvant être portées à la connaissance du Comité sur les conventions et recommandations dans le domaine de l'éducation, conformément à la procédure établie par le Conseil dans sa décision 77 EX/8.3. Sur ces 85 communications, 28 ont déjà été transmises aux gouvernements intéressés, 10 seront envoyées prochainement aux gouvernements concernés, leurs auteurs ayant donné leur accord, et 47 sont en attente, leurs auteurs n'ayant pas encore fait savoir s'ils acceptent qu'elles soient transmises aux gouvernements en cause. Le Secrétariat étudie actuellement la recevabilité des 13 communications restantes.

4.2 Le Directeur général voudrait revenir sur l'affirmation de M. Lipatti selon laquelle le Secrétariat semblerait tenté d'assigner à l'Unesco un rôle d'arbitre et de médiateur entre les Etats membres et leurs ressortissants. Cette allégation lui paraît extrêmement grave et il demande à M. Lipatti sur quels passages du document elle se fonde, afin de pouvoir dissiper toute équivoque.

١٤٥ - ذكر السيد الوكيل أن اختصاص اليونسكو في مجال حقوق الانسان اختصاص أصيل ولا نزاع عليه، وأشار إلى الفقرة ١٢٢ من الوثيقة ١٠٢ م ت / ١٩ التي عدت المصادر القانونية لهذا الاختصاص، ولا سيما الميثاق التأسيسي لليونسكو، وقد كان يتنى أن تذكر الوثيقة الجملة الأولى لديها. إن تمثل كل فلسفة اليونسكو وتضع إطاراً عاماً لسياستها في الدفاع عن حقوق الانسان في العالم أجمع .

١٤٦ - ووافق على الآراء التي ترددت بالمجلس والقاتلة بأن اليونسكو ليست محكمة، بيد أنه ذكر بأنه لا توجد حتى الآن محكمة دولية لحماية حقوق الانسان، وإلى أن يتحقق ذلك، فعلى اليونسكو، كمبرها من المنظمات الدولية الحكومية، تقع مسؤولية حماية حقوق الانسان في مجال اختصاصها وتوفير نوع من الالتزام الأدبي والقانوني للإعلان العالمي لحقوق الانسان .

١٤٣ - ورأى تبعاً لذلك أن دراسة المجلس التنفيذي للإجراءات لا ينبغي أن تكون ذريعة لوضع قيود على اختصاص اليونسكو في هذا المجال، وأن الإجراءات يجب أن تكون مجرد أداة تنظيمية لفحص حالات وسائل حقوق الانسان بموضوعية وندالة .

١٤٤ - وأعرب عن رأيه بأن إجراءات المنظمة لا ينبغي أن تكون بالضرورة طابوقة لإجراءات المنظمات الأخرى للأمم المتحدة . فهذا ما لم يطلبه القرار ١٩ م / ١٢١، بل إنه طلب إجراء تنسيق مع هذه المنظمات . وقال إنه لا يمانع في الإبقاء على سلطة المدير العام في تلقي الشكاوى، حتى لو انفردت اليونسكو بذلك الوضع، مع استعانة السكرتارية بلجنة استشارية صغيرة .

١٤٥ - ونوه السيد الوكيل بأن أية إجراءات حالمة أو مستقبلية لا يمكن أن تنطبق بأي حال من الأحوال على انتهاك حقوق الانسان في الأراضي المحتلة بطريق الغزو والاحتلال العسكري، إذ أن هذه الحقوق محفوظة من حيث الموضوع والجوهر باتفاقية جنيف الرابعة لعام ١٩٤٩ بشأن حماية المدنيين أثناء الحرب . وأشار إلى أن الإجراءات الخاصة بتطبيق هذه الاتفاقية في هذه الحالة لم تزل ترى النور بسبب عناد سلطات الاحتلال، ومن ثم فإن فحص

انتهاك حقوق الانسان في الأراضي المحتلة يجب أن يتم دائما أمام المؤتمر العام والمجلس التنفيذي، مباشرة وليس في اطار أية اجراءات أخرى . وقال ان ذلك ينطبق أيضا على انتهاكات حقوق الانسان الناشئة عن " الأبرتايد " .

١٦هـ - وقال انه لا ينبغي تجميد اختصاص اليونسكو في مجال حقوق الانسان حتى تصدر اجراءات جديدة، بل يجب استمرار العمل بالاجراءات الحالية الى أن توضع أخرى جديدة .

١٧هـ - وأشار الى الطابع المبدئي للنقاش الدائر، وإلى أن أعضاء المجلس في حاجة الى مواصلة دراسة هذا الموضوع في وقت لاحق، وذلك على أساس وثيقة موجزة تتضمن مقترحات عملية ومحددة وبدائل لهذه المقترحات .

5.1 M. El-WAKIL souligne le caractère authentique et incontestable de la compétence de l'Unesco dans le domaine des droits de l'homme en se référant au paragraphe 127 du document 102 EX/19 qui énumère les bases juridiques de cette compétence, parmi lesquelles figure, en premier lieu, l'Acte constitutif de l'Organisation. Cependant, il aurait souhaité que le document cite la première phrase du préambule de l'Acte constitutif, qui lui paraît refléter toute la philosophie de l'Unesco et définir le cadre général de sa politique en matière de défense des droits de l'homme partout dans le monde.

5.2 M. El Wakil approuve l'opinion exprimée au sein du Conseil selon laquelle l'Unesco n'est pas un tribunal. Il fait toutefois valoir qu'il n'existe pas encore de tribunal international pour la protection des droits de l'homme et qu'en attendant l'institution d'une telle instance, l'Unesco se doit, comme les autres organisations intergouvernementales, d'assumer la responsabilité de la protection des droits de l'homme dans les domaines de sa compétence et de présenter l'application de la Déclaration universelle des droits de l'homme comme une obligation morale et juridique.

5.3 L'étude par le Conseil des procédures à suivre en la matière ne devrait donc pas, selon M. El-Wakil servir de prétexte à la fixation de limites à la compétence de l'Unesco dans le domaine des droits de l'homme. Ces procédures doivent simplement constituer un outil pratique pour examiner, d'une manière objective et juste, les cas et les questions relatifs aux droits de l'homme.

5.4 M. El-Wakil estime que les procédures de l'Unesco n'ont pas nécessairement à être identiques à celles que suivent les autres organisations du système des Nations Unies ; la résolution 19 C/12.1 ne l'exige d'ailleurs pas mais demande plutôt que soit établie une coordination avec ces organisations. Il n'est pas opposé à ce que le Directeur général reste compétent pour se prononcer sur la recevabilité des communications, même si l'Unesco est seule à appliquer une telle procédure ; le Secrétariat devrait cependant dans l'accomplissement de cette tâche s'assurer le concours d'un comité consultatif à composition restreinte.

5.5 M. El-Wakil considère que les procédures actuelles et futures ne sauraient en aucun cas être appliquées à la violation des droits de l'homme dans les territoires usurpés par la conquête et l'occupation militaire ; en l'occurrence, en effet, ces droits sont protégés, par principe par la quatrième Convention de Genève de 1949 concernant la protection des populations civiles en cas de guerre. Les procédures permettant l'application de cette Convention à la situation en question n'ont pas vu et ne verront pas le jour en raison de l'obstination des autorités d'occupation. Aussi la question de la violation des droits de l'homme dans les territoires occupés doit-elle être toujours examinée directement par la Conférence générale et le Conseil exécutif et non dans le cadre de telle ou telle autre procédure. M. El-Wakil ajoute que les mêmes considérations valent pour les violations des droits de l'homme résultant de l'apartheid.

5.6 M. El-Wakil estime que la compétence de l'Unesco en matière de droits de l'homme ne doit pas être suspendue jusqu'à l'établissement des nouvelles procédures, mais que l'Organisation doit continuer, en attendant, à appliquer les procédures actuelles.

5.7 Enfin, il souligne le caractère préliminaire du débat et la nécessité pour les membres du Conseil de poursuivre ultérieurement l'examen de la question sur la base d'un document succinct contenant des propositions concrètes et précises et donnant le choix entre plusieurs solutions.

6.1 Mr. BAGUNYWA, after commending the Director-General and his staff on the implementation of the demanding exercise called for in 19 C/Resolution 6.113, observed that the violation

of human rights had spread like an epidemic throughout the world and had, in some States, become endemic. That being so, he believed that any procedures which would make Unesco's action concerning the exercise of those rights more effective, in the spheres of its competence, should emphasize preventive, rather than curative measures.

6.2 Preventive and curative measures alike depended on diagnosis - the identification of the disease through its symptoms, and the major symptom of the disease under consideration was to be found in paragraph 95 of document 102 EX/19, which pointed out that only 64 of Unesco's Member States had ratified or accepted the Convention against Discrimination in Education. It was therefore important to persuade as many States as possible to become party to the basic conventions and protocols on human rights, and thereby commit themselves to submit periodic reports as required. Once a State had done so, it would be difficult for any government of the day to abandon that commitment without loss of face.

6.3 Although it was probable that the failure of many States to ratify the conventions was due rather to ignorance of the procedures involved than to conscientious objections to their provisions, some States remained recalcitrant, and it was likely that remedial action in the form of sanctions would continue to be required in identifiable and proven cases of the violation of human rights. But one type of preventive action worth considering was the intensification of teaching about human rights. A soundly-written textbook, the drafting of which might be entrusted to a team of pedagogues or to Unesco's own Division of Structures, Content, Methods and Techniques of Education, could serve as a basis for such teaching at the secondary level, while at the university level, the young people of today who would be the leaders of tomorrow could be instructed in the basic conventions and protocols on human rights.

6.4 As far as Unesco's action up to the present time was concerned, he was satisfied with the procedure followed by the Committee on Conventions and Recommendations in Education, whose role might be compared with that of the councils of elders which, in traditional African settings, often settled clan and family disputes more effectively than courts of law. But the Committee's effectiveness was severely limited by the principle of non-interference in the domestic affairs of Member States and by the length of time required by its procedure, and as yet he could see no easy way of overcoming those difficulties. There were merits in the suggestions by Mr. Carneiro and by Mr. Rahnama concerning the transfer of the Committee's mandate to an independent committee of experts or to a "committee of wise men". However, the non-voting and non-judicial character of the present Committee was an important factor, and - if it were decided to create a new body - care should be taken to avoid upsetting the checks and balances which had up to now kept the Committee free from bias. In particular, one should not abandon the careful manner in which its members, like those of the Executive Board itself and of its other subsidiary bodies, had been selected on the basis of their integrity, intellectual abilities and internationalism.

6.5 The conditions for receivability of cases and questions pertaining to the violation of human rights were, as stated in paragraph 118 of document 102 EX/19, the subject of no detailed regulations. He believed that it was a matter of some urgency to codify the present unwritten procedure. While he considered it essential for the Director-General to continue to process the receivability of cases and questions for submission to the Committee, with the proviso that the latter could call for others to be reported to it *in toto*, he thought that it would be improper to expect the Director-General or his representative to mediate in disputes involving his employers - the Member States - and therefore found the allusion to such a possibility, in paragraph 143, quite unacceptable.

6.6 Desirable though it might be to consider human rights as indivisible, particularly where basic needs were concerned, it was almost inconceivable that Unesco could handle all the cases and questions that might be addressed to it on all aspects of human rights. It therefore appeared advisable to circumscribe the Organization's action within its specific fields of competence.

6.7 In conclusion, he said that if he found little room for changing present procedures in the hope of making Unesco's action more effective, it was not because he was pessimistic or resistant to change. On the contrary, he remained open to suggestions, but - foreseeing a number of difficulties in the changes proposed so far - he remained unconvinced that they would be effective. It was, however, possible that when a smaller body applied itself to the task of refining some of those proposals, they would meet with a more favourable response on his part.

7. The CHAIRMAN said he appreciated the importance of dealing with theoretical as well as practical aspects of the problem before the Board, but reminded members that the time available was far from limitless. He hoped that they would agree that the present discussion constituted a preliminary exchange of views only, and - at the end of the debate - adopt without further discussion a brief draft resolution resuming its conclusions, to be prepared by the Bureau.

The meeting rose at 4.40 p. m.



NINTH MEETING

Thursday, 5 May 1977, at 10.45 a.m.

**Item 5.6.2 - STUDY OF THE PROCEDURES WHICH SHOULD BE FOLLOWED IN THE EXAMINATION OF CASES AND QUESTIONS WHICH MIGHT BE SUBMITTED TO UNESCO CONCERNING THE EXERCISE OF HUMAN RIGHTS IN THE SPHERES OF ITS COMPETENCE, IN ORDER TO MAKE ITS ACTION MORE EFFECTIVE (102 EX/19)**

1.1 Mr. TOWEETT, President of the General Conference, referring to the mandate given to the Executive Board and the Director-General by the General Conference, said that in Nairobi he had understood that the procedures to be examined concerned only those problems in the field of human rights which Unesco and Unesco alone was qualified to tackle.

1.2 Document 102 EX/19 was very useful, and the discussion in the Board had been very interesting, but what was needed was not so much an evaluation of the document as a decision as to which of its proposals should be retained for further consideration or action, and a recommendation to the next session of the General Conference.

2.1 Mr. AGIOBU-KEMMER said that the question of human rights was one which should unite Member States rather than cause division. It concerned all, for even those now living in freedom could not be sure that they would always be so fortunate, and indeed, in a sense, no one could call himself free as long as another individual was living in bondage.

2.2 That question was particularly important for the African region, in view of the daily violations of human rights which were taking place in southern Africa. He and other members of the African group were therefore disappointed that document 102 EX/19 made no reference to racialism, apartheid and kindred evils, and hoped that such matters would receive more attention in due course. While he supported Mr. Carneiro's call for an end to all forms of violence, he thought, for instance, that the terrorism and guerilla warfare in southern Africa would cease to exist when the oppression which caused them was removed. There could be no peace on earth as long as human rights were violated, as Mr. Le Riverend had so eloquently pointed out in speaking of the "unity of human rights".

2.3 Mr. Lipatti's definition of matters coming within Unesco's spheres of competence and of the Organization's role in the field of human rights had been less than clear. Surely that role was one of conciliation, of quiet diplomacy aimed at assisting the individual States, which bore the primary responsibility in this field, to correct deviations from the standards laid down in the United Nations Charter and the Constitution of Unesco. Appeals to the international community should be used as a last resort when all possibilities of mediation at national level had been exhausted and, in any case, more publicity should be given to successes than to failures. It should be remembered that Unesco was not a court of law, and, as had been said, the examination of allegations of violations of human rights should never be regarded as an opportunity to settle old scores.

2.4 The question before the Board was how to improve the effectiveness of Unesco's action and fortunately a majority of speakers had been concerned to maintain the Organization's uncompromising moral authority in that sphere rather than to weaken its influence in the international community. The United Nations and its Specialized Agencies formed a framework within which the freedom of nations and individuals could be guaranteed and national sovereignty of individual Member States strengthened by the collective will to not uphold the principles enshrined in the United Nations Charter and the Constitutions of the various organizations given a spirit of goodwill and mutual understanding such as that which governed the proceedings of the Executive Board, it should not be an impossible task to create a machinery which would sustain what had been termed "the spirit of Nairobi" and spread it throughout the world.

2.5 Referring to paragraph 117 of document 102 EX/19, he asked what action would be taken if a State in which a violation of human rights was alleged to have taken place subsequently applied for membership of Unesco.

2.6 In general, he felt that document 102 EX/19 did not make it sufficiently clear why changes were needed or what new procedures were recommended.

2.7 Paragraph 10 (a) of 19 C/Resolution 12.1 called for a situation report on substance as well as procedures, which was not to be found in the document. Perhaps the Director-General would comment on that and indicate how this shortcoming was to be remedied. The co-operation of Member States would be required to draw up such a report, and if it proved difficult to obtain the General Conference should be informed.

2.8 Paragraph 10 (b) of the resolution invited the Director-General and the Executive Board to study procedures which should be followed for the examination of complaints, but document 102 EX/19, although of an extremely high standard, instead submitted a list of procedures which were in fact followed by different bodies. In order to make a decision as to which procedures should be followed the Executive Board might wish to set up a small working group.

2.9 Although paragraph 10 (c) of the resolution stressed the advantages of co-operation with other United Nations bodies in this field, Unesco should not be content to copy procedures followed by others: it should be open to new, progressive ideas more suited to its own unique identity. In order to implement that paragraph, the possibility of Unesco taking part in the work of the United Nations Commission on Human Rights should be explored.

2.10 It was, therefore, the collective view of the African group that, far from exceeding his mandate, the Director-General had carried out only a small part of it. It was difficult to understand Mr. Lipatti's anxiety on that point, but perhaps the matter would become clearer once he had supplied the information which the Director-General had requested.

2.11 Those dissatisfied with present arrangements for determining the receivability of a complaint had not made clear their reasons for wishing a change. The African group was satisfied that the Director-General and his staff were immune to pressures from individual States in a way that no member of the Board, and not even an expert appointed on personal merit, could claim to be. Moreover, present arrangements were flexible and did not leave the decision entirely to the Secretariat. They should therefore be retained, regardless of the practice of other United Nations bodies.

2.12 There was a need to speed up present procedures. If a working group was set up, that however would probably be one of the questions to which it should address itself.

2.13 One of the most effective safeguards of human rights would be a system of education which inculcated respect for the rights of others. He was sure that if the Director-General required assistance in this field it could be provided by experts from many Member States, including Nigeria.

3.1 Le DIRECTEUR GENERAL voudrait répondre aux remarques faites par plusieurs membres du Conseil au sujet du contenu du document 102 EX/19. Le Secrétariat a établi ce document pour tenir compte d'une demande formulée à la 100e session du Conseil par le Comité sur les conventions et recommandations dans le domaine de l'éducation et de la décision prise par la Conférence générale dans sa résolution 19 C/6. 113. La résolution 19 C/12.1 est également citée au début du document 102 EX/19 parce que son paragraphe 10 (b) reprend les termes de la résolution 6. 113. L'intitulé du document indique clairement qu'il porte exclusivement sur les questions de procédure, ce qui est conforme au désir tant de la Conférence générale que du Comité. En ce qui concerne les autres dispositions de la résolution 12.1, et notamment celles qui ont trait aux questions de fond soulevées par le colonialisme, le néo-colonialisme, le racisme et l'apartheid, le Directeur général établira un rapport distinct, qu'il pourra présenter à une des prochaines sessions du Conseil et, par la suite, à la Conférence générale.

4. The CHAIRMAN endorsed what the Director-General had said. There had been many occasions when speakers had ranged far beyond the item under consideration, but he had not called them to order in view of the fact that many were new members of the Board.

5.1 Pour M. KI-ZERBO, la question qui se pose au Conseil est celle de la définition d'une approche correcte de l'examen des problèmes des droits de l'homme. Le document présenté par le Secrétariat constitue un excellent dossier dont les éléments sont bien choisis pour donner une vue d'ensemble de la question. Tout au plus pourrait-on lui reprocher d'avoir accordé trop de place aux expériences faites dans deux régions.

5.2 Le rôle de l'Unesco en matière de droits de l'homme découle, notamment, des dispositions des articles 1 (3) et 55 de la Charte des Nations Unies, de l'Acte constitutif de l'Organisation - qui est cité, en particulier, au paragraphe 128 du document - et des résolutions pertinentes

de la Conférence générale. Ce rôle est toutefois soumis à certaines restrictions. En premier lieu, le paragraphe 3 de l'article premier de l'Acte constitutif précise que l'Organisation s'interdit "d'intervenir en aucune matière relevant essentiellement de la juridiction des Etats membres". On notera toutefois à cet égard que les Etats se sont engagés librement à respecter les dispositions d'un certain nombre d'instruments juridiques internationaux, notamment la Déclaration universelle des droits de l'homme et la Déclaration sur la protection de toutes les personnes contre la torture et les autres peines et traitements cruels, inhumains ou dégradants, adoptée en 1975 par l'Assemblée générale des Nations Unies. En outre, les constitutions nationales prévoient généralement des garanties en matière de droits de l'homme. Certaines organisations non gouvernementales internationales se fondent précisément sur de telles dispositions pour intervenir en faveur de personnes dont les droits ont été lésés. Lorsqu'on invoque des décisions prises par un Etat en toute souveraineté, celui-ci ne saurait donc considérer qu'il s'agit d'une ingérence dans ses affaires intérieures.

5.3 L'action de l'Unesco est soumise à une deuxième restriction ayant trait à l'étendue de sa compétence en la matière. Toutefois, son domaine de compétence est très vaste puisqu'il comprend l'éducation, la science, la culture et l'information. De plus, si une répartition en fonction des compétences est souhaitable, il ne faut pas oublier que ces droits des actions en faveur des droits de l'homme sont indivisibles.

5.4 Enfin, l'action de l'Unesco est subordonnée à une troisième condition : l'épuisement des voies de recours internes. Cette restriction est parfaitement fondée, mais il se présente assez souvent des cas où tout recours interne est impossible. En outre, il convient de remarquer que l'Unesco, si elle n'est évidemment pas un tribunal, pas une instance tout à fait extérieure aux Etats, puisque ceux-ci sont généralement membres de l'Organisation, ni non plus une instance supérieure à eux, est plutôt une tribune d'une autre nature en ce sens qu'elle s'attache à défendre et à sauvegarder des idéaux reconnus par les Etats eux-mêmes.

5.5 La distinction faite, tant dans le document que dans les résolutions de la Conférence générale sur lesquelles il est fondé, entre les cas particuliers de violation des droits de l'homme et les atteintes massives à ces droits - par exemple, en Afrique du Sud - a certes sa valeur, mais paraît parfois un peu artificielle. Il arrive assez fréquemment, en effet, que derrière certains cas signalés se cache une grave situation. D'autre part, même s'ils constituent véritablement des exceptions, ce n'est pas une raison pour les négliger. Quant aux atteintes massives aux droits de l'homme, elles sont sans doute plus fréquentes qu'on ne le pense généralement si, comme on a tendance à le faire maintenant, on retient une large définition de ces droits. Selon une telle définition, le plein respect des droits de l'homme exigerait non seulement que soient éliminés la torture, les mauvais traitements et les emprisonnements arbitraires, mais aussi que soient assurés à chacun la satisfaction de ses besoins fondamentaux sur les plans de l'alimentation, du logement, de l'éducation et de la santé, ainsi que l'exercice des libertés civiles et politiques. Or, certains de ces droits sont déniés à des millions d'hommes du fait d'une violence qu'on peut qualifier de "structurelle" et dont on parle rarement.

5.6 Plusieurs enseignements se dégagent de l'analyse faite dans le document des procédures suivies par l'ONU et par l'OIT. On remarquera, notamment, au paragraphe 12 que la Sous-Commission de la lutte contre les mesures discriminatoires et de la protection des minorités est autorisée par la résolution 1503 (XLVIII) du Conseil économique et social à désigner un groupe de travail, composé de cinq de ses membres, qui détermine, à la majorité, si des communications semblent révéler l'existence d'un ensemble de violations flagrantes et systématiques des droits de l'homme. Le paragraphe 14 mentionne le Comité des droits de l'homme créé, en application du Pacte international relatif aux droits civils et politiques et composé de 18 personnalités siégeant à titre individuel. Enfin, le paragraphe 18 signale que le Conseil d'administration de l'OIT a institué dès 1950 une Commission d'investigation et de conciliation en matière de liberté syndicale, qui a compétence pour examiner non seulement les communications concernant les Etats ayant ratifié les conventions dans le domaine de la liberté syndicale, mais aussi toutes les communications dirigées contre tout Etat membre de l'OIT et même contre un Etat non membre de l'OIT mais membre de l'ONU. On se trouve là en présence de trois principes - prise des décisions à la majorité, étude des communications par un comité de spécialistes siégeant à titre individuel, examen de plaintes dirigées même contre des Etats non parties à une convention - dont l'application éventuelle dans le cadre de l'Unesco pourrait être étudiée avec profit par le groupe de travail que le Conseil envisage de créer.

5.7 Reprenant une idée exprimée par M. Van Ussel, M. Ki-Zerbo affirme que le principe de la non-indifférence aux violations des droits de l'homme est encore plus important que celui de la non-intervention dans les affaires intérieures des Etats. L'opinion publique mondiale ne comprendrait pas que les compétences reconnues aux organisations internationales en matière des

droits de l'homme leur soient retirées ou que ces organisations soient inactives dans ce domaine. Toutefois, s'il faut être intransigeant sur les principes, il convient de retenir des modalités d'action d'autant plus souples que peu nombreux sont les Etats n'ayant rien à se reprocher à cet égard. Dans la recherche des moyens de rendre plus efficaces les interventions de l'Unesco en faveur des victimes de violations des droits de l'homme, deux éléments majeurs doivent être pris en compte, les droits de la personne lésée et la souveraineté de l'Etat en cause. Cette condition ne pourra être remplie que si l'Organisation fait preuve, dans l'étude des cas qui lui sont soumis et dans la suite qui leur est donnée, de discrétion, de promptitude, de sérieux, de doigté et de sens du dialogue.

5.8 Ce soin de se prononcer sur la recevabilité des communications pourra être confié au Directeur général ou à un organe délibérant, mais il est évident que ce dernier risque d'être tenté de donner à ses débats un caractère politique générateur de tension. De plus, c'est le Directeur général qui reçoit les communications et on peut avoir confiance en lui pour respecter les critères de recevabilité qui ont été ou seront fixés. Il semble donc que, même si l'intervention d'un organe délibérant à ce stade ne doit pas être totalement écartée, ce soit au Directeur général que le rôle le plus important doit être confié. Bien entendu, l'examen des cas reconnus comme recevables incomberait en tout état de cause au Comité sur les conventions et recommandations dans le domaine de l'éducation ou au Conseil lui-même siégeant en séance privée. Enfin, au stade de l'action proprement dite, les interventions en faveur des plaignants devraient pouvoir être effectuées, selon le cas, par les organes délibérants ou par le Directeur général, de manière plus ou moins publique.

5.9 M. Ki-Zerbo estime que le Comité sur les conventions et recommandations dans le domaine de l'éducation ne doit pas interrompre ses travaux, même pendant une éventuelle période de transition, car cela créerait un vide juridique et moral contraire aux instructions de la Conférence générale qui a demandé que l'action de l'Organisation soit rendue plus efficace. Le Comité devrait donc se réunir et faire rapport à la prochaine session du Conseil sur ce qu'il aura accompli. Simultanément, il est souhaitable qu'un groupe de travail où toutes les régions géographiques seraient représentées soit constitué pour réfléchir aux nouvelles procédures à appliquer.

5.10 L'Unesco a le devoir, conclut M. Ki-Zerbo, d'inciter les Etats à respecter les lois de la conscience et une certaine idée de l'homme. La violence peut parfois être considérée comme nécessaire - c'est le cas, par exemple, des guerres de libération nationale - mais on ne saurait accepter que le souci de maintenir l'ordre justifie n'importe quelle action. A cet égard, M. Ki-Zerbo insiste sur le rôle d'éducation que devrait jouer l'Unesco en s'efforçant de promouvoir l'enseignement des droits de l'homme mais aussi de ses devoirs. D'autre part, il lui semble souhaitable qu'elle propose sa médiation dans les conflits relatifs aux droits de l'homme. La médiation est, en effet, - la tradition africaine le prouve - un des meilleurs moyens de règlement des différends.

٦٠١ - توجه السيد السالم بالشكر للمدير العام والأمانة العامة على اعداد الوثيقة ١٠٢ م/ت ١٩ بهذه السرعة وعلى ما احتدته من نور وحكمة وموضوعية . وقال ان دراسة الاجراءات المتعلقة بفحص البلاغات فيما يخص ممارسة حقوق الانسان ينبغي أن تكون مجرد وسيلة لبلوغ الهدف الانساني النبيل ، وهو رفع الظلم وازالة الحيف والتصف .

٦٠٢ - وتطرق الى دور اليونسكو في مجال حقوق الانسان وقال انه باسكان اليونسكو أن تتصدى لهذه المشكلة؛ فاليونسكو تستند الى ركائز قوية . أولها الشرائع والمواثيق والقرارات التي اعتمدها الأسرة الدولية في هيئة الأمم المتحدة والوكالات المتخصصة الأخرى ، وهي ملزمة لليونسكو وجديرة باحترامها العميق . وقد استندت هذه الشرائع والمواثيق الى وحي السماء والقيم الروحية والفكر الانساني المبدع الاخلاق . كما أن اليونسكو تستند الى ميثاقها التأسيسي في تعريف رسالتها ومسؤولياتها . ويدعو هذا الميثاق "لفضان الاحترام الشامل للمدالة والقانون وحقوق الانسان والحريات الأساسية للناس كافة دون تمييز . . ." فضلا عن أن اليونسكو منظمة دولية حيادية لا تنتهي الى فلسفة سياسية أو اجتماعية خاصة ، وتتمتع بقيادة حكيمه عادلة منزهة عن الفرض . ثم انها منبر عالمي رفيع ولديها إمكانات اعلامية هائلة .

٦٠٣ - وأشار بعد ذلك الى أسباب الضعف في موقف اليونسكو ازاء القضايا المتعلقة بحقوق الانسان في مجالات تخصصها . ومن هذه الأسباب تعذر تصنيف حقوق الانسان الى مناطق نفوذ أو اختصاص لكل منظمة دولية على حدة . وهناك مبدأ "سيادة الدولة" الذي يحول دون التدخل فيما يعتبر شأنًا من شؤونها الداخلية . وبدأ "حماية الانسان" الذي يجيز للمجتمع الدولي حماية المضطهدين والمحرومين من حقوقهم الانسانية . وبدأ عدم التدخل وارد في ميثاق المنظمة أيضا . وقد تتذرع الدول للحيلولة دون التحري والتقصي والبحث عن الحقيقة . وسببنا

بصعب في بعض الأحيان التوفيق بين هذين المبدئين المتناقضين . وهناك أيضا القبلية السياسية التي لم تبرا منها الدول الأعضاء في منظمة اليونسكو ، ما قد يؤدي الى غماع الحق الانساني في خضم المناورات والمآرب السياسية .

٦٤ - ثم تحدث عن حقوق الانسان في دول العالم الثالث ، وقال ان نظام الأفضليات في دول العالم الثالث كان في الماضي مهزوزا قليلا فيما يتعلق بمقام حقوق الانسان بالنسبة للقضايا الأخرى التي تقص مخاجع هذه الدول ، بيد أن الدول النامية قد أصبحت اليوم من أغلص الدول في ممارسة الحقوق الانسانية التي نتحدث عنها في هذا المقام .

٦٥ - وقال انه تعلو على صوت اليونسكو ، في أحيان كثيرة ، موجات اعلامية شرسة تشوه الحقيقة وتخلل الناس وتقلب الحق باطلا والباطل حقا . ولا تملك اليونسكو القوة التنفيذية لاحقاق الحق ، وهذا يؤكد وزنها الأدهسى الذي يتعسر ويكبر بمواقف الدول الأعضاء من الدولة المعنية التي لا تستجيب للحوار أو لا تفتح أبوابها للبحث عن الحق .

٦٦ - ثم تسأل عن الأسلوب الأمثل لدراسة الشكاوى واثبات الانتهاكات . وقال انه ينبغي غرس احترام حق وق الانسان في عقل الانسان منذ حداثة تكوينه . ولا مانع من أن تصبح اليونسكو ضمير العالم في ميدان حماية الحقوق ، ولكنها يجب أن تعتمد في المرء الأخير على ما يمكنه ضمير كل مسؤول من معرفة بحقوق الانسان واحترام لها وحرص على تمتع المواطنين بها . وأضاف أنه قد يكون من المناسب أن تجرى اليونسكو دراسة مقارنة لما تنص عليه دساتير الدول الأعضاء من تشريعات بشأن حقوق الانسان ، لتكتشف مدى قصورها أو مخالفتها لاطلان حقوق الانسان وضمير من المصهور المتعلقة بهذه الحقوق . كما سبق أن كلفت اليونسكو المعهد الدولي لحقوق الانسان في فرنسا باجراء دراسة حول تدريس حقوق الانسان في الجامعات بالتعاون مع جمعية القانون الدولي الامام ومعهد الولايات المتحدة لحقوق الانسان . وتسأل عما أفادت اليونسكو من هذه الدراسة ، ولماذا لم تجر دراسات مماثلة ومتواصلة لا تقتصر على الجامعات وحدها وإنما تمتد الى دور المعلمين ثم الى المدارس الثانوية للاطمئنان الى أن حقوق الانسان تتال قسطها الوافي من الاهتمام في أنظمة التعليم بحيث يكون احترامها هدفا رئيسيا من أهداف هذا التعليم .

٦٧ - وأضاف أنه يمكن لليونسكو أن تقدم المشورة الفنية في ابرام اتفاقيات اقليمية تتعلق بحقوق الانسان ، على غرار الاتفاقية الأوروبية لحقوق الانسان ، ولو أنه أمر بهن خطورة المفهوم الاقليمي لحقوق الانسان . بيد أنه يرى أن مشاركة اليونسكو بأى وسيلة ، تعد فنانا لاطاء مفهوم الحقوق الانسانية أبعادا عالمية . ودعا الى استمرار تعاون اليونسكو مع الهيئات الدولية المعنية بحقوق الانسان .

٦٨ - وأضاف أن فقرة واحدة من فقرات التقرير تضمن إشارة الى حقوق السكان في المناطق العربية المحتلة ، وقال ان من سخرية القدر أن العام الذي أقرت فيه هيئة الأمم المتحدة الاطلان العالمي لحقوق الانسان كان هو العام الذي صدر فيه قرار بانشاء دولة اسرائيل ، ما أدى الى تشريد الفلسطينيين وحرمانهم من حقوق الانسانية .

(6.1) Mr. SALIM thanked the Director-General and Unesco's Secretariat for the speedy preparation of document 102 EX/19, and for the wisdom and objectivity of that document. He added that study of the procedures for the examination of communications concerning the exercise of human rights should be only a means for the realization of the noble human objective of putting an end to injustice and oppression.

(6.2) Referring to Unesco's role in that field, he said that Unesco was qualified to tackle problems of human rights, since it was guided first of all by the rules, conventions and resolutions adopted by the international community within the framework of the United Nations and its Specialized Agencies. Such rules, which were based on religious and moral values and derived from creative human thought, were binding on Unesco, and worthy of its profound respect. Unesco was also guided in the definition of its vocation and responsibilities by its Constitution which called for furthering "... universal respect for justice, for the rule of law and for the human rights and fundamental freedoms ... for the peoples of the world, without distinction." Furthermore Unesco was a neutral international organization which did not adhere to any particular political or social philosophy, and was endowed with an impartial, just and far-sighted leadership. Unesco was also a lofty universal forum, having enormous potential in the field of information.

(6.3) He referred to some of the factors which weakened Unesco's position as regards human rights issues related to its areas of competence. It was difficult, for example, to classify human rights as falling within the competence of one international organization or another. There was, furthermore, the principle of State sovereignty - which prohibited

interference in what a State might consider as its internal affairs, side by side with the principle of the "protection of human rights" which allowed the international community to defend the oppressed and protect those denied their human rights. The principle of non-interference in the internal affairs of Member States was provided for in Unesco's Constitution, and some States might use it as a pretext for hampering the fact-finding process. It was therefore sometimes difficult to reconcile those two contradictory principles. Besides, there was a tendency towards political tribalism among Unesco's Member States, which might cause human rights to be lost sight of amidst political manoeuvring and scheming.

(6.4) Referring to human rights in the Third World countries, he said that the order of priorities regarding human rights in those countries had been rather uncertain in comparison with priorities accorded to the other issues of concern to them. However, the developing countries had now become among the most scrupulous States in so far as the exercise of human rights was concerned.

(6.5) He said that Unesco's voice was in many cases smothered under the pressure of ferocious information campaigns that distorted facts and misled the people. Unesco had no executive power to impose justice. Hence the importance of its moral influence which could be enhanced and developed through the attitudes adopted by Member States towards any country that did not respond to dialogue or open its doors to fact-finding and investigation.

(6.6) He wondered about the best method for examining complaints and proving violations. Respect for human rights should, nevertheless, be inculcated in the minds of the young from early childhood. Unesco could be the conscience of the world in the field of human rights, but respect for those rights should depend, in the final analysis, on the inner conscience of every responsible individual, and his awareness of, and respect for, the inalienable rights of men. Furthermore it might be appropriate for Unesco to conduct a comparative study on human rights legislation contained in the constitutions of Member States so as to discover the shortcomings of such legislation or its departures from the Universal Declaration of Human Rights and other covenants related to those rights. Unesco had already asked the International Institute of Human Rights in France to undertake, in collaboration with the Society for International Public Law and the Human Rights Institute of the United States of America, a study on the teaching of human rights at university level. He did not know how much benefit Unesco would derive from that study, and wondered why it should be limited to universities; it should be extended to teacher-training institutes and secondary schools so as to ensure that human rights were given due attention at different educational levels. Respect for human rights should thus become one of the main aims of education.

(6.7) He added that Unesco could provide technical advice for the conclusion of regional conventions on human rights, following the lines of the European Convention on Human Rights. Though he expressed reservations as to the regional concept of human rights, yet he felt that whatever form Unesco's participation might take, it would result in giving universal dimensions to that concept. He called for continued co-operation between Unesco and international institutions concerned with human rights.

(6.8) He said that only one paragraph of the report referred to the rights of the population in occupied Arab territories, and pointed out that it was an irony of fate that the United Nations had adopted the Universal Declaration of Human Rights in the same year as a resolution was adopted establishing the State of Israel. As a result, Palestinians had been expelled from their homeland and were denied their basic human rights.

٧١ - توجه السيد مبرود بالشكر للمدير العام على اعداد الوثيقة ١٠٢ م/ت ١٩. وقال انه يتفق مع السيد كي - زيهو في ملاحظاته بأن العقوبة والممارسات التي تذكر بالنازية سواء بشكلها البشع المكشوف في جنوب أفريقيا وغيرها ، أو من خلال ممارسات متكررة تجاه تجمعات كبيرة من الرجال والنساء كمجموعات العمال المهاجرين ، ما زالت ماثلة في ميدان العلاقات الانسانية . وأضاف أن حقوق الانسان تمثل وحدة كاملة ، ابتدأ بالحوار وحتى حروب التحرير التي تستهدف طرد المحتل من الأرض والحفاظ على التراث الوطني .

٧٢ - وأعرب عن موافقته على الملاحظات التي أدلى بها السادة السالم وكي - زيهو وأجيو - كير ، حول موضوع حقوق الانسان .

(7.1) Mr. MURAYWII thanked the Director-General for the preparation of document 102 EX/19. He said that attitudes and practices reminiscent of nazism, whether in its flagrant and odious form as for example in South Africa, or in the form of discrimina-

tory practices against large groups of men and women such as emigrant workers, existed still in the field of human relations. He pointed out that human rights constituted an indivisible whole: they covered a wide area in which the means of their application, ranged from dialogue to liberation wars aimed at setting territories free and safeguarding their national heritage.

(7.2) He endorsed the remarks made by Mr. Salim, Mr. Ki-Zerbo and Mr. Agiobu-Kemmer on the subject of human rights.

8.1 M. MOHAMEDOU déclare que l'Unesco a un grand rôle à jouer en matière de droit de l'homme mais qu'elle doit se garder de toute passion partisane. Il rappelle que les violations de la liberté, de la justice et de la paix sont la source de toutes les crises internationales, comme en témoigne les cas de l'Afrique du Sud et de la Palestine.

8.2 Pour ce qui est des procédures à suivre dans le domaine des droits de l'homme, le document présenté par le Secrétariat constitue une étude remarquable qui permettra au Conseil de fonder sa réflexion sur des données précises. Cette réflexion devra déboucher sur la définition de procédures appelées à remplacer celles que l'Organisation a appliquées ces dernières années et à donner à son action en la matière un caractère non seulement plus efficace mais aussi moins contesté. Une étude approfondie sera toutefois nécessaire pour mettre au point les nouvelles procédures ; les indications données dans le document montrent que celles qui ont été élaborées par les autres organisations du système des Nations Unies ne sont pas meilleures que celles de l'Unesco. En tout état de cause, les dispositions retenues devront respecter rigoureusement les limites de la compétence de l'Organisation, son esprit et ses intérêts.

8.3 Au préalable, il conviendrait d'apporter des réponses appropriées à un certain nombre de questions portant, notamment, sur le rôle de l'Unesco en matière de promotion des droits de l'homme, sur les principes auxquels doit obéir son action, sur les limites de celle-ci, et sur les moyens d'apporter un soulagement concret aux victimes de violations des droits de l'homme et d'obtenir l'application des résolutions adoptées par les organisations internationales au sujet de la paix et des droits de l'homme. A partir de ces réponses, il devrait être possible d'instituer une procédure qui tiendrait compte de la nature spécifique de l'Organisation et des caractéristiques du domaine de compétence qui est le sien. Toutefois, il est certain qu'une telle procédure, si bien conçue qu'elle soit, n'aura l'efficacité escomptée que si les Etats membres apportent à l'Organisation et à son Directeur général un soutien sans défaillance.

La séance est levée à 12 h. 50.

TENTH MEETING

Thursday, 5 May 1977, at 1.15 p.m.

VISIT BY DR. AHMED MOHAMED ALI, PRESIDENT OF THE ISLAMIC DEVELOPMENT BANK

The President of the Islamic Development Bank entered the Boardroom and was escorted to his place

1.1 The CHAIRMAN recalled that two days previously, the Board had adopted Part I of the report of the Programme and External Relations Commission which concerned Unesco's relations with the Islamic Development Bank. The Director-General had been authorized thereby to conclude an agreement with the Bank, and the agreement had been signed that morning. The President of the Bank, Dr. Ahmed Mohamed Ali, was present in the Boardroom that afternoon. Dr. Ali was to be welcomed back to Unesco as a very good friend. He was an economist and banker but had also been a most influential educationalist in his time, being Rector of the King Abdul Aziz University in Saudi Arabia and, from 1972, Under-Secretary of State for Education in his own country with special responsibility for scientific and technical education. It was in the latter capacity that he began to have contacts with Unesco and he had led his country's delegation to the eighteenth session of the General Conference in 1974. He thus had many qualifications of interest to Unesco.

1.2 The agreement signed with the Bank was the fifth signed by Unesco with a development bank but the first agreement that the Islamic Development Bank had signed with a United Nations agency. It was especially gratifying that the Bank had signed its first such agreement with Unesco, thus demonstrating its concern with educational and social development. The agreement was sure to lead to the most fruitful results.

2. The PRESIDENT OF THE ISLAMIC DEVELOPMENT BANK delivered the speech reproduced in Annex I to this summary record.

3. The DIRECTOR-GENERAL delivered the speech reproduced in Annex II to this summary record.

4. The CHAIRMAN thanked Dr. Ali and said on behalf of all members that he looked forward to fruitful co-operation between the Organization and the Islamic Development Bank.

The President of the Islamic Development Bank withdrew from the Boardroom.

The meeting was resumed at 3.50 p.m.

Item 5.6.2 - STUDY OF THE PROCEDURES WHICH SHOULD BE FOLLOWED IN THE EXAMINATION OF CASES AND QUESTIONS WHICH MIGHT BE SUBMITTED TO UNESCO CONCERNING THE EXERCISE OF HUMAN RIGHTS IN THE SPHERES OF ITS COMPETENCE, IN ORDER TO MAKE ITS ACTION MORE EFFECTIVE (102 EX/19) (continued)

5.1 Mr. PETERSEN said that points of agreement which had emerged from the debate on item 5.6.2 were that Unesco should not act like a tribunal; conciliation should be the ultimate means for promoting human rights, a working group should prepare proposals for submission to the Executive Board at its 103rd session; and the Board's Committee on Conventions and Recommendations in Education should continue its work until new procedures had been drawn up.

5.2 The aim of revising the procedures was to make Unesco's action more effective, and that was the mandate given to the Board by the General Conference. Document 102 EX/19 was very clear and well-drafted and was of great assistance in identifying the various alternatives open. He disagreed with those colleagues who thought that nothing needed to be done.

5.3 The Committee on Conventions and Recommendations in Education should not act like a tribunal, as it had perhaps tended to do in the past; but if the aim was to make Unesco's action more effective, it was pertinent to ask, as one member had done, for whom and for what was efficiency being sought? The answer should be for the human being and not for the political aims of States or groups of States. Efficiency was obtained if human rights were promoted, but if efficiency came to be thought of as winning propaganda battles with human rights counting for nothing, the Board would not have succeeded in its task.

5.4 The procedures therefore had to be worked out very carefully, avoiding all ambiguity, since precision in formulating them was the only way to avoid disputes. No procedure, however,



could work well unless there was the greatest possible agreement among Member States and unless all of them were prepared to co-operate, including those alleged to have violated human rights.

5.5 He thought most appropriate the proposals concerning Unesco's competence in the field of human rights that were made in paragraphs 131 and 132 of the document.

5.6 Careful screening of communications was needed to decide on their admissibility, and the criteria set out in paragraph 137 (1)-(vi) were appropriate. Decisions on admissibility could be made by the working group proposed in paragraph 139. It might indeed be advisable for the Director-General no longer to bear responsibility for that task but to be responsible solely for making a preliminary examination of the communications and for forwarding proposals as to their admissibility to the working group. It would also be acceptable to set up a group of independent personalities to examine the communications, as had been suggested by many members.

5.7 He was in favour not only of publishing reports prepared on questions concerning human rights, as was envisaged in paragraph 150, but also of continuing the practice of public discussion of violations of human rights since that was often the only way of convincing a government that respect for human rights was in its political interests.

5.8 One problem was how to reconcile the promotion of human rights with non-interference in the internal affairs of Member States. Pointing at violations of human rights elsewhere while raising the banner of national sovereignty to defend one's own violations, was a temptation to be avoided. It was, in fact, a well established principle that by becoming a signatory to various instruments concerning human rights, a government assumed international obligations to respect such rights, and the international community had a right to see that they were observed. A discussion on that topic by a panel of experts would be very instructive and could perhaps be organized for the next session of the Executive Board.

5.9 One misconception was to believe that one category of human rights had to be fulfilled completely before the second category could be tackled, meaning, for example, that hunger and poverty should be conquered before dealing with the fundamental freedoms of the individual. Economic and social rights and civil and political rights were, however, by no means mutually exclusive. Free development and expression of the individual personality was not a consequence of, but a condition for, an improvement in living conditions.

6.1 Mr. UPRAITY said that the fruitful debate had owed much to the quality of document 102 EX/19. He felt that Member States should make their position clear in such a debate and said that matters of human rights were, for his country, strictly within the jurisdiction of the State and that there should be no outside interference. On the other hand, international organizations and individuals must be free to raise their voice against violations, but in the countries of Asia where 80 per cent of the people lived in extreme poverty, human rights had no meaning unless living conditions could be substantially improved and to achieve that, efforts were needed to establish a new international economic order.

6.2 The problem with the Committee on Conventions and Recommendations in Education was that its procedures were unable to cope with the volume of information it received. They thus needed to be changed, as the Committee itself had suggested in the first place. However, the action that had been taken over the last two years had brought results and there was no cause for pessimism.

6.3 There had been a strong current of opinion noticeable throughout the debate to the effect that not much had been done when human rights had been violated, but it was realistic to admit that limits existed and that Unesco was not an international tribunal. It had to keep a low profile and concern itself with conciliation without dramatizing the facts.

6.4 He felt, therefore, that the same Committee should continue its work, with some improvements. The aim was to improve existing procedures in three respects, firstly with regard to the time factor, there being too great a delay between receipt of a communication and reaching a decision on it, secondly with regard to benefiting from the experience of other United Nations agencies concerned with human rights, and thirdly with regard to the division of responsibility between the Secretariat and the Committee over decisions on receivability.

6.5 The Committee itself had proposed these changes but the debate had seemed to reflect a lack of confidence in it. In his opinion, all the ideas expressed should be referred back to the Committee for consideration and the Committee's own suggestions could subsequently be dis-

cussed and commented on by the Executive Board which should postpone its discussion on procedures till that time. Meanwhile, the work of the Committee would not be stopped and examination of cases already before it would continue.

7.1 M. LIPATTI voudrait apporter, à l'intention du Directeur général, certains éclaircissements au sujet de son intervention à la séance de l'après-midi du 3 mai. Il avait alors émis l'opinion que, sous peine de s'engager dans une voie sans issue, le Comité sur les conventions et recommandations dans le domaine de l'éducation ne devait pas se transformer en organe de bons offices ou de conciliation ayant à connaître d'affaires relatives aux droits de l'homme signalées dans tel ou tel pays. Il avait, d'autre part, mis en garde le Secrétariat contre la tentation d'assigner à l'Unesco un rôle d'arbitre ou de médiateur entre les Etats membres et leurs ressortissants. Il rappelle, à cet égard, ce qui est dit dans les paragraphes 143 et 145 du document 102 EX/19.

7.2 M. Lipatti fait observer que plusieurs membres du Conseil, parfois d'un avis différent du sien sur les propositions contenues dans le document 102 EX/19, y ont relevé une telle orientation. Il ne voit donc pas ce que sa propre déclaration a de particulièrement choquant.

7.3 Il tient, par conséquent, à répéter que l'action de l'Unesco dans le domaine des droits de l'homme doit être essentiellement une action de caractère politique, consistant à lutter contre les violations massives, flagrantes et systématiques de ces droits et en faveur du nouvel ordre économique international et du désarmement général. Ses critiques ont été inspirées par la crainte qu'une telle action ne soit quelque peu négligée au profit de la mise au point de nouvelles procédures pour l'examen des communications relatives aux droits de l'homme. Les procédures existantes sont d'ailleurs tout à fait appropriées et on devrait se borner à les améliorer pour les rendre plus souples et efficaces, sans déroger pour autant aux principes du droit international.

8.1 Le DIRECTEUR GENERAL fait observer qu'il avait demandé à M. Lipatti de bien vouloir indiquer sur quel passage du document il se fondait pour prêter au Secrétariat la tentation de jouer un rôle d'arbitre ou de médiateur. M. Lipatti n'a pas répondu à cette question. C'est donc bien que le document ne laisse nullement transparaître une telle tentation. Dans ces conditions, le Directeur général ne peut accepter des déclarations laissant entendre qu'il aurait enfreint la règle de réserve ou outrepassé le mandat que lui a confié la Conférence générale.

8.2 Il réaffirme que, chaque fois qu'un problème se posera dans les relations qu'il a avec un Etat membre, il prendra une attitude très claire, dira comment il a assumé et compte assumer ses responsabilités et ne se laissera guider que par les directives de la Conférence générale ou du Conseil exécutif.

9.1 M. LIPATTI regrette que ses propos aient suscité une réaction aussi vive de la part du Directeur général. Soucieux de bien préciser sa position, il rappelle les deux dangers que lui paraissent receler les propositions formulées dans le document du Secrétariat : celui d'une trop grande extension de la compétence de l'Unesco pour ce qui est des cas particuliers concernant l'exercice des droits de l'homme, et celui d'attribuer une importance excessive à la question des procédures au détriment de l'action politique en faveur des droits de l'homme dans le monde.

10.1 M. LUSSIER (conseiller juridique) croit utile pour la suite des travaux du Conseil exécutif sur cette question de faire un rappel historique des circonstances qui ont abouti à la procédure actuellement en vigueur en ce qui concerne les communications relatives aux droits de l'homme.

10.2 Dès sa création, l'Organisation a entrepris une action très diversifiée pour la promotion des droits de l'homme. L'une de ces formes d'action est l'action normative, à laquelle il a été souvent fait référence au cours du débat et qui a abouti à l'adoption de nombreuses conventions, recommandations et déclarations. Certaines des conventions adoptées prévoient des procédures particulières pour le règlement des différends qui pourraient surgir concernant leur application ou leur interprétation. Mais l'accès à ces procédures comme à celles, plus générales, prévues dans les textes constitutionnels ou réglementaires pour le contrôle de l'application des instruments normatifs par la soumission et l'examen de rapports des Etats membres, est réservé aux Etats.

10.3 Cependant, indépendamment de ces procédures, l'Organisation, c'est-à-dire le Directeur général et parfois même le Président du Conseil exécutif, reçoit fréquemment des communications invoquant les droits de l'homme et émanant de nombreux particuliers et organisations non gouvernementales qui n'ont pas accès directement aux organes et aux procédures de l'Unesco en la matière. Devant cette situation de fait, et après avoir constaté dans sa décision 29 EX/11.3 qu'aucune suite ne pouvait, en l'état des textes constitutionnels et réglementaires, être donnée à des communications de cette nature et, dans sa décision 77 EX/8.3, que l'Organisation n'était

habilité par son Acte constitutif à prendre aucune mesure au sujet de réclamations relatives aux droits de l'homme, le Conseil exécutif a néanmoins décidé de demander au Directeur général de porter, selon une procédure analogue à celle prévue par la résolution 728 F (XXVIII) du Conseil économique et social des Nations Unies, les communications adressées à l'Unesco au sujet de cas particuliers et invoquant une violation des droits de l'homme dans les domaines de l'éducation, de la science et de la culture à la connaissance de son Comité sur les conventions et recommandations dans le domaine de l'éducation. Cependant, ni cette décision, ni les décisions antérieures du Conseil ne contiennent d'indications sur le mandat, les méthodes de travail et la procédure à suivre par l'organe auquel ces communications sont transmises, qu'il s'agisse de ce Comité ou, avant celui-ci, du Bureau du Conseil, bien qu'il fût implicitement admis que le Conseil pourrait être, le cas échéant, saisi de toutes questions que l'examen des communications aurait fait apparaître et qu'il serait estimé nécessaire de soumettre à son intention. La décision 77 EX/8.3 demeure toujours en vigueur, bien que son application, en particulier depuis la 93e session du Conseil, ait de toute évidence donné lieu à certaines difficultés.

10.4 Dans ce contexte, les résolutions 6.113 et 12.1, que la Conférence générale a adoptées à sa dix-neuvième session et qui sont sans précédent, marquent un tournant et traduisent une modification considérable dans la manière d'aborder le problème. Des différences importantes existent, en effet, entre les termes des paragraphes pertinents des résolutions 19 C/6.113 et 19 C/12.1, d'une part, et ceux de la décision 77 EX/8.3, d'autre part. Les décisions de la Conférence générale ne se réfèrent plus à une procédure unique, mais à des procédures ; il pourrait donc être prévu plusieurs. Il n'est plus fait état de "communications reçues", mais de l'examen de "cas" et de "questions" dont l'Organisation pourrait être saisie selon des modalités qui ne sont ni définies ni par conséquent limitées. Il ne s'agit plus de "cas particuliers", mais de "cas" et de "questions", les secondes étant sans doute considérées comme distinctes des premiers. Enfin, il est fait référence non plus aux violations des droits de l'homme, mais à l'exercice de ces droits et les domaines de compétence de l'Organisation ne sont plus énumérés, mais mentionnés d'une manière globale. C'est dire que la tâche confiée au Conseil exécutif et au Directeur général est particulièrement vaste et importante.

10.5 Se référant au paragraphe 143 du document 102 EX/19 dont un membre du Conseil fait mention, M. Lussier rappelle que la Commission de conciliation et de bons offices a été instituée par un Protocole à la Convention concernant la lutte contre la discrimination dans l'enseignement, adopté par la Conférence générale. Ce Protocole ne comportant aucune disposition concernant sa révision, celle-ci devrait s'effectuer conformément aux règles générales du droit international applicables aux traités. Il ne paraît pas exclu, à cet égard, que la révision puisse être effectuée non par une conférence diplomatique, mais par la Conférence générale elle-même. Cela dit, il ne semble pas qu'au paragraphe 143 soit envisagé une révision du Protocole, laquelle, en tout état de cause, soulèverait des problèmes juridiques complexes, ne serait-ce que celui d'éviter la coexistence pendant une période plus ou moins longue de deux organismes dont les compétences ne seraient pas identiques. Ce qui paraît avoir été envisagé, en revanche, c'est de confier à la Commission, sans modification du Protocole, des tâches et des missions non expressément prévues par celui-ci. Ainsi que le précise le paragraphe 143, un tel processus exigerait sans doute l'accord de l'Etat intéressé, celui de la Commission elle-même et celui de la Conférence générale.

11.1 Le DIRECTEUR GÉNÉRAL se félicite de la richesse et de la haute tenue du débat auquel a donné lieu le point 5.6.2 de l'ordre du jour. Il voudrait, avant toute chose, répondre à une observation formulée par plusieurs membres du Conseil au sujet du contenu du document 102 EX/19. Selon ces membres, le document ne ferait pas une place suffisante aux violations massives et systématiques des droits de l'homme. De telles violations représentent sans conteste un aspect fondamental du problème général des droits de l'homme. Toutefois, elles n'avaient pas à être traitées en détail dans le cadre de l'étude des procédures à suivre pour l'examen des cas et questions concernant l'exercice des droits de l'homme, qui était demandée au paragraphe 10(b) de la résolution 12.1 de la Conférence générale. Le Directeur général rappelle qu'en vertu du paragraphe (a) de la même résolution, il doit établir un rapport sur la situation des droits de l'homme dans le monde, dans les domaines de compétence de l'Unesco. Ce rapport, dans lequel les violations en question seront nécessairement évoquées, sera communiqué au Conseil avant d'être soumis à la Conférence générale, lors de sa vingtième session.

11.2 Le Directeur général désire faire d'abord quelques remarques au sujet de la procédure d'examen des communications relatives aux droits de l'homme qui est actuellement en vigueur et dont les phases successives sont indiquées aux paragraphes 112 à 124 du document 102 EX/19. Depuis quelque temps, des difficultés marquent la dernière de ces phases, celle de la présentation au Conseil exécutif des rapports du Comité sur les conventions et recommandations dans le domaine de l'éducation ; en effet, les cas particuliers faisant l'objet des communications sont exa-

minés par le Comité en séance privée, le rapport du Comité sur ces communications étant ensuite soumis au Conseil en séance publique. Il y a là une anomalie à laquelle il conviendrait de remédier. J'ai ailleurs, la procédure actuelle ne peut guère avoir d'autre aboutissement pratique qu'une intercession du Directeur général auprès du gouvernement mis en cause. Il est donc devenu nécessaire d'améliorer cette procédure. Toutefois, elle restera en vigueur tant que le Conseil exécutif ne l'aura pas formellement abolie, le Comité sur les conventions et recommandations dans le domaine de l'éducation continuant d'examiner les communications que lui transmet le Secrétariat après les avoir jugées recevables. A ce propos, le Directeur général souligne que l'examen préalable des communications auquel procède le Secrétariat se fait sous la responsabilité du Comité et sur la base des critères définis par lui.

11.3 En ce qui concerne les propositions formulées dans le document 102 EX/19, le Directeur général voudrait commencer par répondre à un certain nombre d'observations de portée générale auxquelles elles ont donné lieu.

11.4 De nombreux membres du Conseil ont mis l'accent sur les conditions sociales et économiques qui doivent être réunies pour que les droits de l'homme, notamment les droits civils et politiques, ne restent pas des notions purement théoriques : or les tâches que la Conférence générale a assignées à l'Organisation en adoptant le Plan à moyen terme et les résolutions générales ont précisément pour objet de la faire contribuer à la création de ces conditions dans les domaines de sa compétence.

11.5 M. Libid et M. Ki-Zerbo ont fait valoir que les droits de l'homme ont pour contrepartie un certain nombre de devoirs. Cela est vrai, et la question mériterait de faire l'objet d'une étude, mais c'est une question distincte.

11.6 Mme Pintasilgo aurait souhaité qu'un effort de réflexion soit fait sur les liens qui existent entre les droits civils et politiques et les droits économiques, sociaux et culturels, liens qui sont soulignés dans la résolution 19 C/12.1 et dans le Plan à moyen terme. Le Directeur général fait observer qu'une telle réflexion - nécessairement de longue haleine - n'avait pas sa place dans un document consacré aux procédures, mais que le Secrétariat ne manquera pas de l'entreprendre dans le cadre des études qui seront effectuées pour donner suite à la résolution 19 C/12.1.

11.7 A propos du principe de la non-intervention dans les affaires intérieures des Etats membres, le Directeur général constate que les avis sont partagés au sein du Conseil quant à son application au domaine des droits de l'homme. Cette question devrait donc être étudiée de près par le groupe de travail qui pourrait être chargé de réexaminer le document 102 EX/19 et d'analyser les débats dont il a fait l'objet.

11.8 Une autre question sur laquelle le groupe de travail devrait se pencher est celle de la définition des droits de l'homme relevant de la compétence de l'Unesco, définition qui, malgré les propositions réalistes formulées au paragraphe 131 du document, a fait apparaître un profond désaccord entre les membres du Conseil. A cette question se rattache d'ailleurs celle de la coordination à établir avec les organes des Nations Unies compétents en matière de droits de l'homme.

11.9 Quant à l'examen de la recevabilité des communications, il appartient au Conseil de recommander que le Secrétariat continue à en être chargé ou que cette tâche soit confiée à un autre organe. En tout état de cause, le Directeur général ne revendique nullement le rôle en question, mais déclare que, tant que le soin de se prononcer sur le respect des conditions de recevabilité sera réservé au Secrétariat, celui-ci continuera à s'acquitter de cette fonction avec une impartialité rigoureuse. A cet égard, il ne faut d'ailleurs jamais perdre de vue que, quelle que soit la procédure retenue, elle ne saurait déboucher sur la condamnation de tel ou tel Etat membre, le but à atteindre étant, au contraire, d'aider cet Etat à surmonter ses difficultés.

11.10 En ce qui concerne les auteurs des communications, le Directeur général rappelle que, selon la procédure en vigueur, n'importe quelle organisation privée peut saisir l'Unesco, même si le plus souvent il s'agit d'organisations entretenant des relations de travail avec elle. Le Conseil exécutif devra aussi prendre position sur cette question en indiquant, par exemple, s'il convient de n'accorder qu'aux organisations se trouvant dans ce cas le droit d'adresser des communications à l'Unesco.

11.11 Reconnaissant l'insuffisance du seul résultat tangible - son intercession personnelle en faveur de l'auteur de la communication ou de la victime prétendue - auquel la procédure actuelle puisse aboutir, le Directeur général estime souhaitable que s'y ajoute une démarche parallèle du Conseil exécutif ou d'un organe que celui-ci pourrait créer et qui pourrait être soit un organe subsidiaire du Conseil soit un organe indépendant. Au cas où le Conseil pencherait pour le main-

lien de la procédure en vigueur, il risquerait d'aller à l'encontre du désir de rendre l'action de l'Unesco plus efficace qui a été exprimé par la Conférence générale dans sa résolution 19 C/12. 1.

11.12 A l'intention des nombreux membres du Conseil qui ont estimé que l'Unesco doit intensifier son action de promotion et d'information dans le domaine des droits de l'homme, le Directeur général souligne que cette action va connaître un développement considérable. C'est ainsi qu'à l'objectif 1.5 du Plan à moyen terme - Promotion de l'enseignement et de l'éducation ainsi que d'une information plus large dans le domaine des droits de l'homme - correspondent dans le programme pour 1977-1978 des projets visant à améliorer la connaissance que les élèves des écoles secondaires, les étudiants et les enseignants universitaires, d'une part, et l'ensemble de la population, d'autre part, ont des droits de l'homme. Les activités prévues dans le premier cas s'inscrivent notamment dans le cadre du Système des écoles associées et de la mise en oeuvre de la Recommandation sur l'éducation pour la compréhension, la coopération et la paix internationales et l'éducation relative aux droits de l'homme et aux libertés fondamentales. Dans le second cas, il s'agit d'élaborer de la documentation se prêtant à une large diffusion, d'encourager des activités au sein des clubs et associations pour l'Unesco et de faire paraître régulièrement des articles relatifs aux droits de l'homme dans les périodiques publiés par l'Unesco.

11.13 La diffusion dans le public du document 102 EX/19, souhaitée par divers membres du Conseil, est possible si le Conseil le désire. La valeur pédagogique d'une telle publication serait peut-être encore accrue si les procédures suivies dans toutes les organisations intergouvernementales y étaient passées en revue.

11.14 Répondant aux questions posées au sujet des pactes internationaux relatifs aux droits de l'homme adoptés sous les auspices de l'Organisation des Nations Unies, le Directeur général déclare que le Secrétariat suit de près la mise en oeuvre de ces pactes, dont bien des dispositions rejoignent les préoccupations de l'Unesco. Comme les Etats parties aux pactes doivent présenter des rapports sur les mesures qu'ils auront prises pour leur donner effet, le Secrétariat de l'ONU a été invité à faire savoir quelle part l'Unesco pourrait éventuellement prendre à l'étude de ces rapports et d'une manière générale, au fonctionnement des procédures que les pactes ont instituées. Si le Conseil émettait explicitement le vœu de voir l'Unesco contribuer à la mise en oeuvre des pactes, le poids de cette demande en serait naturellement accru.

11.15 M. Van Ussel a eu raison de rappeler la résolution de la Commission des droits de l'homme invitant l'Unesco à entreprendre, à l'occasion du vingtième anniversaire de la Déclaration universelle des droits de l'homme, des activités en matière d'enseignement universitaire de ces droits. Cette résolution, qui sera certainement entérinée par le Conseil économique et social, est de nature à renforcer le rôle de l'Unesco dans le domaine des droits de l'homme et c'est dans cette perspective que le Directeur général a proposé d'organiser - initiative qui est signalée au paragraphe 162 du document - une réunion de responsables des départements des différentes organisations internationales chargés des droits de l'homme, en vue de coordonner les activités relatives à l'enseignement de ces droits. Pareille réunion devrait marquer le début d'une coopération rendue très souhaitable par la dispersion des efforts que les institutions des Nations Unies déploient en la matière. En ce qui concerne plus spécialement l'enseignement des droits de l'homme au niveau universitaire, le Directeur général rappelle que des activités sont prévues à cet égard aux paragraphes 3147 à 3153 du Programme et budget approuvés pour 1977-1978. Il ajoute qu'il se propose d'instituer un prix dont les lauréats seraient des facultés de droit et de sciences politiques qui se sont particulièrement distinguées pour leur enseignement des droits de l'homme. Si le Conseil approuvait cette initiative, ce prix pourrait être décerné pour la première fois le 10 décembre 1978, à l'occasion du trentième anniversaire de la Déclaration universelle des droits de l'homme. En outre, le Secrétariat est en train de préparer un manuel pour l'enseignement des droits de l'homme dans ces mêmes facultés et, si la Conférence générale l'accepte à sa prochaine session, une recommandation sur l'enseignement des droits de l'homme et de l'éthique médicale dans les facultés de médecine pourra être élaborée conjointement par l'Unesco et l'OMS.

11.16 M. El-Wakil a insisté pour que la question du respect des droits de l'homme dans les territoires arabes occupés soit dissociée du problème général des droits de l'homme. Le Directeur général fait valoir qu'il ne peut qu'en être ainsi puisque l'action de l'Organisation en la matière, ainsi qu'en ce qui concerne les droits de l'homme au Chili, est régie par des résolutions distinctes de la Conférence générale.

11.17 Le Directeur général se félicite que l'idée qu'il avait développée lors de la clôture de la dix-huitième session de la Conférence générale - celle du consensus - ait avancé au point que certains Etats, qui semblaient avoir des doutes à son sujet, s'y soient ralliés. L'expérience de la dix-neuvième session de la Conférence a été positive dans bien des cas, mais il y a lieu de noter que le consensus n'a pas été réalisé en ce qui concerne les problèmes relatifs aux droits de l'homme. La question actuellement à l'étude est particulièrement complexe et difficile.

mais le Directeur général pense qu'il pourrait être possible d'aboutir à une solution à condition de poser clairement les problèmes, de relever méthodiquement les sujets d'accords et de désaccord et de chercher, éventuellement à la faveur de discussions officieuses, les moyens de lever les obstacles qui subsistent. Cependant, il va de soi que le consensus des membres du Conseil ne devrait pas être réalisé au prix du reniement de principes qui sont à la base de la résolution 19 C/12, 1 de la Conférence générale.

11.13 En conclusion, le Directeur général déclare que le Secrétariat est prêt à établir un document faisant la synthèse des débats sur le point 5.6.2 et énumérant les points de convergence et de divergence. Ce document serait communiqué aux membres du Conseil suffisamment à l'avance pour qu'ils puissent en tirer des enseignements utiles en vue de la reprise du débat à la 103<sup>e</sup> session.

12. The CHAIRMAN thanked the Director-General for his detailed reply to the many questions which had been raised and said that Board members should have at present a clearer view of the issues involved.

13.1 A une question de M. Arturo MUNOZ LEDO, le Directeur général répond que les documents du Conseil sont toujours envoyés à l'ensemble des Etats membres de l'Organisation. Si toutefois le Conseil souhaite avoir l'avis des Etats membres sur les questions traitées dans tel ou tel document, il doit les y inviter expressément.

La séance est levée à 18 h. 20.

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## Section 2: Setting up of the Working Party

5. 6. 2 Study of the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective (102 EX/19)

The Executive Board,

1. **Having made** a preliminary examination of document 102 EX/19 on the study of procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective,
2. **Recalling that**, according to the terms of its Constitution, UNESCO was founded in particular “in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations”,
3. **Recalling** resolutions 6.113 and 12.1 of the nineteenth session of the General Conference and in particular paragraph 10 of the latter resolution,
4. **Thanks** the Director-General for the information provided in document 102 EX/19 in conformity with the mandate given to him by the General Conference;
5. **Requests** the Director-General to prepare an analytical summary of the discussions that took place at the 102nd session and to send it to all members of the Executive Board not later than 15 June 1977;
6. **Invites** all its members to send to the Director-General before 15 July 1977 further comments concerning this subject and the contents of document 102 EX/19;
7. **Decides** to set up a working party of 13 members (including the Chairman of the Executive Board as Chairman) to meet in the early part of August 1977 with the following terms of reference:
  - (a) to carry out an in-depth study of document 102 EX/19, the analytical summary of the discussions that took place at the 102nd session, and the written comments of members of the Executive Board mentioned in paragraph 6 above;
  - (b) to identify points of agreement and divergence and, working to the extent possible on a basis of consensus, try to reduce divergences;
  - (c) to prepare for submission to the 103rd session of the Board a report on its work containing suggestions regarding the procedures to be followed in future (proposing several alternatives whenever necessary);
8. **Further decides**:
  - (a) to include again in the agenda of the 103rd session the item “Study of the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective”;
  - (b) to study the report mentioned in paragraph 7 (c) above with a view to arriving, if possible, at a final conclusion at the 103rd session;
9. **Decides** also that the Committee on Conventions and Recommendations in Education should continue to exercise its functions in accordance with its current terms of reference, as set forth in paragraphs 12 and 13 of 98 EX/Decisions, 9.4, 9.5 and 9.6 and that, to this end, it should meet immediately following the closure of the present session.

# Chapter 4: Work of the Executive Board Working Party

The Working Party of the Executive Board held its first meeting from 1 to 5 August 1977 at which several of its members submitted their written views concerning the new procedure or submitted draft decisions on the subject. A report of the discussions that took place was drawn up for the Executive Board ([Section 1: First report of the Working Party](#)).

The Working Party held its second meeting from 9 to 17 January 1978 at the end of which it drew up a draft Executive Board decision defining the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO in the field of human rights ([Section 2: Second report of the Working Party](#)).

The Annex contains the text of the written comments submitted by some of the delegates of the Executive Board ([Annex 1: Document 103 EX/WP/HR/INF 1, Add. and Add. 2](#)), a Note showing in parallel the text of a decision suggested by the Chairman of the Executive Board, the amendments submitted by members including the amendment proposed by Messrs Koutakov and Paszkowski which constituted a complete parallel text, ([Annex 2: Document 104 EX/WG/HR/1](#)), a draft resolution submitted by Mr Buergenthal, ([Annex 3: Document 104 EX/WG/HR/DR.1](#)) and the Report of the Committee on Conventions and Recommendations in Education ([Annex 4: Document 103 EX/17](#)).



# Section 1: First Report of the Working Party



United Nations Educational,  
Scientific and Cultural Organization

Executive Board

EX

## Hundred-and-third Session

103 EX/19  
PARIS, 19 August 1977  
Original: French

### Item 5.5.2 of the Provisional Agenda

STUDY OF THE PROCEDURES WHICH SHOULD BE FOLLOWED IN THE EXAMINATION  
OF CASES AND QUESTIONS WHICH MIGHT BE SUBMITTED TO UNESCO  
CONCERNING THE EXERCISE OF HUMAN RIGHTS IN THE SPHERES OF  
ITS COMPETENCE, IN ORDER TO MAKE ITS ACTION  
MORE EFFECTIVE

REPORT OF THE WORKING PARTY OF THE EXECUTIVE BOARD  
SET UP IN PURSUANCE OF 102 EX/DECISION 5.6.2 (7)

1. Following the preliminary examination of document 102 EX/19 concerning a "study of the procedures which should be followed in the examination of cases and questions which might be submitted to Unesco concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective", the Executive Board decided (decision 5.6.2) to set up a working party of 13 members, including the Chairman of the Executive Board as Chairman, to meet in the early part of August 1977.
2. The terms of reference of the working party were defined in paragraph 7 of the same decision 5.6.2 as follows:
  - "7. Decides to set up a working party of 13 members (including the Chairman of the Executive Board as Chairman) to meet in the early part of August 1977 with the following terms of reference:
    - (a) to carry out an in-depth study of document 102 EX/19, the analytical summary of discussions that took place at the 102nd session, and the written comments of members of the Executive Board mentioned in paragraph 6 above;
    - (b) to identify points of agreement and divergence and, working to the extent possible on a basis of consensus, try to reduce divergences;
    - (c) to prepare for submission to the 103rd session of the Board a report on its work containing suggestions regarding the procedures to be followed in future (proposing several alternatives whenever

3. After the appropriate consultations had been carried out, the following members of the Executive Board were appointed members of the Working Party:

Mr. Leonard C.J. MARTIN, Chairman  
Mr. Reginald S.G. AGIOBU-KEMMER (Nigeria)  
Mr. Arthur BAGUNYWA (Uganda)  
Mr. Paulo E. de Berrêdo CARNEIRO (Brazil)  
Mr. Chams Eldine EL-WAKIL (Egypt)  
Mr. Sarvepalli GOPAL (India)  
Mr. Robert B. KAMM (United States of America)  
Mr. Leonid N. KUTAKOV (Union of Soviet Socialist Republics)  
Mrs. Eugenia KRASSOWSKA (Poland)  
Mr. Mahmoud MESSADI (Tunisia)  
Mr. Sjarif THAJEB (Indonesia)  
Mr. Arturo USLAR-PIETRI (Venezuela)  
Mr. Michel VAN USSEL (Belgium).

In accordance with the above-mentioned decision, the Working Party met at Unesco's Headquarters in Paris from 1 to 5 August 1977.

Mr. P.E. de Berrêdo CARNEIRO was assisted by Mr. de FREITAS,

Deputizing for Mr. R.B. KAMM were Mr. T. BUERGENTHAL, and Mr. S. WARVARIV,

Mr. L.N. KUTAKOV was assisted by Mr. V. KARTASHKIN,

Deputizing for Mrs. E. KRASSOWSKA was Mr. M. PASZKOWSKI, and

Deputizing for Mr. S. THAJEB was Mr. SAPIIE, assisted by Mr. S. POESPOWARDOJO.

4. In addition to document 102 EX/19, the Working Party had at its disposal an analytical summary of the discussion that had taken place at the 102nd session of the Executive Board concerning item 5.6.2 - prepared by the Director-General in accordance with paragraph 5 of 102 EX/Decision 5.6.2 (document 103 EX/18) - together with the written comments submitted by several members of the Executive Board on this question and on the content of document 102 EX/19 (document 103 EX/WP/HR/INF. 1, Add. 1 and Add. 2), namely:

Mr. Chams Eldin EL-WAKIL  
Mr. Valentin LIPATTI  
Mr. Michel VAN USSEL  
Mr. Werner BAHNER  
Mr. Gunnar GARBO  
Mr. Leonid KUTAKOV and  
Mr. Kiyoshi SUGANUMA.

5. At its Chairman's suggestion, the Working Party, in carrying out the task set it, took up the various points in the order in which they were dealt with in Part V of document 102 EX/19. This report, which summarizes the discussions that took place within the Working Party, follows the same order.

## SUMMARY OF THE DISCUSSIONS

A. Legal considerations1. Legal basis for Unesco's competence in the matter

6. In its consideration of paragraphs 127 to 130 of document 102 EX/19 and paragraphs 4 to 12 of document 103 EX/18 together with the relevant comments by members of the Executive Board contained in document 103 EX/WP/HR/INF. 1, Add. 1 and Add. 2, the Working Party acknowledged Unesco's competence in the field of human rights. This competence is grounded first and foremost on the Organization's Constitution. It also derives from all the relevant provisions contained in the United Nations Charter. The Constitution and the various Conventions and Recommendations adopted by Unesco in that respect clarify the Organization's specific responsibilities in the matter.
7. All members recalled that the actions of the Organization in exercising its competence should be judged according to their relevance and contribution to the promotion of understanding and respect for human rights. Observations made during the discussion, both as to the legal and procedural aspects of the consideration of communications were characterized by different points of view as to what actions and what procedures of international co-operation best served the promotion of the respect of human rights.
8. Some members of the Working Party considered that the Organization's competence in the field of human rights related primarily to massive, systematic violations stemming from such international crimes and offences as aggressive war, occupation of foreign territory, genocide, colonialism, apartheid and racism; in that connection, reference was made to resolution 12.1, adopted by the General Conference at its nineteenth session, which set forth guidelines for the Organization with regard to such violations.
9. The Working Party agreed that the Organization was competent to study cases and questions concerning such massive and systematic violations of human rights. Many members emphasized in this connection that the international community was entitled to look to the Organization for action to defend the human rights falling within Unesco's sphere of competence from violations at the individual level as well as on a massive and systematic scale. It was pointed out that individual instances of violation often had to be considered in order to allow the existence of a situation involving massive and systematic violations of human rights to be established.
10. In that connection, Unesco's legal adviser, replying to a question put by one of the members of the Working Party, pointed out that the procedure established by the Executive Board in 77 EX/Decision 8.3 was designed explicitly and exclusively for "individual" cases. It was in consequence of its examination of such "individual" cases that the Committee on Conventions and Recommendations in Education had found it necessary to draw the Board's attention to a situation which it considered to be the result of an accumulation of individual cases and to present certain general observations to the Board. The word "question" used by the General Conference at its nineteenth session in resolutions 6.113 and 12.1, on the other hand, did not appear to depend on an accumulation of individual cases. He further pointed out that States could always request the inclusion of a "question" of the agenda of Unesco's Executive Board or of the General Conference. The Committee on Conventions and Recommendations in Education for its part, had never had to consider communications from Member States.

11. In the absence of a precise definition of the word "question", several members of the Working Party proposed that the term "question" should be taken to apply to the official policy and practice of a State if that policy and practice were at variance with its international obligations with regard to human rights and were accompanied by massive and systematic violations of human rights. A "question" would be distinguished, according to these members, from a "situation" which was an accumulation of individual cases.
12. Some members considered that the consent of States was needed before the Organization could be considered competent to deal with individual cases and that decision by a body such as the Executive Board did not carry the same legal weight as the Constitution or a formal agreement. Furthermore, since there was no opinio juris in that regard, it could not be claimed that a rule of customary law existed. This view was not shared by other members of the Working Party who did, however, agree that the co-operation of a State was indispensable to solve the problems giving rise to the communication.
13. Several members of the Working Party stressed that the Committee on Conventions and Recommendations in Education, in accordance with its terms of reference, had always considered individual communications. No member of the Committee on Conventions and Recommendations had ever argued that individual communications which did not relate to massive and systematic violations would ipso facto be inadmissible.
14. The Working Party agreed that the Organization's competence in the field of human rights did not authorize it to take enforcement measures. Its action should be prompted by the necessary regard for human dignity, and its working methods should be based on international co-operation. The Working Party considered that the Organization's action in that field should not embitter international relations but should, on the contrary, assist in strengthening international co-operation; in that connection, it was emphasized that co-operation and international understanding depended in particular upon respect for human rights and fundamental freedoms.
15. Among the rules applicable to international co-operation, the one concerning non-interference in affairs falling within the competence of States was stressed by several participants. While all agreed that that rule, which was laid down, for example, in Article I (3) of Unesco's Constitution and in Article 2 (7) of the United Nations Charter, must be observed, members of the Working Party expressed differing views on the nature, extent and scope of the action that the Organization might take in the field of human rights without infringing it. It was stated, for example, that the problems arising in connection with individual cases should be solved by the State on whose territory an alleged violation of human rights had taken place. According to some members of the Working Party, only massive, systematic violations of human rights should be subjects of legitimate concern to the international community. By ratifying certain international instruments such as the Optional Protocol to the International Covenant on Civil and Political Rights, of course, States might recognize the competence of international organizations in individual cases, but it was important to note that such instruments were optional.
16. Many members felt that the protection and promotion of human rights within the borders of a State was primarily the responsibility of the State concerned, which was accountable in this respect to the international community.
17. Many members considered that it would be dangerous to wait until individual cases of violation of human rights became so widespread that international peace was thereby threatened, or until they could be regarded as constituting examples of massive, systematic violations, before the Organization was entitled

to take action on them. The legal obligations freely assumed by Member States by virtue of their ratification of the United Nations Charter and the Constitution of Unesco implied that the substance of human rights was not a matter falling exclusively within the national jurisdiction of States. The only question which arose in that connection was that of the policy which an international organization wished to follow with respect to the action to be taken in the matter; its legal competence, however, could not be questioned. There was also disagreement on the ground for distinguishing between individual violations and massive, systematic violations of human rights, since it was difficult, if not impossible, to establish criteria in that regard. Some members nevertheless considered that legal criteria for making such a distinction did appear in a number of instruments adopted under the auspices of the United Nations.

18. Many members considered that the Director-General was empowered to intercede on behalf of the victims of violations of human rights, but that such intercession should be carried out in such a way as not to constitute intervention within the meaning of Article I (3) of the Constitution. Some members pointed out that use of the term "intercession" instead of "intervention" did not solve the problem: what was important was the informal nature of the action taken by the Director-General.

## 2. Human rights falling within Unesco's competence and rules of law applicable

19. In its study of that aspect of the question, the Working Party considered paragraphs 131 to 133 of document 102 EX/19, paragraphs 13 to 20 of document 103 EX/18, and the relevant passages of the written comments reproduced in document 103 EX/WP/HR/INF. 1, Add. 1 and Add. 2.

20. Many members considered that the rights listed in paragraph 131 (a) and (b) of document 102 EX/19 were within Unesco's competence; several members considered that those referred to in paragraph 131 (c) also fell within the Organization's competence. Some members recalled that Unesco's competence was confined to the fields set out in its Constitution.

21. Several members of the Working Party emphasized that the notion of human rights, as applied in the procedures in question, should not be limited solely to civil and political rights, but that economic, social and cultural rights should also be an essential concern of the Organization. In that regard, several members stressed that the economic and social conditions in a country had a determining influence on the exercise of all human rights, and that they should be given due attention in applying the various procedures.

## B. Procedure to be followed

### 1. Sources of communications

22. In dealing with this point, the Working Party examined paragraphs 134 to 136 of document 102 EX/19 and paragraphs 21 to 23 of document 103 EX/18, together with the relevant passages of the comments contained in document 103 EX/WP/HR/INF. 1, Add. 1 and Add. 2.

23. The Working Party were agreed in considering that the direct victim of a violation of human rights should always be able to forward a communication to the Organization, but opinions differed as to who might act on his or her behalf when, for various reasons, the victim was not in a position to do so.

24. Most of the members considered that a private or a non-governmental organization might properly address communications to the Organization, and it was mentioned in this connection that a very large number of communications transmitted to the

Committee on Conventions and Recommendations come from such organizations. It was also stressed, however, that those organizations were of very different kinds and that, while some specialized in the protection of human rights, others were frequently too remote from the realities of the issues concerned, or submitted communications solely or essentially for political purposes. Some members considered that the Organization might take account of the views of non-governmental organizations, but that those views should not constitute a source of communications. One member suggested that only those organizations which were admitted by the Executive Board and the Director-General to one or other of the different categories of relationship with Unesco should be authorized to submit communications to the Organization. A requirement might also be that the organization's statutory aims should include the promotion of human rights, or that an agreement should be established between it and Unesco, recognizing its authority in respect of communications relating to human rights.

25. One member of the Working Party considered that any person and any non-governmental organization might properly be a source of communications, as had to date been the practice in the case of the Committee on Conventions and Recommendations, the essential point being to establish whether in the case in question there had or had not been a violation of human rights in the fields of Unesco's competence.
26. Several members of the Working Party considered the concept of "legitimate interest" introduced in paragraph 136 of document 102 EX/19 to be justified. Several members thought the term required precise definition because, in the view of some, it was too vague and too subjective.
27. A few members considered the concept of "potential victim" to be unacceptable.

## 2. Consideration of receivability

### (a) Conditions governing receivability

28. In considering this question, the Working Party examined paragraphs 137 and 138 of document 102 EX/19, paragraphs 25 to 27 of document 103 EX/18, and the relevant passages of the comments contained in document 103 EX/WP/HR/INF. 1, Add. 1 and Add. 2.
29. Under the current procedure, as defined in 77 EX/Decision 8.3, the problem of the receivability of communications arose for the Director-General only to a very limited extent. The Director-General in fact confined himself to deciding whether the substance of a communication received satisfied the requirements defined by the above-mentioned decision, namely, whether it related to a specific case and involved human rights in the fields of Unesco's competence. All communications satisfying those requirements were then, provided that their authors had given their consent, transmitted to the Committee by the Secretariat without any further assessment of their substance being undertaken. It was then for the Committee to examine the communications and to decide on the action - if any - to be taken.
30. The Working Party agreed that the communication should not be anonymous. It was pointed out, however, that it might be necessary to take account of cases in which the author of the communication feared that to divulge his name might be prejudicial to him.
31. The problem of lis pendens (submission of a communication to several international bodies simultaneously) was not considered by the majority of members of the Working Party to be sufficiently important to justify making it a condition of receivability that a communication must not be the same as another communication

already pending or submitted to another international body. In that connection, the Director of the Division of Human Rights and Peace indicated that the participants at the meeting of directors of the human rights departments and divisions of the various international organizations, which had been held, as provided for in paragraph 162 of document 102 EX/19, at Unesco on 30 June and 1 July 1977, had taken the view that the simultaneous examination of the same communication by several bodies competent in the field of human rights would not give rise to difficulties.

32. One member of the Working Party, supported by several others, quoted the example of the fourth Geneva Convention in support of his view that any new procedures followed by Unesco should not operate in cases where specific procedures had been laid down, since it was a general principle of law that special rules took precedence over general rules.

33. The conditions governing receivabilities set forth in subparagraphs (iii) and (vi) of paragraph 137 in document 102 EX/19 were in general approved by the members of the Working Party. Several members nevertheless considered that the expressions "manifestly ill-founded", "abuse of the right to submit communications" and "reasonable time-limit" should be further clarified. The Director of the Division of Human Rights and Peace referred to the practice of other international organizations in applying those conditions.

34. Several members of the Working Party took the view that all remedies, both at the national and at the regional level, should be exhausted before a communication could be considered receivable by Unesco. Other members stressed the need for a precise definition of the conditions in which the rule concerning prior exhaustion of domestic remedies should operate. Emphasis was placed on the importance of ensuring that this condition should not be applied too strictly, in particular where the system of repression was such as to exclude all expectation of results from a domestic remedy, or when such a remedy was too lengthy or too costly. One member pointed out in that connection that the Subcommission on Prevention of Discrimination and Protection of Minorities, in accordance with its resolution I (XXIV), applied the rule concerning prior exhaustion of domestic remedies "unless it appears that such remedies would be ineffective or unreasonably prolonged". Some members declared themselves to be against the application of that rule by Unesco, one member considering that the condition stipulating that the communication must not be manifestly ill-founded was sufficient. The Director of the Division of Human Rights and Peace informed the Working Party of the attitude of the Freedom of Association Committee of the Governing Body of the International Labour Organisation, which had taken the view that, "given the nature of its responsibilities, it could not consider itself to be bound by the rule concerning the exhaustion of domestic remedies... but that, nevertheless, it had to take account of the fact that the possibilities afforded by national procedure for seeking a remedy from an independent tribunal providing all the necessary guarantees have not been fully utilized".<sup>(1)</sup>

35. One member of the Working Party suggested that, in applying the rule concerning prior exhaustion of domestic remedies: (a) the onus of proof that these means had not been exhausted should rest with the State concerned; (b) the remedies in question should be available to all, regardless of their material resources; and (c) the rule should not result in unreasonable delays in the submission of communications in violation of the criterion set out in paragraph 137 (vi) of document 102 EX/19.

36. Another member of the Working Party proposed that all Member States should be invited to designate a body that would be competent at the national level to deal with questions relating to human rights. Such bodies existed in several

(1) Translated from the French, the authoritative English text not being available.

countries, and it was to them that cases should be submitted before they became the subject of a communication to Unesco. Another member of the Working Party said that the practical solution of the question of which body should settle matters relating to human rights was a matter within the national jurisdiction of States.

(b) Organ competent to decide on the receivability of communications

(c) Procedure for consideration of receivability

37. Besides referring to the relevant considerations contained in the written comments reproduced in document 103 EX/WP/23/INF. 1, Add. 1 and Add. 2, the Working Party examined this question on the basis of paragraphs 139 and 140 of document 102 EX/19 and paragraphs 32 to 50 of document 103 EX/18.

38. Several members were in favour of maintaining and extending as necessary, the Director-General's role in the consideration of the receivability of communications; some, however, considered that that task should devolve either on the Committee on Conventions and Recommendations or on a small working party of that Committee, assisted by the Secretariat or on an appropriate body set up by the General Conference.

39. Several members of the Working Party were of the opinion that the competent organ, or the Secretariat, should be able to obtain additional information about the observance of the conditions governing receivability, which would make it possible to establish as full a file as possible on the matter. It was also considered that the author of any communication should be kept informed of the action taken on it. The Director of the Office of International Standards and Legal Affairs pointed out, in that connection, that up to the 94th session of the Executive Board, the Committee did not make any report on the results of such work and that the interested parties were consequently not informed about the fate of their communications. From the 94th to the 99th session, the Committee drew up reports which were public documents and, by a decision of the Committee taken at its 99th session, were communicated to the authors of the communications. That practice had not, however, been followed at the 100th session, since the Committee's report was set out in a confidential document.

40. The Director of the Division of Human Rights and Peace pointed out that, in other international organizations, as could be seen from the table given in Annex I to document 102 EX/19, the Secretariat did not decide on the receivability of communications, except in the case of the League of Nations, where the Director of the Minorities Division was responsible for so doing in the case of petitions addressed to that organization.

41. The Director of the Office of International Standards and Legal Affairs, explaining the background to the procedure applied by the Committee on Conventions and Recommendations, stressed that the role of the Director-General was, in point of fact, confined to transmitting to the Committee communications which: (a) were addressed to the Organization; (b) related to specific cases; and (c) involved human rights within Unesco's spheres of competence; but that the Director-General did not, strictly speaking, take decisions on their receivability. He pointed out that the Director-General's role would be considerably changed if he were asked to apply the conditions governing receivability set forth in paragraph 137 of document 102 EX/19.

### 3. Consideration of receivable communications

42. Paragraphs 141 to 147 of document 102 EX/19, and paragraphs 31 to 51 of document 103 EX/18, together with the relevant passages of the comments



contained in document 103 EX/WP/HR/INF. 1, Add. 1 and Add. 2, were considered by the Working Party under this heading.

43. Several members found it necessary to distinguish between cases, situations and questions, and suggested that there should be a specific procedure for each type of communication. Other members considered that there was a clear distinction between cases and questions and objected to the creation of a new category of "situations" with a special procedure.
44. Whether the existing Committee on Conventions and Recommendations or a new body was to be responsible for considering receivable communications, the Working Party approved the idea that dialogue, rather than accusation and confrontation, should be the approach in the carrying out of the competent body's work.
45. Several members regretted that the present procedure of the Committee on Conventions and Recommendations was so slow, and one member of the Working Party wondered whether excessive caution was not being shown, for example, by writing to the author of a communication in order to check the accuracy of his address, even though it was known to be correct, or by waiting passively for a reply from the government concerned, which often never came. The same member of the Working Party suggested that communications should be forwarded to the Committee on Conventions and Recommendations as soon as they were received, so as to avoid the delays resulting from the present procedure. A few members objected to that proposal.
46. Taking as a basis the definition proposed in paragraph 11 above, several members considered that only "cases" and "situations" could be examined by the Committee on Conventions and Recommendations, but that "questions" should be examined only by the Executive Board and by the General Conference.
47. One member of the Working Party suggested that the Director-General should be competent to consider not only receivability but also receivable communications. In general, the members of the Working Party were agreed in thinking that consideration of a communication by the competent body should not prevent the Director-General from interceding personally with the Member State concerned. One member of the Working Party suggested that the Director-General should act at the request of the competent body; another member pointed out that the Director-General's role was not of a legal nature and that it was not for the Working Party to say what the Director-General should or should not do.
48. Some members of the Working Party suggested that the name of the competent body should be "Committee on Human Rights" or "Committee on Human Rights and Conventions and Recommendations". Some members were opposed to any change in the name of the existing Committee, while another member stressed that its present name did not correspond with the Committee's activities, and that Member States were entitled to know what it was really meant to do. He therefore thought that the Executive Board should submit the question of the name, membership and terms of reference of the competent body to the General Conference, which should decide the matter. For his part, he would prefer a new body to be set up by the General Conference.
49. On the question of the working methods of the competent body, several members approved the content of paragraph 143 of document 102 EX/19. A few members subscribed to that paragraph, so long as massive and systematic violations of human rights were involved; and referred, in that connection, to the examples of ad hoc working parties which had been set up in the United Nations to investigate such violations. In their view, such procedures would be unacceptable when dealing with individual cases.

4. Settlement of the affair

50. Paragraphs 149 and 150 of document 102 EX/19, and some passages in the comments contained in document 103 EX/WP/HR/INF. 1, Add. 1 and Add. 2, were considered by the Working Party under this heading.

51. Referring once again to the distinction to be made between "cases", "situations" and "questions", several members of the Working Party thought that the statement appearing in paragraph 149 of document 102 EX/19 to the effect that consideration of the affair cannot terminate in a binding decision was not correct. They considered that decisions taken by the General Conference on "questions" concerning the policy of a State did constitute binding decisions.

52. The Working Party had an exchange of views on the publication of reports concerning "cases" and "situations". It was thought, however, that this question required further discussion by the Executive Board. Several members were in favour of the publication of these reports. Others objected and some thought that only reports which contained no detailed information about the individual cases and the countries concerned could be made public. One member suggested that any report to be made public should cover not only violations of human rights but, more particularly, alleged violations that had been recognized to be ill-founded. Most of the members saw merit in reporting successes in the field of promoting human rights.

53. There was a difference of views as to whether all reports should be made public, whether the results of the procedure were positive or not, without the Executive Board's exercising any discretionary power in the matter. Referring to paragraph 150 of document 102 EX/19, one member thought that it should be incumbent on the Chairman of the Executive Board or the Director-General, but not on the competent body, to inform the government involved about the conclusion of the case.

5. Co-ordination of Unesco's procedures with other procedures for the examination of communications

54. On this item, the Working Party studied the comments contained in document 103 EX/WP/HR/INF. 1, Add. 1 and Add. 2, as well as paragraphs 151 to 162 of document 102 EX/19, and paragraphs 52 to 60 of document 103 EX/18.

55. Most of the members of the Working Party approved, in general, the considerations appearing in the relevant paragraphs of document 102 EX/19 but some voiced objections against the considerations appearing in certain paragraphs. Some members pointed out that the object of co-ordinating Unesco's procedures with those of other competent institutions should be to reinforce those procedures with a view to making them more effective, and that any competition or rivalry should be avoided.

56. Another member suggested that the problem of co-ordination should be examined by the Administrative Committee on Co-ordination. He further thought that the rule of reciprocity should operate in that field, particularly with respect to the transmission of communications from one organization to another.

57. Several members of the Working Party laid great stress on the need for the Organization to have a comprehensive programme in the field of human rights which, besides procedures, would include projects designed to promote human rights by preventing their violation. Some members suggested that States might, for example, be requested to submit periodic reports on the situation with regard to human rights within Unesco's purview, and that the communications addressed to the Organization should be examined on the basis of those reports. Some members

expressed appreciation of Unesco's work in preparing studies in the field of human rights and hoped that such studies would be continued. Other members drew attention to the desirability of establishing, in each country, a national human rights commission which would be the liaison body for Unesco's activities in the field of human rights. Other members opposed this suggestion.

## Section 2: Second Report of the Working Party

United Nations Educational,  
Scientific and Cultural Organization

Executive Board

EX

### Hundred-and-fourth Session

104 EX/3  
PARIS, 3 March 1978  
Original: English/French

#### Item 3.3 of the Provisional Agenda

STUDY OF THE PROCEDURES WHICH SHOULD BE FOLLOWED IN THE EXAMINATION OF CASES AND QUESTIONS WHICH MIGHT BE SUBMITTED TO UNESCO CONCERNING THE EXERCISE OF HUMAN RIGHTS IN THE SPHERES OF ITS COMPETENCE, IN ORDER TO MAKE ITS ACTION MORE EFFECTIVE

#### REPORT OF THE WORKING PARTY OF THE EXECUTIVE BOARD SET UP IN PURSUANCE OF 102 EX/Decision 5.6.2 (7)

1. In pursuance of 102 EX/Decision 5.6.2, the Working Party instructed by the Executive Board to study "the procedures which should be followed in the examination of cases and questions which might be submitted to Unesco concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective" had already met from 1 to 5 August 1977 and on 28 September and 1 October 1977 and had submitted a report to the Executive Board at its 103rd session (103 EX/19). After taking note of this report, the Executive Board, in 103 EX/Decision 5.5.2, had requested the Working Party "to meet in January 1978, in order to prepare a final report in accordance with the terms of reference laid down in 102 EX/Decision 5.6.2, and taking into consideration the comments of the Committee on Conventions and Recommendations in Education contained in document 103 EX/17, Part II, for submission to it at its 104th session".

2. In compliance with that decision, the Working Party met from 9 to 17 January 1978 at Unesco Headquarters in Paris, under the chairmanship of Mr. Leonard C.J. MARTIN (Chairman of the Executive Board). The following members took part in the work of the Party:

Mr. Reginald S.G. AGIOBU-KEMMER (Nigeria), assisted by  
Mr. Joseph O. OIARINMOYE

Mr. Partomo M. ALIBAZAR and Miss Koestijali PRODJOLALITO, deputies for  
Mr. Sjarif THAJEB (Indonesia)

Mr. Arthur BAGUNYWA (Uganda)

Mr. Thomas BUERGENTHAL and Mr. Constantine WARVARIV, deputies for  
Mr. Henry E. KERRY (United States of America)

Mr. Paulo E. de Berrêdo CARNEIRO (Brazil), assisted by  
Mr. Isnar de FREITAS  
Mr. Sarvepalli GOPAL (India)  
Mr. Leonid N. KUTAKOV (Union of Soviet Socialist Republics), assisted  
by Mr. Vladimir KARTASHKIN  
Mr. Mahmoud MESSADI (Tunisia)  
Mr. Mieczyslaw PASZKOWSKI, deputy for Mrs. Eugenia KRASSOWSKA (Poland)  
Mr. Michel VAN USSEL (Belgium).

3. In addition to documents 102 EX/19, 103 EX/17, Part II, 103 EX/18 and 103 EX/19, the Working Party had at its disposal a working document containing: (i) the text suggested by the Chairman of the Executive Board at the meetings of the Working Party on 28 September and 1 October 1977; (ii) a complete parallel text submitted by Mr. Kutakov and Mr. Paszkowski at the meetings held on 28 September and 1 October 1977; (iii) the amendments submitted by other members of the Working Party, both at the August meeting and at that of September/October 1977; and (iv) where appropriate, the standards applicable in the United Nations system (document 104 EX/WG/HR/1). Another draft decision was submitted by Mr. Buergethal (document 104 EX/WG/HR/DR.1).

4. The Working Party drew up a draft decision of the Executive Board stating the procedures which should be followed in the examination of cases and questions which might be submitted to Unesco concerning the exercise of human rights in the spheres of its competence. This draft decision was approved by consensus. In accordance with its terms of reference, the Working Party submits the following draft for approval by the Board:

The Executive Board:

1. Mindful that the competence and role of Unesco in the field of human rights derive primarily from Article I.1 of the Constitution of Unesco which states: "The purpose of the Organization is to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations", and from the Charter of the United Nations,
2. Recalling the Universal Declaration of Human Rights, the international covenants on human rights and the various conventions and recommendations adopted by Unesco,
3. Recalling resolution 19 C/6.113 concerning Unesco's responsibilities in the field of human rights,
4. Recalling also resolution 19 C/12.1: "Unesco's contribution to peace and its tasks with respect to the promotion of human rights and the elimination of colonialism and racialism, long-term programme of measures whereby Unesco can contribute to the strengthening of peace"; and in particular paragraph 10 of the resolution which invites the Executive Board and the Director-General:  

"(a) to examine with particular attention the general situation with regard to respect for human rights throughout the world in Unesco's fields of competence;

- (b) to study the procedures which should be followed in the examination of cases and questions which might be submitted to Unesco concerning the exercise of human rights in the spheres to which its competence extends, in order to make its action more effective;
  - (c) to continue to establish, with a view to the implementation of subparagraphs (a) and (b), close co-operation and co-ordination with the relevant United Nations organs so as to take advantage of their work and the lessons that can be learned from them in this field",
5. Having considered the report of a working group of the Board set up by virtue of decision 102 EX/5.6.2 to carry out an in-depth study of document 102 EX/19, the analytical summary of discussions that took place at the 102nd session of the Board, and additional written comments provided by members of the Board,
  6. Mindful of Article I.3 of the Constitution of Unesco which states: "With a view to preserving the independence, integrity and fruitful diversity of the cultures and educational systems of the States members of the Organization, the Organization is prohibited from intervening in matters which are essentially within their domestic jurisdiction",
  7. Considering that in matters concerning human rights, within its fields of competence, Unesco, basing its efforts on moral considerations and its specific competence, should act in a spirit of international co-operation, conciliation and mutual understanding; and recalling that Unesco should not play the role of an international judicial body,
  8. Recognizing the important role of the Director-General, in:
    - (a) seeking continually to strengthen the action of Unesco in the promotion of human rights, both through the settlement of cases and the elimination of massive, systematic or flagrant violations of human rights and fundamental freedoms; and
    - (b) initiating consultations, in conditions of mutual respect, confidence, and confidentiality, to help reach solutions to particular problems concerning human rights,
  9. Invites the Director-General to pursue this role;
  10. Considering that in the exercise of its competence in the field of human rights, Unesco is called upon to examine:
    - (a) cases concerning violations of human rights which are individual and specific;
    - (b) questions of massive, systematic or flagrant violations of human rights which result either from a policy contrary to human rights applied de jure or de facto by a State or from an accumulation of individual cases forming a consistent pattern,
  11. Considering the terms of reference of the Committee on Conventions and Recommendations in Education,
  12. Taking into account the tasks already entrusted to the Committee concerning human rights matters within the Organization's fields of competence,

13. Decides that the Committee will henceforth be designated "the Committee on Conventions and Recommendations";
14. Decides that the Committee will continue to carry out its functions with respect to conventions and recommendations and will consider communications received by the Organization concerning cases and questions of violations of human rights within Unesco's fields of competence in accordance with the following conditions and procedures:

Conditions

- (a) Communications shall be deemed admissible if they meet the following conditions:
  - (i) the communication must not be anonymous;
  - (ii) the communication must originate from a person or a group of persons who, it can be reasonably presumed, are victims of an alleged violation of any of the human rights referred to in paragraph (iii) below. It may also originate from any person, group of persons, or non-governmental organization having reliable knowledge of those violations;
  - (iii) the communication must concern violations of human rights falling within Unesco's competence in the fields of education, science, culture and information and must not be motivated exclusively by other considerations;
  - (iv) the communication must be compatible with the principles of the Organization, the Charter of the United Nations, the Universal Declaration of Human Rights, the international covenants on human rights and other international instruments in the field of human rights;
  - (v) the communication must not be manifestly ill-founded and must appear to contain relevant evidence;
  - (vi) the communication must be neither offensive nor an abuse of the right to submit communications. However, such a communication may be considered if it meets all other criteria of admissibility after the exclusion of the offensive or abusive parts;
  - (vii) the communication must not be based exclusively on information disseminated through the mass media;
  - (viii) the communication must be submitted within a reasonable time-limit following the facts which constitute its subject-matter or within a reasonable time-limit after the facts have become known;
  - (ix) the communication must indicate whether an attempt has been made to exhaust available domestic remedies with regard to the facts which constitute the subject-matter of the communication and the results of such an attempt, if any;

- (x) communications relating to matters already settled by the States concerned in accordance with the human rights principles set forth in the Universal Declaration of Human Rights and the international covenants on human rights shall not be considered;

Procedures

- (b) The Director-General shall:
- (i) acknowledge receipt of communications and inform the authors thereof of the above-mentioned conditions governing admissibility;
  - (ii) ascertain that the author of the communication has no objection to his communication, after having been communicated to the government concerned, being brought to the notice of the Committee and to his name being divulged;
  - (iii) upon receipt of an affirmative answer from the author of the communication, transmit the communication to the government concerned, informing it that the communication will be brought to the notice of the Committee, together with any reply the government may wish to make;
  - (iv) transmit the communication to the Committee, together with the reply, if any, of the government concerned and additional relevant information from the author, taking into account the need to proceed without undue delay;
- (c) The Committee shall examine in private session the communications transmitted to it by the Director-General;
- (d) The Committee shall decide on the admissibility of communications in accordance with the above-mentioned conditions;
- (e) Representatives of the governments concerned may attend meetings of the Committee in order to provide additional information or to answer questions from members of the Committee on either admissibility or the merits of the communication;
- (f) The Committee may avail itself of the relevant information at the disposal of the Director-General;
- (g) In consideration of a communication, the Committee may, in exceptional circumstances, request the Executive Board to authorize it under Rule 29 of the Rules of Procedure to take appropriate action;
- (h) The Committee may keep a communication submitted to it on its agenda while seeking additional information it may consider necessary for the disposition of the matter;
- (i) The Director-General shall notify the author of the communication and the government concerned of the Committee's decision on the admissibility of the communication;



- (j) The Committee shall dismiss any communication which, having been found admissible, does not, upon examination of the merits, appear to warrant further action. The author of the communication and the government concerned shall be notified accordingly;
  - (k) Communications which warrant further consideration shall be acted upon by the Committee with a view to helping to bring about a friendly solution designed to advance the promotion of the human rights falling within Unesco's fields of competence;
15. Decides further that the Committee shall submit confidential reports to the Executive Board at each session on the carrying out of its mandate under the present decision. These reports shall contain appropriate information arising from its examination of the communications which the Committee considers it useful to bring to the notice of the Executive Board. The reports shall also contain recommendations which the Committee may wish to make either generally or regarding the disposition of a communication under consideration;
  16. Decides to consider confidential reports of the Committee in private session and to take further action as necessary in accordance with Rule 28 of the Rules of Procedure;
  17. Decides also that communications transmitted to it by the Committee which testify to the existence of a question shall be dealt with in accordance with paragraph 18 below;
  18. Considers that questions of massive, systematic or flagrant violations of human rights and fundamental freedoms - including, for example, those perpetrated as a result of policies of aggression, interference in the internal affairs of States, occupation of foreign territory and implementation of a policy of colonialism, genocide, apartheid, racialism, or national and social oppression - falling within Unesco's fields of competence should be considered by the Executive Board and the General Conference in public meetings;
  19. Decides to consider at its 105th session the report to be made by the Executive Board and the Director-General to the General Conference at its twentieth session on the implementation of Part II of 19 C/Resolution 12.1.



103 EX/WF/HR/INF.1  
PARIS, 18 July 1977

UNITED NATIONS EDUCATIONAL,  
SCIENTIFIC AND CULTURAL ORGANIZATION

EXECUTIVE BOARD

Hundred-and-third Session

WORKING PARTY OF THE EXECUTIVE BOARD  
SET UP IN PURSUANCE OF 102 EX/DECISION 5.6.2 (7)

(Paris, 1-5 August 1977)

Item 5.5.2 of the Provisional Agenda: Study of the procedures which should be followed in the examination of cases and questions which might be submitted to Unesco concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective (102 EX/19 and 103 EX/18)

WRITTEN COMMENTS SUBMITTED BY MEMBERS  
OF THE EXECUTIVE BOARD

Communications from members of the Executive Board received by the Secretariat before 15 July 1977 are annexed to this document. Subsequent communications will be the subject of an addendum, which will be distributed at the meeting of the working party.

ANNEX I

Communication from Dr. Chams Eldine El-Wakil  
(Arab Republic of Egypt)

No.435

Paris, 23 June 1977

Sir,

With reference to your letter No. SCX/EXB/2513 of 16 June 1977 requesting me to transmit any fresh comments that I might wish to submit concerning document 103 EX/18 (Analytical summary of the discussions that took place at the 102nd session of the Executive Board on item 5.6.2), I have the honour to inform you that, having been designated a member of the working party set up by the Executive Board to study the procedures which should be followed in the examination of cases and questions which might be submitted to Unesco concerning the exercise of human rights, I prefer to submit my comments when the group meets at the beginning of August.

I should like, however, to reaffirm the point of view that I expressed on the occasion of the Board's debates at its 102nd session concerning the violation of human rights in territories usurped through military occupation. I venture to remind you that human rights in such territories are governed by the fourth Geneva Convention of 1949 relating to the protection of civilian persons in time of war. I pointed out on that occasion that the special procedures mentioned in that Convention have never been applied owing to the stubbornness and bad faith of the occupying authorities, and we are therefore of the opinion that any violation of human rights in an occupied territory should be examined directly by the Executive Board and the General Conference and not in the context of any other procedure under consideration. Moreover, this point of view was endorsed by the Director-General in paragraph 11.14 of the Provisional Summary Record of the tenth meeting of the Executive Board at its 102nd session (102 EX/SR.10 Prov.).

I would consequently have liked that remark to appear in the Analytical Summary of the discussions that took place at the 102nd session of the Executive Board on item 5.6.2 (103 EX/18).

Accept, Sir, the assurances of my highest consideration.

Dr. Chams Eldine El-Wakil  
Ambassador - Permanent Delegate

Mr. Stepanek  
Secretary of the General Conference  
and Executive Board  
SCX  
Unesco

ANNEX II

Communication from Mr. Valentin Lipatti (Romania)

Observations and comments on document  
102 EX/19 dated 7 April 1977

(Item 5.6.2 of the Provisional Agenda of  
the Executive Board of Unesco, 102nd session)

1. In approaching this matter, the Romanian authorities take as their starting-point the wealth of ideas and the complexity of human rights and fundamental freedoms to be found in the international instruments adopted in this field, particularly the international covenants on human rights.
2. These covenants state that the most important human right is the right of peoples to self-determination. With regard to the human person, the preamble to the covenants states that the individual has duties to other individuals and to the community to which he belongs. Similarly, the covenants lay stress on the guarantee which should be provided for the exercise of these rights and freedoms without any discrimination on the grounds of race, colour of skin, sex, language, religion, political or other views, national or social origin, birth or any other circumstance. The covenants also provide for the possibility of regulating and limiting the exercise of some of these rights and freedoms, having regard to the level of a country's economic development, the interests of national security, public order, health or public morals, or the protection of the rights and freedoms of others.
3. The complexity of this problem has consequently led to the establishment of organized machinery to promote and monitor respect for human rights. This machinery consists of the General Assembly, ECOSOC, the Commission on Human Rights, the Human Rights Committee and other bodies with special responsibilities laid down in the covenants or in other international agreements.
4. It is therefore clear that respect for human rights and fundamental freedoms is closely linked both with the economic, social and political development of each country and with the solution of the major problems facing mankind, such as the establishment of a new international economic order, the elimination of economic backwardness and the achievement of general and complete disarmament.
5. Consequently, the action which Unesco should take in the field of human rights should firstly consist of major political action to eliminate colonialism, neo-colonialism, racialism and the policy of apartheid, especially with regard to its effects in Unesco's fields of competence. Unesco's action should also be designed to solve major international problems such as the elimination of economic underdevelopment, the establishment of a new international economic order and the achievement of general and complete disarmament. Unesco thus has particular responsibility for promoting the right to education and culture, access to science and technology, and the right to information, so that all peoples and all men may enjoy the benefits of civilization.

6. Secondly, Unesco has responsibilities with regard to respect for the human rights and freedoms mentioned in the conventions concluded within the framework of the Organization, by virtue of its standard-setting action in adopting the Convention against Discrimination in Education, the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, and the Recommendation concerning the Status of Teachers. In addition, the Organization has itself established a body responsible for the application of these instruments, namely the Committee on Conventions and Recommendations in Education. In the view of the Romanian authorities, this is the Organization's sphere of practical action, and this is the right with which Unesco's various bodies should be concerned in examining communications submitted to them.
7. It is therefore the view of the Romanian authorities that Unesco's action should concentrate on the promotion of, and respect for, the rights and freedoms which, by their content, fall within the Organization's purview. To extend Unesco's activities to all rights and freedoms would be to duplicate what is being done by the United Nations and its agencies in this field. In this connection, it should be mentioned that the most recent body to be established for this purpose, the Human Rights Committee, which met for the first time in 1977, has been given responsibilities which are clearly laid down in the International Covenant on Civil and Political Rights. Hence, interference by these institutions in this field would make the Committee's action more difficult. Then again, to direct Unesco's activities to the defence of all the human rights of certain categories of persons would lead to the paradoxical situation in which human rights would be subordinate to a person's occupation, and each Specialized Agency would be concerned with respect for the human rights of those people who work within its own particular field. The unsatisfactory consequences of such a sectoral approach, which seems to be reflected in paragraphs 131(c) and 132 of the document mentioned above, are thus obvious.
8. The Romanian authorities feel that a study could be made of measures to improve the activity and procedures of the Committee on Conventions and Recommendations in Education. Moreover, this Committee should strive to examine more thoroughly the problems which come within its purview.
9. Liaison and working relations between the Committee and the Secretariat of Unesco could certainly be improved. In this connection, the Romanian authorities feel that it would be desirable for the Committee itself, or else a small working group set up by the Committee (in accordance with paragraph 139), to decide on the receivability of communications. This would be a procedure within Unesco similar to that followed in other United Nations agencies. This Committee, however, must not become either a good offices committee or a body responsible for mediation or conciliation, since those are procedures for the peaceful settlement of disputes arising between States, and this Committee has not been established as a body to settle disputes. Moreover, Unesco has no right to mediate or intervene in any way at all in relations between States and their citizens. Nor is it acceptable that this Committee or any other Unesco bodies should carry out inquiries or make checks or investigations of any kind on the territory of a Member State or in regard to the actions of a State. That would be an unjustifiable extension of the Committee's powers.
10. In addition, this Committee must not become a committee on human rights, since it would have to be established as such by an international agreement. Even in such an event, this would mean establishing sectoral committees or duplicating United Nations bodies.

11. Furthermore, modifying the responsibilities of the Conciliation Commission established by virtue of the Protocol to the Convention against Discrimination in Education - which, in any case, is applicable only to States Parties to the Convention - would entail modifying the Protocol and therefore convening a diplomatic conference of the States Parties. With regard to the receivability of communications relating to the violation of human rights, the Romanian authorities consider it important to apply criteria which are both simple and clear. To begin with, such communications should deal with violations of human rights which fall within the purview of the Committee, in accordance with the conventions and recommendations adopted by the General Conference and the Executive Board.
  
12. Secondly, communications should come either from private persons or from Member States of the Organization. We consider that such communications should not be received from private organizations without first delimiting their field of action in order to determine whether they are purely national organizations or organizations which also have foreign affiliations. It is also important to know whether they are organizations recognized by the State in question or associations without any formal status. The consequences and difficulties of such clarification are obvious. Furthermore, the notion of "popular" action, by which any person may send communications on behalf of another, is not acceptable, because this would mean that the Committee could take more extensive action than the courts of Member States themselves can. The idea of "furnishing evidence that they have a legitimate interest" (para.136) relates to legal procedure which has no place in the Committee's activities. Finally, care should be taken to observe the principle whereby all channels within the country must have been explored, a criterion which must be applied with regard to human rights as in other matters. For the international consideration of communications cannot take the place of the redress of grievances in this field by national bodies.
  
13. There must be no modification, either, of the competence of the Committee with regard to the results of its activities. It must, in fact, report to the Executive Board. It would not be in keeping with the Committee's place in Unesco to empower it to make statements and recommendations to Member States or to publish reports. Only the Executive Board and the General Conference can make such recommendations to Member States, and then only in the case of massive violations of human rights, and not in the case of communications regarding isolated cases.
  
14. The competent Romanian authorities consider that these are the fields and circumstances in which Unesco's action should be strengthened with a view to promoting human rights and fundamental freedoms throughout the world.

ANNEX III

Communication from Mr. Michel Van Ussel (Belgium)

Paris, 11 July 1977

No. 1595/4.12

Dear Mr. Stepanek,

1. With reference to your letter SCX/EXB/2513 of 16 June 1977, I should first like to express my keen gratitude for the excellent analytical summary of the discussions that took place at the 102nd session of the Executive Board on item 5.6.2 of its agenda. This document, which supplements excellently the summary records of the meetings devoted to human rights, will, I am sure, enable the members of the working party to begin examining specific problems relating to the procedure to be followed in regard to violations of human rights at the very first meeting of their session. In other words, I consider that any general discussion is pointless and would be a pure waste of time.

2. Furthermore, recourse to a consensus with a view to reducing divergences between the members should not be any obstacle to the preparation of a report for the Executive Board. It is moreover in this sense that I interpret the phrase "to the extent possible" appearing in sub-paragraph (b) of the working party's terms of reference.

3. I have nothing particular to add to the arguments and considerations set out in my address to the Board. I should however like to stress once again that, in order to avoid any controversy on legal issues, only written and universally accepted sources of law can be used as a legal basis for determining Unesco's competence. In other words, the kind of sources to be adopted should include, the Charter of the United Nations, the Constitution of Unesco, the Universal Declaration of Human Rights and, to a certain extent, the international covenants on human rights, provided that they have been ratified by a sufficient number of Member States.

4. It follows that such legal fictions as the principles of international co-operation are in my view inappropriate and could only create confusion and ambiguity.

5. Since there is also no universal consensus regarding the concepts "massive and systematic violations" or "new international economic order", I consider that these, too, do not constitute a valid legal basis.

6. Lastly, Unesco's fields of competence are fixed by its Constitution, and cannot be interpreted as extending beyond the terms of the Constitution.

Mr. V. STEPANEK  
Secretary of the General Conference and  
of the Executive Board  
7 Place de Fontenoy  
75700 PARIS

7. In conclusion, it is still my view that only a working party consisting of members of the Executive Board will be able to verify whether the conditions governing the receivability of complaints have been fulfilled.

Yours sincerely,

M. VAN USSEL  
Ambassador  
Permanent Delegate of Belgium  
to Unesco



ANNEX IV

Communication from Mr. Werner Bahner (German Democratic Republic)

Mr. Leonard C.J. Martin  
Chairman of the Executive Board of Unesco  
7, place de Fontenoy  
75700 Paris

Berlin, 8 July 1977

Sir,

1. With reference to the discussion initiated at the 102nd session of the Executive Board on document 102 EX/19 "Study of the procedures which should be followed in the examination of cases and questions which might be submitted to Unesco concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective", I would like to put forward a certain number of ideas.
2. The provisions of Articles 55 and 56, in conjunction with Article 2, paragraph 7 of the United Nations Charter, should serve as the starting point for reflection on how to make the exercise of human rights more effective and for possible activities that Unesco, as a Specialized Agency of the United Nations, might undertake to this end. On this subject, I am also in entire agreement with what is said in paragraph 127 of document 102 EX/19. Furthermore, I draw your attention to the fact that the provisions of Article 55 of the United Nations Charter imply that within the territory of each State human rights must be guaranteed and respected in conformity with the social system in question and with national and cultural traditions. The safeguarding of human rights is thus a matter which falls within the competence of States and belongs to their sphere of sovereignty. I feel that in our future reflections and discussions in the Executive Board we must take these fundamental premises into consideration because to deny them would involve the danger and the possibility of unwarrantable interference in the internal affairs of States. This is why paragraph 130 of document 102 EX/19 is quite right to refer to Article I, paragraph 3, of the Constitution of Unesco, which forbids the Organization from intervening in matters which take place exclusively on the territory of Member States. The principle of non-interference was also reaffirmed, as we all know, in resolution 12.1.II, 9, adopted by the General Conference at its nineteenth session.
3. However, this does not mean that Unesco, which feels bound to support human rights and which has achieved a number of successes in this sphere during its 30 years of existence, will be powerless to promote co-operation between States for the universal respect and safeguarding of human rights and fundamental freedoms for all without discrimination and with a view to developing peaceful and friendly relations between peoples based on respect for the principle of their equal rights and self-determination.
4. Basing itself on its constitution and on its competence in the spheres of culture, science and education, Unesco, in order to promote human rights, should consider its most important mission to be to work for the strengthening and safeguarding of peace, which is the most fundamental right of mankind. It should concentrate its activities, through the specific means at its disposal, on condemning the enormous and systematic violation of human rights and should offer its effective contribution to the world-wide struggle against aggression, colonialism, neo-colonialism, racism, apartheid and the suppression of national liberation movements and of other progressive forces struggling against exploitation by transnational companies.

5. I would like to draw your attention to the fact that Unesco has carried out a number of effective actions in relation to its participation in the struggle against the apartheid policy in South Africa, against the systematic violation of human rights in occupied Arab territories as well as against the fascist terror in Chile. Unesco should continue to advance in this direction instead of raising the possibility of interference in domestic affairs by dealing with questions of procedure for the discussion of isolated cases of so-called violations of human rights. During the 102nd session of the Executive Board, I asked why Unesco, in order to deal with information concerning individual cases and questions, needed extensive machinery other than what has fully proved its worth hitherto.
  
6. If one considers the various procedures which exist within the United Nations system for the purpose of enforcing the observance of important United Nations instruments in the field of human rights, one cannot fail to realize that neither the change in procedure based on decision 8.3, adopted by the Executive Board at its 77th session, nor an extension of the terms of reference of the Committee on Conventions and Recommendations in Education, nor the establishment of new commissions, is either a necessary or a useful step. Should not Unesco's mission rather be to work to the end that all States may as soon as possible accede to and ratify the two international covenants of 16 December 1966, on civil and political rights and on economic, social and cultural rights, as well as the other United Nations conventions on human rights? By so doing, it might help to confer world-wide significance to the fundamental norms of human rights agreed upon under international law. So far, co-operation between States with a view to promoting human rights has produced agreement on many carefully-defined procedures for the international implementation of the various conventions and declarations, according to their varying objectives. The detailed account to be found in document 102 EX/19 of procedures which already exist in international organizations is proof of this. In my opinion, these existing procedures should be strictly implemented, and there should be no attempt to devise supplementary procedures which are not recognized as binding by all States. The entry into force of the International Convention on the Suppression and Punishment of the Crime of Apartheid makes effective a new, contractual procedure for the international protection of human rights, within the United Nations machinery. Its effectiveness in the struggle to combat apartheid will increase as the number of States ratifying the Convention or acceding to it increases.
  
7. Finally, I should like to express the view that the discussions held at Unesco for the promotion of international co-operation in the field of human rights should not be conducted independently of events at the United Nations. The thirty-second United Nations General Assembly will, as we know, be required to work out alternative ways of improving the effective observance of human rights: consequently, the outcome of these discussions should also be given consideration in the Unesco context.
  
8. To sum up, I would observe, however, that the safeguarding of human rights depends neither on the quantity nor on the quality of international implementation procedures, but, first and foremost, on the social foundations and policy of each individual State. I can say with satisfaction that in my country, the German Democratic Republic, respect for human dignity reigns supreme, and human rights are a reality.

Accept, Sir, the assurances of my highest consideration.

Professor Dr. Werner Bahner

ANNEX V

Communication from Mr. Gunnar Garbo (Norway)

Further comments concerning the procedures which should be followed in the examination of cases and questions which might be submitted to Unesco concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective

1. Legal basis for Unesco's competence

The legal basis for Unesco's competence in the spheres of human rights is first and foremost its Constitution. This has been rightly stated in document 102 EX/19, paragraph 130. The Organization's freedom of action is, of course, limited by the principle of non-interference in matters which are essentially within the domestic jurisdiction of Member States. The historical origin of this principle is, however, the need to prevent any kind of military interference in other States. This should still be seen as its predominant objective. In addition, the principle of non-interference makes it incumbent upon States to abstain from violating the sovereignty of other States by economic or political pressure or other forms of violence, in order to derive advantages to itself. Under no circumstance, however, should non-interference be understood to prevent States or international organizations from criticizing violations of human rights, wherever they occur, from addressing appeals to the States in question or from interceding in order to promote respect for human rights. The right of international organizations to do so has even been firmly established by the practice of the United Nations General Assembly and by other United Nations bodies. To what extent one should concentrate attention on situations implying massive and systematic violations, is solely a question of practical considerations, not one of principle.

There is indeed need for a clearer understanding of the principle of non-interference. Document 102 EX/19 makes a valuable distinction between interference and intercession. To intercede on behalf of a plaintiff or to promote observance of human rights by way of investigations and consultations, should not be construed to be at variance with the principle of non-interference. Intercession is not interference.

2. Human rights falling within Unesco's field of competence

Paragraph 131 (a) and (b) of document 102 EX/19 seems to give a satisfactory delimitation of the role of Unesco in handling specific complaints. The starting point should be those human rights which Unesco is bound by its Constitution to uphold - not the protection of people belonging to certain professions. But of course if a teacher or an artist is being imprisoned or tortured because of his or her activity as a teacher or as an artist, this may clearly represent infringements upon rights which Unesco has a duty to protect. This may be the case if "political activities" is another name for innovation in education or artistic independence. Unesco should therefore stick to the practice which is mentioned in paragraph 114: a communication reporting a violation against a teacher, an artist, a scientist or a journalist should be considered receivable if it has not been established beyond doubt that there is no connection between the victim's profession and the violation.

### 3. The procedures to be followed in dealing with communications

Paragraph 144 of document 102 EX/19 rightly states that the experience acquired in this field by the Committee on Conventions and Recommendations militates in favour of using this body even if the existing procedures are being reinforced and extended. The general debate which took place at the 102nd session of the Board, proves how difficult it is to reach common agreement on the handling of specific complaints concerning human rights. This is a strong argument for sticking to a committee which has already established itself in the field, and whose activities have been broadly recognized. It might, however, be appropriate to amend the name of the committee, e.g. the Committee on Human Rights and Conventions and Recommendations. The Secretariat is right in stressing that it would be for the committee to work out detailed rules for its procedure, subject to approval by the Board.

As far as the sources of communications are concerned, the Secretariat seems to strike a reasonable balance by its concluding remarks in paragraph 136 and by the points mentioned in paragraph 137. It seems even very reasonable, as stated in paragraph 138, that the rule concerning prior exhaustion of domestic remedies should not be applied by Unesco. This would not only weaken the Organization's ability to act, but even stamp the new procedure with a certain judicial character.

To establish a new and independent body, outside the Executive Board, to decide on the receivability of communications does not seem to be warranted. The Secretariat has not yet met any criticism whatsoever for the way in which it has handled these affairs. Accordingly the task might be entrusted to the Secretariat even in the future. There exists, however, an argument for transferring this role to a small working group set up by the CRE-committee. Up to now the main weakness of the committee's procedure has been the inability of the committee to investigate the cases in depth and to differentiate between true and false allegations from both sides. If a working group of the committee were empowered to collect information along the lines which are suggested in paragraph 140 this might even provide the committee with some useful insight into the substantive issues involved. All in all, therefore, this alternative should be preferred.

All of the suggestions contained in paragraphs 142 to 150 seem to be well founded and should be given support, with the provision, of course, that it is clearly necessary to aim at a wide consensus, if we are to arrive at a solution which is likely to function.

As far as the co-ordination of Unesco's activities with other procedures for the examination of communications is concerned, one of the most important tasks seems to be to define clearly the field of competence of each organization. The present study of Unesco should contribute to this. A continuous exchange of information seems to be called for. One should stick to the principle that a communication is not considered receivable if the same communication is already being examined by another comparable body. On the other hand, it is difficult to see that a certain overlapping would cause great problems. Attendance by Unesco at meetings of other United Nations bodies dealing with specific complaints concerning human rights might be very valuable. Unesco should even declare itself ready to extend its co-operation to the newly established Human Rights Committee under the International Covenant on Civil and Political Rights. Especially when considering reports of the States Parties to Article 40, the Human Rights Committee may need all the general and specific information it can get from the independent agencies, in order to check and evaluate the content of the reports. Within its fields of competence Unesco might provide the committee with useful information concerning the exercise of human rights in the world of today.

103 EX/WP/HR/INF.1 Add.  
PARIS, 1 August 1977  
Original: Russian

UNITED NATIONS EDUCATIONAL,  
SCIENTIFIC AND CULTURAL ORGANIZATION

EXECUTIVE BOARD

Hundred-and-third Session

WORKING PARTY OF THE EXECUTIVE BOARD.  
SET UP IN ACCORDANCE WITH 102 EX/DECISION 5.6.2 (7)

(Paris, 1-5 August 1977)

Item 5.5.2 of the Provisional Agenda: Study of the procedures which should be followed in the examination of cases and questions which might be submitted to Unesco concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective (102 EX/19 and 103 EX/18)

WRITTEN COMMENTS SUBMITTED BY THE MEMBERS  
OF THE EXECUTIVE BOARD

ADDENDUM

ANNEX VI

Communication from Mr. Leonid Kutakov (USSR)

COMMENTS ON DOCUMENT 102 EX/19

"Study of the procedures which should be followed in the examination of cases and questions which might be submitted to Unesco concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective".

1. An analysis of document 102 EX/19 leads to the conclusion that its authors have approached these questions in a rather one-sided way. The document is based on the principle that the so-called communications concerning human rights are to be set against all other sources of information on violations of human rights, not to mention the fact that it fails to make the fundamental distinction between gross and massive violations of human rights and isolated cases of violation of the rights of individuals.
2. The whole study is based in the main on an analysis of the different procedures followed for the examination of appeals (communications) sent to international organizations by private individuals or non-governmental organizations (paragraphs 6-9). The authors of document 102 EX/19 try to prove that these procedures are the most important, if not the only, way of increasing the effectiveness of the work of the Organization in the sphere of human rights.
3. It must be emphasized at this point that any increase in the effectiveness of Unesco's activity in this field must be based on the universally recognized principles of international law laid down in the United Nations' Charter and in the Constitution of Unesco. These principles include the sovereign equality of States and non-interference in their internal affairs.
4. According to these principles, the examination by the United Nations of questions involving the violation of human rights should not lead to interference in the internal affairs of States, to encroachments upon its sovereignty or to their being forced into any decision against their will. On the other hand, statements about national sovereignty and the principle of non-interference must not be used to screen violations of human rights if such violations are of an international nature. This is why a rule has evolved in practice which gives the only possible interpretation of the relation of the above-mentioned principles to the general obligation to observe human rights: violations of human rights which are of international significance are gross and massive violations of human rights resulting from crimes and violations of rights of an international nature committed by States. In such cases references to national sovereignty and non-interference are not acceptable, as the situations concerned are beyond the scope of the internal affairs of individual States. These are situations associated with threats to peace, acts of aggression and the occupation of the territory of other States, policies of colonialism, fascism, genocide, apartheid and racism.

5. But isolated, episodic violations of human rights can occur for a wide variety of reasons: a wrong decision by an organ of the State, an ill-judged assessment of a particular situation by an official, misuse of authority, etc. Such questions come under the internal jurisdiction of States and cannot be examined by international bodies without the agreement of the States concerned. It is possible that one State or another may, within the framework of an international agreement, allow this kind of question to be examined by international bodies. In fact, a similar kind of procedure is provided for in the Optional Protocol to the Covenant on Civil and Political Rights. But an overwhelming majority of States have very rightly not expressed the wish to be party to that Optional Protocol and to adopt such procedures. Efforts to create such procedures outside such a contractual framework and without the consent of the States party to the agreement in question or of the Member States of the international organization concerned (Unesco, for example) would be contrary to the basic principles of international law.

6. In document 102 EX/19 the procedures in question are not considered from this point of view. Instead, attention is focused on purely formal aspects, such as the stages in the consideration of communications and the conditions governing their admissibility, regardless of whether they concern gross and massive violations of human rights or isolated cases, and of whether they are based on international agreements or on resolutions of international organizations, sometimes, in fact, in contradiction to their constitutions (see Section III).

Special attention is devoted in Section III to the criteria (conditions) governing the admissibility of communications. The indiscriminate approach to the various types of procedure which we have already noted is once again in evidence here. A clearly superficial and at times haphazard juxtaposition of a number of different criteria is presented in the document as constituting a "common stock" applicable to all communications (paragraph 68). This gives the impression that a body of specific and internationally accepted legal norms governing the admissibility of communications is already in existence. This formulation of the question is incorrect, if only on account of the diversity of the procedures involved. In any case, the emergence of internationally accepted customs assumes the existence of a general agreement, whether stated or not, on a body of rules which has evolved in practice. There is no such agreement on this subject.

7. The analysis of the criteria (conditions) governing the admissibility of communications does not even refer to such important criteria adopted by the United Nations as that of the need for communications to assist in the exposure of gross and massive violations of human rights. This is mentioned in the United Nations Economic and Social Council's resolutions 1235 (XLII) and 1503 (XLVIII), which are referred to in document 102 EX/19 on more than one occasion. The Sub-Commission on Prevention of Discrimination and Protection of Minorities deals with this point in more detail in paragraph 1 (b) of its first resolution (XXIV), which establishes the criteria for the admissibility of communications received under resolution 1503 (XLVIII). This subparagraph states that:

"Communications shall be admissible only if, ... there are reasonable grounds to believe that they may reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid in any country, including colonial and other dependent countries and peoples".

The specification of these situations leaves no doubt that what is referred to is precisely those gross violations of human rights which arise when criminal actions of an international nature are committed by a State.

8. The fact that no reference is made to this criterion proves that the authors of the document are not interested in the nature of violations of human rights which should be exposed in the course of the procedure for the consideration of communications, but rather in formal aspects, i.e. the procedure itself.
9. The classification of communications which is given in document 102 EX/19 is too complicated. For example, it is not clear why "communications constituting a non-contentious appeal" should include "communications dealing with the principles involved in the promotion of universal respect for, and observance of, human rights", the substance of which does not, as a rule, constitute a complaint (paragraph 26).
10. "Intercession on humanitarian grounds by Heads of State and Secretaries-General and Directors-General of international organizations" falls into the same category. This, however (as is recognized in paragraphs 28 to 30 of the document) covers not complaints but "intercession", i.e. appeals. Furthermore - and this is a most important point - this kind of intercession does not constitute a communication in the legal sense. The mere fact of interceding gives rise to no legal consequences, and intercession cannot be regarded as a source of information concerning violation of human rights.
11. It is also untrue to assert that resolution 728 F (XXVIII) of the Economic and Social Council still serves today as a basis for the examination of communications concerning human rights (paragraph 25). The resolution in question totally excludes any examination of communications, as is clear from the quotation from that resolution given in the document (concerning the fact that the Commission on Human Rights has no power to take any action in regard to any complaints concerning human rights).
12. The detailed analysis of certain regional procedures in the sphere of human rights (paragraphs 19-22; 59-64) cannot be accepted as being sufficiently well founded or appropriate. In the first place, the European and American Conventions on human rights considered in those paragraphs cover a relatively small number of States. In the second place, as experience has shown, the first is largely ineffectual (out of 8,500 individual complaints submitted between 1955 and 1976 to the European Commission of Human Rights set up under the European Convention, only 153 were declared receivable and very few were found to be justified); and the second has not yet come into force. In the third place, the participants in both Conventions are all States with the same type of social system.
13. For these reasons, it can scarcely be of any value to analyse the procedures laid down in these conventions when considering the possibility of making Unesco's action more effective in the sphere of human rights. The only point worthy of note in this connection is the fact that the procedure for examining complaints in both cases is based on the agreement, or in other words the assent, of the States concerned. This is the very point, however, which has been omitted by the authors of the document.



14. The conclusions and recommendations contained in document 102 EX/19 call forth the strongest objection.
15. It is quite arbitrary to contend that, in order to make Unesco's action in the sphere of human rights more effective, a model should be sought in the procedure laid down in ECOSOC resolutions 1235 (XLII) and 1503 (XLVIII), which are alleged to complement ECOSOC resolution 728 F (XXVIII).
16. Apart from the fact that this way of putting the question reduces the problem to the mere development of a procedure for examining communications, the undesirability of which has already been discussed, it is also necessary to point out certain errors in this view of the relationship between the resolutions in question. Firstly, resolution 1503 in practice replaced resolution 1235 as far as the procedure for examining communications was concerned, as can be seen from paragraph 2 of resolution 1503. Secondly, resolution 1503 does not complement but contradicts, resolution 728 F, in that resolution 728 F does not admit of any action concerning complaints whereas resolution 1503 provides for a definite procedure for examining them. The important point is that, as stated in both resolutions 1235 and 1503 are subject to review when the Covenants on human rights come into effect (see paragraph 4 of resolution 1235 and paragraph 10 of resolution 1503. It is illogical, to say the least, to propose emulating obsolete models. A number of States have serious objections to these resolutions; moreover, a special decision to review them has been taken by the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities.
17. An indication of the direction this review will take can already be seen. In resolution 1988 (LX) of 11 May 1976, the Economic and Social Council released parties to the Covenant on Economic, Social and Cultural Rights from the obligation of submitting reports on the implementation of social and economic rights to the Committee on Periodic Reports. It would seem that, following this, it may be assumed that parties to the Covenant on Civil and Political Rights will similarly be released from the procedure laid down in resolution 1503, since the retention of two different procedures of a universal nature in connection with human rights would be unjustified. The procedures provided for in the Covenants on human rights, based on the agreement of the States concerned, are more flexible and, indeed, provide grounds for hopes of further improvement of the procedures in this field.
18. Whatever may be the outcome of the review of procedures provided for by resolution 1503, it should be awaited before any decision is taken by Unesco. In any event, Unesco should follow the example of the United Nations and take account of the trend towards establishing such procedures on the basis of agreement. Document 102 EX/19 itself quotes extensively from decisions of the General Conference of Unesco urging that account be taken of the entry into force of the Covenants on human rights (paragraph 129). This naturally means directing attention to the procedures provided for in the Covenants rather than to the devising of yet other procedures or the further development of the procedures existing within Unesco at the present time, which, on the admission of the authors of document 102 EX/19, have already gone beyond the decisions taken by the responsible organs of Unesco (paragraphs 109-124; 125 (ii)). As the Covenants were produced by the United Nations, their entry into force should be reviewed, in the first place, by the United Nations itself, as is clearly provided for in the relevant resolutions of the Economic and Social Council. In so far, however, as Unesco is a Specialized Agency of the United Nations and has a specific legal relationship with that organization, an evaluation of the experience of the United Nations in connection with the entry into force

of the Covenants on human rights is also necessary for Unesco. This also is the clear inference to be drawn from the General Conference's resolution 12.1 concerning co-ordination and co-operation by Unesco with the competent United Nations organs in the areas in question. Another argument for such co-ordination is the desirability of eliminating and preventing duplication in the work of the international organizations.

19. Another unconvincing proposal put forward in document 102 EX/19 is that, in view of the specific nature of Unesco's functions, it should, when considering procedures in the sphere of human rights, model itself not so much on the United Nations as on other Specialized Agencies - and in particular on the International Labour Organisation (paragraph 125 (i)).

20. In the first place, every Specialized Agency has its own specific role, so that, in itself, a reference to the specific activity of Unesco in the field of human rights does not necessarily mean that it coincides with the specific activity of other Specialized Agencies in that field.

21. In the second place, references to the International Labour Organisation in this context are unjustified, because the International Labour Organisation experience in the examination of complaints (regardless of whether it be good or bad) results from the particular features of representation in the International Labour Organisation, as laid down in that organization's Constitution: the Member States of the International Labour Organisation, as we know, are represented by delegates of governments, trade-unions and employers' organizations. There is nothing similar to this system of representation in Unesco.

22. Many of the recommendations contained in document 102 EX/19 are of a particular nature and concern details of the procedure which, in the opinion of the authors of the document, should be established within Unesco, for examining complaints (paragraphs 127-150). There is no need to analyse those recommendations here, since they arise out of proposals of a more general character which have already been examined above. It should be borne in mind, moreover, that resolution 12.1 adopted by the General Conference of Unesco does not call for the existing procedures to be changed but merely for the question to be studied. The time is not yet ripe for the procedures established within Unesco to be reviewed or improved. This question should be taken up after the appropriate work has been carried out in the United Nations, taking into account the provisions of the Covenants on human rights.

23. In considering the procedures relating to human rights it is essential to be guided by the following basic principles:

- (1) Attention should be concentrated on questions concerning massive and gross violations of basic human rights and freedoms arising from the perpetration by States of international crimes and the violation of human rights, especially: the starting of wars of aggression, the occupation of foreign territory and the implementation of policies of colonialism, fascism, genocide, apartheid and racism.

These matters, as a rule, should be discussed in open sessions of the Executive Board, and concrete action can be taken in respect of them.

- (2) Neither the name of the Committee on Conventions and Recommendations in Education nor its powers and functions should be changed. Any other decision would be contrary to the Constitution of Unesco and to the decisions of the General Conference, and would lead to interference in the internal affairs of States.
- (3) No new bodies should be set up which would decide as to the admissibility and examination of communications instead of the Director-General of Unesco.
- (4) The confidential nature of discussions on all other communications should be maintained.
- (5) Only those communications which concern human rights relating to Unesco's sphere of competence - i.e., the fields of education, science and culture - should be examined.

Member of the Executive Board of Unesco

(L. KUTAKOV)



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PARIS, 1 August 1977  
Original: French

UNITED NATIONS EDUCATIONAL,  
SCIENTIFIC AND CULTURAL ORGANIZATION

EXECUTIVE BOARD

Hundred-and-third Session

WORKING PARTY OF THE EXECUTIVE BOARD  
SET UP IN ACCORDANCE WITH 102 EX/DECISION 5.6.2(7)

Item 5.5.2 of the Provisional Agenda: Study of the procedures which should be followed in the examination of cases and questions which might be submitted to Unesco concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective (102 EX/19 and 103 EX/18)

WRITTEN COMMENTS SUBMITTED BY MEMBERS OF THE EXECUTIVE BOARD

ADDENDUM 2

AUG 1977

ANNEX

Communication from Mr. K. Suganuma (Japan)

Sir,

I have the honour to acknowledge receipt of your letter SCX/EXB/2513, dated 16 June 1977, with which you sent me a copy of the analytical summary of the discussions that took place at the 102nd session of the Board on item 5.6.2 of its Agenda.

This document 103 EX/18 provides an admirable epitome, which not only brings out the points of convergence and divergence, but at the same time succeeds in highlighting the main questions to be settled concerning the problem of human rights within the Organization's spheres of competence.

I should like to take this opportunity to remind you that my deputy, Mr. Chiyuki Hiraoka, clearly expounded my Government's ideas on this problem in the speech which he made during the 102nd session of the Board, the English version of which is enclosed for information.

In short, my Government's views might be summed up in the following two statements: firstly, in view of the Organization's responsibility for promoting international collaboration, the limits of its competence, and its specificity, this problem should be approached with extreme caution. Secondly, the procedure to be adopted should be one which will not jeopardize the spirit of constructive international co-operation based on the collaboration of Member States, and will do nothing to sour the atmosphere of mutual understanding by unnecessarily stirring up political antagonism.

On the question of the receivability of communications, Mr. Chiyuki Hiraoka, in his above-mentioned speech, stressed the idea contained in paragraph 139 of document 102 EX/19, namely, that this task should be entrusted to a small working group set up by the Committee on Conventions and Recommendations.

Since the problem of human rights has inherent political implications, it would be desirable that this small working group should carry out its duties in the same spirit of reconciliation and negotiation which marked the work of the Drafting and Negotiation Group set up during the nineteenth session of the General Conference in Nairobi.

Accept, Sir, the assurances of my highest consideration.

(signed) Kiyoshi Suganuma

Member of the Executive Board

Mr. V. Stepanek  
Secretary of the General Conference and  
of the Executive Board

UNITED NATIONS EDUCATIONAL,  
SCIENTIFIC AND CULTURAL ORGANIZATION

EXECUTIVE BOARD

Hundred-and-fourth Session

Working Party on the procedures which should be followed in the examination of cases and questions which might be submitted to Unesco concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective (102 EX/19, 103 EX/18 and 103 EX/19).

NOTE

1. In 103 EX/Decision 5.5.2, the Executive Board requested "the Working Party to meet in January 1978, in order to prepare a final report in accordance with the terms of reference laid down in 102 EX/Decision 5.6.2, and taking into consideration the comments of the Committee on Conventions and Recommendations in Education contained in document 103 EX/17, Part II, for submission to it at its 104th session".
2. At its meetings on 28 September and 1 October 1977, the Working Party examined a draft decision, proposed by the Chairman of the Executive Board, and several draft amendments.
3. The present working document sets out side by side:
  - (i) the draft proposed by the Chairman of the Executive Board;
  - (ii) the amendments submitted by members of the Working Party;<sup>(1)</sup>
  - (iii) where appropriate, the corresponding passages from the instruments applicable in the United Nations system.

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(1) Including the amendments of Mr. Kutakov and Mr. Paszkowski, which are given in a separate column as they constitute a complete parallel text.

I

## DRAFT - CHAIRMAN

The Executive Board,

1. Recalling resolution 19 C/6.113 concerning Unesco's responsibilities in the field of human rights, in the context of International Standards,
2. Recalling also resolution 19 C/12.1: "Unesco's contribution to peace and its tasks with respect to the promotion of human rights and the elimination of colonialism and racialism, long-term programme of measures whereby Unesco can contribute to the strengthening of peace"; and in particular paragraph 10 of the resolution which invites the Executive Board and the Director-General:
  - "(a) to examine with particular attention the general situation with regard to respect for human rights throughout the world, in Unesco's fields of competence;
  - (b) to study the procedures which should be followed in the examination of cases and questions which might be submitted to Unesco concerning the exercise of human rights in the spheres to which its competence extends, in order to make its action more effective;
  - (c) to continue to establish, with a view to the implementation of subparagraphs (a) and (b), close co-operation and co-ordination with the relevant United Nations organs so as to take advantage of their work and the lessons that can be learnt from them in this field,"
3. Having considered the report of a working group of the Board set up by virtue of decision 102 EX/5.6.2 to carry out an in-depth study of document 102 EX/19, the analytical summary of discussions that took place at the 102nd session of the Board, and additional written comments provided by members of the Board;
4. Considering that the competence and role of Unesco in the field of human rights derive primarily from Article I.1 of the Constitution of Unesco which states: "The purpose of the Organization is to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations", and derive also from the various conventions and recommendations adopted by Unesco in this respect,

II

DRAFT -  
MR. KUTAKOV & MR. PASZKOWSKI

The Executive Board,

1. Recalling resolution 19 C/6.113 concerning Unesco's competence in the field of human rights, in accordance with international principles and standards,
2. Considering resolution 19 C/12.1: "Unesco's contribution to peace and its tasks with respect to the promotion of human rights and the elimination of colonialism and racialism, long-term programme of measures whereby Unesco can contribute to the strengthening of peace"; and in particular paragraph 10 of the resolution, which invited the Executive Board and the Director-General:
  - "(a) to examine with particular attention the general situation with regard to respect for human rights throughout the world, in Unesco's fields of competence;
  - (b) to study the procedures which should be followed in the examination of cases and questions which might be submitted to Unesco concerning the exercise of human rights in the spheres to which its competence extends, in order to make its action more effective;
  - (c) to continue to establish, with a view to the implementation of subparagraphs (a) and (b), close co-operation and co-ordination with the relevant United Nations organs so as to take advantage of their work and the lessons that can be learnt from them in this field,"
3. Having considered the report of a working group of the Board set up by virtue of decision 102 EX/5.6.2 to carry out an in-depth study of document 102 EX/19, the analytical summary of discussions that took place at the 102nd session of the Board, and the written comments provided by members of the Board;
4. Considering that the competence and role of Unesco in the field of human rights derive primarily from Article I.1 of the Constitution of Unesco which states: "The purpose of the Organization is to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations", and also from the various conventions and recommendations adopted by Unesco in this

III.  
OTHER PROPOSALS

IV.  
INTERNATIONAL REFERENCES



I. DRAFT - CHAIRMAN

and from the Charter of the United Nations and the Universal Declaration of Human Rights,

5. Mindful of Article I.3 of the Constitution of Unesco which states: "With a view to preserving the independence, integrity and fruitful diversity of the cultures and educational systems of the States members of the Organization, the Organization is prohibited from intervening in matters which are essentially within their domestic jurisdiction",

II. DRAFT -  
MR. KUTAKOV & MR. PASZKOWSKI

respect, and from the Charter of the United Nations, the Universal Declaration of Human Rights, and the covenants on human rights,

5. Mindful of Article I.3 of the Constitution of Unesco which states: "With a view to preserving the independence, integrity and fruitful diversity of the cultures and educational systems of the States members of this Organization, the Organization is prohibited from intervening in matters which are essentially within their domestic jurisdiction",

Paragraphs agreed upon at the Group's meeting on  
1 October 1977

6. Considering that in matters concerning human rights, within its fields of competence, Unesco, basing its efforts on moral considerations and its specific competence, should act in a spirit of international co-operation, conciliation and mutual understanding and recalling that Unesco should not play the role of an international judicial body,

7. Recognizing the important role of the Director-General in:

(a) seeking continually to strengthen the action of Unesco in the promotion of human rights, and

(b) initiating consultations, in conditions of mutual respect, confidence, and confidentiality, to help reach solutions to particular problems concerning human rights,

8. Invites the Director-General to pursue this role;

New 9 (a). Considering that in the exercise of its competence in the field of human rights, Unesco is called upon to examine:

(a) cases concerning human rights which are individual and specific;

(b) questions, which result either from a policy contrary to human rights applied de jure or de facto by a State or which are an accumulation of individual cases forming a consistent pattern and revealing gross violations of human rights;

9(b). Considering that questions of massive, systematic or flagrant violations of human rights that were brought to the attention of Unesco through the appropriate channels and fell within Unesco's fields of competence, would need to be considered by the Executive Board or the General Conference in a manner corresponding to the matter at issue,

9(b). Considers that questions of massive, systematic or flagrant violations of fundamental human rights and freedoms perpetrated as a result of the waging of aggressive wars, the occupation of foreign territories and the implementation of a policy of colonialism, genocide, apartheid, racialism, or national and social oppression, and falling within Unesco's fields of competence, should be considered by the Executive Board and the General Conference in public meetings;

10. Recalling decisions 98 EX/9.4, 9.5, 9.6 concerning the terms of reference of the Committee on Conventions and Recommendations in Education,

10. Considering the terms of reference of the Committee on Conventions and Recommendations in Education,

III. OTHER PROPOSALS

IV. INTERNATIONAL REFERENCES

ECOSOC Res. 1235 (XLII) para. 3:

Decides that the Commission on Human Rights may, in appropriate cases, and after careful consideration of the information thus made available to it, in conformity with the provisions of paragraph 1 above, make a thorough study of situations which reveal a consistent pattern of violations of human rights, as exemplified by the policy of apartheid as practised in the Republic of South Africa and in the Territory of South West Africa under the direct responsibility of the United Nations and now illegally occupied by the Government of the Republic of South Africa, and racial discrimination as practised notably in Southern Rhodesia, and report, with recommendations thereon, to the Economic and Social Council;

I. DRAFT - CHAIRMAN

11. Decides that communications concerning cases of human rights falling within Unesco's fields of competence, shall be dealt with by the Committee on Conventions and Recommendations in Education in accordance with the following criteria and procedures:

- (a) with a view to determining their admissibility, communications received by Unesco shall be submitted by the Director-General to a working group consisting of the Chairman of the Committee on Conventions and Recommendations of the Executive Board and two other members appointed by the Committee, for the purposes of preliminary consideration;
- (b) the working group shall transmit to the Committee those communications which meet the following conditions:
  - (i) the communication must not be anonymous or concern unnamed individuals;
  - (ii) the communication must relate to human rights which, proclaimed in the Universal Declaration of Human Rights, fall within Unesco's competence in the fields of education, science, culture and information;
  - (iii) the communication must be compatible with the fundamental principles of the Organization, the Charter of the United Nations, the Universal Declaration of Human Rights and the other instruments which are applicable in the field of human rights;

II. DRAFT -  
MR. KUTAKOV & MR. PASZKOWSKI

11. Decides that communications concerning cases, situations and questions relating to human rights and falling within Unesco's fields of competence, will be dealt with initially by the Committee on Conventions and Recommendations in Education which will consider as cases individual violations of human rights, as situations sets of specific cases, and as questions the official policy and practice of States leading to the massive and flagrant violations of fundamental human rights and freedoms referred to in paragraph 9 of this resolution.

12. Further decides that the Committee on Conventions and Recommendations in Education shall consider the communications received in accordance with the following criteria and procedure:

- (a) with a view to determining their admissibility, communications received by Unesco shall be submitted by the Director-General to a working group consisting of the Chairman of the Committee on Conventions and Recommendations of the Executive Board and five other members appointed by the Committee with due regard to equitable geographical distribution for the purpose of preliminary consideration and the taking of a decision, as far as possible by means of a consensus;
- (b) the working group shall transmit to the Committee those communications which meet the following conditions:
  - (i) communications must not be anonymous;
  - (ii) communications must come from individuals or groups of individuals who affirm that they are victims of violations of human rights;
  - (iii) communications must relate to violations of human rights which, being proclaimed in the Universal Declaration of Human Rights and the covenants on human rights fall within Unesco's competence;
  - (iv) communications must be compatible with the Charter of the United Nations principles of the Organization, the Universal Declaration of Human Rights, the covenants on human rights, and other international documents in the fields of human rights;

## III. OTHER PROPOSALS.

In the text of the Chairman of the Executive Board, instead of "communications concerning cases of human rights" read "communications concerning specific cases of human rights" (GARBO)

In the text of the Chairman of the Executive Board, in subparagraph (a), instead of "with a view to determining their admissibility" read "with a view to determining whether such communications should be transmitted to the Committee..." (GARBO)

Add a new sentence as follows: "Any member of the working group who is a national of the country concerned by a communication shall not participate in the examination of that communication" (VAN USSEL)

## IV. INTERNATIONAL REFERENCES

ECOSOC Res. 1503 (XLVIII) para. 1:

1. Authorizes the Sub-Commission on Prevention of Discrimination and Protection of Minorities to appoint a working group consisting of not more than five of its members, with due regard to geographical distribution, to meet once a year in private meetings for a period not exceeding ten days immediately before the sessions of the Sub-Commission to consider all communications, including replies of Governments thereon, received by the Secretary-General under Council resolution 728 F (XXVIII) of 30 July 1959 with a view to bringing to the attention of the Sub-Commission those communications, together with replies of Governments, if any, which appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms within the terms of reference of the Sub-Commission;

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES  
Res. 1 (XXIV)

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Considering that the Economic and Social Council by its resolution 1503 (XLVIII), decided that the Sub-Commission should devise appropriate procedures for dealing with the question of admissibility of communications received by the Secretary-General under Council resolution 728 F (XXVIII) of 30 July 1959 and in accordance with Council resolution 1235 (XLII) of 6 June 1967,

Adopts the following provisional procedures for dealing with the question of admissibility of communications referred to above:

- (1) Standards and criteria
  - (a) The object of the communication must not be inconsistent with the relevant principles of the Charter, of the Universal Declaration of Human Rights and of the other applicable instruments in the field of human rights.

I. DRAFT - CHAIRMAN

- (iv) the communication must not be manifestly ill-founded and must contain evidence of a prima facie case;
- (v) the communication must not be based exclusively on information disseminated through the mass media;
- (vi) the communication must not be offensive, or an abuse of the right to submit communications;
- (vii) the communication must be submitted within a reasonable time-limit following the facts which constitute its subject-matter or within a reasonable time-limit after the facts have become known;

II. DRAFT -  
MR. KUTAKOV & MR. PASZKOWSKI

- (v) communications must not be ill-founded and must contain prima facie trustworthy evidence;
- (vi) communications must not contain slanderous information
- (vii) communications must not be based on information disseminated through the mass media;
- (viii) communications must not be offensive, or an abuse of the right to submit communications;
- (ix) communications must be submitted within a reasonable time-limit following the facts which constitute their subject-matter or within a reasonable time-limit after the facts have become known;
- (x) communications must not have any obvious political motive nor be contrary to the Constitution of Unesco;
- (xi) communications shall be unacceptable if national channels for settlement have not all been exhausted;
- (xii) communications already settled by States in accordance with their internal procedure and obligations arising out of international agreements, shall not be considered.

### III. OTHER PROPOSALS

Replace by the following: "communications must not contain language which is essentially abusive and in particular must not contain insulting references to the State against which the complaint is directed. Such communications may be considered if they meet the other criteria for admissibility after deletion of the abusive language"  
(WARVARIV)

### IV. INTERNATIONAL REFERENCES

- (b) Communications shall be admissible only if, after consideration thereof, together with the replies if any of the governments concerned, there are reasonable grounds to believe that they may reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid in any country, including colonial and other dependent countries and peoples.
- (2) Source of communications
- (a) Admissible communications may originate from a person or group of persons who, it can be reasonably presumed, are victims of the violations referred to in subparagraph (1) (b) above, any persons or group of persons who have direct and reliable knowledge of those violations, or non-governmental organizations acting in good faith in accordance with recognized principles of human rights, not resorting to politically motivated stands contrary to the provision of the Charter of the United Nations and having direct and reliable knowledge of such violations.
- (b) Anonymous communications shall be inadmissible; subject to the requirements of subparagraph 2 (b) of resolution 728 F (XXVIII) of the Economic and Social Council, the author of a communication, whether an individual, a group of individuals or an organization, must be clearly identified.
- (c) Communications shall not be inadmissible solely because the knowledge of the individual authors is second-hand, provided that they are accompanied by clear evidence.
- (3) Contents of communications and nature of allegations
- (a) The communication must contain a description of the facts and must indicate the purpose of the petition and the rights that have been violated.
- (b) Communications shall be inadmissible if their language is essentially abusive and in particular if they contain insulting references to the State against which the complaint is directed. Such communications may be considered if they meet the other criteria for admissibility after deletion of the abusive language.
- (c) A communication shall be inadmissible if it has manifestly political motivations and its subject is contrary to the provisions of the Charter of the United Nations.

I. DRAFT - CHAIRMAN

II. DRAFT -  
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### III. OTHER PROPOSALS

### IV. INTERNATIONAL REFERENCES

- (d) A communication shall be inadmissible if it appears that it is based exclusively on reports disseminated by mass media.
- (4) Existence of other remedies
  - (a) Communications shall be inadmissible if their admission would prejudice the functions of the Specialized Agencies of the United Nations system.
  - (b) Communications shall be inadmissible if domestic remedies have not been exhausted, unless it appears that such remedies would be ineffective or unreasonably prolonged. Any failure to exhaust remedies should be satisfactorily established.
  - (c) Communications relating to cases which have been settled by the State concerned in accordance with the principles set forth in the Universal Declaration of Human Rights and other applicable documents in the field of human rights will not be considered.
- (5) Timeliness

A communication shall be inadmissible if it is not submitted to the United Nations within reasonable time after the exhaustion of the domestic remedies as provided above.



I. DRAFT - CHAIRMAN

- (c) in determining whether these conditions are met, the working group may avail itself of all relevant information at the disposal of the Director-General;
- (d) before admissible communications are considered by the Committee on Conventions and Recommendations, the Director-General shall:
  - (i) ascertain that the author of the communication has no objection to his communication, after having been communicated to the government concerned, being brought to the notice of the Committee and to his name being divulged;
  - (ii) upon receiving an affirmative answer, transmit the communication received to the government concerned, informing it that the communication will be brought to the notice of the Committee together with any reply the government may wish to make;
- (e) the Committee on Conventions and Recommendations shall examine in private sessions the communications transmitted to it or those parts thereof which meet the conditions laid down above, and the replies received in accordance with subparagraph (d). Representatives of the governments concerned may take part in the meetings in order to give oral information or to furnish additional written information or to answer questions from members of the Committee;
- (f) the Committee may keep on its agenda any communications submitted to it, while seeking any additional information it may consider necessary for the disposition of the case;
- (g) the Committee shall submit reports to the Executive Board on the carrying out of its mandate under the present decision. Such reports shall be confidential documents unless otherwise decided by the Committee or by the Board and shall contain all appropriate information on any question or other matter arising from its examination of the communications which the Committee considers necessary to bring to the notice of the Executive Board. These reports may also contain any recommendations which the Committee may wish to make regarding the disposition of the question or matter by the Executive Board;

II. DRAFT -  
MR. KUTAKOV & MR. PASZKOWSKI

- (c) in determining whether these conditions are met, the working group may avail itself of appropriate information at the disposal of the Director-General;
- 13. Before admissible communications are considered by the Committee on Conventions and Recommendations, the Director-General shall:
  - (i) ascertain in accordance with established practice that the author of the communication has no objection to his communication, after having been communicated confidentially to the government concerned, being brought to the notice of the Committee and to his name being divulged;
  - (ii) upon receiving an affirmative answer, transmit the communication received to the government concerned, informing it that the communication will be brought to the notice of the Committee together with any reply the government may wish to make.
- 14. The Committee on Conventions and Recommendations shall examine in private meetings the communications transmitted to it concerning cases and situations. Representatives of the governments concerned may take part in the meetings in order to give oral information or to answer questions from members of the Committee.
  - (a) the Committee may keep a communication submitted to it on its agenda while seeking additional information it may consider necessary for the disposition of the case;
  - (b) the Committee shall submit reports to the Executive Board on the carrying out of its mandate. Such reports shall be confidential documents and shall contain general information on its examination of the communications concerning cases and situations which the Committee considers necessary to bring to the notice of the Executive Board. These reports may also contain general recommendations which the Committee may wish to make;

## III. OTHER PROPOSALS

## IV. INTERNATIONAL REFERENCES

ECOSOC Res. 728 F (XXVIII) para. 2 (b):

To compile before each session of the Commission a confidential list containing a brief indication of the substance of other communications concerning human rights, however addressed, and to furnish this list to members of the Commission, in private meeting, without divulging the identity of the authors of communications except in cases where the authors state that they have already divulged or intend to divulge their names or they have no objection to their names being divulged;

ECOSOC Res. 1503 (XLVIII) para 5:

Requests the Sub-Commission on Prevention of Discrimination and Protection of Minorities to consider in private meetings, in accordance with paragraph 1 above, the communications brought before it in accordance with the decision of a majority of the members of the working group and any replies of Governments relating thereto and other relevant information, with a view to determining whether to refer to the Commission on Human Rights particular situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights requiring consideration by the Commission;

Add in fine: "taking into account the need to proceed without undue delay" to the Chairman's text (WARVARIV)

In second sentence of Chairman's text delete "or by the Board" (VAN USSEL)

ECOSOC Res. 1503 (XLVIII) para. 8:

Decides that all actions envisaged in the implementation of the present resolution by the Sub-Commission on Prevention of Discrimination and Protection of Minorities or the Commission on Human Rights shall remain confidential until such time as the Commission may decide to make recommendations to the Economic and Social Council;

I. DRAFT - CHAIRMAN

- (h) the Executive Board shall consider any confidential report of the Committee in private meetings. The Board may however decide to make public any part of a report of the Committee and to adopt, in public meetings, any decision in connection therewith which it may deem appropriate;

12. Decides to consider at its 105th session the report to be made by the Executive Board and the Director-General to the General Conference at its twentieth session on the implementation of Part II of 19 C/Resolution 12.1.

II. DRAFT -  
MR. KUTAKOV & MR. PASZKOWSKI

- (c) the Executive Board shall consider the confidential reports of the Committee in private meetings and take note of them.

15. If communications considered by the Committee testify to massive, systematic and flagrant violations of basic human rights and freedoms as a result of the perpetration by States of international crimes and offences - the waging of aggressive wars, the occupation of foreign territories or the implementation of a policy of colonialism, genocide, apartheid and racialism or national and social oppression - the Committee shall transmit them to the Executive Board for consideration at public meetings as questions:

- (a) the Executive Board, when discussing questions, shall take all steps possible under Unesco's Constitution to eliminate such massive and flagrant violations of human rights. As a rule, it shall also submit the questions to the General Conference for consideration;
- (b) the Director-General shall take all possible steps within his power to secure elimination of massive and flagrant violations of human rights and freedoms. The Director-General shall report on all such steps taken to each session of the Executive Board and of the General Conference.

16. Decides to consider at its 105th session the report to be made by the Executive Board and the Director-General to the General Conference at its twentieth session on the implementation of Part II of 19 C/Resolution 12.1.

III. OTHER PROPOSALS

For "The Board may however decide..." in the Chairman's text read "Whenever the Board considers it advisable, it shall make public the report of the Committee and adopt in a public session any decision in connection therewith which it may deem appropriate" (WARVARIV)

IV. INTERNATIONAL REFERENCES



UNITED NATIONS EDUCATIONAL,  
SCIENTIFIC AND CULTURAL ORGANIZATION

EXECUTIVE BOARD

Hundred-and-fourth Session

WORKING PARTY ON THE PROCEDURES WHICH SHOULD BE FOLLOWED IN THE EXAMINATION OF CASES AND QUESTIONS WHICH MIGHT BE SUBMITTED TO UNESCO CONCERNING THE EXERCISE OF HUMAN RIGHTS IN THE SPHERES OF ITS COMPETENCE, IN ORDER TO MAKE ITS ACTION MORE EFFECTIVE

DRAFT RESOLUTION

submitted by Mr. Thomas Buergenthal,  
deputy for Mr. Henry E. Kerry (U.S.A.)

The Executive Board,

1. Guided by resolution 19 C/6.113 and 19 C/12.1 concerning Unesco's responsibilities in the field of human rights and in particular, by paragraph 10 of resolution 19 C/12.1, which invites the Executive Board and the Director-General:
  - "(a) To examine with particular attention the general situation with regard to respect for human rights throughout the world in Unesco's fields of competence;
  - (b) To study the procedures which should be followed in the examination of cases and questions which might be submitted to Unesco concerning the exercise of human rights in the spheres to which its competence extends, in order to make its action more effective;
  - (c) To continue to establish, with a view to the implementation of subparagraphs (a) and (b), close co-operation and co-ordination with the relevant United Nations organs so as to take advantage of their work and the lessons that can be learned from them in this field",
2. Having considered the Report of the Working Group of the Board set up by virtue of decision 102 EX/B/5.6.2 to carry out an in-depth study of document 102 EX/19, the analytical summary of discussions that took place at the 102nd session of the Board, and additional written comments provided by members of the Board,
3. Recognizing that the competence and role of Unesco in the field of human rights derives primarily from Article I.1 of the Constitution of Unesco, which states:

"The purpose of the Organization is to contribute to peace and security by promoting collaboration among nations through education, science and culture in order to further universal respect for justice, for the rule of law, and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race,

sex, language or religion, by the Charter of the United Nations", and recognizing further that this competence and role are supplemented by the various conventions and recommendations adopted by Unesco, by the Charter of the United Nations and the Universal Declaration of Human Rights,

4. Mindful of Article I.3 of the Constitution of Unesco which states:

"With a view to preserving the independence, integrity and fruitful diversity of the cultures and educational systems of the Member States of the Organization, the Organization is prohibited from intervening in matters which are essentially within their domestic jurisdiction";

(Paragraphs 5, 6, 7 and 8 following were agreed to at the Group Meeting on 1 October 1977):

5. Considering that in matters concerning human rights, within its fields of competence, Unesco, basing its efforts on moral considerations and its specific competence, should act in a spirit of international co-operation, conciliation and mutual understanding, and recalling that Unesco should not play the role of an international judicial body,
6. Recognizing the important role of the Director-General in:
- (a) Seeking continually to strengthen the action of Unesco in the promotion of human rights, and
  - (b) Initiating consultations, in conditions of mutual respect, confidence, and confidentiality to help reach solutions to particular problems concerning human rights,
7. Invites the Director-General to pursue this role;
8. Considering that in the exercise of its competence in the field of human rights, Unesco is called upon to examine:
- (a) Cases concerning human rights which are individual and specific,
  - (b) Questions, which result either from a policy contrary to human rights applied de jure or de facto by a State or which are an accumulation of individual cases forming a consistent pattern and revealing gross violations of human rights,
9. Recalling decisions 98 EX/9.4, 9.5, 9.6, concerning the terms of reference of the Committee on Conventions and Recommendations in Education,
10. Decides that communications concerning cases and questions relating to human rights falling within Unesco's fields of competence shall be dealt with in accordance with the following criteria and procedures:
- (a) The receipt of all communications shall be acknowledged by the Director-General who shall inform the authors thereof concerning the conditions governing the admissibility of communications and the possibility open to the authors to submit additional information bearing on the admissibility of the communications;
  - (b) With a view to determining their admissibility, all communications shall be submitted by the Director-General to a Working Group consisting of the Chairman of the Committee on Conventions and Recommendations and two other members appointed by the Committee;

- (c) The Working Group shall transmit to the Committee those communications which meet the following conditions:
- (i) The communication must not be anonymous;
  - (ii) The communication must relate to human rights falling within Unesco's competence in the fields of education, science, culture and information;
  - (iii) The communication must be compatible with the fundamental principles of the Organization, the Charter of the United Nations, and the Universal Declaration of Human Rights;
  - (iv) The communication must originate from a person or a group of persons who, it can be reasonably presumed, are victims of an alleged violation of any of the human rights referred to in subparagraph (c) (ii) above, or any person, group of persons, or non-governmental organization having reliable knowledge of those violations;
  - (v) The communication must not be manifestly ill-founded and must contain evidence of a prima facie nature;
  - (vi) The communication must not be based exclusively on information disseminated through the mass media;
  - (vii) The communication must not be offensive or abusive, but no communication shall be deemed inadmissible if it meets all other criteria of admissibility after the deletion of the offensive or abusive parts thereof;
  - (viii) The communication must be submitted within a reasonable time-limit following the facts which constitute its subject-matter or within a reasonable time-limit after the facts have become known;
  - (ix) The communication must indicate whether an attempt has been made to exhaust available domestic remedies with regard to the facts which constitute the subject-matter of the communication, and the results of such an attempt, if any; alternatively, the communication must indicate why no attempt was made to exhaust domestic remedies;
- (d) In determining whether these conditions are met, the Working Group may avail itself of all relevant information at the disposal of the Director-General;
- (e) Before admissible communications are considered by the Committee on Conventions and Recommendations, the Director-General shall:
- (i) Ascertain that the author of the communication has no objection to his communication, after having been communicated to the government concerned, being brought to the notice of the Committee and to his name being divulged;
  - (ii) Upon receiving an affirmative answer, transmit the communication received to the government concerned, informing it that the communication will be brought to the notice of the Committee together with any reply the government may wish to make;

- (f) The Committee on Conventions and Recommendations shall examine in private session the communications or any relevant parts thereof which meet the conditions laid down above, as well as the replies, if any, received from the governments concerned. Representatives of the governments concerned may attend the meetings of the Committee in order to furnish additional information relating to the communication under consideration or to answer questions from members of the Committee. The Committee may keep on its agenda any communication submitted to it while seeking any additional information it may consider necessary for the proper disposition of the communication. If the Committee decides that special circumstances warrant inviting the author of the communication or his representative to appear before the Committee, it may issue such an invitation;
- (g) The Committee shall dismiss any communication with regard to which it has determined that the author has failed to substantiate a meritorious claim warranting further action relating to the communication. The author of the communication shall be notified accordingly;
- (h) All other communications shall be acted upon by the Committee with a view to bringing about friendly solutions designed to advance the protection of the human rights falling within Unesco's fields of competence;
- (i) In dealing with communications with regard to which the Committee has failed, after a reasonable period of time, to bring about a friendly solution, the Committee shall prepare a short report containing a summary of the facts giving rise to the communication, the replies of the government concerned, if any, and any recommendations the Committee wishes to make. The Report shall be submitted to the Executive Board, which shall consider it in private meeting. Representatives of any government concerned, not represented on the Executive Board, may attend the relevant meetings. The Committee's Report and the Executive Board's decision thereon, if any, shall remain confidential for a period of six months following submission of the Report to the Executive Board, unless the government concerned requests that such confidentiality not be maintained. Should the Executive Board conclude that exceptional circumstances warrant such action, it may delay the publication of the Committee's Report and its decision thereon for another six months' period;
- (j) The Committee on Conventions and Recommendations shall submit to the Executive Board an annual report on its activities under the present decision. This report may also contain any general comments and recommendations that the Committee may wish to make relating to the functions assigned to it under this decision.





Hundred-and-third Session

103 EX/17

PARIS, 29 September 1977

REPORT OF THE COMMITTEE ON CONVENTIONS AND  
RECOMMENDATIONS IN EDUCATION

Item 5.5.1 of the Agenda

Communications addressed to Unesco on specific cases involving  
human rights in Unesco's field of competence

PART TWO

1. In pursuance of decision 101 EX/11.1 adopted by the Executive Board at its 101st session, the Committee on Conventions and Recommendations in Education met under the Chairmanship of Mr. Gunnar Garbo (Norway) in private session at the Headquarters of the Organization from 5 to 9 September 1977 to examine the communications on specific cases involving human rights in education, science, culture and information transmitted to it in accordance with decision 77 EX/8.3.
2. At its meeting held on 27 September 1977 for the adoption of its report, the Committee decided that it would present its report to the Executive Board in two parts. The first part, relating to its examination of the communications submitted to it was to be found in a separate confidential document (103 EX/17 FRIV.) which the Committee recommended should be considered by the Executive Board in a private meeting. The second part, relating to matters of procedure and the methods of work of the Committee was incorporated in the present document which the Committee suggested should be considered by the Executive Board in a public meeting in connection with the Board's consideration of item 5.5.2 of its agenda: "Study of the procedures which should be followed in the examination of cases and questions which might be submitted to Unesco concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective.

"Receivability" of communications

3. The Committee addressed itself to this question from the point of view of the Secretariat, on the one hand, and from the point of view of the Committee itself.
4. In reply to questions, it was indicated that when a communication addressed to Unesco was received, the role of the Secretariat was limited to determining (a) whether the communication pertained to a specific case, (b) whether the specific case, if any, involved human rights, and (c) where human rights were considered to be involved, whether such rights were in the fields of education, science, culture or communication. If all these three conditions were fulfilled

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the communication concerned was considered by the Secretariat to come within the framework of decision 77 EX/8.3 and hence it was the duty of the Director-General to bring it to the notice of the Committee in conformity with the procedure indicated by that decision.

5. Once a communication was placed before the Committee, however, it was for the Committee to determine, on the basis of an examination of the substance of the communication itself, the written or oral replies, if any, from the government concerned and any other available information, whether the communication called for any comments, recommendations or conclusion on its part.
6. It was stated, for example, that the Secretariat's decision on the transmission of a particular communication to the Committee was in no way influenced by the exhaustion or non-exhaustion of available appropriate domestic remedies. The exhaustion or non-exhaustion of such remedies was an element which the Committee could, however, legitimately take into consideration in deciding how to deal with the communication. It was recalled that, after having been informed at one of its previous sessions that a specific case mentioned in a communication transmitted to the Committee by the Secretariat in pursuance of decision 77 EX/8.3 was the subject of legal proceedings pending in the courts of the Member State concerned, the Committee had decided that in that particular case it would not be appropriate to examine the communication in question at that stage.
7. The reference to the "Member State concerned" did not imply that there was any prima facie indication that a Member State was responsible for or directly involved in the alleged violation but it simply meant that the alleged violation was stated to have taken place within the jurisdiction of that State.

#### Identity of authors of communications

8. A member of the Committee asked whether the Secretariat made verifications to ensure that communications containing human rights complaints did not come from non-existent organizations. The Secretariat replied that it made no verifications of this nature as such. The Committee was however informed that in accordance with the applicable procedure the Secretariat wrote to ask for the consent of the author concerned before a communication was brought to the notice of the Committee. It was observed that since the author had to write back to give this consent, this procedural requirement could be considered as a built-in means, albeit a limited one, for ensuring that communications did not originate from ghost organizations.

#### Submission of additional information

9. Many members observed that more often than not the Committee was faced with the problem of having to examine conflicting information. They stated that in such cases the Committee should be supplied with additional information to enable it to establish, as far as possible, the facts and form an opinion. Other members of the Committee remarked that some of the communications put before the Committee did not contain sufficient information.
10. It was stated that under the procedure currently applicable the questions of whether the information contained in a particular communication was sufficiently complete or whether a given author was reliable were questions in respect of which only the Committee was competent to decide. It was added, however, that in conformity with indications given by the Committee at its

meeting held in 1976 during the 99th session of the Executive Board, the Secretariat, in its correspondence with authors of communications, always informed these authors that the Committee had stressed the importance of its being supplied with "as detailed information as possible on the allegations contained in their communications".

11. Also it was recalled that at its same meeting, the Committee decided to keep certain communications on the agenda for its subsequent meeting in the hope of getting from the authors or governments concerned more information on some of the specific cases mentioned in those communications.
12. Some members of the Committee suggested that where a communication did not contain sufficient information regarding specific cases mentioned in it, the Secretariat might in certain cases be asked to provide the Committee with information which the Director-General might be able to put before it. The Secretariat might also be authorized to request, on its own initiative, the authors of the communication to submit complementary information before the specific case involved was brought to the notice of the Committee. One member of the Committee suggested that in suitable cases the Regional Offices of the Organization might be requested to make on-the-spot verifications with the view to establishing the accuracy or otherwise of complaints made in communications. Another member of the Committee stated that in his opinion it might be necessary in appropriate cases for the Committee to invite authors of communications to appear before it to substantiate their allegations. It was indicated in this connection that invitations of that nature could be considered as constituting a substantial departure from the procedure followed for the implementation of decision 77 EX/8.3 which was currently applicable. Such suggestions might, however, be considered by the Executive Board within the framework of the broader examination of the question now in process.

#### Possible transmission of communications to the United Nations

13. The Committee was informed that it had not been the practice for the Secretariat, within the framework of decision 77 EX/8.3, to forward to organs of the United Nations communications addressed to Unesco.
14. A member of the Committee stated in this connection that in his view communications which, although addressed to Unesco, appeared to come within the general competence of the United Nations in the field of human rights, should be forwarded by Unesco to the United Nations Human Rights Commission.

#### Intercessions by the Director-General

15. A member of the Committee asked whether between the time communications were received by the Secretariat and the time they were brought to the notice of the Committee, the Director-General, in urgent cases, made any intercession in favour of victims of alleged violations of human rights. It was stated in reply that the Director-General, in cases he deemed appropriate from the humanitarian point of view, had made such intercessions without prejudice to the possible transmission of the communications concerned to the Committee in accordance with the applicable procedure. Detailed information on the intercessions made could not, however, be given as a rule having regard to the fact that the effectiveness of such actions depended on the discretion which surrounded them.

The Committee's terms of reference

16. The representative of one Member State who was heard by the Committee informed the Committee that the position of his government was that human rights were universal and indivisible and consequently all complaints relating to alleged violations of human rights should be handled exclusively by the United Nations Human Rights Commission, and by the Human Rights Committee created under the terms of the International Covenant on Civil and Political Rights.
17. The representative of another Member State, and a member of the Committee suggested on the other hand that in the interest of the effectiveness of Unesco's action in the field of human rights protection, the Committee's mandate might in future be limited to the examination of cases where massive and flagrant violations of human rights in Unesco's fields of competence were alleged. Other members of the Committee indicated that they would not be in favour of such a limitation on the mandate of the Committee.

# Chapter 5: Decision of the Executive Board

At the adoption of 104 EX/Decision 3.3, submitted by the Chairman of the Executive Board, several members of the Board spoke to analyse the new procedure of UNESCO (Section 1: Discussions in the Executive Board on the adoption of the procedure).

Set forth in 104 EX/Decision 3.3, the procedure was implemented first by the Division for Human Rights and Peace, then by the Office of International Standards and Legal Affairs of UNESCO (Section 2: 104 EX/Decision 3.3).

# Section 1: Discussions in the Executive Board on the Adoption of the Procedure



Executive Board Consejo Ejecutivo

EX

Conseil exécutif Исполнительный совет

執行局 المجلس التنفيذي

104th session/104e session/104a. reunión/104-я сессия/ 第 104 届会议 / الدورة الرابعة بعد المائة

Paris, 1978

24 April-9 June 24 de abril-9 de junio ٢٤ أبريل / نيسان - ٩ يونيو / حزيران

104 EX/SR.1-35

24 avril-9 juin 24 апреля-9 июня 4 月 24 日 — 6 月 9 日

Paris, Octobre 1978

Summary Records

Comptes rendus analytiques

Actas resumidas

Краткие отчеты

المحاضر المختصرة

摘要记录

PARTICIPANTS

President of the General Conference

The Hon. Dr. Taaitta TOWEETT, M. P.

Members

Deputies

Mr. Gonzalo ABAD GRIJALVA  
(Ecuador)

Chief Reginald S. G. AGIOBU-KEMMER  
(Nigeria)

Mr. Emilio AGUILAR CRUZ  
(Philippines)

Mr. Paul Yao AKOTO (absent)  
(Ivory Coast)

Mr. Arthur BAGUNYWA  
(Uganda)

Mr. Werner BAHNER  
(German Democratic Republic)

Mr. Walter Arthur BURKE  
(Barbados)

Mr. Horacio J. BUSTAMANTE  
(Panama)

Mr. Paulo E. de Berrêdo CARNEIRO  
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(Brazil)

Mr. Paul DENIS  
(Belgium)

Mr. Luis ECHEVERRIA  
(Mexico)

Mr. Chams Eldine EL-WAKIL  
(Egypt)

Mr. Gunnar GARBO  
(Norway)

Mr. Dismas GASHEGU  
(Rwanda)

Mr. Sarvepalli GOPAL  
(India)

Mr. Advertus A. HOFF  
(Liberia)

Mr. Charles HUMMEL  
(Switzerland)

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(Gabon)

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Mr. Mohamed M. MUSA  
Mr. Joseph O. OLARINMOYE

Mr. Amante R. MANZANO  
Mr. Edmundo LIBID

Mr. Michel Ahoua KANGHA

Mr. Siegfried KAEMPF  
Mr. Joachim MASER

Mr. Rolph W. JORDAN

Miss Ruth M. DECEREGA

Mr. Gerson MACHADO PIRES  
Mr. Isnard de FREITAS

Mr. Marcel CLAEYS  
Mr. Georges-Henri DUMONT  
Miss Cristina FUNES-NOPPEN\*

Miss Marfa de los Angeles LOPEZ ORTEGA

Mr. Wagdi MAHMOUD

Mr. Tarald BRAUTASET

Mr. Maheshwar DAYAL

Mr. E. Delano COOPER

Miss Irène HOFER

Mr. Joseph KUMBA-MUNGUENGUI  
Mr. Emmanuel OBAME  
Mr. Augustin Ze MEZUI

\* For Mr. Michel Van Ussel (Belgium) until acceptance of his resignation by the Executive Board at the first meeting.

Members

Mr. Keharsingh JAGATSINGH  
(Mauritius)

Mr. Henry E. KERRY (absent)  
(United States of America)

Mr. Ali Fahmi KHUSHAIM  
(Libyan Arab Jamahiriya)

Mr. Joseph KI-ZERBO (absent)  
(Upper Volta)

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(Union of Soviet Socialist Republics)

Mrs. Eugenia KRASSOWSKA  
(Poland)

Mr. Julio LE RIVEREND  
(Cuba)

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(Chairman)\*  
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(Mauritania)

Mr. Jens PETERSEN  
(Federal Republic of Germany)

Mr. Hugh PHILP  
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(Australia)

Deputies

Mr. Baboo Ranjitsingh GOORDYAL

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Mr. Russell C. HEATER  
Mr. Constantine WARVARIV  
Mr. Louis G. SLEEPER  
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Mr. Abderahman Ould HAMZA

Mr. Wilhelm FABRICIUS  
Mr. Hermann GRÜNDEL

Mr. Gardner DAVIES  
Mrs. Barbara BARRY DE LONGCHAMP

\* The chair was taken by Mr. Paulo E. de Berrêdo Carneiro (Vice-Chairman) at the sixteenth meeting, by Mr. Leonid N. Kutakov (Vice-Chairman) at the twentieth and twenty-first meetings, by Mr. Hugh Philp (Vice-Chairman) at the fourteenth and nineteenth meetings, and by Mr. Trailokya Nath Upraity (Vice-Chairman) at the fourth, nineteenth and twenty-eighth meetings.



Members

Mrs. Maria de Lourdes PINTASILGO  
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Mr. Arthur T. PORTER  
(Sierra Leone)

Mr. Majid RAHNEMA  
(Iran)

Mr. Khalil SALIM  
(Jordan)

Mr. Kiyoshi SUGANUMA  
(Japan)

Mr. Sjarif THAJEB  
(Indonesia)

Mr. Trailokya Nath UPRAITY  
(Vice-Chairman)  
(Nepal)

Mr. Arturo USLAR-PIETRI  
(Venezuela)

Mr. François VALERY  
(France)

Mr. Alberto WAGNER DE REYNA  
(Peru)

Mrs. YANG Yun-yu  
(China)

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Mr. Alberto MELO  
Mrs. Teresa SANTA CLARA  
Mr. Jorge CAMPINOS

Mr. Magaji HENRY

Mr. Hamid RAHNEMA  
Mr. Fereydoun ARDALAN  
Mr. Ghassem KHATIB SHAHIDI  
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Mr. François TOUSSAINT  
Mr. Yves BRUNSVICK  
Mrs. Jacqueline CHATEL  
Mr. Francis BRIQUET  
Mr. Francis LAFON

Representatives and observers

United Nations:

Mr. Santiago Quijano-Caballero  
Mr. Luc Van Bellinghen  
Mr. Peter Casson  
Mr. Théodore S. Zoupanos  
Mr. Salah Cherif  
Mrs. Manuela d'Arcy  
Mrs. Aminata Djermakoye  
Mrs. Henriette Taviani (Office of the United Nations High Commissioner for Refugees)

International Labour Organisation:

Mr. Gerald Larrue

World Bank:

Mrs. Maria Gradvohl

Representatives and observers

Ibero-American Bureau of Education:

Mr. Rémolo Botto

Arab Educational, Cultural and Scientific Organization:

Mr. Ahmed F. Sorour

Mr. Mongi Ben Amor

Latin American Social Science Faculty:

Mr. Luis Ignacio Ramallo-Massanet

Also took the floor

Mr. Juan José Fernández Valdes (Permanent Delegate of Chile to Unesco)

Mr. Emile Najjar (Ambassador Extraordinary and Plenipotentiary, Special Envoy of the Government of Israel)

Mr. Ibrahim Souss (Chief of the Observation Mission of the Palestine Liberation Organization to Unesco)

Secretariat

Mr. Amadou-Mahtar M'Bow (Director-General), Mr. Federico Mayor (Deputy Director-General), Mr. Sioma Tanguiane (Assistant Director-General for Education), Mr. Jacques Rigaud (Assistant Director-General for General Administration and Programme Support), Mr. Abdul-Razzak Kaddoura (Assistant Director-General for Natural Sciences and their Application to Development), Mrs. Martha Hildebrandt (Assistant Director-General for Social Sciences and their Applications), Mr. Dragoljub Najman (Assistant Director-General for Co-operation for Development and External Relations), Mr. Jean Knapp (Director, Bureau of Studies and Programming), Mr. Georges Perrenoud (Deputy Director of the Office of International Standards and Legal Affairs), other members of the Secretariat, Mr. Vladimir Stepanek (Secretary of the Executive Board)

SIXTH MEETING

Wednesday, 26 April 1978, at 3.15 p.m.  
Chairman: Mr. Martin

Item 3 - METHODS OF WORK OF THE ORGANIZATION

Item 3.3 - STUDY OF THE PROCEDURES WHICH SHOULD BE FOLLOWED IN THE EXAMINATION OF CASES AND QUESTIONS WHICH MIGHT BE SUBMITTED TO UNESCO CONCERNING THE EXERCISE OF HUMAN RIGHTS IN THE SPHERES OF ITS COMPETENCE, IN ORDER TO MAKE ITS ACTION MORE EFFECTIVE

Report of the Working Party set up in pursuance of 102 EX/Decision 5.6.2 (104 EX/3)

Draft decision contained in paragraph 4 of document EX/3

10.1 The CHAIRMAN introduced the report of the Working Party, which had met under his chairmanship to undertake what was probably one of the most difficult tasks ever entrusted to a subsidiary body set up by the Board.

10.2 Despite many difficulties, a spirit of mutual understanding and co-operation which - even by Unesco's standards - was quite remarkable had prevailed, and - together with the very considerable assistance provided by the Secretariat - had enabled the Working Party to approve by consensus the draft decision contained in paragraph 4 of its report.

10.3 He did not claim to be a specialist in the matter, but since the drafting of that decision he had been told that the recommendations contained therein provided a framework for the consideration of cases and questions concerning the exercise of human rights which was at least as good as any other procedures adopted in the United Nations system and which - in certain respects - constituted an improvement.

10.4 Notwithstanding that encouraging appreciation, he stressed that the recommendations had only been agreed upon after a great deal of effort. The document before the Board was not a perfect one. He sincerely hoped, however, that the spirit in which it had been prepared would enable the Board to adopt the draft decision by consensus, without further discussion.

10.5 If that proved possible, members who so desired might subsequently take the floor with comments or statements concerning the item.

11. The draft decision contained in paragraph 4 of document 104 EX/3 was adopted.

12.1 The CHAIRMAN, speaking as Chairman of the Working Party, said that its members wished him to refer to two issues raised during its discussions which were not reflected in its report.

12.2 The first of those issues, which had given rise to considerable debate, concerned participation by a member of the Committee on Conventions and Recommendations in the discussion of cases and questions involving complaints against that member's own government. The Working Party had been unable to come to any specific conclusion in that connection.

12.3 The second issue was directly related to the recommendation set out in paragraph 14(d) of the decision, and concerned the procedure for deciding on the admissibility of communications. Some members of the Working Party believed that the Committee on Conventions and Recommendations should, as a whole, assume that task; others believed that it might be entrusted to a smaller working group. The question remained open; the Working Party had informally agreed that it should be brought to the attention of the Executive Board, with the suggestion that it might be left to the Chairman of the Committee and his colleagues to decide, in the light of experience and in the interests of efficiency, on the most appropriate course to be adopted.

13.1 Mr. TORRES said that the draft set of procedures represented a major step forward in providing Unesco with the increased authority in the field of human rights which the Director-General had asked for at Nairobi.

13.2 The actions of the Executive Board would henceforward ensure that Unesco remained in the vanguard of the United Nations system with regard to the protection of human rights, a position to which the Organization was entitled by its tradition, its Constitution and its historic moral commitment, and which was in keeping with its role as the conscience of the United Nations system.

13.3 The Working Party which had prepared the draft had been carefully chosen to represent all geographic areas and the full range of differing political and philosophical points of view which were found in Unesco. He wished to pay tribute to the wise and skilful leadership of its Chairman, whose patience and resourcefulness had been major factors in the production of the text before the Board; he also commended the tireless and dedicated efforts of the Secretariat in helping the Working Party to reach consensus.

13.4 The task had not been an easy one, and the deliberations leading to the production of the draft had been long and intense. But with goodwill, understanding and a spirit of co-operation, the Working Party had accomplished its mission, and had produced a set of procedures which would constitute a significant advance for Unesco in its ability to ensure universal respect for human rights.

13.5 Needless to say, the proper application of those procedures would provide free access of individuals to Unesco. The very fact that any person would be able to write freely to the Secretariat when his or her human rights had been violated constituted a milestone that underscored the significance of the document, which would undoubtedly become a historical precedent for all mankind.

14.1 M. VALÉRY félicite le Président de l'habileté avec laquelle il a su conduire l'étude d'une question particulièrement délicate. Il se réjouit que les procédures proposées dans le projet de décision du Conseil exécutif ait pu être adoptées par consensus. C'est pour répondre à l'appel du Président à l'esprit de coopération des membres du Conseil que le gouvernement français a bien voulu autoriser M. Valéry à participer à ce consensus. S'il y avait eu débat, la France aurait certainement proposé des amendements au texte proposé dans le document 104 EX/3, et M. Valéry a pour instruction d'indiquer, dans une déclaration, comment les autorités de son pays interprètent certaines dispositions de la décision qui vient d'être adoptée.

14.2 En ce qui concerne, tout d'abord, la disposition relative à l'épuisement des voies de recours internes (paragraphe 14(a) (ix)), le gouvernement français considère pour sa part que la plainte "n'est recevable que si les recours internes ont été épuisés, à moins qu'il ne soit manifeste que ces recours seront inefficaces ou que la procédure se prolongera indûment. Il conviendra d'expliquer de façon satisfaisante pourquoi les recours n'ont pas été épuisés". Telle est la teneur de l'amendement que M. Valéry aurait présenté sur ce point et si celui-ci avait été accepté, il aurait fallu aussi modifier l'alinéa (a) (viii). Ce dernier aurait dû figurer après l'actuel alinéa (a) (ix) et se lire ainsi : "Elle doit être présentée dans un délai raisonnable après l'épuisement des recours internes, tel que prévu ci-dessus".

14.3 La deuxième observation de M. Valéry a trait aux paragraphes 17 et 18 de la décision. Les autorités françaises regrettent l'énumération au paragraphe 18 d'exemples de violations massives, systématiques et flagrantes des droits de l'homme et des libertés fondamentales, car une énumération est toujours limitative. D'autre part, les deux paragraphes semblent préjuger la décision du Conseil exécutif ou de la Conférence générale au sujet de la procédure à appliquer. C'est pourquoi M. Valéry aurait proposé, sur instruction de son gouvernement, de fusionner les paragraphes 17 et 18 et de rédiger le nouveau paragraphe comme suit :

"Décide aussi que les communications qui lui sont transmises par le Comité et qui attestent l'existence d'une question et toute autre question relative à des violations massives ou flagrantes des droits de l'homme et des libertés fondamentales relevant des domaines de compétence de l'Unesco seront examinées selon la procédure que le Conseil exécutif et la Conférence générale arrêteront dans chaque cas pour ce qui les concerne."

14.4 M. Valéry voudrait par ailleurs souligner que, de l'avis des autorités françaises, l'action de l'Unesco dans le domaine considéré doit être spécifique et s'appuyer sur l'autorité morale reconnue à l'Organisation. L'Unesco n'est pas un tribunal chargé de juger des individus ou des Etats : son rôle est de chercher à améliorer le sort des victimes de violations des droits de l'homme dans ses domaines de compétence. C'est eu égard à cet objectif humanitaire que le gouvernement français a surmonté ses réticences à l'égard de la multiplication des instances compétentes en matière de droits de l'homme pour accepter la notion d'une intervention de l'Unesco dans ce domaine.

15. The CHAIRMAN paid tribute to the conciliatory attitude adopted by the Government of France which - despite the reservations to which Mr. Valéry had referred - had been able to join in the consensus.

16.1 M. CARNEIRO remercie le Président de la grande part qu'il a prise à l'adoption par consensus de la décision.

16.2 Il exprime le souhait qu'à l'avenir le Conseil accorde une grande attention à la question de l'examen de la recevabilité des communications ; c'est en effet à ce stade que peuvent s'exercer les pressions politiques. Il convient, selon lui, que ce soit le Comité sur les conventions et les recommandations et non un organe subsidiaire de ce Comité, qui décide de la recevabilité d'une communication.

16.3 M. Carneiro rappelle que l'Unesco peut seulement intervenir en tant qu'autorité morale. C'est en se montrant loyale vis-à-vis de tous les Etats membres qu'elle sera en mesure d'améliorer le sort de toutes les victimes de violations de droits de l'homme dans le monde.

17.1 Mr. GARBO said that as Chairman of the Committee on Conventions and Recommendations in Education, he had followed with the closest interest the deliberations of the Working Party and had attended a number of its meetings.

17.2 His Committee had not formally discussed the matter, but he believed that its members were, in general, well satisfied with the product of the Working Party's discussions, which offered helpful and practical solutions to a difficult problem by confirming and codifying practices which had evolved in the Executive Board during the past three or four years. The recommendations constituted a comprehensive definition of the terms of reference of the Committee, and should facilitate the execution of its task.

17.3 The Working Party had dealt at length with conditions and procedures related to the admissibility of communications. In the past, the Secretariat of Unesco had been responsible for processing those communications, and for transmitting to the Committee all those which appeared to be specifically related to the exercise of human rights in the spheres of Unesco's competence. The new procedure would make the Committee responsible for deciding whether communications were admissible, and that would add considerably to its burden of work, so that its timetable would have to be adjusted accordingly.

17.4 In view of the consensus of the Working Party, which had just been confirmed by the Executive Board, he presumed that as a matter of course, Member States would place no obstacles in the way of any of their citizens who wished to set before Unesco complaints concerning the exercise of their human rights. But the Organization was not a tribunal; its procedures for handling human rights questions was singular - and, he believed, unique in the United Nations system - in that it involved the consideration by a collegiate body of specific complaints against governments which might be represented by members of that body. The successful execution of the Committee's task depended on mutual understanding, a spirit of conciliation and a willingness to engage in dialogue in situations which might be difficult to resolve without conflict or tension.

17.5 He considered that the recommendations which had just been adopted would help the Committee to continue in that task, and would enable individuals or groups of individuals encountering difficulties with regard to the exercise of human rights in the fields of education, science and culture to obtain from Unesco a proper understanding of those difficulties.

18. The CHAIRMAN expressed the Working Party's appreciation of the assistance which it had obtained in its deliberations from the Chairman of the Committee on Conventions and Recommendations in Education.

19. M. LIPATTI félicite le Président et le Groupe de travail pour le résultat auquel ont abouti leurs efforts. Le texte de la décision qui vient d'être adopté lui paraît clair et équilibré et il souligne à cet égard les avantages de la procédure du consensus qui lui paraît conforme au prin-

cipe démocratique et qui, débouchant sur un résultat acceptable par tous, donne plus de poids aux décisions prises. Il espère pour sa part que le Comité sur les conventions et recommandations s'efforcera, lui aussi, d'appliquer cette méthode.

20.1 Mr. GOPAL, as a member of the Working Party, commended its Chairman's balanced and unruffled conduct of its deliberations which, together with the collaboration of the Secretariat, had contributed in no small way to the production of a balanced report. The recommendations were not perfect, but he was convinced that the Board had done well in adopting them without amendment, in a spirit of conciliation and respect for individuals and societies.

20.2 Like Mr. Garbo, he believed that an essential prerequisite to the implementation of the new procedures would be the guarantee of unimpeded access by persons or groups of persons to Unesco concerning human rights matters within its fields of competence.

20.3 In connection with the condition (a) (ix), that communications must indicate "whether an attempt had been made to exhaust available domestic remedies" he suggested that in the application of the new procedures, the accent should be laid on obtaining satisfaction that such an attempt had indeed been made, rather than on the total exhaustion of those remedies. He understood moreover from the information provided by the Secretariat that the International Labour Organisation, which was also a Specialized Agency of the United Nations system, adopted such an attitude when dealing with cases involving the violation of trade union freedoms.

The meeting rose at 6.05 p.m.

SEVENTH MEETING

Thursday, 27 April 1978, at 10.20 a.m.  
Chairman: Mr. Martin

Point 3.3 - ETUDE DES PROCEDURES QU'IL CONVIENT DRAIT DE SUIVRE DANS L'EXAMEN DES CAS ET DES QUESTIONS DONT L'UNESCO POURRAIT ETRE SAISIE EN CE QUI CONCERNE L'EXERCICE DES DROITS DE L'HOMME DANS LES DOMAINES RELEVANT DE SA COMPETENCE, AFIN DE RENDRE SON ACTION PLUS EFFICACE (suite)

Rapport du Groupe de travail établi conformément à la décision 102 EX/5.6.2 (104 EX/3) (suite)

Décision adoptée par le Conseil sur le point 3.3 (paragraphe 4 du document 104 EX/3) (suite)

1.1 Mme KRASSOWSKA s'associe à tous ceux qui ont félicité le Groupe de travail d'avoir pu accomplir avec succès sa tâche difficile et aboutir à un consensus grâce, sans nul doute, à la haute compétence de son Président qui a su faire régner un climat de compréhension mutuelle. Le texte que le Groupe a établi est un compromis. Une telle démarche était inévitable dans un domaine aussi complexe et c'est, d'ailleurs, parce qu'il en a compris la nécessité que le membre polonais de ce Groupe a renoncé à certaines de ses propositions préliminaires bien qu'il les jugeât importantes.

1.2 Comme il ressort du texte, ce sont les violations massives et flagrantes des droits de l'homme, en particulier celles qui résultent de la politique d'apartheid, de colonialisme et d'agression, qui représentent le danger le plus grand pour la paix et les droits de l'homme. Dans les cas de ce genre, il est prévu que les plaintes seront examinées en séance publique. C'est là une nouvelle arme donnée à l'Unesco dans sa lutte contre les violations des droits de l'homme.

1.3 A ce propos, Mme Krassowska évoque le séminaire qui s'est tenu à Poznan en septembre 1977 sur l'Acte final de la Conférence d'Helsinki envisagé à la lumière des pactes internationaux relatifs aux droits de l'homme. Cette réunion qui a donné lieu à des discussions animées est un exemple de coopération et montre combien pourra être fructueuse l'action qui s'instaurera sous l'égide de l'Unesco dans le domaine des droits de l'homme.

2. The CHAIRMAN thanked Mrs. Krassowska for having nominated her deputy, Mr. Paszkowski, to be a member of the Working Party. Mr. Paszkowski's contribution to the Working Party's discussions had been most helpful.

3.1 Г-н КУТАКОВ отмечает, что принятая вчера Советом процедура рассмотрения сообщений, касающихся нарушений прав человека в областях компетенции ЮНЕСКО, подготовлена в соответствии с решением девятнадцатой сессии Генеральной конференции, с учетом опыта работы различных органов ООН и на основе многих документов, включая, в частности, Международный пакт о гражданских и политических правах. Он особо отмечает, что в одобренном проекте правил процедуры подчеркивается значение статьи 1.3 Устава ЮНЕСКО, где сказано, что "Организация отказывается от всякого вмешательства в дела, по существу входящие во внутреннюю компетенцию этих стран", и что в пункте 7 говорится, что ЮНЕСКО должна действовать в духе международного сотрудничества, взаимопонимания и не должна выступать в роли международного трибунала.

3.2 Г-н Кутаков считает важным, что в правилах процедуры основное внимание уделено массовым и грубым нарушениям основных прав и свобод человека, которые происходят в результате политики агрессии, вмешательства во внутренние дела государств, оккупации иностранных территорий, колониализма, геноцида, апартеида, расизма, социального и национального угнетения. Это перечисление следует отнести к числу наиболее важных положений, закрепленных в этом документе. Углубление процесса разрядки, укрепление дружественных отношений между государствами, обеспечение основных прав личности немислимы без ликвидации массовых и грубых нарушений основных прав и свобод человека.

3.3 Г-н Кутаков выражает свое удовлетворение тем, что в процедуре ставятся серьезные преграды против клеветнических и необоснованных жалоб от реакционных, эмигрантских организаций давно потерявших связь со своей страной и ведущих подрывную деятельность. Он считает, что неуклонное и последовательное соблюдение процедуры позволит отнести клеветнические, необоснованные жалобы как неприемлемые.

3.4 В то же время г-н Кутаков считает необходимым отметить наличие в правилах процедуры отрицательных и слабых моментов, недостаток конкретности и последовательности. Это результат компромисса и взаимных уступок, вследствие которых часть первоначальных формулировок, предложенных отдельными членами Рабочей группы, подверглась изменениям.

3.5 В целом же, г-н Кутаков считает, что принятая Советом процедура может стать основной деятельности Организации в защиту основных прав и свобод человека в интересах международного сотрудничества.

3.6 В заключение г-н Кутаков благодарит г-на Мартина за его умелое руководство Рабочей группой.

(3.1) Mr. KUTAKOV remarked that the procedure approved by the Board on the preceding day for the examination of communications concerning violations of human rights in the spheres of Unesco's competence had been drawn up in accordance with a decision of the nineteenth session of the General Conference, taking account of the experience of the work of the various United Nations organs, and on the basis of many documents, including the International Covenant on Civil and Political Rights. He pointed out in particular that the draft procedure approved emphasized the significance of Article I.3 of the Constitution of Unesco, which states that "the Organization is prohibited from intervening in matters which are essentially within their domestic jurisdiction" (i.e. that of Member States) and that paragraph 7 stated that Unesco... should act in a spirit of international co-operation and mutual understanding, and should not play the role of an international judicial body.

(3.2) He thought it important that in the procedure special attention was paid to massive and flagrant violations of fundamental human rights and freedoms which result from a policy of aggression, interference in the internal affairs of States, occupation of foreign territory, colonialism, genocide, apartheid, racialism, or social and national oppression. That list should be regarded as containing the most important provisions set forth in the document. It was not possible to intensify the process of détente, strengthen friendly relations between States or protect the basic rights of the individual without eliminating massive and flagrant violations of the fundamental human rights and freedoms.

(3.3) He was pleased to note that the procedure made serious provision against slanderous and groundless complaints from reactionary, emigrant organizations long out of touch with their country and engaging in subversive activities. Strict and consistent application of the procedure would, he thought, make it possible to dismiss slanderous and groundless complaints as inadmissible.

(3.4) At the same time, he thought it essential to point out that the procedure had certain defects and weaknesses, and was not sufficiently concrete and consistent. That was due to compromise and mutual concessions, as a result of which some of the original texts proposed by individual members of the Working Party had undergone changes.

(3.5) Generally speaking, though, he thought that the procedure approved by the Board could form the basis of the Organization's activity for the protection of fundamental human rights and freedoms in the interests of international co-operation.

(3.6) In conclusion, he thanked Mr. Martin for his competent chairmanship of the Working Party.

4.1 Chief AGIOBU-KEMMER, speaking as a member of the Working Party, thanked the other members of the Board for allowing themselves to be inspired by the spirit of consensus that had finally been achieved despite the Working Party's unpromising early meetings. He wished in that connection to pay tribute to the way in which Mr. Paszkowski had lightened the atmosphere by his wit and humour.

4.2 Document 104 EX/3 represented the triumph of perseverance. It proved that, by refusing to give up hope and by remaining loyal to the noble ideals of the Organization, a spirit of consensus could be reached.

4.3 Concerning the interpretation of paragraph 14 (d) of document 104 EX/3, he recalled that at the 102nd session of the Board he had spoken in support of the former procedure whereby the responsibility for determining the admissibility of communications devolved upon the Director-General. During the discussions of the Working Party he had accepted the fact that the Secretariat wished to be relieved of that responsibility. Sharing the concern expressed by Mr. Valéry, Mr. Carneiro and Mr. Gopal for the freedom of the individual, he was satisfied that the new procedures guaranteed freedom of access to Unesco. He would not support any proposal to delegate to a smaller body the responsibility assigned to the Committee on Conventions and Recommendations under the procedure in paragraph 14 (d).

5. 杨蕴玉女士愿在此声明，中国代表没有参加关于审议人权问题程序的讨论，也没有参与有关 104 EX/3 文件第四段工作组提出的决议草案的协商一致。

(5) Mrs. YANG stated that the representative of China had neither taken part in the discussion on the procedures concerning human rights nor expressed agreement with the draft decision submitted by the Working Party in paragraph 4 of document 104 EX/3.

6.1 Le DIRECTEUR GENERAL prend acte du fait que le Conseil lui demande, aux paragraphes 8 et 9 de la décision adoptée, de continuer à jouer un rôle en intercedant en faveur des victimes de violations des droits de l'homme. Il considère que ces interventions, si limitées soient-elles, peuvent permettre parfois de surmonter des difficultés et il saisit cette occasion pour remercier tous les Etats membres qui ont bien voulu donner une réponse favorable à ses demandes. De nombreux cas demeurent cependant en suspens et le Directeur général formule le vœu que l'on parvienne là aussi à des solutions heureuses.



6.2 Le Directeur général donne au Conseil l'assurance que l'application des procédures nouvelles se fera en tenant compte des arrangements qui existent déjà au sein du système des Nations Unies. Il a l'intention de demander aux responsables des autres institutions de s'efforcer d'agir de concert avec l'Unesco pour éviter les doubles emplois que semblent redouter certains membres du Conseil. Il rendra compte à celui-ci du résultat de ses consultations.

6.3 Plusieurs membres du Conseil se sont inquiétés des représailles qui pourraient être exercées contre les personnes qui saisiraient l'Unesco de cas individuels. La question vaut d'être posée et le problème est de savoir comment assurer la liberté des individus pour qu'ils puissent s'adresser à l'Unesco. S'il faut éviter tout abus dans l'exercice du droit de saisir l'Organisation, il faut aussi protéger ceux qui voudront se prévaloir de ce droit. C'est l'usage qui permettra de se faire une opinion à cet égard. Jusqu'à présent le Directeur général n'a pas eu connaissance de cas de représailles. Si on lui signalait des difficultés de ce genre, il en informerait le Conseil.

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## Section 2: 104 EX/Decision 3.3 of the Executive Board

### 3.3 Study of the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective: report of the working party of the Executive Board (104 EX/3)

The Executive Board,

1. **Mindful** that the competence and role of UNESCO in the field of human rights derive primarily from Article I.1 of the Constitution of UNESCO, which states: “The purpose of the Organization is to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations”, and from the Charter of the United Nations,
2. **Recalling** the Universal Declaration of Human Rights, the international covenants on human rights and the various conventions and recommendations adopted by UNESCO,
3. **Recalling** 19 C/Resolution 6.113 concerning UNESCO’s responsibilities in the field of human rights,
4. **Recalling** also 19 C/Resolution 12.1: “UNESCO’s contribution to peace and its tasks with respect to the promotion of human rights and the elimination of colonialism and racialism - long-term programme of measures whereby UNESCO can contribute to the strengthening of peace”; and in particular paragraph 10 of the resolution, which invites the Executive Board and the Director-General:
  - “(a) to examine with particular attention the general situation with regard to respect for human rights throughout the world in UNESCO’s fields of competence;
  - (b) to study the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres to which its competence extends, in order to make its action more effective;
  - (c) to continue to establish, with a view to the implementation of subparagraphs (a) and (b), close co-operation and co-ordination with the relevant United Nations organs so as to take advantage of their work and the lessons that can be learned from them in this field “;
5. **Having considered** the report of a working group of the Board set up by virtue of 102 EX / Decision 5.6.2 to carry out an in-depth study of document 102 EX/19, the analytical summary of discussions that took place at the 102nd session of the Board, and additional written comments provided by members of the Board,
6. **Mindful** of Article I.3 of the Constitution of UNESCO, which states: “With a view to preserving the independence, integrity and fruitful diversity of the cultures and educational systems of the States members of the Organization, the Organization is prohibited from intervening in matters which are essentially within their domestic jurisdiction”.
7. **Considering** that, in matters concerning human rights within its fields of competence, UNESCO, basing its efforts on moral considerations and its specific competence, should act in a spirit of international co-operation, conciliation and mutual understanding; and recalling that UNESCO should not play the role of an international judicial body,

8. **Recognizing** the important role of the Director-General, in:
  - (a) seeking, continually to strengthen the action of UNESCO in the promotion of human rights, both through the settlement of cases and the elimination of massive, systematic or flagrant violations of human rights and fundamental freedoms, and,
  - (b) initiating consultations, in conditions of mutual respect, confidence and confidentiality, to help reach solutions to particular problems concerning human rights,
9. **Invites** the Director-General to pursue this role;
10. **Considering** that, in the exercise of its competence in the field of human rights, UNESCO is called upon to examine:
  - (a) cases concerning violations of human rights which are individual and specific,
  - (b) questions of massive, systematic or flagrant violations of human rights which result either from a policy contrary to human rights applied de jure or de facto by a State or from an accumulation of individual cases forming a consistent pattern,
11. **Considering** the terms of reference of the Committee on Conventions and Recommendations in Education,
12. **Taking into account** the tasks already entrusted to the Committee concerning human rights matters within the Organization's fields of competence,
13. **Decides** that the Committee will henceforth be designated "the Committee on Conventions and Recommendations";
14. **Decides** that the Committee will continue to carry out its functions with respect to conventions and recommendations and will consider communications received by the Organization concerning cases and questions of violations of human rights within UNESCO's fields of competence in accordance with the following conditions and procedures:

#### **Conditions**

- (a) Communications shall be deemed admissible if they meet the following conditions:
  - (i) the communication must not be anonymous;
  - (ii) the communication must originate from a person or a group of persons who, it can be reasonably presumed, are victims of an alleged violation of any of the human rights referred to in paragraph (iii) below. It may also originate from any person, group of persons or non-governmental organization having reliable knowledge of those violations;
  - (iii) the communication must concern violations of human rights falling within UNESCO's competence in the fields of education, science, culture and information and must not be motivated exclusively by other considerations ;
  - (iv) the communication must be compatible with the principles of the Organization, the Charter of the United Nations, the Universal Declaration of Human Rights, the international covenants on human rights and other international instruments in the field of human rights;
  - (v) the communication must not be manifestly ill-founded and must appear to contain relevant evidence;
  - (vi) the communication must be neither offensive nor an abuse of the right to submit communications. However, such a communication may be considered if it meets all other criteria or admissibility, after the exclusion of the offensive or abusive parts;

- (vii) the communication must not be based exclusively on information disseminated through the mass media;
- (viii) the communication must be submitted within a reasonable time-limit following the facts which constitute its subject-matter or within a reasonable time-limit after the facts have become known;
- (ix) the communication must indicate whether an attempt has been made to exhaust available domestic remedies with regard to the facts which constitute the subject-matter of the communication and the result of such an attempt, if any;
- (x) communications relating to matters already settled by the States concerned in accordance with the human rights principles set forth in the Universal Declaration of Human Rights and the international covenants on human rights shall not be considered.

## Procedures

- (b) The Director-General shall:
  - (i) acknowledge receipt of communications and inform the authors thereof of the above-mentioned conditions governing admissibility;
  - (ii) ascertain that the author of the communication has no objection to his communication, after having been communicated to the government concerned, being brought to the notice of the Committee, and to his name being divulged;
  - (iii) upon receipt of an affirmative answer from the author of the communication, transmit the communication to the government concerned, informing it that the communication will be brought to the notice of the Committee, together with any reply the government may wish to make;
  - (iv) transmit the communication to the Committee, together with the reply, if any, of the government concerned and additional relevant information from the author, taking into account the need to proceed without undue delay;
- (c) the Committee shall examine in private session the communications transmitted to it by the Director-General;
- (d) the Committee shall decide on the admissibility of communications in accordance with the above-mentioned conditions;
- (e) representatives of the governments concerned may attend meetings of the Committee in order to provide additional information or to answer questions from members of the Committee on either admissibility or the merits of the communication;
- (f) the Committee may avail itself of the relevant information at the disposal of the Director-General;
- (g) in consideration of a communication, the Committee may, in exceptional circumstances, request the Executive Board to authorize it under Rule 29 of the Rules of Procedure to take appropriate action;
- (h) the Committee may keep a communication submitted to it on its agenda while seeking additional information it may consider necessary for the disposition of the matter;
- (i) the Director-General shall notify the author of the communication and the government concerned of the Committee's decision on the admissibility of the communication;

- (j) the Committee shall dismiss any communication which, having been found admissible, does not, upon examination of the merits, appear to warrant further action. The author of the communication and the government concerned shall be notified accordingly;
  - (k) communications which warrant further consideration shall be acted upon by the Committee with a view to helping to bring about a friendly solution designed to advance the promotion of the human rights falling within UNESCO's fields of competence;
15. **Decides further** that the Committee shall submit confidential reports to the Executive Board at each session on the carrying out of its mandate under the present decision. These reports shall contain appropriate information arising from its examination of the communications which the Committee considers it useful to bring to the notice of the Executive Board. The reports shall also contain recommendations which the Committee may wish to make either generally or regarding the disposition of a communication under consideration;
  16. **Decides** to consider confidential reports of the Committee in private session and to take further action as necessary in accordance with Rule 28 of the Rules of Procedure;
  17. **Decides also** that communications transmitted to it by the Committee which testify to the existence of a question shall be dealt with in accordance with paragraph 18 below;
  18. **Considers** that questions of massive, systematic or flagrant violations of human rights and fundamental freedoms - including, for example, those perpetrated as a result of policies of aggression, interference in the internal affairs of States, occupation of foreign territory and implementation of a policy of colonialism, genocide, apartheid, racialism, or national and social oppression - falling within UNESCO's fields of competence should be considered by the Executive Board and the General Conference in public meetings;
  19. **Decides** to consider at its 105th session the report to be made by the Executive Board and the Director-General to the General Conference, at its twentieth session, on the implementation of Part II of 19 C/Resolution 12.1.

# Chapter 6: Application of 104 EX/Decision 3.3 laying down the Procedure for examining communications on to Human Rights

The Committee on Conventions and Recommendations of the Executive Board was given the task of implementing the procedure for examination of communications submitted to UNESCO within the spheres of its competence. The Committee adopted, to this end, a form of communication and also a standard letter that is sent to the authors of communications (Section 1: Standard letter sent by the Director of the Office of International Standards and Legal Affairs to the authors of communications examined under 104 EX/Decision 3.3, and form for communications concerning human rights to be submitted to UNESCO). At its 20th and 21st sessions, the General Conference took note of the 104 Procedure and acknowledged the progress that had enabled this mechanism to be set up, thus claiming the 104 Procedure as its own (Section 2: The resolutions of the General Conference: 20 C/Resolution 10.1 (1978) and 21 C/ Resolution 10.1 (1980)).

The composition of the Executive Board from 1977-1978 while the procedure was being prepared, with, in Annex II, a list of the members of the Executive Board who chaired its Committee on Conventions and Recommendations between 1978 and 2008 (Section 3: Composition of the Executive Board during the preparation of the 104 Procedure and List of Chairpersons of the Committee on Conventions and Recommendations from 1978 to 2008).

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## Section 1: Standard letter sent by the Director of the Office of International Standards and Legal Affairs to the authors of communications examined under 104 EX/Decision 3.3 and form for communications concerning human rights to be submitted to UNESCO

### CONFIDENTIAL

...

On behalf of the Director-General, I acknowledge receipt of your letter of ... alleging violations of human rights. In so far as your communication concerns human rights falling within UNESCO's competence in the fields of education, science, culture or communication, it can be examined under the procedure approved by the Executive Board of UNESCO on 26 April 1978 in 104 EX/Decision 3.3, a copy of which is attached for your information.

It must be stressed that in no case is UNESCO an international court nor can it become one. The rights falling within UNESCO's spheres of competence are essentially the following:

- the right to education (Article 26 of the Universal Declaration of Human Rights);
- the right to share in scientific advancement (Article 27);
- the right to participate freely in cultural life (Article 27);
- the right to information, including freedom of opinion and expression (Article 19).

These rights may imply the exercise of others, the most noteworthy of which are set out below:

- the right to freedom of thought, conscience and religion (Article 18);
- the right to seek, receive and impart information and ideas through any media and regardless of frontiers (Article 19);
- the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production (Article 27);
- the right to freedom of assembly and association (Article 20) for the purposes of activities connected with education, science, culture and information.

In accordance with 104 EX/Decision 3.3, I wish to draw your attention to the conditions governing admissibility, which must be met before UNESCO can take action on your communication. They are listed in paragraph 14(a) of 104 EX/Decision 3.3. In order to enable the Director-General to complete the file on your communication, you are invited to fill in the enclosed form and to return it to UNESCO, duly signed by yourself, as soon as possible.

The allegations should be set out in a concise statement, specifying which of the human rights is/are considered to have been violated and which of UNESCO's fields of competence is/are concerned. The date of the decisions complained of and the authority which took them should be clearly indicated, including, in particular, whatever legal remedies have been used (for instance, recourse to the courts in the country concerned) and the results of such action. There should also be an indication as to whether another international procedure has been used and, if so, before what body, the date on which the matter was referred to it and any results of this procedure.

You will notice that you are asked whether you have any objection to your name being divulged and to your communication being brought to the notice of the UNESCO Executive Board Committee on Conventions and Recommendations, after it has been transmitted to the government concerned. Failing an affirmative answer from you on this point, no action on your communication can be taken by UNESCO under the aforementioned decision.

Yours faithfully,

Director  
Office of International Standards  
and Legal Affairs

**CONFIDENTIEL**

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**For UNESCO use only:**

Date of communication: .....

Number of communication: .....

Date of dispatch of this form: .....

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**To be filled in by the author of the communication:**

**I. INFORMATION CONCERNING THE AUTHOR**

Name: ..... First name(s): .....

Nationality: ..... Profession: .....

Date and place of birth: .....

Present address: .....  
.....  
.....

Address to be used for correspondence (if other than the present address) .....  
.....  
.....

Indicate, by ticking the appropriate box, in what capacity you are acting:

- victim of the violation or violations described below
- representative of the victim or victims of the violations described below
- person, group of persons or non-governmental organization with reliable knowledge of the violations described below
- In another capacity.

Specify .....



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**CONFIDENTIEL**

**II. INFORMATION CONCERNING THE VICTIM OR VICTIMS OF THE ALLEGED VIOLATIONS<sup>132</sup>**

If the author is the victim, tick here and pass directly to Part III.

Give the following particulars for each victim, adding as many pages as necessary.

Name: ..... First name(s): .....

Nationality: ..... Profession: .....

Date and place of birth: .....

Present address or whereabouts: .....

.....

**III. INFORMATION CONCERNING THE ALLEGED FACTS**

Name of the country considered by the author to be responsible for the alleged violation .....

.....

Human rights allegedly violated (refer, if possible, to the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights) .....

.....

.....

.....

Connection between the alleged violation and education, science, culture or information .....

.....

.....

.....

Facts of the claim .....

.....

.....

.....

**IV. INFORMATION CONCERNING MEANS OF REDRESS USED**

What steps have been taken to exhaust domestic remedies (recourse to the courts or other public authorities), by whom, when and with what results?

.....

.....

.....

.....

Has the matter been submitted to another international authority concerned with protection of human rights? If so, when and with what results?

.....

.....

.....

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<sup>132</sup> This information is essential in cases where the communication concerns one or more individuals and specific cases of violation of human rights.

**V. PURPOSE AND AIM OF THIS COMMUNICATION**

.....  
.....  
.....

**VI. DECLARATION BY THE AUTHOR**

Does the author agree to his communication being examined in accordance with the procedure approved by the Executive Board of UNESCO in 104 EX/Decision 3.3 and, in particular, is he willing for his name to be divulged and for the communication to be transmitted to the government concerned and brought to the notice of the UNESCO Executive Board Committee on Conventions and Recommendations?

Yes       No

Date: .....

Name, first name: .....

Signature of author: .....

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## Section 2: Resolutions of the General Conference

### Resolution 20 C/10.1 (1978)

#### UNESCO's contribution to peace and its tasks with respect to the promotion of human rights and the elimination of colonialism and racialism

##### 10.1 The General Conference,

*Referring* to the provisions of Article 1 of UNESCO's Constitution, which defines the Organization's tasks with regard to the strengthening of peace and international security and respect for human rights and fundamental freedoms for all,

*Recalling* the resolutions concerning UNESCO's contribution to the cause of peace and the struggle against colonialism and racialism, which it adopted at its eleventh (1960), thirteenth (1964), fifteenth (1968), sixteenth (1970), seventeenth (1972), eighteenth (1974) and nineteenth (1976) sessions,

*Recalling* resolution 12.1 adopted by the General Conference at its nineteenth session, entitled 'UNESCO's Contribution to Peace and its Tasks with Respect to the Promotion of Human Rights and the Elimination of Colonialism and Racialism', and *noting* with satisfaction the report of the Director-General on its implementation (20 C/14 and Add.),

*Noting* that only under a just peace can real achievements be made in the establishment of a new international economic order overcoming unevenness in economic, social and cultural development, speeding up the economic progress of developing countries and establishing their sovereignty over natural resources,

*Bearing in mind* the considerable efforts made by the Organization of African Unity, by the Group of Non-Aligned Countries and other groups to reduce international tensions and to promote human rights, peace and security,

*Taking note* of the resolutions adopted by the fifth Conference of Heads of State or Government of Non-Aligned Countries concerning the preservation and strengthening of peace,

*Stressing* that respect for the right to self-determination and independence and for territorial integrity, non-intervention in the internal affairs of any State, equality, mutually advantageous co-operation, respect for human rights and the struggle against massive, systematic or flagrant violations of these rights, are the essential components of detente and a stable peace,

*Noting* that international relations should be based on resolution 2625(XXV) adopted on 24 October 1970 by the United Nations General Assembly, which includes the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among all States,

*Stressing* that UNESCO has considerable responsibility for improving the international climate, strengthening mutual understanding and co-operation and furthering disarmament through the effective implementation of its own programmes of international co-operation in education, the natural and social sciences, culture and communication,

*Recalling* United Nations resolution 32/105 proclaiming the International Anti-Apartheid Year and the Programme contained in the Annex thereto, as well as the Declaration on Race and Racial Prejudice adopted by the twentieth General Conference on 18 November 1978, and condemning all policies based on racial theories and in particular the racist regimes in Southern Africa which violate the rights of peoples to self-determination, freedom and national independence and endanger peace and international security,

*Condemning* apartheid as a crime against humanity, and other policies and practices of racial segregation and discrimination as crimes against the conscience and dignity of mankind, and *supporting* the struggle for national

liberation, freedom and independence of the peoples of Zimbabwe and Namibia and of all peoples still under racist oppression,

**Pointing** out that 1978 marks the thirtieth anniversary of the adoption of the Universal Declaration of Human Rights by the United Nations General Assembly, and **noting** in this context the organization by UNESCO of the International Congress on the Teaching of Human Rights (Vienna, 12-16 September 1978),

**Recalling**, on this occasion, that, as stated in United Nations General Assembly resolution 32/130, 'All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights', a task in which UNESCO should participate within its fields of competence,

**Recalling further** the Proclamation adopted by the International Conference on Human Rights (Tehran, 1968) and in particular its resolution XXIII, as well as resolution 5(XxX11) adopted by the United Nations Commission on Human Rights in 1976 which among other things affirmed the right of all 'to live in conditions of . . . peace and security and fully to enjoy economic, social and cultural rights and civil and political rights',

**Noting** with anxiety that the situation as regards the effective, widespread application of the principles of the Universal Declaration of Human Rights, of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and the various instruments relating to those rights adopted by the United Nations is at present far from satisfactory, as is evident from the existence of apartheid, racialism, colonialism, foreign occupation and aggression, oppression and other forms of domination, which are flagrant violations of human rights and a growing danger to peace and international security,

**Noting** the establishment of a new procedure, pursuant to 19C/Resolution 12.1, in order to make UNESCO's action more effective, as regards the exercise of human rights in the spheres to which its competence extends,

1. **Urges** Member States:

- (a) to endeavour to reduce in every effective way international political tensions, particularly by giving active support to all efforts to strengthen peace and safeguard and promote human rights and fundamental freedoms, essential prerequisites of which are to put an end to aggression and to foreign occupation and to recognize the right of all people to self-determination in full freedom;
- (b) actively to support UNESCO's efforts to strengthen peace, promote and safeguard human rights and freedoms and combat racism, apartheid, colonialism, neo-colonialism and all forms of oppression;
- (c) to provide effective guarantees of human rights and fundamental freedoms, including the basic right to life, security and proper socioeconomic living conditions;
- (d) to ratify, without delay, in keeping with their constitutional provisions, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and to take all necessary steps for their application and for the implementation of UNESCO's Convention and Recommendation against Discrimination in Education;

2. **Invites** the Director-General:

- (a) to intensify the Organization's contribution to:
  - (i) the strengthening of international peace and security and the protection of human rights and fundamental freedoms, including the elimination of massive, systematic or flagrant violations of the latter;
  - (ii) the struggle against colonialism, neocolonialism, aggression, occupation of foreign territories, apartheid, and all forms of domination, racialism and racial discrimination, bearing in mind 104 EX/Decision 7.1.2 on UNESCO's participation in International Anti-Apartheid Year, in

particular by increasing its studies and information activities in exposing the inhumanity of the system of apartheid;

- (b) to conduct, in the fields of UNESCO's competence and particularly in the field of social sciences, such studies of social and human problems as would make a significant contribution to the promotion and safeguarding of human rights for all;
- (c) to make provision, in drawing up the Draft Programme and Budget for 1981-1983 and taking into account the Medium-Term Plan for 1977-1982, for the development of a range of interconnected measures on the above-mentioned problems, thereby enabling the Organization to improve its practical effectiveness in these urgent tasks;
- (d) to continue to provide, within the framework of UNESCO's programme and budget, assistance to the national liberation movements recognized by the Organization of African Unity and to the Palestine Liberation Organization, by more actively involving their representatives in various UNESCO activities, and in particular in the development of the projects and programmes that are of greatest interest to them, and to continue its aid to refugees, in particular from southern Africa;
- (e) to continue the work carried out by the Organization to implement the provisions of the Final Act of the Conference on Security and Co-operation in Europe (Helsinki, 1975) in the educational, scientific and cultural fields;
- (f) to continue to examine with particular attention the general situation regarding respect for human rights as it stands in UNESCO's fields of competence;
- (g) to ensure the smooth operation of the new procedure designed to increase the effectiveness of UNESCO's action in the examination of the complaints it receives concerning the exercise of human rights;
- (h) to consider, in close co-operation with the competent organs of the United Nations system; what steps could be taken to improve the co-ordination of activities in the field of human rights,
- (i) to report on the implementation of the present resolution to the General Conference at its twenty-first session.

## Resolution 21 C/10.1 (1980)

### UNESCO's contribution to peace

#### *The General Conference,*

*Recalling* the terms of Article I of the Constitution of UNESCO, which defines the Organization's responsibilities in contributing to peace and international security, respect for human rights and fundamental freedoms for all,

*Conscious* of the responsibilities of the General Assembly of the United Nations as regards the problems of peace and international security,

*Noting* the pertinent decisions of the General Assembly of the United Nations, *Recalling* the Declaration of the principles of international cultural co-operation, the Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms, the Declaration on Race and Racial Prejudice, and the Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War,

*Recalling* the resolutions concerning UNESCO's contribution to peace, the promotion of human rights and the struggle against colonialism and racialism, adopted by the General Conference at previous sessions, and in particular resolution

10.1 entitled 'UNESCO's Contribution to Peace and its Tasks with respect to the Promotion of Human Rights and the Elimination of Colonialism and Racialism', which it adopted at its twentieth session,

*Recalling* the Declaration on Race and Racial Prejudice adopted at its twentieth session, on 18 November 1978, by which it noted with the gravest concern that racism, racial discrimination, colonialism and apartheid continued to afflict the world in ever-changing forms, as a result both of the continuation of legislative provisions and the continuation of government and administrative practices contrary to the principles of human rights,

*Noting with satisfaction* the report by which the Director-General informs it of the measures he has taken in application of resolution 10.1 adopted by the General Conference at its twentieth session (21C/13), which deals with three interrelated fields of UNESCO's action, namely the strengthening of international peace and security; the protection of human rights and fundamental freedoms; and the struggle against colonialism, neo-colonialism, aggression, occupation of foreign territories, apartheid, and all forms of domination, racialism and racial discrimination,

*Noting with concern* that the hopes for an improvement in international relations which the General Conference acknowledged at its previous sessions, and particularly at its nineteenth session, have not been fully realized, and *convinced* that UNESCO cannot remain indifferent to such a situation, which damages international co-operation in education, science and culture,

*Considering* that neither a just and lasting peace nor the conditions required for the establishment of a new international economic order are possible as long as all forms of discrimination, foreign occupation in violation of the Charter of the United Nations, domination, oppression and aggression have not been eliminated,

Noting *with concern* that since its twentieth session, there have been no major advances made towards achieving the effective, widespread application of the principles of the Universal Declaration of Human Rights, of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and the various instruments relating to those rights adopted by the United Nations, and that cases still abound of the violation of these principles,

*Stressing* that UNESCO has considerable responsibility in contributing to world peace, the promotion of human rights and the elimination of colonialism and racialism through the effective implementation of its own programmes in education, the natural and social sciences, culture and communication,

*Considering* that, wherever they are practised, racism and apartheid, which are crimes against the conscience and the dignity of mankind, seriously compromise the development of education, science, culture and communication,

*Aware* of the need to denounce apartheid as a crime against humanity and to contribute to the struggle for the national liberation, freedom and independence of the peoples oppressed by it,

*Deeply disturbed* by the intransigence shown by the racist regime of South Africa, by its persistence in the crime of apartheid and its obstinate denial of any effective self-determination, any freedom or any national independence to the people of Namibia,

*Emphasizing* the importance of continuing to alert world public opinion to the iniquity of the South African policy of apartheid,

*Noting* the positive contribution made by UNESCO in its fields of competence towards solving the problems of eliminating colonialism, racialism and apartheid,

*Welcoming* the contribution which UNESCO makes to the strengthening of international peace and security, to the protection of human rights and fundamental freedoms, including the elimination of massive, systematic or flagrant violations of those rights and freedoms, and to the struggle against colonialism, neo-colonialism, aggression, occupation of foreign territories, apartheid and all forms of domination, racialism and racial discrimination,

**Stressing** that, in the present circumstances, the action conducted by UNESCO in the fields of education, culture, science and communication and the influence exercised by UNESCO in order to reduce inequalities and to promote the international principles of an ethical nature which would conform to the ideals of its Constitution, are of major importance,

**Noting with satisfaction** the provisions in the Programme and Budget for 1981-1983, concerning the intensification of teaching and information activities for the promotion of human rights,

**Noting** the progress made under the new procedure established by the Executive Board at its 104th session for the examination of communications concerning the exercise of human rights, which enables individual petitions concerning cases or matters relating to violations of these rights within UNESCO's fields of competence to be dealt with, and permits and facilitates constant and continual dialogue with the States involved in the communications which reach the Secretariat,

## I

1. **Condemns** all forms and manifestations of colonialism, racism and apartheid;
2. Urges Member States to contribute to the furtherance of UNESCO's mission by making every effort:
  - (a) to reduce international political tensions, particularly by giving active support to all efforts to strengthen peace and safeguard and promote human rights and fundamental freedoms, essential prerequisites of which are to put an end to and not to acquiesce in aggression and foreign occupation in violation of the Charter of the United Nations;
  - (b) to respect the sovereignty, territorial integrity and political independence of every State, and to recognize the right of all peoples to self-determination in full freedom;
  - (c) to offer humanitarian aid to all peoples who are victims of aggression or foreign occupation in violation of the Charter of the United Nations;

## II

3. **Recognizes** the importance of UNESCO's assistance and support to the national liberation movements recognized by the Organization of African Unity (OAU) as well as to the Palestine Liberation Organization, which is recognized by the League of Arab States, and calls **for** this support to be continued by allowing the representatives of these national liberation movements to participate in all activities of UNESCO, and in particular in the preparation of the Draft Programme and Budget for activities which are of special importance to them;
4. **Welcomes** UNESCO's past and present activities aimed at assisting the African peoples, through the national liberation movements recognized by the OAU, in their struggle for independence, and in restoring their identity, their dignity and their sovereignty;
5. **Warmly welcomes** the achievement of independence by the people of Zimbabwe, the fiftieth independent State on the continent of Africa, as well as the encouragement it has given to the peoples of Namibia and South Africa;
6. **Expresses** unconditional support for the efforts to achieve self-determination and independence made by the people of Namibia and considers that UNESCO should continue to provide them with appropriate help in its fields of competence through the national liberation movements recognized by the OAU, and should assist them in their struggle to attain their rights and fundamental freedoms;
7. **Also expresses** unconditional support for the contribution made by the Organization to rid the people of South Africa of apartheid;



### III

8. *Invites* the Director-General:

- (a) to continue to contribute, within the fields of competence of UNESCO, to efforts designed to eliminate colonialism, neo-colonialism, aggression, racism, apartheid, all forms of foreign domination and all forms and manifestations of racial discrimination, and to establish an international climate of trust and mutual understanding so as to make a significant contribution to improving the international situation, strengthening peace and broadening international co-operation, which are prerequisites for the establishment of a new international economic order;
- (b) to propose, taking into account the analysis of world problems which he is undertaking in view of the shaping of the Medium-Term Plan, means of action adapted to the growing complexity and interdependence of the problems with which the international community is confronted;
- (c) to develop the contribution of the social sciences to an understanding of the obstacles impeding the establishment of a just and lasting peace, and to devising means of surmounting those obstacles;
- (d) to continue his efforts to alert world opinion to the evils of apartheid by means of education, the mass media and studies in the social sciences;
- (e) to continue to extend UNESCO's support to the United Nations Institute for Namibia in the training of personnel so that independent Namibia may have skilled manpower at its disposal;
- (f) to continue, in co-operation with the OAU and competent bodies in the United Nations system, in particular the United Nations Special Committee against Apartheid and the United Nations Council for Namibia, his action to assist peoples struggling against apartheid, colonialism, racialism and racial discrimination;
- (g) to pay particular attention to the protection of human rights and fundamental freedoms, including the elimination of massive, systematic or flagrant violations of human rights;
- (h) to continue to examine with particular attention the general situation regarding respect for human rights within UNESCO's fields of competence, placing special emphasis on activities in the realm of human rights teaching;
- (i) to take into consideration, in the preparation of the Medium-Term Plan for 1984-1989, the goal of simultaneously attaining development, peace and respect for human rights, adopting an interdisciplinary approach which will enable the Organization to improve its practical efficiency in the accomplishment of its urgent tasks;
- (j) to envisage, in the application of the Organization's programme and in order to implement this resolution, the carrying out of research and studies, the issuing of publications and the organization of seminars and appropriate meetings, and in particular to continue to organize seminars and studies on aspects of racism and apartheid;
- (k) to take into account, when drawing up the Medium-Term Plan and the next Programme and Budget, the necessity of implementing, in accordance with the special responsibilities of UNESCO in this field, the Plan for the Development of Human Rights Teaching, and to consider convening, in 1984, a conference for a mid-point review of this plan and of progress achieved in its implementation;
- (l) to co-operate with international non-governmental organizations with respect to the implementation of this resolution;
- (m) to report to the twenty-second session of the General Conference on the implementation of this resolution.



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## Section 3: Composition of the Executive Board in 1977-1978 and List of Chairpersons of the Committee on Conventions and Recommendations of the Executive Board from 1978 to 2008

### 1. Composition of the Executive Board in 1977 and 1978

#### *Composition of the Executive Board at its 102nd session (1977)*

Chairman: Mr Leonard C. J. Martin (United Kingdom)

Vice-Chairpersons:

- Ms Estefania Aldaba-Lim (Philippines)
- Mr Paulo E. de Barredo Carneiro (Brazil)
- Mr Marcel Ibanga-Magwangu (Gabon)
- Mr Leonid N. Koutakov (Union of Soviet Socialist Republics)
- Mr Hassan Muraywid (Syrian Arab Republic)
- Mr Hugh Philp (Australia)

Members:

- Mr Gonzalo Abad Grijalva (Ecuador),
- Mr Reginald S. G. Agiobu-Kemmer (Nigeria),
- Mr Paul Yao Akoto (Côte d'Ivoire),
- Mr Arthur Bagunywa (Uganda),
- Mr Werner Bahner (German Democratic Republic),
- Mr Walter Arthur Burke (Barbados),
- Mr Horacio J. Bustamante (Panama),
- Mr Chams Eldine El-Wakil (Egypt),
- Mr Gunnar Garbo (Norway),
- Mr Dismas Gashegu (Rwanda),
- Mr Sarvepalli Gopal (India),
- Mr Advertus A. Hoff (Liberia),
- Mr Charles Hummel (Switzerland),
- Mr Keharsingh Jagatsingh (Mauritius),
- Mr Robert B. Kamm (United States of America),
- Mr Ali Fahmi Khushaim (Libyan Arab Jamahiriya),
- Mr Joseph Ki-Zerbo (Upper Volta),
- Ms Eugenia Krassowska (Poland),
- Mr Julio Le Riverend (Cuba),
- Mr Valentin Lipatti (Romania),
- Mr Vittorio Mathieu (Italy),
- Mr Mahmoud Messadi (Tunisia),
- Mr Porfirio Munoz Ledo (Mexico),
- Mr Timothée Ngakoutou (Chad),
- Mr Jens Petersen (Federal Republic of Germany),
- Ms Maria de Lourdes Pintasilgo (Portugal),
- Mr Arthur T. Porter (Sierra Leone),

- Mr Majid Rahnema (Iran),
- Mr Khalil Salim (Jordan),
- Mr Kiyoshi Suganuma (Japan),
- Mr Sjarif Thajeb (Indonesia),
- Mr Trailokya Nath Upraity (Nepal),
- Mr Arturo Uslar-Pietri (Venezuela),
- Mr Michel Van Ussel (Belgium),
- Mr Alberto Wagner de Reyna (Peru),
- Ms Yang Yun-yu (China)

*Composition of the Executive Board at its 103rd session (1977)*

Chairman: Mr Leonard C. J. Martin (United Kingdom)

Vice-Chairpersons:

- Ms Estefania Aldaba-Lim (Philippines)
- Mr Paulo E. de Berrêdo Carneiro (Brazil)
- Mr Marcel Ibinga – Magwangu (Gabon)
- Mr Leonid N. Koutakov (Union of Soviet Socialist Republics)
- Mr Hassan Muraywid (Syrian Arab Republic)
- Mr Hugh Philip (Australia)

Members:

- Mr Gonzalo Abad Grijalva (Ecuador)
- Mr Reginald S. G. Agiobu-Kemmer (Nigeria)
- Mr Paul Yao Akoto (Côte d'Ivoire)
- Mr Arthur Bagunywa (Uganda)
- Mr Werner Bahner (German Democratic Republic)
- Mr Walter Arthur Burke (Barbados)
- Mr Horacio J. Bustamante (Panama)
- Mr Luis Echeverria (Mexico)
- Mr Chams Eldine El-Wakil (Egypt)
- Mr Gunnar Garbo (Norway)
- Mr Dismas Gashegu (Rwanda)
- Mr Sarvepalli Gopal (India)
- Mr Advertus A. Hoff (Liberia)
- Mr Charles Hummel (Switzerland)
- Mr Keharsingh Jagatsingh (Mauritius)
- Mr Henry E. Kerry (United States of America)
- Mr Ali Fahmi Khushaim (Libyan Popular and Socialist Jamahiriya)
- Mr Joseph Ki-Zerbo (Upper Volta)
- Ms Eugenia Krassowska (Poland)
- Mr Julio Le Riverend (Cuba)
- Mr Valentin Lipatti (Romania)
- Mr Vittorio Mathieu (Italy)
- Mr Mahmoud Messadi (Tunisia)
- Mr Timothée Ngakoutou (Chad)
- Mr Ahmed Ould Sidi Baba (Mauritania)
- Mr Jens Petersen (Federal Republic of Germany)
- Ms Maria de Lourdes Pintasilgo (Portugal)
- Mr Arthur T. Porter (Sierra Leone)
- Mr Majid Rahnema (Iran)

- Mr Khalil Salim (Jordan)
- Mr Kiyoshi Suganuma (Japan)
- Mr Sjarif Thajeb (Indonesia)
- Mr Trailokya Nath Upraity (Nepal)
- Mr Arturo Uslar-Pietri (Venezuela)
- Mr François Valery (France)
- Mr Michel Van Ussel (Belgium)
- Mr Alberto Wagner de Reyna (Peru)
- Ms Yang Yun-yu (China)

*Composition of the Executive Board at its 104th session (1978)*

Chairman: Mr Leonard C.J. Martin (United Kingdom)

Vice-Chairpersons:

- Ms Estafania Albada-Lim (Philippines)
- Mr Paulo E. de Berrêdo Carneiro (Brazil)
- Mr Marcel Ibonga-Magwangu (Gabon)
- Mr Leonid N. Kutakov (URSS)
- Mr Hassan Muraywid (Syrian Arab Republic)
- Mr Hugh Philip (Australia)

Members:

- Mr Gonzalo Abad Grijalva (Ecuador)
- Mr Reginald S.G. Agiobu-Kemmer (Nigeria)
- Mr Paul Yao Akoto (Côte d'Ivoire)
- Mr Arthur Bagunywa (Uganda)
- Mr Werner Bahner (German Democratic Republic)
- Mr Walter Arthur Burke (Barbados)
- Mr Horacio J. Bustamante (Panama)
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- Mr Advertus A. Hoff (Liberia)
- Mr Charles Hummel (Switzerland)
- Mr Keharsingh Jagatsingh (Mauritius)
- Mr Robert B. Kamm (United States of America)
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- Mr Kiyoshi Suganuma (Japan)
- Mr Sjarif Thajeb (Indonesia)
- Mr Trailokya Nath Upraity (Nepal)
- Mr Arturo Uslar-Pietri (Venezuela)
- Mr Michel Van Ussel (Belgium)
- Mr Alberto Wagner de Reyna (Peru)
- Ms Yang Yun-yu (China)

## 2. List of Chairpersons of the Committee on Conventions and Recommendations from 1978 to 2008:

<b>1978</b>	Mr Gunnar Garbo (Norway)
<b>1979-1980</b>	Mr Arturo Uslar-Pietri (Venezuela); then Mr Putzeys Alvarez (Guatemala)
<b>1981-1983</b>	Mr Guillermo Putzeys Alvarez (Guatemala)
<b>1984-1985</b>	Mr Hubert de Ronceray (Haiti); then Mr Ben Kufakunesu Jambga (Zimbabwe)
<b>1986-1987</b>	Ms Gisèle Halimi (France); then Mr Georges-Henri Dumont (Belgium)
<b>1988-1989</b>	Mr Georges-Henri Dumont (Belgium)
<b>1990-1991</b>	Mr Jorge Cayetano Zaín Asís (Argentina)
<b>1992-1993</b>	Mr Barry O. Jones (Australia)
<b>1994-1995</b>	Mr Mwindace N. Siamwiza (Zambia)
<b>1996-1997</b>	Mr Jorge Edwards Valdes (Chile)
<b>1998-1999</b>	Mr Victor Massuh (Argentina)
<b>2000-2001</b>	Mr Hector K. Villarroel (Philippines)
<b>2002-2003</b>	Mr Louis Peter Van Vliet (Netherlands)
<b>2004-2005</b>	Mr Davidson Hepburn (Bahamas)
<b>2006-2007</b>	Mr Davidson Hepburn (Bahamas); then Mr Luiz Filipe de Macedo Soares (Brazil) (174th to 177th sessions)
<b>2008-2009</b>	Mr Günter Overfeld (Germany)

# **List of documents forming part of the legislative history**

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## General Conference

- **Debates of the Nairobi General Conference – 19th session – 1976**

Debates on the introduction to general policy (Vol. II, tomes I and II);

Debates on UNESCO's contribution to peace and its tasks with respect to the promotion of human rights and the elimination of colonialism and racialism (agenda item 9) and long term programme for UNESCO's contribution to the maintenance of peace (item 10): Draft resolution submitted by the Drafting and Negotiating Group (19 C/PLEN/DR.18 Parts I and II) (Vol. II, tome 2);

Report of Programme Commission III: Resolutions and recommendations – statement of the rapporteur of Programme Commission III (Vol. II, tome 2).

- **Draft resolutions presented at the 19th session:**

**Document 19 C/PLEN/DR.5**, Draft resolution on UNESCO's contribution to peace and its tasks with respect to the promotion of human rights and the elimination of colonialism and racialism (agenda item 9) and long term programme for UNESCO's contribution to the maintenance of peace (item 10) (agenda item 10), submitted by the Union of Soviet Socialist Republics;

**Document 19 C/PLEN/DR.8**, Draft resolution on UNESCO's contribution to peace and its tasks with respect to the promotion of human rights and the elimination of colonialism and racialism (agenda item 9) and long term programme for UNESCO's contribution to the maintenance of peace (item 10), submitted by the Syrian Arab Republic, Algeria, Iraq, the Socialist Republic of Vietnam, Mozambique, Cuba, India, Sudan, Sri Lanka, Kuwait and Morocco;

**Document 19 C/PLEN/DR.10**, Draft resolution on UNESCO's contribution to peace and its tasks with respect to the promotion of human rights and the elimination of colonialism and racialism (agenda item 9) and long term programme for UNESCO's contribution to the maintenance of peace (item 10), submitted by Algeria, Mozambique, the United Republic of Tanzania, Congo, Niger and Mauritania;

**Document 19 C/PLEN/DR.11**, Draft resolution on UNESCO's contribution to peace and its tasks with respect to the promotion of human rights and the elimination of colonialism and racialism (agenda item 9) and long term programme for UNESCO's contribution to the maintenance of peace (item 10), submitted by the Netherlands, the Federal Republic of Germany, Belgium, Denmark, France, Ireland, Italy, Luxembourg and the United Kingdom of Great Britain and Northern Ireland;

**Document 19 C/PLEN/DR.8 Parts I and II**, Draft resolution on UNESCO's contribution to peace and its tasks with respect to the promotion of human rights and the elimination of colonialism and racialism (agenda item 9) and long term programme for UNESCO's contribution to the maintenance of peace (item 10), submitted by the Drafting and Negotiating Group.

**Document 19 C/DR.108**, Draft resolution submitted by France, Amendment to the draft programme and budget for 1977/1978 (document 19 C/5).

- **Resolutions adopted at the 19th General Conference**

**19 C/Resolution 6.111**

**19 C/Resolution 6.113**

**19 C/Resolution 12.1** – UNESCO's contribution to peace and its tasks with respect to the promotion of human rights and the elimination of colonialism and racialism; long term programme for UNESCO's contribution to the maintenance of peace (item 10)

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## Executive Board

- **Discussions:**

**Document 102 EX/SR.1-17 (1977)**, Analytical reports of the discussions in the Executive Board concerning document 102 EX/ 19;

**Document 103 EX/18 (1977)**, Analytical summary of the discussions that took place at the 102nd session of the Executive Board on Item 5.6.2., Study of the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective, a document drawn up by the Director-General;

**Document 103 EX/SR.1-17 (1977)**, Extracts of the analytical reports of the discussions in the Executive Board on Items 5.5.1, Report of the Committee on Conventions and Recommendations in Education: communications addressed to UNESCO on individual cases invoking human rights in the spheres of competence of the Organization (in part in private meeting) and 5.5.2., Study of the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective (report of the Working Party of the Executive Board);

**Document 104 EX/SR.1-35 (1978)**, Extracts of the analytical summary of the discussions in the Executive Board on Item 3.3, Study of the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective (report of the Working Party of the Executive Board).

- **Decisions:**

**102 EX/Decision 5.6.2 (1977)** Study of the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective (creation of a Working Party charged with examining the procedures to be followed);

**103 EX/Decisions 5.5.1 and 5.5.2 (1977)**, Report of the Committee on Conventions and Recommendations in Education: communications submitted to UNESCO concerning individual cases invoking human rights in the spheres of competence of the Organization and Study of the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective (report of the Working Party 103 EX/19).

**104 EX/Decision 3.3 (1978)**, Study of the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective.

- **Other documents:**

Standard form of letter sent by the Director of the Office of International Standards and Legal Affairs to the authors of communications examined pursuant to 104 EX/Decision 3.3; Form of communications concerning human rights submitted to UNESCO.

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## Director-General

**Document 102 EX/19 (1977)** prepared by the Director-General and submitted to the Executive Board at its 102nd session (1977) on the Study of the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective;

**Document 19 C/13.** Report of the Director-General on the implementation of General Conference Resolution 11.1, UNESCO's contribution to peace and its tasks with respect to the promotion of human rights and the elimination of colonialism and racialism (14 October 1976).

**Document 19 C/4 (1976),** Medium-Term Plan approved for 1977-1982

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## Working party

- **Reports**

**Document 103 EX/19 (1977),** First report of the Working Party on the Study of the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective;

**Document 104 EX/3 (1978),** Second report of the Working Party on the Study of the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective.



- **Working documents**

**Document 104 EX/WG/HR/1 (1978)**, Note showing in parallel the text of a decision suggested by the Chairman of the Executive Board, the amendments submitted by the members (including the amendment proposed by Messrs Koutakov and Paszkowski which constitutes a complete parallel text) and, where appropriate, the corresponding texts of the instruments in force in the United Nations system;

**Document 104 EX/WG/HR/DR.1 (1978)**, draft resolution submitted by Mr Buergenthal, substitute for Mr Kery (United States);

**Documents 103 EX/WP/HR/INF.1 and 103 EX/WP/HR/INF.1 Add. 1 and Add. 2.** Written communications submitted by certain members of the Executive Board.

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## Committee on Conventions and Recommendations

**Document 103 EX/17 (1977)**, Report on communications submitted to UNESCO on individual cases invoking human rights within its competence.

The background of the page features a large, faint watermark of the UNESCO logo, which consists of a globe with latitude and longitude lines, surrounded by a laurel wreath. The logo is centered and spans most of the page's width.

## Constitution of the United Nations Educational, Scientific and Cultural Organization

### Article I

#### Purposes and functions

1. The purpose of the Organization is to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations.