

UNESCO's Contribution to the Progressive Development of Human Rights

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I. Introduction

The obligation to promote and protect human rights is formulated in article 1 of the United Nations Educational, Scientific, and Cultural Organization (UNESCO) Constitution which states that:

“The purpose of the Organization is to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for human rights and fundamental freedoms ...”

To further universal respect for human rights, the Organization, through education, information, and documentation, as well as research and reflection, promotes human rights and makes them known and better understood. Human rights can be protected if they are known and understood by people, as well as by professionals having special responsibilities in this field (lawyers, judges, police and army officers, etc.). Consequently, the promotion of the knowledge of human rights became an essential part of UNESCO's activities from the very first years of its existence.¹

¹ Activities and programmes of UNESCO aimed at the creation of a comprehensive system of education for human rights are presented in a number of publications: D. Chitoran/ J. Symonides, “UNESCO's Approaches to Promoting International Education at the Level of Higher Education”, in:

It may be recalled that, on 10 December 1948, immediately after the proclamation of the Universal Declaration of Human Rights, the General Conference adopted a resolution which acknowledged the importance of this cornerstone instrument for all UNESCO's activities. Moreover, the General Conference asked the Director-General to actively disseminate information concerning the Universal Declaration within the Secretariat to ensure that all units of the Organization were inspired by its provisions.

To give an impetus to the development of human rights education, UNESCO organized a series of international congresses on this subject: in Vienna, Austria (1978), Malta (1987), and Montreal, Canada (1993). The Montreal International Congress on Education for Human Rights and Democracy adopted the World Plan of Action on Education for Human Rights and Democracy based on the assumption that education on human rights is itself a human right and is a prerequisite for the full realization of the ideals of democracy, social justice, peace, development, and human rights, which are universal and indivisible. The Plan presents a framework of action to be tailored and executed by states, intergovernmental, and non-governmental organizations and other social actors.

UNESCO is also actively involved in the implementation of the Plan of Action for the United Nations Decade for Human Rights Education (1995–2004). The Organization is now working to encourage the preparation and adoption of national plans for developing human rights education; to support the elaboration of manuals, textbooks, and teaching aids and to reinforce networks of institutions active in education for peace, human rights, and democracy. These questions are discussed at regional meetings on human rights education convened by UNESCO. The long-term goal of UNESCO is the creation of a culture of human rights by the establishment of a comprehensive system of education and training for peace, human rights, and democracy for all groups of people that embrace all levels of education, whether formal or non-formal.

J. Calleja (ed.), *International Education and the University*, 1995, 9 et seq.; J. Symonides/ V. Volodin, "Education for Human Rights and Democracy in the New International Context", *Education for Human Rights and Citizenship in Central and Eastern Europe*, 1995, 38 et seq.; J. Symonides, "UNESCO and Education for Human Rights", in: E. Verhellen (ed.), *Understanding Children's Rights*, 1998, 708 et seq.; J. Symonides, "United Nations and Human Rights Education", in: D. Bourantonis/ M. Evriviades (eds), *A United Nations for the Twenty-First Century*, 1996, 361 et seq.

In order to protect human rights the Organization elaborates international instruments. Standard-setting has thus always played an important role in UNESCO's activities. During more than half a century of existence, about sixty Conventions, Declarations and Recommendations have been elaborated and adopted by the General Conference of UNESCO. A majority of these instruments is linked directly or indirectly with human rights. It is obvious that they concern primarily those human rights which are within UNESCO's fields of competence (education, culture, science, as well as communication and information). Though a number of UNESCO instruments are not designed specifically for human rights protection, nevertheless they establish guarantees for the rights of persons belonging to various professional groups and concern the implementation of the rights which are within UNESCO's fields of competence. Such normative instruments deal with the right to participate in cultural life, access to education, science and information.² The normative instruments adopted by the Organization can be divided into two categories: on the one hand, Conventions and, on the other, Declarations and Recommendations.

The adoption of an international Convention demands a two-third majority at the General Conference, whereas in the case of Recommendations and Declarations a simple majority is sufficient. Conventions, after ratification, acceptance or accession by states, are binding. Though Declarations and Recommendations are not formally binding, Member States are invited to implement them. The fact that a state is not party to a given instrument does not mean that its provisions can be completely disregarded. Member States have an obligation to submit standard-setting instruments (Conventions, Recommendations and Declarations), adopted by the General Conference, "... to its competent authorities within a period of one year from the close of the session of the General Conference at which they were adopted". It presumes that the provisions of these instruments are taken into account in national legislation and practice. Apart from monitoring the implementation of adopted instruments through the reporting system, the Executive Board of UNESCO at its 104th Sess. in 1978, laid down a confidential procedure for the examination of communications (complaints) received by

² Recommendation concerning the Status of Teachers, 1966; Recommendation concerning the Status of Scientific Researchers, 1974; Recommendation on the Legal Protection of Translators and Translations and the Practical Means to Improve the Status of Translators, 1976; Recommendation concerning the Status of the Artists, 1980.

the Organization concerning alleged violations of human rights in its field of competence namely education, science, culture and information. This procedure is set out in 104/EX Decision 3.3 of the Executive Board.

The main objective of this article is not to present numerous UNESCO's activities aimed at the promotion of human rights but to answer the question whether and to what extent UNESCO has contributed to the progressive development of human rights. This means that standard-setting instruments and monitoring and supervisory procedures will be closely analyzed.

II. UNESCO Standards Setting Instruments³

1. Standards Concerning Education

a. The Right to Education

In accordance with its mandate, UNESCO has adopted a number of normative instruments: Conventions and Recommendations ensuring the enjoyment of the education for everyone. The best known among these is the *Convention Against Discrimination in Education*, 1960, which entered into force in 1962. The Convention is not only directed at the elimination of discrimination in education but also concerns the adoption of measures aimed at promoting equality of opportunity and treatment in this field. At the same time as the Convention, the General Conference also adopted the *Recommendation Against Discrimination in Education*, in order to avoid difficulties which Member States might have — for various reasons, in particular those due to their federal structure, in ratifying the Convention.

The right to education is intimately linked with the right to teach. In 1966 an intergovernmental conference convened by UNESCO, with the participation of the ILO, adopted the *Recommendation Concerning the Status of Teachers*. In its preamble it underlines that the right to education is a fundamental human right and recognizes the essential

³ UNESCO's Standard-Setting instruments are presented in: J. Symonides/V. Volodin (eds), *UNESCO and Human Rights, Standard-Setting Instruments, Major Meetings, Publications*, 2nd edition, 1999.

role of teachers in educational advancement and the importance of their contribution to the development of man and modern society.

A joint ILO/UNESCO Committee of Experts on the Application of the Recommendation Concerning the Status of Teachers was set up by the 14th Sess. of the UNESCO General Conference and the 167th Sess. of the Governing Body of the ILO. The Committee's terms of reference are to examine the reports received from governments on action taken by them on the Recommendation. Several of the Recommendation's provisions are directly connected with the exercise of human rights, particularly those relating to non-discrimination in the training and employment of teachers and the right of association of teachers.

b. UNESCO's Recommendations and Declarations Developing the Obligation to Educate Human Rights⁴

In 1950, the ECOSOC invited UNESCO to encourage and facilitate teaching about the Universal Declaration of Human Rights in schools and adult education programmes, and through the media: press, radio and films. The International Conference on Human Rights, which met in Teheran in 1968, called upon UNESCO to develop its programmes aimed at making children aware of respect for the dignity and rights of man and at ensuring that the principles of the Universal Declaration prevail at all levels of education, particularly in institutions of higher learning, where the future teachers are trained.⁵

The United Nations Commission on Human Rights, in 1971, urged UNESCO to examine the desirability of envisaging the systematic study and the development of an independent scientific discipline of human rights. In 1973 the Commission encouraged UNESCO to develop education for human rights for all and at all levels. Responding to these requests UNESCO adopted at the 18th Sess. of the General Conference of UNESCO in 1974, the *Recommendation Concerning Education for International Understanding, Cooperation and Peace and Education Relating to Human Rights and Fundamental Freedoms*. It describes human rights as being those defined by the United Nations Charter, the Universal Declaration of Human Rights and the Interna-

⁴ See J. Symonides, "The State Duty to Promote Human Rights Education", in: S. S. Åkermark (ed.), *Human Rights Education, Achievements and Challenges*, 1998, 11 et seq.

⁵ Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968.

tional Covenants on Human Rights, that is the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights of 1966. The Recommendation called upon Member States to take steps to ensure that the principles of the Universal Declaration of Human Rights and the International Convention on the Elimination of All Forms of Racial Discrimination become an integral part of the developing personality of each child, adolescent, young person or adult, by applying these principles in the daily conduct of education of each level and in all its forms. Member States should encourage a wider exchange of textbooks, especially those concerning history and geography, and should take measures for the reciprocal study and revision of textbooks and other educational materials in order to ensure that they are accurate, balanced, up-to-date, without prejudice, and enhance mutual knowledge and understanding between different peoples.

The Intergovernmental Conference on Education for International Understanding, Cooperation and Peace and Education Relating to Human Rights and Fundamental Freedoms, held in Paris in 1983, recommended extending the scope of the 1974 Recommendation to the whole of the education system, including non-formal and higher education. In accordance with the decision taken by the General Conference during its 23rd Sess. in 1985, the permanent system of reporting on steps taken by Member States to apply the 1974 recommendation was adopted.

The first synthesis of national reports covering both the achievement of, and problems identified by Member States in promoting education for international understanding, cooperation and peace, and education for human rights and fundamental freedoms, was submitted to the General Conference at its 25th Sess. in 1989.⁶

To develop education for human rights UNESCO organized a series of international conferences: the International Congress on the Teaching of Human Rights in Vienna 1978, The International Congress on Human Rights Teaching, Information and Documentation in Malta in 1987, and the International Congress on Education for Human Rights and Democracy in Montreal in 1993.

⁶ UNESCO Doc. 25C/30.

The main result of the Montreal Congress was the *World Plan of Action on Education for Human Rights and Democracy*.⁷ It is introduced by a recommendation which states that, in spite of major progress achieved in the field of education for human rights, serious efforts still need to be made to overcome present obstacles and shortcomings as well as to meet new challenges. The Congress emphasized the responsibility of the international community, the United Nations and its specialized agencies, in particular UNESCO, to initiate and support educational programmes and activities relevant to human rights.

The International Conference on Education which was held in Geneva in 1994, unanimously adopted a Declaration in which Ministers of Education acknowledged their responsibilities for citizens' education committed to the promotion of peace, human rights and democracy in accordance with the letter and spirit of the Charter of the United Nations, the Constitution of UNESCO, the Universal Declaration of Human Rights, and in accordance with the Recommendations Concerning Education for International Understanding, Cooperation and Peace and Education Relating to Human Rights and Fundamental Freedoms.

The International Congress on Education for Human Rights and Democracy (Montreal, 1993) stated that "the education for human rights and democracy is itself a human right and is a prerequisite for the full realization of social justice, peace and development. The exercise of such a right would contribute to the safeguarding of democracy and its comprehensive meaning."

The General Assembly resolutions⁸ concerning the United Nations Decade for Human Rights Education, adopted in 1993, 1994 and 1995, contain the same phrase:

Considering the World Plan of Action on Education for Human Rights and Democracy, adopted by the International Congress on Education for Human Rights and Democracy convened by the United Nations Educational, Scientific and Cultural Organization at Montreal from 8 to 11 March 1993, according to which education for human rights and democracy is itself a human right and a pre-

⁷ See "International Congress on Education for Human Rights and Democracy", in: *Human Rights Teaching*, VIII (1993). See also Appendix 4 to this volume.

⁸ A/RES/48/127 of 20 December 1993; A/RES/49/184 of 23 December 1994; and A/RES/ 50/177 of 22 December 1995.

requisite for the realization of human rights, democracy and social justice.

2. Standards Relating to Science

a. The Right to Participate in Scientific Progress. Human Rights Implications of Scientific and Technological Progress

The *Recommendation on the Status of Scientific Researchers* adopted by the General Conference in 1974 underlines that each Member State should strive to use scientific and technological knowledge for the enhancement of the cultural and natural well-being of its citizens and to further the ideals and objectives of the United Nations. Member States should actively promote the interplay of ideas and information among Scientific Researchers throughout the world, which is vital to the healthy development of science and technology and, to this end, should take all possible measures to ensure that Scientific Researchers are able, throughout their careers, to participate in international scientific and technological gatherings and to travel abroad. Scientific Researchers should have the right to publish the results obtained and enjoy appropriate legal protection, in particular that afforded by copyright law.

The Organization has shown concern for the human and cultural implications of scientific and technological progress. At the conference organized by UNESCO in Brasilia (Brazil) in 1985, participants urged the use of science and technology for peaceful ends, and rejected "any application that places the survival of humanity in jeopardy".

In its activities concerning bioethics, UNESCO has attached special attention to the human genome. In 1997, the UNESCO General Conference adopted a *Universal Declaration on the Human Genome and Human Rights*.⁹ The Declaration, the result of four years of deliberations and work of the UNESCO International Bioethics Committee, provides an answer to several ethical and legal concerns linked, in particular, with the threat that research on the human genome may open the door to dangerous deviations contrary to human dignity and fundamental human rights. It establishes limits on interventions in the genetic heritage of humanity and in individuals which the international community has a moral obligation not to transgress. Among the rights

⁹ Adopted unanimously and by acclamation by the General Conference of UNESCO at its 29th Sess. on 11 November 1997.

of individuals, the Declaration enumerates the following: prior consent to all research, treatment or diagnosis,¹⁰ prohibition of any discrimination based on individual characteristics; confidentiality of genetic information associated with an identifiable person; and the right to "just reparation for an damage sustained as a direct and determining result of an intervention affecting his or her genome".¹¹ With regard to the crucial question of research on the human genome, it takes a balanced position, underlining that, on the one hand, no research or application concerning the human genome in biology, genetics and medicine should prevail over the respect for human rights, fundamental freedoms and human dignity. It states, on the other, that freedom of research, which is necessary to the progress of knowledge, is part of the freedom of thought. However, certain practices, as observed in article 11, contrary to human dignity, such as reproductive cloning of human beings, shall not be permitted. States, as provided by the Declaration¹² should respect and promote solidarity towards individuals, families and population groups who are particularly vulnerable to or affected by disease or disability of a genetic character.

b. Academic Freedom

The question of academic freedom has been for a long time discussed by UNESCO mainly from the point of view of the professional status of various groups. The *Recommendation concerning the Status of Teachers*, 1966, contains a stipulation that "the teaching profession should enjoy academic freedom in the discharge of professional duties". However, the Recommendation does not give any clarifications as to how the term "academic freedom" should be understood and interpreted. The *Recommendation on the Status of Scientific Researchers*, 1974, provides that Scientific Researchers have the responsibility and right "(a) to work in a spirit of intellectual freedom to pursue, expound and defend the scientific truth as they see it."

¹⁰ The Declaration explains: "If according to the law a person does not have the capacity to consent, research affecting his or her genome may only be carried out for his or her direct health benefit, subject to the authorization and the protective conditions presented by law", article 5 lit.(e).

¹¹ Article 8.

¹² Arts 17–19 of the Declaration, Part E: Solidarity and International Cooperation.

In 1989, UNESCO, in cooperation with the World University Service, organized an international seminar on Factors and Conditions Conducive to Academic Freedom. The meeting agreed that, although there were extensive international instruments and guidance in the field of human rights in general, there was a lack of these in the field of higher education which covered academic freedom and autonomy. Though the efforts to adopt a special international normative instrument dealing in a comprehensive way with all aspects of academic freedom have until now not been crowned with success, an important step in this direction was taken in 1997, with the adoption by the General Conference at its 29th Sess. of the *Recommendation concerning the Status of Higher-Education Teaching Personnel*.¹³ In fact, this is the first intergovernmental instrument presenting academic freedom in a developed form.

The Recommendation declares that, apart from the rights enjoyed by all human beings, higher-education teaching personnel are entitled to the maintaining of academic freedom. This freedom is defined as the right to freedom of teaching and discussion, freedom in carrying out research and disseminating and publishing the results thereof, freedom to express freely their opinion about the institution or system in which they work, freedom from institutional, censorship and freedom to participate in professional or representative bodies. Higher-education teaching personnel have the right to teach without any interference, subject to accepted professional principles. Research work should be free from any interference, or any suppression, and should be in accordance with professional responsibility and subject to nationally and internationally recognized professional principles of intellectual rigour, scientific inquiry and research ethics. Research work is linked with the right to publish the results.

The proper enjoyment of academic freedom requires the autonomy of institutions of higher education, that is, that degree of self-

¹³ The decision to elaborate this Recommendation was adopted by the General Conference at its 27th Sess. in 1993. A preliminary draft was prepared by Donald Savach, Executive-Director of the Canadian Association of University Professors. The ILO and non-governmental organization specializing in higher education were consulted. The second draft was adopted by the Governmental Experts' Meeting which took place at UNESCO on 8-9 October 1996. See *New Papers on Higher Education*, Meeting Documents, 12, Governmental Experts' Meeting to Examine Draft Recommendation concerning the Status of Higher-Education Teaching Personnel, UNESCO, Paris, Final Report, ED-96/45.41.

governance which is necessary for effective decision-making regarding academic work, standards, management and related activities. Teaching personnel, as stressed by the Recommendation, have not only rights but also duties inherent in academic freedom.¹⁴ It is worth noting that, in the part concerning its implementation, the Recommendation provides that the Director-General of UNESCO will prepare a comprehensive report on the world situation with regard to academic freedom on the basis of the information supplied by Member States, or any other information supported by reliable evidence.

3. Standards Developing Cultural Rights

a. The Right to Cultural Identity

During the World Conference on Cultural Policies which took place in Mexico City in 1982, delegates emphasized people's growing awareness of their cultural identity, of the pluralism stemming from it, of their right to be different and of the mutual respect of one culture for another, including that of minorities. It was observed that the affirmation of cultural identity had become a permanent requirement, both for individuals and for groups and nations.

The Mexico City Declaration on Cultural Policies states, *inter alia*, that the assertion of cultural identity contributes to the liberation of peoples. Cultural identity is a treasure which vitalizes mankind's possibilities for self-fulfillment by encouraging every people and every group to seek nurture in the past, to welcome contributions from outside compatible with their own characteristics, and so to continue the process of their own creation. In the Recommendation on cultural identity, the Conference called upon Member States to:

¹⁴ Para. 34 of the *Recommendation concerning the Status of Higher-Education Teaching Personnel* enumerates these duties very comprehensively in 12 points. They embrace, *inter alia*, the obligation to achieve the highest possible standards in professional work; to teach students effectively and without any discrimination; to conduct scholarly work of academic colleagues and students; to ensure that research is conducted according to the laws and regulations of the state concerned and that it does not violate international standards of human rights.

a. Respect and work to preserve the cultural identity of all countries, regions and peoples and oppose any discrimination with regard to the cultural identity of other countries, regions and peoples.

b. Promote the development of cultural identity through all appropriate means.

b. The Right to Participate in Cultural Life

As formulated by the *Recommendation on Participation by the People at Large in Cultural Life and their Contribution to it*, 1976: "By access to culture is meant the concrete opportunities available to everyone, in particular through the creation of the appropriate socio-economic conditions, for freely obtaining information, training, knowledge and understanding and for enjoying cultural values and cultural property".¹⁵

This formulation thus stressed rather the passive side of participation in culture. Among other instruments which are linked with this right is the *Recommendation concerning the Most Effective Means of Rendering Museums Accessible to Everyone*, 1960 which urges that, in order that museums may contribute to the education of the public through all stages of life, a permanent link should be established between museums, industrial and commercial enterprises and the like. The accessibility of museums entails not only the granting of material facilities, particularly with regard to admission charges and opening hours, but also measures which ensure that collections are easy to appreciate.

An active approach to culture is reflected in the right of participation which is dealt with separately from the right of access in the above mentioned *Recommendation on Participation by the People at Large in Cultural Life* which defines it as: "the concrete opportunities guaranteed for all — groups or individuals — to express themselves freely, to act and engage in creative activities with a view to the full development of their personalities, a harmonious life and cultural progress of society".¹⁶

The Recommendation concerns everything that should be undertaken by Member States to democratize the means and instruments of cultural activity. Participation in cultural life presupposes involvement of the different social partners in decision-making related to cultural policy as well as in the conduct and evaluation of relevant activities.

¹⁵ Art. I.2 lit.(a).

¹⁶ Art. I 2. lit.(b).

c. The Right to Creativity and the Right to Benefit from the Protection of the Moral and Material Interest Resulting from any Literary or Artistic Production

The concept of creativity is very closely linked with that of participation and may be seen as part of the right of participation. Nevertheless, due to the fact that this was especially stressed by the *Recommendation concerning the Status of the Artist*, 1980, it is presented under a separate heading. Creativity lays stress on the maintenance and development of individual and group attitudes and opportunities, rather than on the product of their activities. The Recommendation calls upon Member States to encourage all measures tending to strengthen respect for artistic creation and emphasizes that governments should help to create and sustain not only a climate encouraging freedom of artistic expression but also the material conditions facilitating the release of creative talents. It stipulates that: "Since freedom of expression and communication is the essential prerequisite for all artistic activities, Member States should see that artists are unequivocally accorded the protection provided for in this respect by international and national legislation concerning human rights".¹⁷

A number of normative instruments adopted by the General Conference of UNESCO are of direct relevance in promoting the right of everyone to benefit from the protection of interests resulting from intellectual property, the principal one being the *Universal Copyright Convention* of 1952, as revised in 1971. Both Conventions require that each Contracting State protect the rights of authors and other copyright holders. Article 1, identical in both conventions, provides that: "Each Contracting State undertakes to provide for the adequate and effective protection of the rights of authors and copyright proprietors in literary, scientific and artistic works, including writings, musical, dramatic and cinematographic works, and paintings, engravings and sculpture".

The 1952 Convention imposed on States parties an obligation to adopt measures to bring its laws and practices into harmony with its provisions. An Intergovernmental Committee was established to study problems related to its application and periodic revision. UNESCO has also sponsored the *International Convention for the Protection of Performers and Producers of Phonograms and Broadcasting Organizations*, 1961 and the *Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms*, 1971.

¹⁷ Art. III. 6.

d. The Right to the Protection of Cultural Property and the World Cultural Heritage

The largest number of UNESCO instruments dealing with cultural rights are those devoted to the protection of cultural property both in time of peace and of war. In 1954 UNESCO convened in The Hague an Intergovernmental Conference which worked out the *Convention for the Protection of Cultural Property in the Event of Armed Conflict*. The Convention contains provisions for the safeguarding of movable or immovable property of great importance to the cultural heritage of peoples, irrespective of its origin or ownership, and makes respect for such property obligatory. The safeguarding of such property implies that the state, within the territories of which it is situated, will take all necessary protective measures in time of peace. Respect for protected property is an obligation for both, the territorial state and its enemies in time of armed conflict. The *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, 1970 developed the principles and standards set forth in the Recommendation on the same subject adopted by the General Conference in 1964. It defines cultural property qualifying for protection not only on historical, archaeological or artistic grounds but also in the interest of science. The transfer of ownership, the import and the export of all property covered by this definition is not automatically prohibited. It is for each State party to establish regulations and decide which operations are lawful, and which are, illicit. Measures should be adopted to prevent museums from acquiring illegally exported cultural property and to prohibit the import of cultural property stolen from a museum or a public institution after the entry into force of the Convention.

The General Conference adopted a number of recommendations dealing, *inter alia*, with archeological excavations (1956), safeguarding of the beauty and character of landscapes and sites (1962), preservation of cultural property endangered by public or private works (1968), protection of movable cultural property (1978) and safeguarding and preservation of moving images (1980).

The *Convention concerning the Protection of the World Cultural and Natural Heritage* was adopted by the General Conference on 16 November 1972.¹⁸ Article 7 defines international protection of the world cultural and natural heritage as: "... the establishment of a system

¹⁸ *ILM* 11 (1972), 1358 et seq.

of international cooperation and assistance designed to support States parties to the Convention in their efforts to conserve and identify that heritage.”

The items protected by the Convention are those of outstanding universal value from the point of view of history, art, science or aesthetics. The Convention lays down two basic principles: that each State party recognizes the duty of ensuring the conservation of elements of the world heritage situated on its territory and that it is the duty of the international community as a whole to cooperate in ensuring the conservation of the heritage which is of a universal character. The World Heritage Committee designates the items which, being regarded as forming a part of the world heritage, fall under protective measures provided for by the Convention.

e. The Right to International Cultural Cooperation

The *Declaration of the Principles of International Cultural Cooperation* adopted by UNESCO, 1966, states, in its article I, that every people has the right and duty to develop its culture. It explains in article V that cultural cooperation is a right and duty for all peoples and all nations, which should share with one another their knowledge and skills.

The aims of international cultural cooperation, bilateral or multilateral, regional or universal, are, *inter alia*, to spread knowledge, to stimulate talent, to enrich cultures, to develop peaceful relations and friendship among the peoples, and to raise the level of the spiritual and material life of man in all parts of the world.

In accordance with the ideals set forth in its Constitution, UNESCO has special responsibility for the promotion of international cultural cooperation at national, regional and international levels. It assists Member States in promoting the various aspects of their cultural policies and thus provides intellectual, technical and financial assistance for a wide variety of activities, including the formulation of cultural policies, strategies or programmes and training of specialized personnel.

f. The Right to Information

Freedom of information is rightly regarded as one of the prerequisites for the exercise of human rights and constitutes a very potent confidence-building measure. Accordingly, article 1 para. 2 lit.(a) of the UNESCO Constitution stipulates that the Organization will: “collabo-

rate in the work of advancing the mutual knowledge and understanding of peoples, through all means of mass communication and to that end recommend such international agreements as may be necessary to promote the free flow of ideas by word and image". In implementing the right to information, UNESCO strives to eliminate various barriers to the free movement of books, publications and other printed materials. Four agreements have been prepared for this purpose.¹⁹

The end of ideological rivalry between East and West allowed the organization to adopt a clear-cut strategy concerning freedom of information and free flow of ideas. The organization took an unequivocal position on this subject, foreseeing the encouragement of the free flow of information and promotion of its wider and better balanced dissemination, *without any obstacle to the freedom of expression*. The Major Programme on Communication, Information and Informatics is inspired by the principle of freedom of expression and its corollary: freedom for all to choose their information. This is reflected in action aimed at promoting press freedom, pluralism and media independence, and at supporting efforts in Member States to set up independent, pluralist media. The ultimate aim of this strategy is to provide practical responses to the challenges arising from the process of democratization going on in many countries and the demands of sustainable development.

Declarations on promoting independent and pluralistic media were adopted at the meetings in Windhoek, Alma-Ata and Sofia. UNESCO has made the promotion of a free and independent press the cornerstone of its communication development strategy. It also supports the

¹⁹ In 1948 the General Conference adopted an Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character. This agreement introduced exemption from all customs duties and quantitative restrictions for materials originating in the territory of any Contracting State. In 1950 the Florence Agreement on the Importation of Educational, Scientific and Cultural Materials was designed to abolish customs duties and remove the trade barriers which impede exchanges of visual and auditory materials and of several other items. Twenty-six years later a Protocol was added to this Agreement. Furthermore, under the provisions of the *Convention Concerning the International Exchange of Publications* of 1958, the Contracting States grant exemption from customs duties for both imported and exported material. A *Convention Concerning the Exchange of Official Publications and Government Documents between States* of 1958 facilitated the international exchange of official publications.

International Freedom of Expression Exchange (IFEX), an international communication network which disseminates information about attacks on freedom of speech and press freedom.

4. UNESCO's Contribution to the Elimination of all Forms of Discrimination

a. UNESCO Statements and the Declaration on Race and Racial Prejudice

The UNESCO stand against racism has already been determined by its Constitution which declares:

“...the great and terrible war which has now ended was a war made possible by the denial of the democratic principles [...], and by the propagation, in their place through ignorance and prejudice, of the doctrine of the inequality of men and races”.

In 1948, the ECOSOC urged UNESCO to adopt a programme, concerning discriminatory scientific facts, designed to remove racial prejudice. In response to this appeal, the Organization undertook a number of studies which brought to light the completely unscientific foundations of racism.

UNESCO convened several meetings of specialists to consider various manifestations and aspects of racism. In 1950, a group of eminent experts prepared a Statement on Race, following in 1951 by a Statement on the Nature of Race and Race Differences. Both statements emphasized that biological differentiation of races is without foundation. Race is not a biological phenomenon but a social myth. Therefore it would be better, when speaking of humankind, to drop the term “race” and to speak of ethnic groups. In 1964, a Proposal on Biological Aspects of Race was elaborated. This text emphasized the predominance of historical, social and cultural factors over biological factors in the explanation of physical differences between populations living in different geographical areas of the world. The fourth Statement on Race and Racial Prejudice was worked out in 1967 and contained the elucidation of the racist theories and racial prejudice.

In 1972, the UNESCO General Conference called for the preparation of a Declaration which would take into account the findings of the Statements and present a set of universally applicable principles which could be recommended to Member States. Consequently, the General

Conference, at its 20th Sess. 1978, solemnly adopted, by acclamation, the *Declaration on Race and Racial Prejudice* which states that all human beings belong to a single species and are descended from a common stock; that they are born equal in dignity and rights and all form an integral part of humanity. Racial prejudice, historically linked with inequalities in power and reinforced by economic and social differences between individuals and groups, is qualified by this instrument as being totally without justification.

The Declaration proclaims that diversity of life styles and the right to be different may not in any circumstances serve as a pretext for racial prejudice. The State has prime responsibility for ensuring human rights and fundamental freedoms and it should take all appropriate steps to prevent, prohibit and eradicate racism, racist propaganda, racial segregation and apartheid.

b. The 1978 Declaration

In the efforts aimed at the consolidation of peace, in the elimination of all forms of discrimination, in the promotion of human rights and fundamental freedoms, in the shaping of behaviour patterns, the mass media, radio, television, newspapers may and should play an important role. This idea led to the adoption in 1978 by the General Conference of the *Declaration on Fundamental Principles Concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War*.

The Declaration in its preamble recalls the provisions of international conventions²⁰ which oblige States parties to adopt immediate and positive measures assigned to eradicate all incitement to, or acts of, racial discrimination, and agree to prevent any encouragement of the crime of apartheid and similar segregation policies or their manifestations.

Article I states that the strengthening of peace, and international understanding, the promotion of human rights and the countering of racialism, apartheid and incitement to war demand a free flow and a wider and better balanced dissemination of information.

²⁰ *Inter alia*, article 4 of the Convention on the Elimination of All Forms of Racial Discrimination, and the International Convention on the Suppression and Punishment of the Crime of Apartheid.

The Declaration does not call for state control of the media and does not speak about governmental responsibilities. It stresses that it is indispensable, with due respect for constitutional provisions and for the applicable international instruments, to create and maintain throughout the world the conditions which make it possible for the organizations and persons professionally involved in the dissemination of information to achieve the objectives of this Declaration. Therefore it should be rather seen as a help in the application of a code of ethics by professional organizations, educators, journalists and other agents of the mass media and those who assist them in performing their functions.

c. Elimination of Discrimination against Women

UNESCO has been very active in combating all forms of inequalities based on gender within its fields of competence. Apart from incorporating into standard-setting instruments numerous provisions aimed at the elimination of discrimination in education, professional, and public life, the Organization has promoted research yielding fuller knowledge of the situation of women throughout the world and better understanding of the nature of existing inequalities. All its activities are based on the assumption that international organizations can contribute to the emancipation of women and girls through research, information, education, and training.

The Organization continues to support action to combat violence against women. More specifically, UNESCO gives priority attention to women and girls in countries ravaged in the recent past by armed conflict, with the aim of alleviating the effect of violence, and providing education to refugees and displaced persons. Thus, for example, it has provided assistance to women and children who were victims of rape as a tool of war in Bosnia and Herzegovina.²¹

²¹ Bearing in mind that, with very few exceptions, illiteracy rates are higher for women than for men, UNESCO has launched a number of operational activities known as literacy, functional literacy, legal literacy, and civic education for women. UNESCO participated actively in the Beijing Conference on Women and has undertaken a programme to implement the Beijing Declaration and Platform of Action.

d. The Declaration of Principles on Tolerance

Discrimination and intolerance often go hand in hand. The Organization has taken steps to organize a real "crusade" against intolerance within the United Nations system. The General Assembly, at the initiative of UNESCO, proclaimed 1995 the United Nations Year for Tolerance and invited it to assume the role of lead organization for the Year. It called upon Member States to cooperate with UNESCO in the observance of national and international programmes and requested it to prepare for the conclusion of the year a declaration of principles and a programme of action as a follow-up to the year. Research carried out throughout the world on new forms of discrimination and ways of combating them, served as a basis for UNESCO's efforts to involve an increasing number of partners in promoting the idea, and above all, the practice of "active" tolerance, which implies the desire to get to know other people, to understand what makes others different and to show respect for those differences. Tolerance is one of the great challenges of our time, as, in principle, all societies are pluralistic, diverse and diversified and many of them are multi-cultural and multi-religious.

The Declaration of Principles on Tolerance, foreseen by a General Assembly resolution, was adopted by the General Conference of UNESCO as its 28th Sess. in 1995. In article 1, it explains that:

"Tolerance is respect, acceptance and appreciation of the rich diversity of our world's culture, our forms of expression and ways of being human. It is fostered by knowledge, openness, communication and freedom of thought, conscience and belief. Tolerance is harmony in difference. It is not only a moral duty, it is also a political and legal requirement".

Article 2 stresses that tolerance requires the economic and social opportunities be made available to each person without any discrimination. States should ratify existing international human rights conventions and draft new legislation where necessary to ensure equality of treatment and opportunity for all groups and individuals in society. Education, as stated in article 4, is the most effective means of preventing intolerance.

The General Conference urged Member States to communicate to the Director-General any information that they would like to share in order to increase understanding of the phenomenon associated with intolerance and the ideologies which preach intolerance, such as racism,

fascism and anti-semitism, and the most effective measures for addressing these issues.²²

III. UNESCO's Procedures for the Implementation of Human Rights

1. UNESCO's Reporting System

UNESCO instruments envisage the monitoring of their implementation. A general provision to this end is formulated in the Constitution which stipulates that: "The General Conference shall receive and consider the reports sent to the Organization by Member States on the action taken upon the recommendations and conventions ... or, if it so decides, analytical summaries of these reports".²³ Apart from this general request, more specific provisions may be also formulated by standard-setting instruments. Article 7 of the *Convention on Technical and Vocational Education* 1989 provides: "The Contracting States shall specify, in periodic reports submitted to the General Conference [...] at the dates and in the form determined by it, the legislative provisions, regulations and other measures adopted by them to give effect to this Convention".

Declarations and Recommendations are in some cases supplemented by special resolutions requesting additional action from states in order to observe their provisions. Thus the General Conference, at its 20th Sess. in 1978, adopted a resolution concerning the implementation of the Declaration on Race and Racial Prejudice 1978, which urges Member States: "... to communicate to the Director General all necessary information concerning the steps they have taken to give effect to the principles set forth in the Declaration". This resolution invites the Director-General to prepare, on the basis of the information supplied by

²² The Plan of Action for the follow-up to the United Nations Year for Tolerance, also adopted by the General Conference, presents the causes and factors contributing to manifestations of intolerance around the world. The aim of the Plan is to transpose the most successful components of the United Nations Year for Tolerance into more enduring strategies and structures, by which promotion and sensitization of tolerance may be improved in every region of the world.

²³ UNESCO Constitution, article IV, para. B.6.

Member States, a comprehensive report on the world situation in the fields covered by the Declaration.²⁴

a. Reporting System Linked with the Convention and Recommendation against Discrimination in Education, 1960

As foreseen by article 7 of this Convention, the States parties shall, in their periodic reports submitted to the UNESCO General Conference on dates and in a manner to be determined by it, give information on the legislative and administrative priorities which they have adopted and other actions they have taken for its appreciation. Since the Convention's entry into force in 1962, the Secretariat has organized six periodic consultations of Member States party to the Convention and of all Member States with regard to the Recommendation against Discrimination in Education. Consultations ended with the preparation of the final report to the Executive Board's Committee on Conventions and Recommendations considered thereon by the General Conference. The last of the six consultations was initiated by resolution of the General Conference in 1993.²⁵ It was decided to focus the consultation process and final report on the basic education of four population groups: (a) women and girls, (b) persons belonging to minorities, (c) refugees, and (d) indigenous people.

In response to the circular letter sent by the Director-General, 56 Member States presented reports. Supplemented for the first time by the comments of non-governmental organizations and information sent by Member States to the International Bureau of Education (IBE), these reports, together with the analytical reports of the Secretariat, were submitted to the Executive Board for examination prior to submitting them with the Executive Board's comments to the General Conference at its 30th Sess. in 1999. During the examination of the reports and responses received at the sixth consultation, the members of the Committee on Conventions and Recommendations unanimously emphasized that the struggle against discrimination in education is particularly important in the light of UNESCO's Constitution and of the Organi-

²⁴ Since the adoption of the Declaration the Director-General has submitted five reports on its implementation to the General Conference at its 1980, 1983, 1987, 1991 and 1995 Sess.

²⁵ Resolution 27C/1.9 adopted by the 27th Sess. of the General Conference in 1993.

zation's role in the United Nations system regarding the right to education for all.²⁶

To be adequately tackled, this problem demands that new measures and monitoring mechanisms be devised and applied by UNESCO. The present system, which is based only on periodic reporting by Member States, is rather weak and very far from comprehensive. Reports should reflect the situation critically, and the relevant reports submitted to the United Nations should be taken into account. UNESCO should not only report on reports received from Member States but also organize dialogue with individual Member States. Information provided by Member States should be evaluated on the basis of agreed criteria. It was recommended that the Committee on Conventions and Recommendations strengthen its original monitoring role. The Executive Board invited Member States which have not yet done so to become parties to the Convention and recalled that the submission of periodic reports concerning the implementation of conventions and recommendations adopted by the General Conference is a constitutional obligation.

The Director-General has also been invited to strengthen UNESCO's action against discrimination and to study, in view of the seventh consultation and in cooperation with the United Nations: "the possibility of creating a coherent mechanism of reporting on and monitoring of the right to education as set down in various United Nations conventions on human rights, and to inform the Executive Board about measures undertaken to this end". This decision opens the way for a profound, far-reaching change in the reporting system linked with the Convention and Recommendation against Discrimination in Education.

b. The Permanent System of Reporting on Education for Peace, Human Rights, Democracy, International Understanding and Tolerance

In 1985, the UNESCO General Conference, at its 23rd Sess. as has been already mentioned, agreed that the Permanent System of Reporting on steps taken by Member States should also apply to the 1974 Recom-

²⁶ See Executive Board, examination of the reports and responses received in the 6th consultation of Member States on the implementation of the Convention and Recommendation against Discrimination in Education, Doc. 156 EX/21 of 17 March 1999.

mentation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms.

In 1995, during its 28th Sess. the General Conference decided to update the Permanent System of Reporting in the context of a number of new UNESCO and United Nations instruments and action plans regarding education for peace, human rights, democracy, international understanding and tolerance. The draft questionnaire for the Permanent System of Reporting was examined by the Advisory Committee on Education for Peace, Human Rights, Democracy, International Understanding and Tolerance.²⁷

The Committee on Conventions and Recommendations in its debate on this subject underlined the necessity of sending the questionnaire not only to governments but also to parliaments and non-governmental organizations maintaining official relations with UNESCO, and to take into account data existing in the United Nations system when preparing the third report within the framework of the Permanent System of Reporting, to be submitted to the General Conference at its 31st Sess., 2001.

The Executive Board adopted the proposed questionnaire, which is unique within the United Nations system, as it applies not only to instruments concerning education for peace, human rights, democracy, international understanding and tolerance adopted by UNESCO but also to those adopted by the United Nations. It is also unique because it requests from Member States comprehensive reports on a totality of actions aimed at the building of a culture of peace through education.

2. Communications (Complaints) Procedure

In 1978, the Executive Board of UNESCO, by its Decision 104 EX/3.3,²⁸ instituted a special procedure for the examination of cases and

²⁷ Doc. ED-98/CONF.501 of 7 October 1998. Advisory Committee on Education for Peace, Human Rights, Democracy, International Understanding and Tolerance, 4th Sess, Paris, 21–23 September 1998.

²⁸ Study of the procedures which should be followed in the examination of cases and questions which might be submitted to UNESCO concerning the exercise of human rights in the spheres of its competence, in order to make its action more effective: Report of the working party of the Executive Board (104 EX/Decision 3.3 of the Executive Board of UNESCO adopted

questions submitted to UNESCO concerning the exercise of human rights in its sphere of competence. In the exercise of its competence, UNESCO is called upon to examine cases concerning violations of human rights which are individual and specific and questions of massive, systematic or flagrant violations of human rights and fundamental freedoms which result either from a policy contrary to human rights applied *de iure* or *de facto* by a state or from an accumulation of individual cases forming a consistent pattern.

To be considered admissible, a communication has to meet ten conditions set out in paragraph 14 of the Decision 104 EX/3.3. Thus, it must not be anonymous, must originate from a person or a group of persons who can be reasonably presumed to be victims, or a person or group of persons or organization having reliable knowledge of an alleged violation of human rights falling within UNESCO's fields of competence. It must concern violations of human rights falling within the Organization's competence and 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. Communications which are manifestly ill-founded, offensive, are based exclusively on information disseminated through mass media, are not submitted within a reasonable time-limit and have not exhausted available domestic remedies shall not be considered. Communications relating to matters already settled by the states concerned shall not be considered.

The Executive Board decision did not specify which human rights fall within UNESCO's fields of competence. In practice, it has been accepted that the following cultural rights belong to this category:

- the right to education;
- the right to share in scientific advancement and enjoy its benefits;
- the right to participate freely in cultural life;
- the right to information, including freedom of opinion and expression.²⁹

at the 104th Sess. of the UNESCO Executive Board (24 April–6 June 1978)).

²⁹ These rights may imply the exercise of others, in particular: – the right to freedom of thought, conscience and religion, – the right to seek, receive and impart information and ideas through any medium and regardless of frontiers, – the right to protection of the moral and material interests resulting

When the grievance of an alleged victim comes within UNESCO's fields of competence, there is a presumption that there is a link between the alleged violation and UNESCO's fields of competence.

The procedure to examine cases is confidential and takes place in private meetings of the already above mentioned Committee on Conventions and Recommendations, which is one of the permanent subsidiary bodies of the Executive Board and at present it is composed of 30 members from all the electoral groups. The examination of questions by the Executive Board and the General Conference should be public. However, until now questions of massive, systematic or flagrant violations of human rights have not been examined.

Before any complaint is referred to the Committee on Conventions and Recommendations, it passes through preliminary stages. The Secretariat is first authorized by the Committee to make, if necessary, a prior selection. Allegations that do not fall within UNESCO's competence, are ill-founded or from authors mentally unbalanced are not passed on to the Committee. The Committee has often recalled that its sole object is, for purely humanitarian reasons, to establish a dialogue with the governments concerned in order to consider with them what might be done on behalf of alleged victims in the event of having suffered violations of human rights in UNESCO's fields of competence. Concluding its work, the Committee adopts a confidential report containing the decision and all relevant information arising from its examination of the communication.

One of the most important features of the procedure laid down in 104 EX/Decision 3.3 is its confidentiality. Consequently, the sessions at which the Committee examines the communications submitted under this procedure take the form of closed meetings. The public, the press, radio, television are not allowed to participate. Sessions are attended only by members of the Committee or their deputies and Secretariat staff, whose presence is essential. Representatives of the government which is the subject of a complaint are invited to attend the session, but only for that part reserved for the presentation by them of their government's position and for answering questions from members of the Committee. In cases where the principle of confidentiality is not observed by the author of the communication, it is up to the Committee to decide whether such indiscretion constitutes an abuse of the right to

from any scientific, literary or artistic production, and – the right to freedom of assembly and association for the purposes of activities connected with education, science, culture and information.

submit a communication and then to strike the communication from its list, as a kind of penalty. In practice, communications whose authors had already breached the confidential character of the procedure have been declared inadmissible.

a. Specific Characteristics of UNESCO's Procedure

The procedure laid down in 104 EX/Decision 3.3 has specific characteristics in comparison with similar procedures in other organizations of the United Nations system.³⁰ In accordance with 104 EX/Decision 3.3, a complaint may be directed at any Member State, for the very reason that it is a member of UNESCO. The right to present communications does not result from any specific human rights instruments adopted by the Organization. The Committee's competence to examine individual communications concerning alleged violations of human rights in UNESCO's fields of competence has been gradually recognized by practically all UNESCO's Member States, and an increasing number of the governments concerned by the communications send representatives to the Committee and cooperate with it, although they are under no legal obligation to do so. While the other procedures seem most often to take a conflictual and accusatory form, the UNESCO procedure — although it is largely similar — has, from the very beginning been deliberately applied exclusively with a view to seeking a solution with the state concerned. The desire shown by the Committee to

³⁰ See on this subject: Ph. Alston, "UNESCO's procedure for dealing with human rights violations", *Santa Clara L. Rev.* 20 (1980), 665 et seq.; S. Bastid, "La mise en œuvre d'un recours concernant les droits de l'homme dans le domaine relevant de la compétence de l'UNESCO", in: *Festschrift H. Mosler*, 1983, 45 et seq.; F. Coomans, "UNESCO and Human Rights", in: R. Hanski/ M. Suksi, (eds), *An Introduction to the International Protection of Human Rights*, 1997, 186 et seq.; G.H. Dumont, "Une action concrète de l'UNESCO en matière des droits de l'homme", *Revue internationale des sciences sociales* 122 (1989), 651 et seq.; St. Marks, "The complaint procedure of UNESCO", in: H. Hannum, (ed.), *Guide to International Human Rights Practice*, 2nd edition, 1992, 89 et seq.; K.J. Partsch, "La mise en œuvre des droits de l'homme par l'UNESCO — remarques sur un système particulier", *AFDI* 36 (1990), 482 et seq.; M. Paszkowski, "UNESCO's Unknown Human Rights Procedure", *Polish Quarterly of International Affairs* 1 (1996), 1 et seq.; P. Rolland, "La nouvelle procédure d'examen des communications concernant la violation des droits de l'homme à l'UNESCO", *Revue internationale des sciences administratives* 46 (1996), 1 et seq.

take its decisions solely by consensus is no doubt a reflection of the same concern. However, what is perhaps the overriding characteristic of the UNESCO procedure is the emphasis, or indeed the insistence, on its strictly confidential nature, even after cases have been settled. In 104 EX/Decision 3.3, the Executive Board recognized and confirmed the role of the Director-General as regards UNESCO action in the field of promotion of human rights in general and, more specifically, in initiating consultations in conditions of mutual respect, confidence and confidentiality to help reach solutions to particular problems concerning human rights.

From 1978 to 2000, about 500 communications from individuals, as well as from such non-governmental organizations as Amnesty International, the International Association of Democratic Lawyers, the International Human Rights Law Group, the World Federation of Teachers' Unions, the Women's International Democratic Federation were examined by the Committee on Conventions and Recommendations. Though the number of communications presented to UNESCO is relatively small, nevertheless the procedure is relatively effective.³¹

b. Decisions Aimed at the Improvement of the Communications Procedure

At its 154th Sess., 1998 the UNESCO Executive Board invited the Director-General to seek views and comments of Member-States concerning the examination of the methods of work of the Committee on Conventions and Recommendations.

In order to draw up proposals for improving the communications procedure and the working methods of the Committee, which would lead to an improvement in the situation of alleged victims of human rights violations, a working group comprising six members was created.³² The working group examined 21 proposals in the light of Deci-

³¹ From 1978 to 1998 of 482 communications which were examined, 280 were positively settled. As the result 153 persons were liberated; 54 persons obtained permission to leave or to enter the interested states; 12 received passports or diplomas; 29 could find employment. In 15 cases, publications were permitted and in 8 a discriminatory legislation in the field of education has been amended.

³² The working group comprised members representing six electoral groups: Belgium, Russian Federation, Brazil, India, Senegal and Libyan Arab Jamahiriya.

sion 104 EX/3.3. Taking into account the working group's recommendations, the Committee on Conventions and Recommendations agreed on five points.³³

1. As to the admissibility of communications, the Committee stressed that the recognition of a communication's admissibility does not imply any condemnation of the government concerned. In order to speed up decisions concerning the admissibility of communications, only the governments concerned are requested to make their position known within a time limit of three months from the transmission of the communication by the Secretariat.

2. When a communication submitted to the Committee is being examined or has already been examined by another body in the United Nations system, the Secretariat will check with this other body whether there is any unnecessary duplication or incompatibility. If there is any doubt, the Secretariat will submit the question to the Committee.

3. When the government concerned fails to cooperate, the Committee may, in its report to the Executive Board, draw the board's attention to such a case and suggest a debate in the Executive Board in private meeting.

4. Confronted with the fact that the very existence of the Committee and the communication procedure are not very well known, the Committee underlined the need to continue efforts by the Secretariat and the Member States to make the procedure better known.

5. On the question of the publication of its annual report, the Committee did not adopt any general rule but decided that it will determine under what circumstances each of its annual reports may be made public.

Decisions taken by the Committee and notes by the Executive Board do not change the basic principles on which the communications procedure is based; nonetheless, they may improve its effectiveness and the speed with which alleged violations of cultural rights are dealt with.

³³ Report of the Committee on Conventions and Recommendations, Doc. 156 EX/52 of 7 June 1999.

IV. Conclusions

The analysis of UNESCO standard-setting instruments allows us to state that the Organization has no doubt contributed to the progressive development of human rights, in particular those which can be qualified as cultural rights.³⁴ Thanks to UNESCO's normative action, provisions of the Universal Declaration and the Covenants concerning cultural rights are not only clarified and elucidated but also further developed. However, cultural rights are formulated by UNESCO in instruments of different legal nature. Some, provided by ten binding conventions, may be recognized as "hard law", whereas those proposed by twenty declarations or recommendations can only be qualified as "soft law". The adoption of certain instruments has not been free from disputes and opposition. For example, the *Recommendation on Participation by the People at Large in Cultural Life and Their Contribution to it* of 1976 was not universally accepted. Before the vote on the Recommendation, delegations from Belgium, Canada, the Federal Republic of Germany, France, Guatemala, Italy, Portugal, the United Kingdom and the United States objected to terminology, meanings, implied restrictions on freedom of expression and of individual creativity and possible control of creativity by the governmental bureaucracy. The *Controversial Declaration of Guiding Principles on the Use of Satellite Broadcasting for the Free Flow of Information* adopted in 1972 under pressure from the Soviet Bloc and developing countries was recognized after the end of the Cold War as contradicting the freedom of expression and freedom of press.

The difference between hard and soft law means that UNESCO has contributed first of all to the progressive development of those rights like the right to education, the right to the protection of the moral and material interest resulting from any literary or artistic production and the right to the protection of cultural heritage where binding conventions were elaborated and adopted.³⁵

This is clearly acknowledged by the Committee on Economic, Social and Cultural Rights which in its General Comment No. 13 (21st Sess. 1999) declared that article 2 paras 2 and 3 of the Covenant are in-

³⁴ Broadly understood, cultural rights also embrace the right to education, the right to benefit from the scientific progress and the right to information.

³⁵ However, even the best known UNESCO *Convention against Discrimination in Education*, 1960 is far from being universal, as in the year 2000 it is binding in only 88 State parties.

terpreted "in the light of the UNESCO Convention against Discrimination in Education". It further "...affirms article 2 of the UNESCO Convention..." and "...takes note...of Article 3 (e) of the UNESCO Convention...".³⁶

UNESCO Declarations and Recommendations in particular those adopted by consensus and relating to the Organization's field of competence also contribute to the progressive development of human rights. This is recognized by the United Nations, which in an official publication: *Human Rights. A Compilation of International Instruments*³⁷, apart from the UNESCO Convention against Discrimination in Education, lists the following Declarations and Recommendations: 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; Declaration of the Principles of International Cultural Cooperation; Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms.³⁸

Though the UNESCO reporting and communications procedures may be criticized, and in recent years the need for their improvement has been recognized by the Committee on Conventions and Recommendations, the Executive Board and the General Conference, nevertheless they have unique features. They establish important precedents and can be seen as contribution to the progressive development of the United Nations supervisory mechanism. Thus the permanent system of reporting of education for peace, human rights, democracy, international understanding and tolerance, as already mentioned, applies not only to instruments adopted by UNESCO, but also to those adopted by the United Nations. This is rather a unique solution.

It is true that the UNESCO complaints procedure is not well known and not so often used. Nonetheless, this does not change the fact that until now UNESCO created the only complaints mechanism relating to cultural rights. It is worth noting that the Committee on

³⁶ Doc. E/C.12/1999/10 of 8 December 1999, 71-72.

³⁷ *Human Rights. A Compilation of International Instruments, I (First Part) and II (Second Part)*, 1993.

³⁸ Next addition of this *Compilation* should add to this list such important UNESCO human rights instruments like the *Declaration of Principles on Tolerance*, 1995; the *Universal Declaration on the Human Genome and Human Rights*, 1997.

Economic, Social and Cultural Rights decided to present to the United Nations Conference on Human Rights in Vienna 1993 a document suggesting the need to reflect on the possibility of elaborating and adopting an optional protocol to the Covenant which would allow individuals to present petitions concerning alleged violations of their economic, social and cultural rights. The World Conference on Human Rights encouraged the Commission on Human Rights, in cooperation with the Committee on Economic, Social and Cultural Rights, to continue the examination of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. During its 15th Sess., 1997, the Committee adopted a report on a draft optional protocol which is still under consideration by the Commission on Human Rights. Needless to add that this proposed Protocol is entirely optional, whereas the UNESCO procedure has been recognized by Member States and applies not to a specific human rights instrument but, in general, to human rights which are in the UNESCO field of competence.

In the context of the monitoring of cultural rights it is worth noting that UNESCO took part in the elaboration of the procedure for the implementation of the International Covenant on Economic, Social and Cultural Rights.³⁹ Subsequent to the entry into force of the Covenant, the Executive Board examined, in May 1979 and June 1980, the question of UNESCO's participation in the procedure for the implementation of the Covenant. The Executive Board invited the Director-General to communicate to the United Nations suggestions regarding the guidelines that the Secretary-General was to establish for the States parties with reference to arts 13 to 15 of the Covenant. The Executive Board underlined that these suggestions should take account of UNESCO's normative instruments and its experience in collecting information on the implementation of human rights which fall within its sphere of competence. Proposals were communicated to the Secretary-General by the Director-General in a letter dated 10 October 1980. In accordance with the decisions of the Executive Board the Director-General sent to the ECOSOC two reports on the implementation of

³⁹ In its Resolution E/RES/1988 (LX) of 11 May 1976, the ECOSOC laid down more detailed rules of procedures concerning supervision of the implementation of the Covenant. The Secretary-General, in cooperation with the Specialized Agencies concerned, was requested to draw up general guidelines for the reports to be submitted by the States parties to the Covenant and the Specialized Agencies.

the Covenant. The first report was transmitted in 1982 and the second in 1988.⁴⁰

As far as UNESCO's programmes are concerned, the second report noted the importance of the World Conference on Cultural Policies (MONDIACULT) held in Mexico in August 1982. In accordance with the proposal of UNESCO, the United Nations General Assembly, proclaimed on 8 December 1986, the World Decade for Cultural Development for the period 1988–1997. Three of four objectives of the Decade: affirming and enriching cultural identities, broadening participation in culture, and promotion of international cooperation are intimately linked with the observance of cultural rights.

In 1992, UNESCO established the World Commission on Culture and Development chaired by Javier Pérez de Cuéllar. The Commission's mandate obliged it to prepare a World Report on Culture and Development and "proposals both for urgent and long-term action to meet cultural needs in the context of development". During the fourth meeting, the World Commission discussed cultural rights and the right to development. The report of the World Commission on Culture and Development, under the title *Our Creative Diversity*, was published in 1995. Among its ten recommendations for international cooperation, Action 7 is entitled "Protecting cultural rights as human rights".⁴¹

Answering the question on how to assure the better protection of cultural rights, and how to eliminate their violation, the World Commission, proposed a whole range of steps from the establishment of an inventory of cultural rights, the preparation of an International Code of Conduct and the setting up of an International Office of the ombudsman for cultural rights, to the establishment of an international court to hear cases brought before it by individuals and groups prosecuted over matters involving cultural rights.

Indeed, though a fair number of standard-setting instruments adopted by the United Nations, UNESCO and regional organizations formulate states' obligation to implement cultural rights, the necessity

⁴⁰ With respect to each of the three articles (13–15) dealt with, an indication was provided by the relevant major normative instruments adopted by UNESCO in connection with the implementation of the Covenant's provisions. The report also contained overall references to the relevant programme activities being pursued by UNESCO, without any attempt to present a full and complete picture of the Organization's activities.

⁴¹ *Our Creative Diversity*, Report of the World Commission on Culture and Development, 1996, 281 et seq.

for their “inventory” or, in other words, “codification” can not be questioned. The adoption of a special normative instrument could not only contribute to the further elucidation of cultural rights but also help to make them better known. However, such a perspective seems to be rather remote.

By the dawn of the 21st century, cultural rights are gaining new importance. They are today “empowering rights”. Without their recognition and observance, without implementation of the right to cultural identity, to education, to creativity or to information, neither may human dignity and human development be guaranteed nor may other human rights be fully implemented. Without the recognition of cultural rights, cultural plurality and diversity cannot be respected, and democratic societies cannot function properly.