



33 C/20  
4 August 2005  
Original: French

Item 7.1 of the provisional agenda

**LEGAL FRAMEWORK FOR THE ELABORATION, EXAMINATION,  
ADOPTION AND FOLLOW-UP OF DECLARATIONS, CHARTERS AND  
SIMILAR STANDARD-SETTING INSTRUMENTS ADOPTED BY THE  
GENERAL CONFERENCE AND NOT COVERED BY THE  
RULES OF PROCEDURE CONCERNING RECOMMENDATIONS TO  
MEMBER STATES AND INTERNATIONAL CONVENTIONS COVERED BY THE  
TERMS OF ARTICLE IV, PARAGRAPH 4, OF THE CONSTITUTION**

**OUTLINE**

**Source:** 32 C/Resolution 77.

**Background:** At its 32nd session, the General Conference invited the Director-General to submit to it at its 33rd session a legal framework for the elaboration, examination, adoption and follow-up of declarations, charters and similar standard-setting instruments adopted by the General Conference and not covered by the *Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution*.

**Purpose:** This document is divided into three parts covering UNESCO's practice with regard to the elaboration, examination and adoption of declarations, the practice with regard to their follow-up and, in that regard, the multi-stage procedure proposed as a legal framework and based on 20 C/Resolution 32.1 of the General Conference and on the established practice in the Organization.

**Decision required:** paragraph 41.

## INTRODUCTION

1. By 32 C/Resolution 77, the General Conference of UNESCO invited the Director-General to submit to it at its 33rd session a legal framework for the elaboration, examination, adoption and follow-up of declarations, charters and similar standard-setting instruments (hereinafter referred to as “declarations”) adopted by the General Conference and not covered by the *Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution*.

2. That resolution followed the approval by the General Conference of amendments to 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*, as part of the review of the procedures under which Member States are invited to inform the Organization of action that they have taken in pursuance of conventions and recommendations adopted by the General Conference.

3. However, compared with conventions and recommendations, declarations have the following distinctive characteristics:

- the elaboration, examination and adoption of declarations, also known as charters in some cases, do not rest on any specific constitutional or regulatory basis but draw on practice within the Organization, in contrast to conventions and recommendations, which are instruments adopted on the basis of the Constitution and the *Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution*;
- as in the case of conventions and recommendations – other UNESCO standard-setting instruments – the advisability of drafting declarations is usually determined by the General Conference, in accordance with 20 C/Resolution 32.1 adopted in 1978;
- declarations are non-conventional instruments that are not binding on Member States, which is also the case of recommendations;
- declarations generally have a simple structure, comprising a Preamble and a statement of a set of principles;
- the aim of a declaration is to stress the importance that the Organization ascribes to the subjects covered by the declarations and to the principles that should guide the action of Member States and the Organization. Declarations cover subjects of universal significance and raise international awareness of crucial issues that are not yet covered by international regulations;
- declarations are adopted by consensus and preserve State sovereignty, allowing States to choose the measures to be adopted in pursuance of the declarations. They thus differ from conventions and recommendations which are adopted by the General Conference by a two-thirds majority and a simple majority, respectively;
- the conditions under which declarations are implemented are not subject to any particular procedure, while the implementation of conventions and recommendations is governed by the *Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution*.

4. Against this background, the Secretariat has drawn-up this document which sets out the Organization's practice with regard to the elaboration, examination and adoption of declarations, the practice with regard to their follow-up and, in that regard, the multi-stage procedure proposed as a legal framework and based on 20 C/Resolution 32.1 of the General Conference (Annex I) and on the established practice in the Organization. By way of comparison, an outline of the practice at the World Trade Organization (WTO) in this field is annexed to this document (Annex II).

### **Part I – UNESCO's practice with regard to the elaboration, examination and adoption of declarations**

5. Although there is no specific rule setting out procedures for the elaboration, examination and adoption of declarations at UNESCO apart from the terms of 20 C/Resolution 32.1 of the General Conference, an analysis of the practice in the Organization shows that the various stages below have generally been followed:

- in general, the work entailed in the drafting of declarations has been undertaken in accordance with a resolution adopted by the General Conference as to the advisability of such a standard-setting instrument. The request to draw up a declaration may be taken on the basis of a report by the Director-General or a recommendation by the Executive Board or a recommendation by a subsidiary organ of the General Conference, whose members are elected by the General Conference. The initiative may also be taken by other international organizations or non-governmental organizations and associations;
- it should also be noted that the General Conference at its 20th session had already decided in 20 C/Resolution 32.1 that any proposal calling for the drafting of a standard-setting instrument other than an international convention or a recommendation should also take the form of a draft resolution specifying the time-limits and stages of its preparation and providing for prior consultation of Member States;
- the drafting of declarations rests on the work of experts and on meetings of groups of governmental experts and drafting committees. UNESCO bodies may also play a role in the drafting of declarations, as in the case of the International Bioethics Committee with respect to the *Universal Declaration on the Human Genome and Human Rights* and the *International Declaration on Human Genetic Data*. The World Heritage Committee also played a part in drawing up the *UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage*;
- a declaration is adopted through the adoption of a resolution by consensus by the General Conference. The adoption of a declaration demonstrates the wish of the General Conference to ensure that the instrument adopted has a particular scope. Principles are set out and reaffirmed in declarations in order to strengthen the authority of the declarations. Indeed, the enshrinement and recognition of principles in non-binding but widely adopted instruments undoubtedly contribute to the establishment and reinforcement of their importance.

6. Twelve declarations have been adopted by the General Conference of UNESCO.<sup>1</sup> The practice followed in the elaboration, examination and adoption of each of these twelve declarations is detailed below.

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<sup>1</sup> These declarations are available on the Organization's website at the following address:  
[http://www.unesco.org/legal\\_instruments](http://www.unesco.org/legal_instruments)

### **Declaration of the Principles of International Cultural Cooperation, 4 November 1966**

7. This declaration is the outcome of drafting and negotiation work following a United Nations Economic and Social Council resolution in 1960, which was followed by two meetings of experts and a working party of the Programme Commission of the General Conference. The views of States were sought. The General Conference, at its 13th session (1964), requested the Director-General to draw up a declaration, in cooperation with the Executive Board and the Member States. The text was drawn up by a Special Committee of the Executive Board, on the basis of consultations. The Commission unanimously recommended that the General Conference adopt the Declaration. It was adopted by the latter on 4 November 1966.

### **Declaration of Guiding Principles on the Use of Satellite Broadcasting for the Free Flow of Information, the Spread of Education and Greater Cultural Exchange, 15 November 1972**

8. The General Conference at its 16th session authorized the Director-General to draft a declaration on guiding principles for the use of space communication for the free flow of information, the spread of education and greater cultural exchange, with the assistance of an advisory panel and in cooperation with the United Nations and the International Telecommunication Union. This initiative followed on from reports requested by the General Conference as from 1962, which in fact involved meetings of experts and consultations with the international partners concerned. The Director-General submitted to the General Conference for adoption a draft Declaration which had been endorsed by a meeting of experts. The General Conference adopted the Declaration on 15 November 1972.

### **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, 28 November 1978**

9. At the request of the General Conference at its 17th session (1972), a group of experts was convened to advise the Director-General on a draft declaration on this issue. A draft was submitted to the General Conference at its 18th session (1974). Following the debates, the General Conference requested that an intergovernmental group of experts be convened to draw up a new version of the draft declaration. At its 19th session (1976), the General Conference requested further consultations on the draft to secure the broadest possible agreement on the text of the Declaration. In view of the varying and conflicting viewpoints, the Director-General brought the matter to the attention of the Executive Board, which in turn requested that he continue his work. The Director-General, with the assistance of another group of consultants, drew up a new draft which was submitted to the General Conference for approval at its 20th session (1978). Extensive consultations were held on the draft at the 20th session of the General Conference. The Director-General recommended that it be adopted by consensus. The Declaration was approved by the General Conference on 28 November 1978.

### **Declaration on Race and Racial Prejudice, 27 November 1978**

10. At the request of the General Conference at its 19th session (1976), the Director-General submitted to the General Conference at its 20th session (1978) a draft Declaration on Race and Racial Prejudice. The draft was based on work conducted at the request of the General Conference by the Director-General in consultation with experts. Member States were consulted. The draft declaration was adopted by consensus by a group of State representatives, convened in March 1978 by the Director-General in accordance with a decision of the Executive Board, with a view to drawing up the text of a draft declaration. Taking into account the views expressed by States, the

text was then amended. It was adopted by consensus by the General Conference at its 20th session on 27 November 1978.

### **International Charter of Physical Education and Sport, 21 November 1978**

11. On the proposal of the Director-General, the General Conference at its 19th session (1976) established an Interim Intergovernmental Committee for Physical Education and Sport, composed of thirty Member States, to consider the Director-General's proposal to draw up an International Charter of Physical Education and Sport. A subsidiary body was set up by the Intergovernmental Committee and was assigned the task of drawing up a draft charter in the form of a declaration. Having examined, amended and approved the draft, the Intergovernmental Committee then recommended that the Director-General submit it to the General Conference. The Director-General submitted the draft to the General Conference which adopted it on 21 November 1978, at its 20th session.

### **Declaration of Principles on Tolerance, 16 November 1995**

12. At its 26th session (1991), the General Conference invited the Director-General to examine, in consultation with the United Nations, the appropriate arrangements for declaring 1995 United Nations Year for Tolerance, and to prepare a declaration on tolerance. The United Nations General Assembly, in resolution 47/124 (1992), took note with appreciation of the proposal of the General Conference, encouraging UNESCO to prepare a declaration on tolerance. The Director-General then submitted to the Executive Board an analytical study and a plan of action with a view to the proclamation of 1995 United Nations Year for Tolerance and the preparation of a Declaration on Tolerance. The Executive Board, having examined the report of the Director-General, invited him to pursue international consultations on the drafting of a text to be submitted to the United Nations General Assembly for official adoption at the time of the launch of the United Nations Year for Tolerance. At its 27th session (1993), the General Conference took note of the analytical study and plan of action with a view to the proclamation of 1995 as United Nations Year for Tolerance and the preparation of a declaration on tolerance. The two documents were submitted by the Director-General, following meetings of a group of experts. Pursuant to the request in resolution 49/213 of the United Nations General Assembly (1994), which called for a declaration of principles and a programme of action for the United Nations Year for Tolerance, the General Conference at its 28th session adopted the draft declaration and the plan of action submitted by the Director-General and transmitted them to the United Nations General Assembly, which then took note of the Declaration of Principles on Tolerance and Follow-Up Plan of Action for the United Nations Year for Tolerance (resolution 51/95).

### **Declaration on the Responsibilities of the Present Generations Towards Future Generations, 12 November 1997**

13. In 1994, UNESCO sponsored a meeting of experts organized by the Tricontinental Institute for Parliamentary Democracy and Human Rights, which adopted the *Universal Declaration of Human Rights for Future Generations*. The Director-General submitted this Declaration to the Executive Board at its 145th session (1994). During the debates, the Executive Board requested a deeper examination of the nature of the rights of future generations. The Director-General, taking into account the suggestions of the Executive Board, consulted specialists before submitting a preliminary draft declaration entitled *Preliminary Draft of a Declaration of the Rights of Future Generations* to the Executive Board at its 147th session (1995). Pursuant to the suggestions made at the 147th session of the Executive Board, the Director-General drew up a new version of the preliminary draft declaration entitled *Preliminary draft of a declaration on the responsibilities of the present generations towards future generations*, which was submitted to the

General Conference at its 28th session (1995). The Director-General then proposed to convene a working group composed of governmental experts. The Executive Board endorsed the proposal, which was adopted at its 151st session (1997). A draft Declaration on the Responsibilities of the Present Generations Towards Future Generations produced by the working group was then submitted to the Executive Board at its 152nd session (1997). The latter decided at its 152nd session (1997) to transmit the draft declaration to the General Conference. The General Conference adopted this Declaration on 12 November 1997.

#### **Universal Declaration on the Human Genome and Human Rights, 11 November 1997**

14. At its 24th session (1987), the General Conference invited the Director-General to study the impact of scientific and technological progress on human rights. At its 25th session (1989), the General Conference invited the Director-General to give priority to the examination of this subject during the period 1990-1995. The General Conference, at its 27th session (1993), approved the establishment by the Director-General of the International Bioethics Committee of UNESCO and invited the Director-General to continue in 1994-1995 the preparation of an international instrument on the protection of the human genome. Following the submission of the Director-General's report entitled *Possibility of drawing up an international instrument on the protection of the human genome*, which endorsed the work accomplished by the International Bioethics Committee of UNESCO, the General Conference at its 28th session invited the Director-General to draw-up a preliminary draft declaration on the protection of the human genome and to convene a committee of governmental experts to be entrusted with the finalization of this draft declaration, with a view to its adoption by the General Conference at its 29th session (1997). The governmental committee of experts met in July 1997 at UNESCO Headquarters and adopted the draft Universal Declaration on the Human Genome and Human Rights by consensus. The Director-General then proposed that it be adopted by the General Conference at its 29th session. The General Conference adopted the *Universal Declaration on the Human Genome and Human Rights* on 11 November 1997.

#### **UNESCO Universal Declaration on Cultural Diversity, 2 November 2001**

15. The Executive Board at its 160th session (2000) invited the Director-General to identify the preliminary considerations for a UNESCO draft declaration on cultural diversity. The Director-General then submitted a report to the Executive Board at its 161st session (2001), which invited the Director-General to draw-up, on the basis of that report, a draft declaration for submission to the General Conference at its 31st session (2001), taking into consideration the amendments suggested by the Executive Board at its 161st and 162nd sessions (2001). The UNESCO draft declaration on cultural diversity, drawn-up by the Director-General, was submitted to the General Conference by the Executive Board. The General Conference adopted the *UNESCO Universal Declaration on Cultural Diversity* on 2 November 2001.

#### **Charter on the Preservation of Digital Heritage, 15 October 2003**

16. The General Conference at its 31st session (2001) invited the Director-General to draw-up, for the Executive Board at its 164th session (2002), a draft charter on the preservation of digital heritage, to be submitted to the General Conference for adoption at its 32nd session (2003). The Executive Board, having examined and amended the draft submitted by the Director-General, invited him to prepare a preliminary draft charter on the preservation of the digital heritage, taking into consideration the discussions held at the 164th session of the Executive Board. The preliminary draft, which took into consideration the suggestions of Member States, was submitted to the Executive Board at its 166th session (2003). The preliminary draft charter was then examined and amended by the Executive Board, which invited the Director-General to submit a consolidated draft

charter to the General Conference at its 32nd session. The General Conference adopted the *Charter on the Preservation of Digital Heritage* on 15 October 2003.

### **International Declaration on Human Genetic Data, 16 October 2003**

17. The General Conference at its 31st session (2001) endorsed the Director-General's proposal to initiate work to draw up an international instrument on genetic data. The International Bioethics Committee of UNESCO (IBC) had worked on the issue of genetic data since 1999. At the request of the Director-General, IBC established an *ad hoc* drafting group in 2001. At its 165th session (2002), the Executive Board, after examining the IBC's work on genetic data, considered that an international declaration on human genetic data with due regard for human dignity and human rights and freedoms should be drawn up as a matter of urgency. The Executive Board also invited the IBC Drafting Group to continue work to draw up such a declaration. At its 166th session (2003), the Executive Board, after taking note of the work carried out by the IBC Drafting Group, convened a meeting of governmental experts and invited the Director-General to submit a preliminary draft declaration for submission, after being discussed at a meeting of governmental experts, to the General Conference at its 32nd session (2003) for adoption. The preliminary draft submitted by the Director-General took into consideration the work of the IBC Drafting Group. The Executive Board at its 167th session (2003) recommended that the General Conference adopt the draft International Declaration on Human Genetic Data. The General Conference adopted this declaration on 16 October 2003.

### **UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage, 17 October 2003**

18. The Executive Board addressed the issue of the intentional destruction of cultural heritage at its 162nd session (2001). The General Conference had already addressed this issue at its 31st session (2001). The Director-General had then been invited by the Executive Board to submit a report on the subject, taking into consideration the proposals of the World Heritage Committee. The Director-General then proposed to draw up a draft declaration to be adopted by the General Conference at its 32nd session (2003). The report by the Director-General proposed to draw up a draft declaration, recalling the principles set out in the UNESCO Conventions on cultural heritage. The Executive Board approved that report at its 162nd session (2001) and transmitted it to the General Conference. At its 31st session, the General Conference requested the Director-General to formulate, for its 32nd session, a draft Declaration concerning the Intentional Destruction of Cultural Heritage. In pursuance of this resolution, a meeting of governmental experts was convened and a draft declaration was drawn up. On the basis of that draft, the Director-General compiled a consolidated draft which was approved by the Executive Board at its 167th session (2003) and transmitted to the General Conference. The General Conference adopted the *UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage* on 17 October 2003.

### **Part II – UNESCO's practice with regard to the follow-up of declarations**

19. With regard to the follow-up of declarations, certain characteristics emerge from UNESCO's practice:

- in general, resolutions concerning the adoption of declarations or the follow-up of these instruments urge the Member States of UNESCO to take all appropriate measures, whether of a legislative, administrative or other character, to give effect to the principles set out in a given declaration;

- furthermore, resolutions invite the Director-General to take into account the principles set forth in the declarations and to take the necessary steps to ensure the widest possible dissemination.

20. Some declarations may contain specific follow-up mechanisms, which include the establishment of an implementation plan of action or even action by UNESCO's special committees in making recommendations addressed to the General Conference and giving advice concerning the follow-up of a given declaration.<sup>2</sup> In one case, the adoption of a declaration has given rise to the negotiation of an international convention.<sup>3</sup> The practice with regard to the follow-up of each of the twelve declarations is set out below.

#### **Declaration of the Principles of International Cultural Cooperation, 4 November 1966**

21. The General Conference of UNESCO, by 14 C/Resolution 8 regarding the adoption of the Declaration, recommended the Declaration to the attention of Member States and Associate Members and invited them to publish the text of it in their respective languages and to ensure that it was distributed, displayed, read and commented on. It also requested Member States to use their best efforts to implement the provisions of the Declaration. It then authorized the Director-General to arrange for the widest possible circulation of the text of the Declaration in Member States and among Associate Members and international organizations, and to study ways and means of giving effect to the principles it enunciates.

#### **Declaration of Guiding Principles on the Use of Satellite Broadcasting for the Free Flow of Information, the Spread of Education and Greater Cultural Exchange, 15 November 1972**

22. The General Conference of UNESCO adopted this Declaration in 17 C/Resolution 4.111. However, no provision was made for a follow-up mechanism.

#### **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, 28 November 1978**

23. The General Conference of UNESCO adopted this Declaration in 20 C/Resolution 4/9.3/2. No provision is made for a mechanism to follow up the Declaration.

#### **Declaration on Race and Racial Prejudice, 27 November 1978**

24. In 20 C/Resolution 3/1.1/3, in which the above-mentioned Declaration was adopted, the General Conference of UNESCO invited the Director-General to prepare a comprehensive report on the world situation in the fields covered by the Declaration. It also invited the Director-General to report to the General Conference and to submit to it for decision any general comments and any recommendations deemed necessary to promote the implementation of the Declaration.

#### **International Charter of Physical Education and Sport, 21 November 1978**

25. 20 C/Resolution 1/5.4/2, in which the Charter was adopted, does not contain any follow-up measures. Nevertheless, 20 C/Resolution 1/5.4/3, in which the statutes of the Intergovernmental Committee for Physical Education and Sport (CIGEPS) were adopted, provides that the Committee shall be responsible for the implementation of the Charter.

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<sup>2</sup> See Article 24 of the Universal Declaration on the Human Genome and Human Rights.

<sup>3</sup> See the UNESCO Universal Declaration on Cultural Diversity.



### **Declaration of Principles on Tolerance, 16 November 1995**

26. In 28 C/Resolution 5.62, the General Conference of UNESCO invited the Director-General to ensure the widest possible dissemination and to initiate an appropriate mechanism for coordinating and evaluating actions undertaken in support of tolerance promotion and education in the United Nations and in cooperation with other partner organizations.

27. Pursuant to 28 C/Resolution 5.41, the Permanent System of Reporting on Education for Peace, Human Rights, Democracy, International Understanding and Tolerance concerning the application of the 1974 Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms also applies, *inter alia*, to the *Declaration of Principles on Tolerance*, which is thus one of the standard-setting instruments monitored by the Committee on Conventions and Recommendations of the Executive Board (CR).

### **Declaration on the Responsibilities of the Present Generations Towards Future Generations, 12 November 1997**

28. This Declaration was adopted by 29 C/Resolution 44. Article 12 of the Declaration sets out an implementation procedure. States, the United Nations system, other intergovernmental and non-governmental organizations, individuals, public and private bodies should assume their full responsibilities in promoting, in particular through education, training and information, respect for the ideals laid down in the Declaration, and encourage by all appropriate means their full recognition and effective application. Moreover, the Organization is requested to disseminate the Declaration as widely as possible, and to take all necessary steps in its fields of competence to raise public awareness of the ideals enshrined therein.

### **Universal Declaration on the Human Genome and Human Rights, 11 November 1997**

29. This Declaration was adopted by 29 C/Resolution 16 of the General Conference. Paragraph G of the Declaration contains rules concerning its implementation. In particular, States are requested to take appropriate measures to promote, through education, training and information dissemination, respect for the principles enshrined and to foster their recognition and effective application. States should also encourage exchanges and networks among independent ethics committees, as they are established, to foster full collaboration. Paragraph G of the Declaration also states that the International Bioethics Committee of UNESCO, created in 1993, should contribute to the dissemination of the principles set out in the Declaration and to the further examination of issues raised by their applications and by the evolution of the technologies in question. It should organize appropriate consultations with parties concerned, such as vulnerable groups. It should make recommendations, in accordance with UNESCO's statutory procedures, addressed to the General Conference and give advice concerning the *follow-up* of this Declaration, in particular regarding the identification of practices that could be contrary to human dignity, such as germ-line interventions.

30. General Conference resolution 29 C/Resolution 17 sets out mechanisms for the follow-up to the Declaration. The plenary body invited the Director-General to convene an ad hoc working group with balanced geographical representation, comprised of representatives of Member States, with a view to advising him on the constitution and the tasks of the International Bioethics Committee with respect to the Universal Declaration, and on the conditions, including the breadth of consultations, under which it will ensure the follow up to the said Declaration. Thus, since 1998, IBC has rules of procedure and statutes which define its mandate, its membership and its procedures. The Director-General of UNESCO convenes IBC at least once a year. At its sessions and thanks to its working groups, IBC provides opinions and recommendations on specific matters,

which are widely disseminated and submitted to the Director-General so that he may communicate them to the Member States, the Executive Board and the General Conference.

31. The General Conference also invites the Director-General to prepare a global report on the situation worldwide in the fields relevant to the Declaration, on the basis of information supplied by the Member States and of other demonstrably trustworthy information gathered by whatever methods he may deem appropriate. Lastly, the Director-General is invited to submit his global report to the General Conference, together with whatever general observations and recommendations may be deemed necessary in order to promote the implementation of the Declaration.

### **UNESCO Universal Declaration on Cultural Diversity, 2 November 2001**

32. Annex II of the Declaration, which was adopted in 31 C/Resolution 25 of the General Conference, contains the *Main lines of an action plan for the implementation of the UNESCO Universal Declaration on Cultural Diversity*. The General Conference, in 31 C/Resolution 25, urge the Member States to take appropriate measures to promote the principles set forth in that Declaration together with the main lines of an action plan, and to facilitate their application, and to communicate regularly to the Director-General all relevant information on the measures they have taken to apply the principles set forth in the Declaration and the action plan. Furthermore, this resolution invites the Director-General to take into consideration the principles set forth in the Declaration and the main lines of its action plan when implementing UNESCO's programmes, and to take the necessary steps to ensure dissemination of and follow-up to the Declaration and the main lines of the action plan, in particular in relation to the institutions of the United Nations system and other intergovernmental and non-governmental organizations concerned. The action plan provided, *inter alia*, that the States should consider the advisability of an international legal instrument on cultural diversity. General Conference resolution 32 C/Resolution 31 authorizes the Director-General to implement the corresponding action plan for the promotion of the UNESCO Universal Declaration on Cultural Diversity.

### **Charter on the Preservation of Digital Heritage, 15 October 2003**

33. In 32 C/Resolution 42, whereby the Charter on the Preservation of digital heritage was adopted, the General Conference invited the Director-General to undertake all necessary actions, in cooperation with Member States, international governmental and non-governmental organizations and the private sector for the implementation of the Charter.

### **International Declaration on Human Genetic Data, 16 October 2003**

34. The Declaration was adopted by 32 C/Resolution 22 of the General Conference. Section F of the Declaration contains a series of rules relating to its implementation. Article 23 deals explicitly with implementation, and provides that States should take all appropriate measures, whether of a legislative, administrative or other character, to give effect to the principles set out in the Declaration, in accordance with the international law of human rights. Article 23 also urges States to enter into bilateral and multilateral agreements enabling developing countries to build up their capacity to participate in generating and sharing scientific knowledge concerning human genetic data and the related know-how. Article 25 emphasizes the role of the International Bioethics Committee (IBC) and the Intergovernmental Bioethics Committee (IGBC) in the implementation of the Declaration and the dissemination of the principles set out therein. On a collaborative basis, the two committees are responsible for its monitoring and for the evaluation of its implementation, *inter alia*, on the basis of reports provided by States. The two committees are responsible, in particular for the formulation of any opinion or proposal likely to further the effectiveness of the Declaration.

35. Article 26 of the Declaration relates to follow-up action by UNESCO. The Organization shall take appropriate action to follow up the Declaration so as to foster progress of the life sciences and their applications through technologies, based on respect for human dignity and the exercise and observance of human rights and fundamental freedoms.

36. General Conference resolution 32 C/Resolution 23 also deals with the implementation of the Declaration; in particular, it calls upon Member States to take all appropriate measures, whether of a legislative, administrative or other character, to give effect to the principles set out in the Declaration, in accordance with the international law of human rights, and to notify the Director-General regularly of any pertinent information on steps taken by them to implement the principles set forth in the Declaration. The resolution invites the Director-General to take appropriate steps to ensure the follow-up to the Declaration, including its dissemination and translation into a large number of languages and to take the necessary steps to enable UNESCO's international bioethics committee (IBC) and the Intergovernmental Bioethics Committee (IGBC) to contribute appropriately to the implementation of the declaration and dissemination of the principles set forth therein.

### **UNESCO Declaration concerning the intentional destruction of cultural heritage, 17 October 2003**

37. UNESCO General Conference resolution 32 C/ Resolution 33 invited the Director-General to take the necessary steps to ensure dissemination of and follow-up to the Declaration of the Principles of International Cultural Cooperation.

### **Part III – Multi-stage procedure proposed as a legal framework for the elaboration, examination, adoption and follow-up of declarations**

38. Although no specific regulations are in force, with the exception of 20 C/Resolution 32.1, the elaboration, examination, adoption and follow-up of UNESCO declarations have always, in practice, followed a pattern based on the following stages:

- resolution by the General Conference as to the desirability of a declaration, based on a report by the Director-General or a recommendation by the Executive Board or a recommendation by a subsidiary organ of the General Conference;
- consultation of intergovernmental experts and/or groups and actual drafting of the declaration;
- discussions in the Executive Board and adoption of the declaration by the General Conference, possibly on a recommendation by the Executive Board.

39. Follow-up action varies from one declaration to another, as set out in paragraphs 19 to 37 of this document.

40. The General Conference may wish, on the basis of this established practice and 20 C/Resolution 32.1, to institute a multi-stage procedure as a legal framework for the elaboration, examination, adoption and follow-up of declarations, charters and other standard-setting instruments, as set out below:

Multi-stage procedure for the elaboration, examination, adoption and follow-up of declarations, charters and similar standard-setting instruments adopted by the General Conference and not covered by the Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution.

*Stage 1: Resolution by the General Conference as to the desirability of a declaration, charter and similar standard-setting instruments*

It shall be for the General Conference to decide whether a question should be the subject of a declaration, charter or similar standard-setting instrument on the basis of a report by the Director-General or a recommendation by the Executive Board or a recommendation by a subsidiary organ of the General Conference, whose members are elected by the General Conference.

*Stage 2: Drawing up of the draft declaration, charter or similar standard-setting instrument*

The General Conference shall request the Director-General to submit to it on a date that it shall determine a draft declaration, charter or similar standard-setting instrument drawn up in consultation with the Member States. For the purpose of drawing up the draft instrument, the Director-General may convene intergovernmental meetings and committees of experts in accordance with the *Regulations for the general classification of the various categories of meetings convened by UNESCO*.

*Stage 3: Examination and adoption of the draft declaration, charter or similar standard-setting instrument by the General Conference*

The General Conference shall examine and discuss the draft declaration, charter or similar standard-setting instrument submitted to it, together with the recommendations of the Executive Board thereon.

The declaration, charter or similar standard-setting instrument shall be adopted by consensus.

*Stage 4: Follow-up of declarations, charters and similar standard-setting instruments adopted by the General Conference*

The Director-General shall ensure that the text of the declaration, charter or similar standard-setting instrument adopted by the General Conference is disseminated as widely as possible.

If the actual text of the instrument does not provide for a follow-up mechanism, the General Conference may invite the Director-General to submit to it on the dates that it shall determine a report on the measures taken by the Member States to give effect to the principles set forth in the declaration, charter or similar standard-setting instrument.

41. After examining this document, the General Conference may wish to adopt a resolution along the following lines :

The General Conference,

Having examined document 33 C/20 and taken note of the report of the Legal Committee (33 C/LEG/...),

Decides to approve the multi-stage procedure proposed by the Director-General as a legal framework for the elaboration, examination, adoption and follow-up of declarations, charters and similar standard-setting instruments adopted by the General Conference and not covered by the Rules of Procedure concerning recommendations and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution, as set out in paragraph 40 of document 33 C/20.

## ANNEX I

### 20 C/Resolution 32.1 of the General Conference

#### 32 The standard-setting activities of the organization

##### 32.1 *The General Conference,*

**Recalling** resolution 6.112 adopted at its nineteenth session and decision 105 EX/5.6.1 adopted by the Executive Board at its 105th session,

**Having examined** document 2OC/22 and Add. ('The Standard-setting Activities of the Organization: Proposals and Reports of the Director-General and the Executive Board'),

**Stressing** the importance of UNESCO's normative action,

**Considering** that the proposals set forth in the above-mentioned document are of a nature substantially to improve the Organization's standard-setting activities,

1. **Decides** accordingly that:

(a) any proposal whose purpose is to initiate a preliminary study with a view to the international regulation of a question in the form of an international convention or a recommendation to Member States should be the subject of a draft resolution submitted to the General Conference;

(b) having regard to the nature of the question under consideration, such a draft resolution shall specify the appropriate time-limits, with respect to the session of the Executive Board during which the preliminary study is to be examined, or the session of the General Conference during which the question of the advisability of such regulation will, if appropriate, be discussed; it might also provide for consultation of Member States for the purpose of preparing the preliminary study;

(c) proposals calling for the drafting of a normative instrument other than an international convention or a recommendation should also take the form of a draft resolution which might specify different time-limits, depending on the case, for the different stages of its preparation: such a draft resolution might provide for prior consultation of Member States;

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

(a) to give consideration to the feasibility of drawing up policy guidelines similar to those adopted at the nineteenth General Conference on UNESCO's publications policy, for use during the various stages of preparing normative instruments of all types;

(b) if this is considered feasible, to draw up draft guidelines for consideration by the twenty-first session of the General Conference;

3. **Invites** the Director-General to submit to it, at each of its sessions, a memorandum reporting the progress of work undertaken as part of the Organization's standard-setting action, indicating the subsequent stages contemplated and supplying all available information on the use made by Member States' governments of standard-setting instruments adopted under UNESCO's auspices ;

4. **Decides** that the report of the subsidiary organ of the Executive Board responsible for examining Member States' reports on the application of conventions and recommendations and the Executive Board's comments on this report shall be examined by the programme commissions of the General Conference, each in respect of the instruments which concern it, prior to their consideration in plenary meeting.

## ANNEX II

### Procedure followed at the International Labour Organization (ILO) for the adoption of declarations

1. Among the specialized agencies of the United Nations system, the International Labour Organization (ILO) and UNESCO have been assigned major standard-setting responsibilities. The constitutions of both organizations<sup>4</sup> are closely related in regard to the adoption of international conventions and recommendations.<sup>5</sup> It is noteworthy that the governing bodies of both the ILO and UNESCO have adopted a number of declarations. In both cases, the Constitutions do not expressly provide for the adoption of such instruments. Furthermore, neither of the two organizations has adopted regulations requiring that the drafting and adoption of a declaration be governed by pre-established regulations and a procedure.

2. To date, four declarations have been adopted by the ILO.<sup>6</sup>

- The *Declaration Concerning the Aims and Purposes of the International Labour Organization (Declaration of Philadelphia)* was adopted in 1944 in the context of the broadening of the ILO's fields of competence, which began immediately after the Second World War. The declaration stresses, in particular, the ILO's determination to cover not only workers' working conditions but also their living standards, and it covers all categories of workers.<sup>7</sup> The declaration was therefore adopted in order to redefine the Organization's aims and purposes. Its status is unique in that it was incorporated into the ILO's Constitution in 1946.
- The *Declaration Concerning the Policy of Apartheid of the Republic of South Africa* was adopted in 1964, updated in 1988 and abrogated in 1991 when it no longer served any purpose. It was not a standard-setting instrument. It dealt with a matter of great importance to the ILO, a fact highlighted by the adoption of a declaration.
- The *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* was adopted in 1977 by the Governing Body of the International Labour Office. It was accompanied by follow-up procedures, drawn up by the Governing Body of the International Labour Office, designed to exert political (and moral) pressure on Member States so that they will apply the Declaration through their national laws. States are also required to submit reports, drawn up in consultation with representative employers' and workers' organizations. The reports are then examined by an *ad hoc* body (the Subcommittee on Multinational Enterprises of the Committee on Legal Issues and International Labour Standards) which reports to the Governing Body.<sup>8</sup> In practice, major impediments are encountered in implementing the follow-up procedures.
- The *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up*, adopted in 1998, stemmed from a report by the Director-General of the ILO (report entitled

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<sup>4</sup> See Article 19 of the Constitution of the International Labour Organization (Annex A) and Article IV, paragraph 4, of the Constitution of UNESCO.

<sup>5</sup> On the origin of Article IV, paragraph 4, and the inspiration drawn from the Constitution of the International Labour Organization, see H. Saba, "L'activité quasi-législative des institutions spécialisées des Nations Unies", in *Collected Courses of the Hague Academy of International Law*, Vol. 111, 1964, pp. 643-644.

<sup>6</sup> They may be adopted by a simple majority.

<sup>7</sup> Nicolas Valticos, *International Labour Law*, Kluwer, Deventer/Boston, 1995, p. 47.

<sup>8</sup> See [http://www.ilo.org/public/english/standards/norm/enforced/ad\\_hoc/mne\\_pro.htm](http://www.ilo.org/public/english/standards/norm/enforced/ad_hoc/mne_pro.htm).

The *ILO, Standard Setting and Globalization*, submitted to the International Labour Conference at its 85th session (1997)), in which it was proposed that the Conference adopt a solemn declaration on fundamental rights. This initiative arose from the Employers' Group's proposal to the Governing Body in March 1997 to make the mandate of the ILO more explicit "by means of a document, which might take the form of a Declaration, which could be adopted by the Conference. This document would not modify the Constitution, but would clarify its meaning in relation to the fundamental principles".<sup>9</sup>

3. It should be noted that at the ILO, the choice to have recourse to a declaration is indicative, for the Governing Body and the General Conference of the ILO, of the importance accorded by the Organization to the subject covered by the declaration and of its desire to highlight the importance of the principles and standards established therein. The small number of declarations adopted so far by the ILO is a sign of these concerns and reflects the solemnity of their adoption.

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### **Annex A - Article 19 of the Constitution of the International Labour Organization**

1. When the Conference has decided on the adoption of proposals with regard to an item on the agenda, it will rest with the Conference to determine whether these proposals should take the form: (a) of an international Convention, or (b) of a Recommendation to meet circumstances where the subject, or aspect of it, dealt with is not considered suitable or appropriate at that time for a Convention.

2. In either case a majority of two-thirds of the votes cast by the delegates present shall be necessary on the final vote for the adoption of the Convention or Recommendation, as the case may be, by the Conference.

3. In framing any Convention or Recommendation of general application the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organization, or other special circumstances make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries.

4. Two copies of the Convention or Recommendation shall be authenticated by the signatures of the President of the Conference and of the Director-General. Of these copies one shall be deposited in the archives of the International Labour Office and the other with the Secretary-General of the United Nations. The Director-General will communicate a certified copy of the Convention or Recommendation to each of the Members.

5. In the case of a Convention:

- (a) the Convention will be communicated to all Members for ratification;
- (b) each of the Members undertakes that it will, within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than 18 months from the closing of the session of the Conference, bring the Convention before the authority or authorities

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<sup>9</sup> International Labour Conference, *Report VII - Consideration of a possible Declaration of principles of the International Labour Organization concerning fundamental rights and its appropriate follow-up mechanism*, 86th session, 1998, Geneva (Annex B).

within whose competence the matter lies, for the enactment of legislation or other action;

- (c) Members shall inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring the Convention before the said competent authority or authorities, with particulars of the authority or authorities regarded as competent, and of the action taken by them;
- (d) if the Member obtains the consent of the authority or authorities within whose competence the matter lies, it will communicate the formal ratification of the Convention to the Director-General and will take such action as may be necessary to make effective the provisions of such Convention;
- (e) if the Member does not obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the Member except that it shall report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of its law and practice in regard to the matters dealt with in the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement or otherwise and stating the difficulties which prevent or delay the ratification of such Convention.

6. In the case of a Recommendation:

- (a) the Recommendation will be communicated to all Members for their consideration with a view to effect being given to it by national legislation or otherwise;
- (b) each of the Members undertakes that it will, within a period of one year at most from the closing of the session of the Conference or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than 18 months after the closing of the Conference, bring the Recommendation before the authority or authorities within whose competence the matter lies for the enactment of legislation or other action;
- (c) the Members shall inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring the Recommendation before the said competent authority or authorities with particulars of the authority or authorities regarded as competent, and of the action taken by them;
- (d) apart from bringing the Recommendation before the said competent authority or authorities, no further obligation shall rest upon the Members, except that they shall report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice in their country in regard to the matters dealt with in the Recommendation, showing the extent to which effect has been given or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as it has been found or may be found necessary to make in adopting or applying them.



7. In the case of a federal State, the following provisions shall apply:

- (a) in respect of Conventions and Recommendations which the federal government regards as appropriate under its constitutional system for federal action, the obligations of the federal State shall be the same as those of Members which are not federal States;
- (b) in respect of Conventions and Recommendations which the federal government regards as appropriate under its constitutional system in whole or in part, for action by the constituent states provinces, or cantons rather than for federal action, the federal government shall:
  - (i) make, in accordance with its Constitution and the Constitutions of the states, provinces or cantons concerned, effective arrangements for the reference of such Conventions and Recommendations not later than 18 months from the closing of the session of the Conference to the appropriate federal, state provincial or cantonal authorities for the enactment of legislation or other action;
  - (ii) arrange, subject to the concurrence of the state, provincial or cantonal governments concerned, for periodical consultations between the federal and the state, provincial or cantonal authorities with a view to promoting within the federal State coordinated action to give effect to the provisions of such Conventions and Recommendations;
  - (iii) inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring such Conventions and Recommendations before the appropriate federal state, provincial or cantonal authorities with particulars of the authorities regarded as appropriate and of the action taken by them;
  - (iv) in respect of each such Convention which it has not ratified report to the Director-General of the International Labour Office at appropriate intervals as requested by the Governing Body, the position of the law and practice of the federation and its constituent states, provinces or cantons in regard to the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement, or otherwise;
  - (v) in respect of each such Recommendation, report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice of the federation and its constituent states provinces or cantons in regard to the Recommendation, showing the extent to which effect has been given, or is proposed to be given to the provisions of the Recommendation and such modifications of these provisions as have been found or may be found necessary in adopting or applying them.

8. In no case shall the adoption of any Convention or Recommendation by the Conference, or the ratification of any Convention by any Member, be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation.

**Annex B – International Labour Conference, Report VII - Consideration of a possible Declaration of Principles of the International Labour Organization concerning fundamental rights and its appropriate follow-up mechanism (86th session, Geneva, June 1998)**

[...]

**III. THE LEGAL SCOPE OF THE DECLARATION AND ITS FOLLOW-UP MECHANISM**

The legal nature and scope of the Declaration have given rise to numerous discussions since the question of its inclusion on the Conference agenda was first envisaged and then decided. In particular, a concern was expressed that the purpose or the effect of the Declaration would be to extend, by legally questionable means, the constitutional obligations binding on Member States and that it could serve as a pretext for trade measures of a protectionist kind. The Office has on several occasions endeavoured to dissipate these fears. The following paragraphs summarize the essential considerations already developed in the document prepared for the April consultations.

The concerns most frequently voiced refer to two questions: firstly, whether or not the Declaration is legally binding, or, to use more precise and exact terms, whether it is legally binding per se; and secondly, to what use the Declaration might be put outside the context of the ILO. Before recalling the three main elements of the reply, it seems useful to add a word of clarification concerning the meaning and scope of this instrument at the procedural level.

In the general practice of the organizations of the United Nations system, a declaration may be defined as a “formal and solemn instrument suitable for rare occasions when principles of lasting importance are being enunciated”.<sup>10</sup> In ILO practice, this kind of act appeared with the Declaration of Philadelphia,<sup>11</sup> which, however, constitutes a special case, since two years later it was incorporated into the Constitution on the occasion of the constitutional amendments of 1946. A second interesting example was the Declaration concerning the Policy of Apartheid of the Republic of South Africa, adopted in 1964, updated in 1988 and abrogated in 1991 when it became superfluous. This last mentioned precedent shows that a declaration, even though it clearly does not have the scope of a standard-setting instrument, has certain characteristics which give it a broader scope than that of a simple resolution under article 17 of the Standing Orders of the Conference. Such a declaration, over and above its solemn form, is adopted within the framework of an item placed specifically on the Conference agenda by the Governing Body. As a result, in practice the special report of the Director-General which was intended to monitor the situation was considered as a kind of standing item on the Conference agenda. And this explains in particular why instead of

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<sup>10</sup> Memorandum of Legal Service, United Nations Secretariat, 34 UNESCOR, sup. (No. 8) doc. UN E/CN.4/L.610 (1962).

<sup>11</sup> It is interesting to quote from Report I submitted to the 1944 Conference: “In the context of [...] evolving policies it has clearly become desirable that the [...] Organization should reformulate the aims and purposes which it will pursue in the period into which the world is now moving. All that has happened since 1919 has given added force to the basic philosophy of international affairs proclaimed by the Constitution of the Organization, [...] But the world having moved forward, the Organization can now move forward with it, or preferably somewhat in advance of it, and the time would accordingly appear to have come for the adoption of a new statement of general principles [...] which would constitute [...] a social mandate setting certain goals before the Organization and representing a pledge by the Members of the Organization to co-operate for the attainment of those goals. [...] A solemn declaration by the Conference appears to be the most appropriate form for this reformulation of the Organization’s aims and purposes. [...] The adoption of such a declaration would serve to mark a turning point in the history of the Organization by reformulating its objectives in the new perspective of a changed world situation.”

being discussed in the plenary, as is the case with the Report of the Director-General, it could be sent to an ad hoc select committee.

### **Effects vis-à-vis the Organization**

As regards its effects vis-à-vis the Organization, the Declaration is clearly an act which commits the Organization as a whole and has legal effects with regard to all its bodies, the Conference, the Governing Body and the Director-General, at least equal to those of a resolution for the reasons indicated above. In the present case, these bodies will in particular have to ensure the implementation of the “concomitant obligation”, placed upon the Organization, to provide all appropriate assistance to support the efforts of its Members. However, this obligation placed on the Organization does not imply, for reasons which will be examined below, an increase in the legal obligations of its Members.

### **Effects vis-à-vis Members**

As regards the legal effect of the Declaration vis-à-vis Members, the question is in fact whether or not the Declaration adds any further obligations to those that already exist under the Constitution and under constitutional practice. When examining the text of the Declaration and its follow-up mechanism, the answer to this question must be negative.

It should first of all be pointed out that, basically, the Declaration does not set out to establish or extrapolate a new or more detailed charter of fundamental labour rights; its aim is to underscore the renewed relevance and importance, in the context described in the Preamble, of fundamental rights, the principle of which is already enshrined in the Constitution and the Declaration of Philadelphia. Freedom of association, the protection of children, equality of treatment and opportunity are, indeed, already upheld in the Constitution or the Declaration of Philadelphia. Thus the only point on which the Declaration extrapolates to any extent is forced labour, a term which does not actually appear in the text, but the prohibition of which appears inherent to the principles proclaimed in the Constitution and the Declaration of Philadelphia which establish that labour is not a commodity and that workers are entitled to have their freedom of association, dignity and equality of opportunity respected. The Declaration would without any doubt be tantamount to a political and moral recognition by ILO Members of this logic. Strictly speaking, however, the Declaration does not constitute an interpretation of the Constitution which is legally binding for the Member States because only the International Court of Justice is competent to give an interpretation of this nature, in accordance with article 37.1 of the Constitution. In any event, nobody as yet has tried to argue that adherence to the Constitution and its underlying principles would leave Members entirely free to practise forced labour if they had not ratified the corresponding Conventions (and, what is more, all constitutions or national legislations exclude the practice of forced labour).

In short, the Declaration requires nothing more of ILO Members than to be consistent and to comply with the commitment they have already undertaken, and serves to encourage them in their endeavours; it certainly does not seek to impose further commitments on them. Contrary to what may have been said, there is definitely no question of subjecting Members to specific provisions of Conventions that they have not ratified.

The same conclusions apply in respect of the follow-up mechanism, which will be further examined below, especially given the fact that this mechanism might be implemented even in the absence of a Declaration. The mechanism is based on article 19(5)(e) of the Constitution, which the Governing Body is, in any event, entitled to implement according to procedures that it might see fit to establish, and – depending on what is decided – on a report or general overview based on all available information that would simply involve the functions that might be assigned to the

International Labour Office by the Conference or the Governing Body as provided for under article 10 of the ILO Constitution.

### **Effects outside the ILO**

What has been said above regarding the legal scope of the Declaration has an important corollary with regard to its effects outside the ILO: the Declaration, just as it does not create any new constitutional obligations for member States, does not release them from any legal obligations they may have under international law. This applies particularly to obligations arising from other multilateral treaties to which ILO Members may be party and which they can only renounce in accordance with the conditions provided in those treaties or constituent charters, or in accordance with the general conditions provided in the Vienna Convention on the Law of Treaties (article 41). It is clear that the Declaration, given that it is not even a treaty, would not provide any legal basis for derogations from these treaties *inter se*. Neither would it allow the ILO to issue any sort of instructions on a matter that does not fall within its competence. From this point of view, it could be said that the final “understanding”, which in the preliminary draft submitted to the informal consultations appeared after the asterisks, is redundant from a legal point of view. Its significance is in fact mainly political. During the consultations, many participants expressed the view that if it were to be retained, the wording should be simplified and its place in the text modified. In the light of the preceding explanations which will be part of the preparatory work, the paragraph which was intended to emphasize the legal aspect of the problem could be deleted. Since there is still no agreement on its inclusion and the Workers’ group as well as some governments have expressed their opposition to the very principle of such a clause, it seemed preferable to leave the paragraph where it was. It may be appropriate, as proposed by some governments, to place it in the Preamble after the last “Whereas” and in order to link up with the previous paragraph, it might be worded as follows: “Whereas the Organization is not competent in the sphere of trade and nothing in the present Declaration may be seen as authorizing any Member of the ILO to adopt measures of a protectionist kind or ... etc. ...”.

Another formula, also proposed during the last consultations, would consist of placing the paragraph – possibly in its simplified form – immediately before the paragraph which begins with the word “Decides ...”.

[...]