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REVIEW BY THE COMMITTEE ON CONVENTIONS AND RECOMMENDATIONS OF THE WORKING METHODS REGARDING THE "104 PROCEDURE" ESTABLISHED IN 104 EX/DECISION 3.3

SUMMARY

Pursuant to 181 EX/Decision 26, this document contains the written contributions submitted by the members of the Committee on Conventions and Recommendations (CR) on the review of the working methods of the CR Committee regarding the "104 procedure".

This item has no financial or administrative implications.

1. By 181 EX/Decision 26, the Executive Board decided that the Committee on Conventions and Recommendations (CR) would continue its review of working methods regarding the "104 procedure" established in 104 EX/Decision 3.3 at its 182nd session, based on written contributions from the members of the Committee on Conventions and Recommendations through its Chair, which should reach the Secretariat by 10 June 2009, and that the review would also take into account the rich debate of the Committee on Conventions and Recommendations at the 181st session of the Executive Board, during which many ideas were voiced, *inter alia* the idea of establishing a working group to further study questions of admissibility.

2. In application of this decision, the Chair of the Committee sent a letter dated 15 May 2009 which included in its annex 104 EX/Decision 3.3, the procedural practice contained in document 179 EX/CR/2 and the report of the Committee at the 181st session on the subject.

3. In reply to his letter, the Chair had received letters as at 10 June 2009 from the following 11 States members of the CR Committee: Germany, China, Cuba, Egypt, France, Hungary, India, Italy, Luxembourg, Mexico and Sri Lanka.

4. The contributions of the above-mentioned States are reproduced in the annex to this document.

ANNEX

CHINA

I. International Cooperation of China in the Field of Human Rights

China is committed to engaging in international exchanges and cooperation in the field of human rights on the basis of equality and mutual respect, with a view to promoting healthy development of human rights undertakings across the world.

As a responsible member of the international community, China actively participates in the work of United Nations Human Rights Council, pushing for addressing human rights issues by the Council in an equitable, objective and non-selective manner. China participated in the Council's first overall periodic review of China's human rights situation, engaging in constructive dialogue with all parties concerned. And it is implementing its reasonable suggestions. China has formulated its Human Rights Action Plan for 2010-2011 and will continue its cooperation with the special mechanism of human rights of the United Nations. It will also continue its bilateral dialogue and exchanges with relevant countries in the field of human rights on the basis of equality and mutual respect and will continue to participate in the human rights endeavours at the regional (Asia and the Pacific) and subregional levels.

II. Comments on the Working Methods of CR

1. The terms of reference of the Committee must be clearly defined. According to 104 EX/Decision 3.3, the Committee was designated "Committee on Conventions and Recommendations". The same decision also provides that the Committee shall address human rights cases within the fields of competence of the Organization. There is a need to reaffirm and define the two mandates of the Committee: with respect to the first mandate-examination of the status of implementation of conventions and recommendations, it has to be clearly spelled out that the Committee is responsible only for monitoring those conventions and recommendations that are formulated by UNESCO; with respect to handling "human rights matters within the Organization's fields of competence", efforts have to be made to ensure cooperation and coordination with other United Nations agencies by avoiding overlapping with their work. There is a division of labour among United Nations agencies whose terms of references in human rights issues are clearly defined.

With regard to the second mandate of CR, we believe that its meeting agenda cannot be dictated by authors of communications. These authors, coming from a variety of complicated backgrounds, may submit communications selectively either due to their ignorance of the established procedures of the United Nations system or out of political motivations. Their actions raise a lot of doubts about their real objectives. Certain authors, taking advantage of the loopholes of the Committee's procedures, piece together communications which are false. Some even go as far as using hearsays, conjectures or media reports as the basis of their communications, making irresponsible remarks on the internal affairs of other countries or even attacking their judicial sovereignty, prettifying criminals and supporting separatists. Such actions of the authors are not tolerated even in their own countries.

In certain cases, the well-funded authors of communications, submit the same communications simultaneously to several United Nations agencies, which lead to overlapping of work. And also as a result, the CR Committee may consider cases that do not fall within its fields of competence.

The Committee, due to its intergovernmental nature, has to respect the ten conditions set forth in 104 EX/Decision 3.3 concerning admissibility of a communication and make sure that no communications that do not fall into its competence be included in its agenda. Moreover the Committee has to abide by the basic rules governing international relations and make every effort

to avoid “double standards” or selective actions in the field of human rights. Therefore before a communication is included in the agenda of the Committee, there has to be a preliminary screening. The Committee should set up a prior review group or similar mechanism which shall conduct a prior review of the communications against the 10 conditions so as to help the Committee not to deviate from its mandate.

2. Contents of Communications to be examined. Medical conditions and conditions of detention that appear in the decisions of CR on individual cases undoubtedly fall within the fields of competence of other human rights mechanisms, such as the Committee against Torture and the Red Cross. The profound humanity displayed by CR is indeed moving, but often those that the Committee requests to be released are not noble and innocent individuals as some members have imagined. It is groundless to say that alleged victims would be facing life-threatening situations if the Committee does not consider their cases timely. Based on historical records of the communications that have been struck from its list, information concerning the state of health of the alleged victims is cited to justify the consideration by the Committee of those cases and is the centre of discussion during the meetings of the Committee. The facts of the last two decades demonstrate that certain authors of communications, in order to gain sympathy of those good-intentioned members, have done everything possible to fabricate information concerning the “torture” of the alleged victims and their “severe” and “grave” illnesses. While it should not give up its profound compassion, the Committee should be careful that its compassion is not misplaced because we should not ignore the feelings of women who were raped by the alleged victims in those communications, nor should we overlook our humanitarian responsibilities towards those innocent civilians caught in terrorist bombings. The Committee should give up its practices of preferring fabrications from authors of communications over evidence-based information from the Member States.

3. Suggestions on how to improve the working methods of CR:

(a) The uniqueness of the Committee should be maintained. What makes CR unique from other United Nations human rights mechanisms lies with its principle of confidentiality, nothing else.

(b) A prior review group be set up. This group shall be responsible for reviewing communications against the conditions of admissibility set forth in Decision 104 EX/3.3 and for determining whether a communication falls within the Organization’s competence before submitting it to the Committee for examination.

(c) The practice of applying *rationae personae* in handling communications should be reconsidered. It is presumptuous to assume that a person that has received higher education or has a professional job falls within the Organization’s competence, no matter what crime he or she has committed. Among communications declared admissible by CR, there are monks who committed bombings, clergymen raping disciples or causing injuries by pouring sulphuric acid. The equity and justice of the Committee is compromised by examining such communications.

(d) A communication involving criminals shall not be examined. UNESCO CR is not a court. And no one including communication authors is in a position to challenge judicial procedures of any sovereign country.

(e) CR should strike a communication off its list if it does not receive information from its authors for two sessions consecutively.

(f) CR should terminate examination of a communication that is just based on mass media.

(g) The draft decisions shall be worded in a way to make sure that they stay within the Organization's competence and strictly observe the principles set forth in the Constitution. Any wordings that interfere into the internal affairs and sovereignty of a country shall be avoided. Wordings such as improving medical, detention conditions and immediate release unconditionally should not be used in a draft decision as they do not fall within the competence of UNESCO.

(h) CR may, through the Secretariat, provide relevant information to authors who are not clear about the division of labour among the United Nations agencies dealing with human rights so that they can deliver their communications to the appropriate entities.

III. Analysis and comments on "CR's communications involving primarily Asian countries"

The work of CR is disturbed by certain communication authors who are still guided by their "cold war" mindset. At CR meetings, "Europe-centric" views as well as arrogance and prejudices and western judicial superiority are observed from time to time. The efforts of Asian countries, including China, to improve their human rights are not objectively assessed. That is why we often see at the CR meetings a lack of trust of the Member States and a confrontational ambiance. This strange situation stands in sharp contrast with the spirit of cooperation and consultation that we find in other committees of the Executive Board.

Quite a number of Asian countries consider it to be an arrogance and prejudice that CR attaches more importance to ill-founded accusations from western NGOs than statements of the governments concerned.

No country has a human rights blemish-free record. And human rights violations are not the bane of any particular country or region.

The Chinese Government, adhering to the "people-centred" principle, is endeavouring to implement the provisions enshrined in our Constitution such as the State respecting and protecting human rights. It is committed to the notion of development led by the people and for the people, trying to promote orderly participation of the public in the political life at various levels and in different fields. The government is endeavouring to improve the system of democracy by enriching its contents and increasing its channels. It is also advancing democracy in elections, decision-making, governance and monitoring, highlighting the protection of people's right to be informed, the right to participation, the right of expression and the right to monitoring. Meanwhile, the Chinese Government advocates increasing international exchanges, dialogues and cooperation in the field of human rights and is ready to make joint efforts with other countries of the world to promote a healthy development of global human rights undertakings and to make its due contributions to building a world of lasting peace, harmony and prosperity for all.

CUBA

General observations on the procedure used by the CR Committee, in accordance with 104 EX/Decision 3.3

UNESCO's competence in the field of human rights is limited and the instruments used as a reference for the enforcement of rights sometimes revealed significant legal deficiencies.

- The criteria for the admissibility and follow-up of cases are subjective and imprecise, thus leaving much room for interpretation.

- These criteria lack clearly defined indicators that would enable the effective implementation of the 10 conditions that determine the admissibility of a communication.

  – There are 10 conditions that determine whether a case or a question is admissible. However, no clear and objective criteria have been established to assess the implementation of these 10 conditions.

  – The conditions include that the communications must not be manifestly ill-founded and must appear to contain relevant evidence. It is not stated, however, how the veracity of the information provided is assessed. The allegations generally conflict with the arguments put forward by governments in their replies.

  – Another condition is the promptness of submission of the communication following the alleged facts which constitute its subject-matter or after the facts have become known. The "reasonable time limit" is not specified.

  – The conditions state that it must be indicated "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". It is not specified, however, how this question shall be assessed and how it affects the admissibility of the case.

- Disharmony between the functioning of the CR Committee and international human rights instruments in the handling of cases. The procedure outlined in 104 EX/Decision 3.3 does not require the provision of details on the instrument and specific article that form the basis of the complaint.

- The special procedures both of the Human Rights Council and the human rights treaty bodies have a comparative advantage and greater capacity than the CR Committee to address and follow up the complaints of alleged human rights violations.

- Duplication of complaints of alleged human rights violations among various United Nations system bodies, which places an additional burden on governments and discredits international human rights protection mechanisms.

- Strong tendency to consider cases relating to developing countries, which might indicate the existence of unacceptable political manipulation, double standards and selectivity against countries of the South – problems that discredited the superseded Commission on Human Rights.

EGYPT

General notes for a more effective application of 104 EX/Decision 3.3

1. The Committee on Conventions and Recommendations (CR), in accordance with 104 EX/Decision 3.3 is entrusted with dealing with communications submitted to it concerning human rights violations in the fields of work of UNESCO, in amicable fashion, through dialogue with the parties concerned. It therefore needs to be stressed that the CR Committee is not an adjudication body which issues binding decisions; rather, it is a committee which uses its good offices in order to arrive at recommendations which contain acceptable and practicable solutions with regard to the communications submitted to it.

2. The admissibility of communications is an extremely delicate and complex matter, given that the criteria laid down pursuant to 104 EX/Decision 3.3 and subsequent decisions are not sufficiently clear and are in need of revision in order to ensure that they satisfy current realities and the defects to be addressed engendered by the working practices of the Committee.

3. The credibility of States and of their replies to the Committee's queries needs to be put in its rightful place and accorded the true status it deserves. In other words, the credibility of States should not be subject to question, and should be granted its true magnitude.

4. There is also a need to seek the necessary means to ascertain the credibility of submitters of communications and how exact their information is. The credibility of the State should not be placed under investigation against the information of submitters of communications, especially if the States have affirmed that their information is accurate.

5. Nor should we disregard national laws and the sovereign right of each State to draw up its internal regulations insofar as they are not contrary to the international instruments, conventions and agreements signed by it.

6. The question of exhausting domestic remedies needs to be made more effective. The Committee should allow the State sufficient opportunity to examine its own cases and take its decisions before the Committee begins to discuss them so that the positions are not contradictory and in order that the Committee's work should not constitute interference in the internal affairs of the Member States.

7. There is a need to coordinate with United Nations bodies entrusted with following up human rights cases so that no kind of discrepancy arises, and in order to ensure that the role of the CR Committee is not marginalized such that the Committee loses its credibility when it concerns itself with matters which lie outside its competence or despite the existence of bodies whose primary task is to follow up such matters.

8. Finally, the Committee's consideration of communications concerning human rights violations in the fields of work of UNESCO should not take precedence over its basic function of monitoring the implementation by States of conventions and recommendations, which is the primary task entrusted to it.

9. Also, care should be taken to ensure that the work of the Committee is examining communications is not politicised; some previous practices have shown a kind of politicisation which should be avoided, given that UNESCO is an organization which is concerned with technical matters, in which politics should play no role.

FRANCE

1. The Executive Board, at its 181st session, decided that the CR Committee would continue its review of working methods regarding the "104 procedure" at its 182nd session based on written contributions from the members of the Committee through its Chair, which should reach the Secretariat by 10 June 2009. The purpose of this note is to present the views of France in accordance with the decision adopted by the Executive Board.

2. For more than 30 years, the CR Committee has had a twofold mission: monitoring conventions and recommendations, and considering the communications submitted to it under the "104 procedure" – the procedure established in 1978 by 104 EX/Decision 3.3. Both duties are an integral part of the terms of reference of the Committee and are equally important. The Committee should not favour one role over the other, but should fully perform its functions by devoting due attention and time to each of them.

3. The review of the working methods of the CR Committee regarding the "104 procedure" may therefore be conducted only with a view to improving these methods in order to make the procedure more effective, and it is important to ensure that this review does not end up, directly or indirectly, by undermining the procedure.

4. The United Nations Educational, Scientific and Cultural Organization is directly involved in promoting respect for human rights. Its Constitution states that it must contribute to international 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" (Article I, para. 1).

5. By establishing the "104 procedure" despite the existence of many international instruments that have instituted various human rights protection mechanisms, the Executive Board wished to make a specific and unique contribution to the promotion of these rights. In so doing, it recalled that "UNESCO, basing its efforts on moral considerations and its specific competence, should act in a spirit of international cooperation, conciliation and mutual understanding" (104 EX/Decision 3.3, para. 7) and that the Organization "should not play the role of an international judicial body" (ibid.). In fact, the "104 procedure" is based on humanitarian considerations and is by no means comparable to court proceedings. On the contrary, it seeks to ensure, in the context of private discussions, dialogue with the Member States concerned with the sole purpose of improving the situation of the alleged victims.

6. Specific rules governing the procedure are set out in 104 EX/Decision 3.3. These rules were carefully drafted to ensure the reliability of the communications and to achieve a satisfactory balance between due respect for the sovereignty of Member States and the degree of freedom that should be left to the authors of communications – thus ensuring that their own right to draw the Committee's attention to an individual case is not curtailed. Some of these rules take into account the asymmetry between the authors of the communications and the Member States concerned (particularly with regard to the substantiation of allegations), while others are derived from the humanitarian, non-judicial nature of the procedure (such as that which, overriding the international judicial rule of the exhaustion of domestic remedies, merely provides that 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" (104 EX/Decision 3.3, para. 14(a) (ix)). All of these rules were carefully drawn up in order to reflect the distinctive character of the procedure and they should not be infringed, failing which the very existence of the "104 procedure" would be jeopardized.

7. Over the last 30 years, the CR Committee has implemented the "104 procedure", while ensuring that it did not depart from the basic rules established by 104 EX/Decision 3.3. The

practice of the Committee is set out in Annex II to document 179 EX/CR/2 and leaves no doubt that the overarching principles underlying the “104 procedure” are observed by the Committee.

8. In recent discussions, several reservations have been expressed regarding the working methods of the CR Committee.

9. An example of this is the suggestion that the adoption by the United Nations General Assembly, on 10 December 2008, of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights of 1966 makes the “104 procedure” devoid of interest. While the adoption of this new international instrument should be commended, it should be noted that it is not in force and that, when the time comes, it shall provide a mechanism – for States Parties only – that is wholly different from that of the “104 procedure” which, it is worth recalling, concerns all the Member States of UNESCO. The possible entry into force of this Protocol shall therefore not render obsolete the “104 procedure”, which aims to contribute, according to its own terms and for the benefit of the Member States of the Organization, to promoting human rights.

10. Similarly, it was stated that the communications submitted to the Committee mainly called into question governments from the same geographical region, “thus thwarting cooperation and participation by those States which perceived the CR Committee as a tribunal and not as a body acting in a spirit of international cooperation, conciliation and mutual understanding” (see the report of the Committee, 181 EX/64). It may be noted, however, that the communications concern Member States located on three continents and that the States concerned have, in a true spirit of international cooperation, generally fully cooperated with the Committee. In any event, it is not the geographical origin of the States concerned that determines the judicial aspect of the work of the Committee, but solely the procedure followed in the consideration of communications and the follow-up they may be given. As recalled above, the “104 procedure” explicitly precluded a judicial dimension in favour of an approach based on mutual dialogue and such is the practice of the Committee. It may be noted, however, that the number of States concerned by communications is still limited; this has no direct bearing on the consideration of communications but suggests that the “104 procedure” probably does not receive sufficient publicity and is no doubt under-utilized. It would thus be appropriate to address the issue of the resources required to increase the visibility of this procedure within civil society.

11. With regard to the working methods per se, France is of the view that they ensure the fulfilment of the mission entrusted to the CR Committee in compliance with the specific rules of the “104 procedure”.

12. The answer to some of the proposals made during the discussions held at the 181st session of the Board may be found in the actual provisions of 104 EX/Decision 3.3. This is the case, for instance, with regard to the exhaustion of remedies, explicitly precluded by the decision (para. 14 (a) (ix)), the exclusion of communications based exclusively on information disseminated through the mass media (para. 14 (a) (vii)), the reasonable time-limit for the submission of a communication (para. 14 (a) (viii)), and the credibility of the information provided by the authors of the communication (para. 14 (a) (v)).

13. Other proposals do not appear to be perfectly justified for the purpose of the exercise. It is thus difficult to see what benefit would be derived from submitting the examination of the admissibility of a new communication to a working group (irrespective of its composition). In fact, the small number of new communications submitted to the CR Committee at each session does not in any way require the examination of their admissibility to be entrusted to a subsidiary body. Furthermore, since the authority to decide on admissibility belongs to the Committee *in toto*, it is unclear how a preliminary examination by any working group would prevent in-depth discussion in plenary – in which each member would, in any event, retain the right to state its view. Accordingly, the intervention of a working group would only introduce an additional step in the procedure, without in any way alleviating the agenda of the Committee itself.

14. Similarly, the proposal that the CR Committee should devote only one session each year to examining communications, to ensure "a better balance between the two aspects of the Committee's terms of reference" (181 EX/64), is not based on any objective observation of real problems in managing the Committee's agenda. The Committee has so far, in our view, always satisfactorily fulfilled its two missions at a single session. Moreover, such a proposal would result mainly in delaying the consideration of communications by at least six months. Since these are situations that concern the sometimes difficult plight of people whose rights may have been ignored, such a delay would be in direct contravention of the specific humanitarian objective of the "104 procedure".

15. Ultimately, our country considers that the "104 procedure" of the CR Committee remains fully valid. When communications are submitted to the Committee, the Secretariat is, with a few exceptions, not authorized to make a selection and it is the Member States in the first place that decide on their admissibility before proceeding, as appropriate, with the examination as to their substance. Based on humanitarian considerations, the procedure is not judicial and should fully comply with the principle of confidentiality. This procedure is intended both to ensure the reliability of the communications and to introduce Member States to communications concerning them so as to provide appropriate responses. In the light of these various elements, the members of the Committee may examine the communications and engage in dialogue with the States concerned in a spirit of conciliation and international cooperation. These characteristics confer value on this unique procedure, which should be preserved as UNESCO's own contribution to the international protection of human rights in its fields of competence. It no doubt deserves to be better known so that its use may become more widespread.

16. It may be desirable, however, to enhance cooperation between the human rights bodies within the United Nations system and, possibly within regional organizations. In this regard, the CR Committee would certainly significantly benefit from being systematically informed of the follow-up given by the various bodies or institutions to the cases on its own agenda, particularly when these bodies or institutions have been required to establish the facts objectively.

GERMANY

1. There is a full understanding that the Committee on Conventions and Recommendations (CR) continues to be entrusted with the following two main tasks which are complementary in character:

(a) to consider all questions relating to the implementation of UNESCO's standard-setting instruments that are entrusted to it by the Executive Board in accordance with Article 18.1 of the Rules of Procedure concerning recommendations to Member States and international conventions; accordingly, the CR examines reports of Member States on the implementation of conventions and recommendations;

(b) to examine communications relating to cases and questions concerning the exercise of human rights in UNESCO's fields of competence – a confidential procedure as laid down in 104 EX/Decision 3.3.

2. In addition, the CR fulfils the following tasks:

- to examine the reports of the Joint ILO-UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel,

- to examine the reports of the Joint Expert Group UNESCO (CR) / ECOSOC (CESCR) on the Monitoring of the Right to Education.

3. The two main tasks must be seen in the context of a postulated human rights-based approach related to all UNESCO activities as well as within the further development of the human rights machinery within the United Nations system. They are closely interrelated, not only with regard to the allocation of limited time available, but also in terms of substance because all human rights are universal, indivisible and interdependent and interrelated; they must be treated on the same footing and with the same emphasis. As a consequence, UNESCO and also the CR are confronted with problems of internal and external coordination.

4. Before dealing with those issues, the procedure 104 EX/3.3, which is – compared to other procedures of individual communications in the United Nations system – unique in several respects, deserves our special attention:

- the procedure treats the human person as the central subject of human rights who is to be the principal beneficiary in the realization of these rights;

- the procedure is not based on a convention and an optional protocol to it, but on articles of the Universal Declaration on Human Rights which are falling into the fields of UNESCO's competence;

- all persons or groups of persons living in UNESCO Member States can submit communications as victims of an alleged violation of any of the human rights falling within UNESCO's competence;

- any person, group of persons or organization having reliable knowledge of those violations may also submit such communications;

- there is a clear understanding that the aim of this procedure is to seek an amicable solution to cases brought to UNESCO's attention by establishing a dialogue with the governments concerned;

- those cases are to be examined in full confidentiality and in a spirit of international cooperation, conciliation and mutual understanding; and

- the CR should not play the role of an international judicial body, because the aim is not to condemn the government concerned, but to improve the situation of the alleged victim.

5. Against this background, it should be noted that the conditions for admissibility do not postulate that available domestic remedies must have been exhausted; however, the communication must indicate whether an attempt has been made to do so.

6. Also, those conditions clearly indicate that only communications being already settled by other United Nations bodies shall not be considered; this implies that, because of its unique procedure, the CR can deal with communications which are also under investigation by other bodies.

7. Concerning the question of the admissibility of communications, Germany wishes to underline that the 10 clearly defined conditions that determine the admissibility must be thoroughly discussed in each case, i.e. subparagraph by subparagraph before the CR decides as to its admissibility.

8. Also, the attachments available deserve more attention and demand an intensive study; it should be discussed whether the Chair could ask a CR member to act as rapporteur or another procedure be applied.

9. At the beginning of the private session dealing with communications the Secretariat should inform the CR about the number of letters received and the decisions made concerning communications to be brought to the attention of the CR.

10. Apart from the different nature outlined in paragraphs 4 to 6, the Optional Protocols to the two International Covenants to examine communications from individual persons demand the ratifications of the Covenants as well as of the Optional Protocols which also allow reservations. Therefore, the often postulated danger of duplication of work is not at hand.

11. Germany wishes to remind that the Working Group on the Admissibility of Communications as established under the “1503 procedure” was composed of experts serving in their personal capacity and acted only at the first stage in a complex procedure which intended to gather information with regard to a particular situation that reveals a consistent pattern of systematic and gross violations of human rights, but not to provide legal protection for individual victims of human rights violations. If the CR also intends to examine “questions of massive, systematic or flagrant violations of human rights” as mentioned under 10(b) of 104 EX/Decision 3.3, then such a proposal deserves further consideration. With regard to the examination of cases, Germany is not in favour of setting up a working group composed of CR members from the six regional groups which would also require changes of the procedure as laid down in 104 EX/Decision 3.3.

12. Germany is in favour of a strict application of the terms of reference and especially of the conditions that determine the admissibility of communications as laid down in paragraph 14(a). Any attempts of identifying the CR as a Committee in which confrontations between regional groups take place must be rejected. Imbalances in the number of cases from different regions always occurred in the history of the CR. In order to correct them all Member States, National Commissions and human rights NGOs should be informed to make better use of the services the CR can offer.

13. Germany wishes to express its satisfaction concerning the new legal framework since 2007 with regard to the examination of the reports on conventions and recommendations received from Member States which consists of a specific multi-stage procedure for the monitoring as well as framework guidelines for the preparation of reports. Hopefully, the low number of ratifications as well as the low response rates of States Parties in the case of conventions and of Member States in the case of recommendations can be increased. In future monitoring processes, it might be

helpful that the states reports of CR members will be discussed during the meetings in detail if country-by-country analyses cannot be added to the summary reports prepared by the Secretariat.

14. Furthermore, in the context of the monitoring processes undertaken by the CR with regard to different conventions and recommendations, the involvement of experts will be necessary if further progress is envisaged.

HUNGARY

Taking into account the debate held during the 181st session of the Executive Board, Hungary would make the following comments related to the methods of work of the Committee on Conventions and Recommendations (CR):

- Given the specific mandate of UNESCO in Human Rights, the CR Committee has an important **added value** among other structures of the United Nations system. The tradition of consensus and goodwill approach is a specificity of the Committee, where the parties concerned have always been searching for mutually acceptable solutions. This shall continue being the guideline of our activities.

- Hungary is satisfied with the existing methods of work, however, in the spirit of the debate we had in the past session, we are open for a dialogue in order to identify the possible problems.

- Hungary attributes an utmost importance to keeping the traditional framework of a **balance between the two mandates** of the Committee, which should continue being reflected in the timetable of our work.

- In these terms we consider that the Committee has elaborated an efficient multi-stage procedure of monitoring the standard-setting instruments for the forthcoming sessions, which permits to dedicate sufficient time to this part of our mandate, as it has been the case till present.

- As for the human rights aspect of the CR activities, we shall not forget that the Committee is dealing with concrete cases when the time frame is often playing a decisive role. Therefore, it would be highly inappropriate to reduce the frequency of the meetings dealing with communications, and it is essential to maintain the current practice of dedicating to this theme **two sessions per year**.

- There certainly exists an imbalance in the geographical provenance of the communications coming before the CR Committee. We believe that the solution could be wider **awareness-raising** about the functions and mandate of the CR, its complementary nature, and the additional tools it offers within the United Nations system in human rights protection.

- We appreciate the excellent work completed by the Secretariat in providing a comprehensive and well synthesized information on each communication. We **do not see any added value in creating a working group** to make a pre-selection of the communications, neither for any other questions, otherwise we risk undermining the transparency and the spirit of good faith of the work of the entire Committee.

- In order to continue our discussions we would consider it useful if the Secretariat could provide an updated analysis about the role and the specific place of the CR within the United Nations system.

INDIA

1. As an original signatory to the Universal Declaration on Human Rights, India is committed to the enjoyment of all human rights and fundamental freedoms as enshrined in the United Nations Charter and Universal Declaration.

2. The 30-member Committee on Conventions and Recommendations (CR) was established in 1978 with a dual mandate of considering communications relating to human rights violations within UNESCO's fields of competence and consideration of all questions entrusted to the Executive Board concerning the implementation of UNESCO's standard setting instruments. Given the international situation at the time of its establishment, it is not surprising that the communications aspect of the CR's mandate met with notable success. With the end of the Cold War however, there occurred a shift in focus particularly towards the Asia-Pacific region. This shift needs to be fully analysed.

3. A close examination of the Working Methods also indicates the following additional elements which merit reflection. Relevant examples taken from confidential documents discussed at private meetings are cited in the attached confidential Annexes which are not for circulation:

- Most Communications are predominantly focused (with a few exceptions) to Member States from the Asia-Pacific region. (Additional details in Annex I.)*

- Most Communications are made by the same set of Organizations and/or persons located in a particular part of the world. (Additional details in Annex II.)*

- On some occasions, Communications pertain to the domestic jurisdiction of the country concerned or are not serious enough to merit consideration by CR. There have been instances wherein Communications appear to relate to criminal charges. Consideration of such Communications dilute the authority of the Committee. (Additional details in Annex III.)*

- Time frame of the consideration of the Communications require revision. The discussion of each Communication biannually does not give sufficient time for the countries concerned to address the concerns cited by the Committee. Reiteration of earlier decisions, sometimes in harsher language reinforces the perception of CR as a tribunal rather than a body acting in a spirit of conciliation and mutual understanding, contrary to the stipulation in Annex II of 104 EX/Decision 3.3.

- Method of selection of the Communications needs to be revisited. These Communications should not be entirely based on secondary sources such as media reports and none of them should be admitted unless all domestic remedies have been exhausted. These conditions are also specifically cited as important conditions for the admission of Communications in Annexe II of 104 EX/Decision 3.3, yet are often disregarded.

- In principle the Secretariat is not authorized to weed out communications. Who should do so? It would probably be a more transparent procedure to constitute a Working Group of Committee Members who could examine Communications in accordance with the established criteria. The Working Group could consist of one member from each Regional Group and be chaired by the Chairman of the Committee prior to the CRE meeting.

- Paragraph 7 of 104 EX/Decision 3.3 states that the Communications would be considered “in a spirit of international cooperation, conciliation and mutual understanding” and recalls that “UNESCO should not play the role of an international judicial body”. This is sometimes not the case. Pointed and sometimes discourteous questions are put to

* Note of Secretariat: Confidential document not reproduced but available for consultation at the Secretariat.

Ambassadors or senior representatives of the Governments concerned by some Members. The context of discussions then become conflictual and acrimonious and condemnatory of concerned Governments, which is against the very spirit of CR.

Analysis:

The above would justify a complete review of the current working methods of the Committee in the context of the "Procedural Practices" outlined in Annex II of 104 EX/Decision 3.3. Specifically the following may be noted:

- The concept of "reliable knowledge": It has been noted in the Annex that in all legal systems "good faith" *is* presumed as a condition of admissibility. It may be noted that this also applies to presentations made by Member States of UNESCO in response to their communications. Unfortunately however, this is often questioned by some Members of the Committee.

- Prior selection of communications by the Secretariat: Although the cases when the Secretariat can do so have been specified, in reality the Secretariat is hardly weeding out any communications. This needs to be re-examined in the context of the suggested establishment of a six-Member group to examine communications prior to the meeting of the Committee.

- Communications should not be exclusively based on media reports: This is imperative to maintain the gravity of Committee discussions. Media reports may or may not be reliable. Giving them higher importance than the presentations of the Member States of UNESCO is not acceptable. There should be relevant information from primary sources by the authors of the Communication.

- Communications must indicate whether steps have been taken to exhaust all possible remedies: In the past there have been instances where *sub judice* cases were taken up by the Committee. In order to streamline the working of the Committee, this has to be strictly avoided. Going against its own established principles is a practice that is not conducive to the Committee's future vitality.

- Communications struck from the list *ipso facto* in the event of there being no reply from its author: This practice has not been strictly followed.

Conclusion:

4. Finally, the success of an international human rights mechanism is also based on an external perception of its work and achievements. Within the Asia Pacific which is India's Regional Group, the perception is of being of unfairly singled out as if human rights violations are focalized exclusively in this part of the world. In the recent document prepared by the Secretariat for CR relating to the "Methods of Work" it has been stated "The recent concentration of Communications concerning States from the same geographic region could be explained, among other things, by the lack of international jurisdiction for protecting human rights in the region concerned and by the lack of the visibility of the work of the Committee in the other regions of the world."

5. This is a judgemental perception which cannot be accepted. Human rights violations occur all over the world including in regions where there are regional mechanisms for protecting human rights such as in Europe which has the European Court of Human Rights. Moreover, the established international mechanism for monitoring human rights violations established until the international Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, and the Human Rights Council apply to all States Parties to these Covenants/Instruments. Asia Pacific countries are all States Parties to these Covenants/Instruments. It is not the lack of visibility of the work of the Committee in other regions of the world which is the reason for the exclusive focus on

ASPAC by authors of Communications which has led to this imbalance. The work of CR is not known in the Asia Pacific region. The Communications relating to ASPAC do not come from within the region but from outside the region.

6. It is also a matter of sober reflection whether such an intensive and unfair scrutiny of this fast growing region, home to two thirds of humanity, would not give the impression that unlike the rest of the world ASPAC does not enjoy democracy, rule of law and pluralism and that its citizens do not enjoy human rights and fundamental freedoms. If the CR is to succeed in its mandate, then this perception must be addressed urgently through a thorough review of its Working Methods.

ITALY

1. In general, I believe that the “104 procedure” has been very successful, as demonstrated by the work of the CR Committee and the document prepared by the Secretariat. What is required is increased publicity for this procedure, particularly through the organization of a joint study session of the CR Committee and the Committee on International Non-Governmental Organizations, which are the main “providers” of communications submitted to the Committee.

2. I am firmly opposed to the establishment of a working group on the admissibility of communications. The Chair and members of the Secretariat, who have extensive and noteworthy experience, may continue perfectly well to submit cases to the Committee under the “104 procedure” for consideration in plenary, as only the Committee has the right to decide on the admissibility of cases.

3. The current frequency of meetings should be maintained. In the face of certain humanitarian emergencies, subsequent extraordinary sessions should be envisaged, wherever possible. The loss of specificity of the “104 procedure” would seriously undermine the effectiveness of UNESCO’s action in the field of human rights.

4. The rules of procedural practice, contained in document 179 EC/CR/2, remain valid. The focus should rather be on strengthening the authority of the Chair and of the Director-General to intervene, including through *in loco* visits in the States concerned, in risk situations. It should also be possible to resume consideration of cases struck from the agenda and whose current situations are of concern to international public opinion, also taking into account 19 C/Resolution 6.113 and 12 C/Resolution 12.1.

5. With regard to the first aspect of the Committee’s mandate, the document prepared by the Secretariat should be more comprehensive and cooperation with the CR Committee should be further enhanced, with improved texts, since the reports are always criticized by the Committee.

LUXEMBOURG

Following the discussions of the CR Committee at its last session with regard to its working methods, and in reply to your letter dated 19 May 2009, please find below the comments of Luxembourg concerning the working methods of the Committee. As mentioned during the discussion held in April, my country is generally satisfied with these methods, therefore our comments will focus on some of the ideas expressed during the discussion of the Committee at its last session.

First and foremost, we wish to reiterate our commitment to the specific procedure of the CR Committee. Luxembourg is willing to consider any improvement in working methods that may enable the Committee to operate more rigorously and effectively; we nevertheless wish to draw attention to the fact that there is a "procedural practice" which already clarifies a number of issues raised during our discussion. It is therefore appropriate, before making any amendments to our rules, to check whether these have not already been clarified in the "procedural practice".

In addition, Luxembourg is of the view that before introducing amendments to the working methods, it is necessary to jointly identify the problems to be addressed, in order to ensure that the proposed amendments approximately address the problems raised. However, at the end of our discussion in April, it appeared to us that this was not always the case.

After these preliminary observations, please find below our comments on some more specific points:

- Luxembourg reaffirms the need to maintain a balance between the two mandates of the CR Committee. This means that the "human rights" and "monitoring of the implementation of UNESCO's standard-setting instruments" aspects should both continue to be addressed without either one becoming dominant or dominated. The agenda of the Committee should always allow sufficient time to address all the issues before it in the context of its two mandates.

- Luxembourg firmly believes that it is essential to continue to hold two sessions of the Committee each year, as in the past. Not only is it unclear to us which problem would be solved by abolishing an annual session, but it should also be borne in mind that cases addressed under the "104 procedure" are humanitarian and often concern individuals in extremely precarious situations. There would be no justification for reducing the attention of the Committee to these cases.

- Some countries called for the relevance of the "104 procedure" to be examined in the light of the other existing procedures within the United Nations system. To our knowledge, a study was already carried out on the subject by the Secretariat a few years ago and it concluded that the procedure of the CR Committee was specific and unique (particularly since it avoids all publicity regarding the victims and the countries concerned), thus ruling out the notion of duplication. The Secretariat could provide the Committee with a copy of this study and, if necessary, update it.

- The attitude to adopt in the event that no new information is provided by the authors to the Committee is an issue that should be addressed. It may be useful to clarify this issue by letting the authors of communications know that if they fail to provide additional information for two consecutive sessions, the Committee reserves the right to withdraw the case from its list.

- Some countries raised the issue of verification of the information. In addition to the fact that each of our countries may use its diplomatic network or simply the Internet to perform some checks, it appears to us that the Secretariat, which is neutral, could provide the Committee with additional information on the authors of the communication. We wish to

recall, however, that the Committee operates in a spirit of trust and that it is not a court that must judge the reliability of any “evidence”. Furthermore, the sources cited by the authors of the communications are stated in the text of the latter and are made available by the Secretariat to Committee members who wish to verify them.

- The issue of the geographical imbalance of the communications also calls for reflection. It does not appear to us, however, that it can be resolved through a working group. Several observations should be made:

  – As we noticed on the occasion of its 30th anniversary, the “104 procedure” is still too little known to civil society – which most often initiates the communications. An enhanced visibility campaign for the CR Committee and its procedure in all the regions would constitute an important initial step in providing the conditions for a smaller imbalance. We wish to state, however, that the Committee should not seek to achieve “geographical balance” in communications – the Committee should take up all cases that fall within its mandate, regardless of geographical considerations.

  – It is important not to confuse the issues of geographical imbalance and admissibility. Confusing the two would be tantamount to politicizing the admission of cases to the Committee. Luxembourg considers that it is neither necessary nor useful to establish a working group to make an initial selection of the communications:

    - This task is already performed by the Secretariat, a politically neutral body;

    - The CR Committee is a sufficiently small body (30 members) for it not to require the establishment of a sub-group that would only make its procedures more burdensome;

    - The number of new cases that require a decision to be made as to their admissibility can currently be fully managed by the Secretariat and the Committee;

    - Which problem would be addressed by the creation of a sub-working group? Issues that may arise in relation to neutrality or verification are, according to Luxembourg, addressed by the Secretariat in the processing of files. It seems to us that it would be wiser to specify, as necessary, the information that the Committee wished to obtain in order to decide on the admissibility of a case, rather than to create additional bodies that would, in our view, be counterproductive.

MEXICO

Position of Mexico on the review of working methods under the "104 procedure"

In the first place, Mexico considers that any review of the CR Committee's working methods should include the possibility of consolidating all of the Committee's methods into a single document. The fact that at present the methods are to be found in the Executive Board decisions and Rules of Procedure and in procedural decisions and practices adopted by the CR Committee itself, affects the predictability and certainty of the mechanism.

(a) Conditions for the admissibility of communications

The decision adopted by the Executive Board in 1978 (104 EX/Decision 3.3) establishes, in paragraph 14(a), the conditions that determine the admissibility of communications to the CR Committee, namely:

"(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."

Mexico considers that the conditions of admissibility – which form the substance of the procedure – lack precision and transparency. For instance, subparagraph (iii), relating to the CR Committee's competence *rationae materiae*, does not identify exactly which human rights violations may be examined by the Committee. Likewise, the wording of subparagraph (ix), regarding the exhaustion of domestic remedies, is not clear and may be subject to varying interpretations, especially in the light of the finding reported in document 179 EX/CR/2.

Nor does admissibility require that communications should not concern questions that are already, have been or might be examined by other bodies or under procedures established within the United Nations system. Accordingly and in order to avoid duplication, the advisability of requiring, as a condition of admissibility, that the communications do not concern questions that are already being, or have been, examined by other international bodies or under such procedures must be assessed. Similarly, the question of revising the scope of the requirement in respect of the prior exhaustion of domestic remedies might be raised, given the flexibility with which it is currently applied.

Mexico considers that it is also desirable to revise the procedure followed in determining the admissibility of cases. Mexico considers that the Committee should be apprised of the grounds on which the Secretariat rejects some cases and of the States concerned by the communications that are thus not admitted, which would help to make the procedure more transparent.

(b) Procedure for the consideration of communications

The procedure is neither judicial nor quasi-judicial; on the contrary, its goal is to find an amicable solution to cases brought to the attention of UNESCO through:

- dialogue with the governments concerned in order to consider with them, in strict confidentiality, measures that might be taken to promote human rights in the Organization's fields of competence;

- and "in a spirit of international cooperation, conciliation and mutual understanding … [since] UNESCO should not play the role of an international judicial body" (104 EX/Decision 3.3, para. 7).

The UNESCO procedure has distinctive features when compared to similar procedures already existing in other organizations of the United Nations system, most outstandingly:

- the mechanism is not based on a convention;

- the complaint may concern any Member State, precisely because it is a member of UNESCO;

- the complaint will be considered under a procedure that maintains its personal nature from beginning to end, unlike procedures under which personal communications are examined as a source of information on a particular situation and as revealing a pattern of flagrant and systematic violations of human rights;

- every effort is made to avoid a conflictual and adversarial context, in an endeavour to improve the situation of the alleged victims, rather than to condemn, much less punish, the governments concerned.

(c) Role of the CR Committee in the context of United Nations system reform in the field of human rights

System-wide coherence is an important component in achieving comprehensive reform of the United Nations, owing to its impact on the efficiency of the Organization and its effects on other aspects of the *reform process*. Mexico therefore considers that, in the review of the CR Committee, establishment of specific terms of reference for such a body is a matter of prime importance.

In that regard, Mexico considers that owing to the broad competence *rationae materiae* of the procedure, the CR Committee examines cases that fall within the specialized jurisdiction of other United Nations bodies and procedures. The CR Committee frequently analyses not only questions relating to the right to education and culture, but also the imprisonment of teachers, matters relating to the freedom of expression and the right to information of professionals in the fields of education, science and culture and, indeed, questions relating to their freedom of movement.

Mexico is of the opinion that the foregoing leads to the duplication of UNESCO's functions with other specialized and independent human rights mechanisms. For instance, several cases of imprisonment concern questions that also fall within the purview of the Human Rights Council, which has been set the specific task of "promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner". Likewise, consideration of complaints concerning economic, social and cultural rights will fall within the jurisdiction of the fledgling Committee on Economic, Social and Cultural Rights.

It should be pointed out that the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights was adopted on 10 December 2008 and will be opened for signature in September 2009. Under this instrument, the Committee on Economic, Social and Cultural Rights may receive and consider individual communications on alleged violations of those rights.

The CR Committee's procedure for the examination of communications relating to the second aspect of its terms of reference also involves a duplication of work falling within the remit of other committees in the United Nations system, such as the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination Against Women, *inter alia*, and in regional systems. Moreover, duplication is being exacerbated for, as mentioned above, admissibility does not require that communications should not concern questions that *are already being, have been or might be* considered by other international bodies or under such procedures.

In short, it would be desirable for the UNESCO Secretariat to conduct a study on the role of the CR Committee within the reformed United Nations system, in which it would assess the Committee's current relationship to the international bodies considered below.

Human Rights Council

The Human Rights Council, established under resolution 60/251 adopted on 15 March 2006 by the United Nations General Assembly has been set the task of "promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner". According to paragraph 3 of the resolution, "the Council should address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon. It should also promote the effective coordination and the mainstreaming of human rights within the United Nations system". The Council is also required to "promote human rights education and learning, as well as advisory services, technical assistance and capacity-building, to be provided in consultation with and with the consent of Member States concerned".

Fulfilment of the State's human rights obligations is assessed under a universal period review mechanism (resolution 5/1 and decision 6/102 of the Council) in place since June 2007.

The universal periodic review mechanism is a tool used by the international community to conduct a public four-yearly examination of the human rights situation in all United Nations Member States.

It is a very innovative tool, designed in 2006 when the United Nations Human Rights Council was established.

One of the main reasons for the establishment of the Council was to put an end to the perception of politicization, selectivity and double standards that were associated with its predecessor, the Commission on Human Rights. In its resolutions, the Commission frequently singled out human rights situations in some countries rather than in others, not necessarily on grounds of the severity of the case but rather as a result of the political alliances of the country sponsoring the denunciatory resolution.

The universal periodic review mechanism breaks new ground in that the international community now examines the human rights situation in ***all*** United Nations Member States ***without exception***. Special attention was paid when establishing the Committee, to the written provision requiring that the work of the mechanism be guided by the principles of *objectivity, non-selectiveness, universality and equal treatment*.

One of the objectives of the review is *improvement of the human rights situation on the ground*. To that end, positive developments and challenges faced by each country reviewed in the field of human rights are assessed. An effort is made to determine whether the State needs international cooperation and technical assistance and to contribute to its capacity-building and fulfilment of its international human rights obligations. Furthermore, the mechanism serves as a forum for the sharing of best practices in the field among States and other stakeholders and encourages all countries to cooperate with the international human rights system. The review is conducted in two stages.

First stage

During the first stage, an intergovernmental working group, in which all United Nations Member States take part, holds an interactive three-hour dialogue with the State under review. Other stakeholders, such as civil society organizations, may attend and observe the review.

The States question the country under review on the basis of the information contained in three separate reports:

(i) a national report, 20 pages long, prepared by the country under review;

(ii) two reports compiled by the United Nations Office of the High Commissioner for Human Rights (UNOHCHR), each 10 pages long and drawing on:

(a) information contained in relevant official United Nations documents; and

(b) input from other stakeholders, including autonomous human rights bodies (that is, national and State human rights commissions) and civil society organizations.

The outcome of the review consists of recommendations made by States to the country under review with a view to improving the national human rights situation. The country under review may accept or reject the recommendations.

Second stage

During the second stage, the outcome of the review is considered by the “plenary” of the Human Rights Council, held approximately two months after the country review. At the plenary meeting, the country under review makes additional comments on the outcome of the review and other

stakeholders, such as autonomous or civil society bodies, have the opportunity to make general comments on the matter. All comments are reflected in the final outcome report.

In addition, the Human Rights Council also has a procedure, known as the complaint procedure, or 1503 procedure, which is followed in handling communications relating to human rights. It was established by Economic and Social Council resolution 1503 (XLVIII) of 27 May 1970 and is thus the "oldest human rights complaint mechanism of the United Nations". In 2000, the Economic and Social Council revised the procedure (resolution 2000/3 of 16 June 2000) thoroughly in order to make it more effective, facilitate dialogue with the governments concerned and provide for a more profound debate in the final phases of the complaints procedure before the Human Rights Council.

The procedure entails examination of individual communications and, on that basis, identification of cases of "consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances".

Pursuant to resolution 2000/3 (16 June 2000) of the Economic and Social Council, a Working Group on Communications (WGC) is appointed each year by the Sub-Commission on the Promotion and Protection of Human Rights. It meets annually to examine communications (complaints) received from individuals and groups alleging human rights violations and all governments' replies on these specific cases.

When the Working Group finds reasonable proof of a consistent pattern of gross violations of human rights, the matter is referred to the Working Group on Situations (WGS). The Council may thus take a decision on each situation brought to its attention by WGS.

Criteria for the admissibility of a communication

In order to decide which communications are acceptable for examination, the Sub-Commission on the Promotion and Protection of Human Rights has drawn up rules of procedure (Sub-Commission resolution 1 (XXIV) of 13 August 1971). The admissibility criteria may be summarized generally as follows:

- no communication will be admitted if it runs counter to the principles of the Charter of the United Nations or appears to be politically motivated;

- a communication will only be admitted if, on consideration, there are reasonable grounds to believe – also taking into account any replies sent by the government concerned – that a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms exists;

- communications may be submitted by individuals or groups who claim to be victims of human rights violations or who have direct, reliable knowledge of violations; anonymous communications are inadmissible as are those based only on reports in the mass media;

- each communication must describe the facts, the purpose of the petition and the rights that have been violated; as a rule, communications containing abusive language or insulting remarks about the State against which the complaint is directed will not be considered;

- domestic remedies must have been exhausted before a communication is considered, unless it can be shown convincingly that solutions at the national level would be ineffective or that they would extend over an unreasonable length of time.

Quasi-judicial mechanisms

Quasi-judicial mechanisms provide for the examination of individual communications by United Nations treaty bodies that are composed of independent experts, especially those who examine

communications relating to imprisonment and to violations of the rights to education, culture, freedom of expression and other such rights, matters also addressed by the CR Committee.

Judicial and quasi-judicial mechanisms

Readings under such mechanisms are conducted by the Inter-American Commission on Human Rights and Inter-American Court of Human Rights.

SRI LANKA

1. All communications are from developing countries and the majority of them are from the ASPAC region.

2. The communications emanate from the same group of people or organizations from the same geographical region.

3. Though the mandate of the CR is two-fold, there is an unbalanced focus on considering communications on “perceived” human rights violations.

4. Some communications do not merit the consideration of the CR Committee and are better suited for examination by other United Nations Human rights bodies.

5. Some communications undergo parallel examination by several bodies of the United Nations. The CR Committee should work in coordination and consultation with these bodies in order to avoid duplication of work.

6. The CR Committee should only consider communications which clearly fall within the fields of competence of UNESCO.

7. The CR Committee should not examine cases which fall within the domestic jurisdiction of individual countries. It should also be kept in mind that Member States of UNESCO are sovereign nations with their own national legal systems, the workings and procedures of which should be respected by the Committee Members.

8. The Communications should indicate that all domestic remedies have been exhausted. The Committee should not accept any cases that are *sub-judicae*.

9. Too much credibility is being given to submissions made by the authors of communications whereas submissions by sovereign governments which are the Member States of UNESCO are being questioned.

10. Representatives of Member States who come before the Committee in a spirit of cooperation with the Committee are sometimes questioned with such disrespect and lack of courtesy by certain Members of the Committee who tend to take a very pejorative stance against the “perceived” guilty party, that it gives the impression that the CR Committee is a tribunal, indeed “playing the role of an international judicial body”. This is in clear contrast to the objective of the Committee.

11. Communications which are authored on the basis of media reports should not be accepted for consideration, as media reports cannot be considered a source of “reliable knowledge”, upon which a communication is based.

12. The frequency of the Committee meetings to consider communications should be reduced. Communications should be considered only once every year rather than biannually as the time gap between two consecutive sessions of the Executive Board may not be sufficient for Member States to take measures to address the issues.

13. Sri Lanka fully supports the idea of creating a Working Group comprising representatives of the six regional groups who would examine new communications on their admissibility before the first meeting of the Committee and submit recommendations to the Committee.

14. Sri Lanka believes that a comprehensive assessment of the working methods of the Committee to accommodate the above concerns is essential for it to function in the way it was intended to at its inception.