

**Elisabeth Kornblum**

**A comparison of self-evaluating  
state reporting systems**

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**Elisabeth Kornblum** holds a Master's degree in International Law and a Master's degree in Archaeology, both from the Leiden University in the Netherlands. In May 1994 she started a study on state reporting systems for the Legal Division of the ICRC. At present she is working for the United Nations Office of Amnesty International in Geneva.

# A comparison of self-evaluating state reporting systems

by Elisabeth Kornblum

## ABSTRACT

A self-evaluating state reporting system is a method for implementing international agreements. A self-evaluating state report provides information on the operation and implementation of a treaty regime. Self-evaluating means that a state monitors its own execution of an international agreement in its territory. The information may be submitted to an international institution with a supervisory role or to a technical secretariat.

The key tasks of a supervisory international organization are: collecting information and data, receiving reports on treaty implementation by States, facilitating independent monitoring and inspection, and acting as a forum for reviewing the performance of states or the negotiation of further measures and regulations. Such bodies may acquire law-enforcement and law-making functions.

This report describes the self-evaluating state reporting systems of the United Nations human rights conventions, the Organization for Economic Co-operation and Development, the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization, the World Intellectual Property Organization, the disarmament treaties and the environment treaties.

There are several characteristics of determining importance for the functioning of a reporting system. In short, these are: the sensitivity of the subject of a treaty; the economic value of the subject; the specificity of the subject; the popularity of the subject in the media; secretarial support; the flexibility of the reporting procedure; a permanent body to which to report; the quality and efficient functioning of the supervisory body; follow-up; admission to an international instrument and the existence of a national monitoring body or procedure.

It should be noted that the allocation of sufficient human and financial resources will be essential to the effectiveness of a reporting system.

## INTRODUCTION

The goal of this paper is to find out what entails a self-evaluating state reporting system, what are the characteristics that render such a system successful, and which of them could be used in a system to stimulate preventive implementation of humanitarian law.

To this end, the systems of the United Nations human rights conventions, the Organization for Economic Co-operation and Development, the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization, the World Intellectual Property Organization, the disarmament treaties and the environment treaties, are studied.

In addition to reports by States parties to the treaties, a common mandatory implementation mechanism, some conventions contain other implementing mechanisms, such as **fact-finding, research** and **on-site inspections**.

The counterpart of implementing preventive measures are mechanisms dealing with violations, for example, **complaints procedures** for states or individuals.

The above-mentioned mechanisms are all based on an international agreement. There are also, however, a number of procedures that are not treaty-based and that also deal with observance of international agreements, either to prevent violations or to redress them. There is the United Nations Commission on Human Rights, which uses extra-conventional monitoring procedures, known as **working groups** and **special rapporteurs**, to oversee the application of the principles set out in the various declarations and conventions. Such procedures can be divided into thematic mandates (e.g. torture, extra-judicial executions, sale of children) and country-oriented mandates (e.g. Iraq, Occupied Territories, Sudan, Rwanda). The working groups and special rapporteurs collect information and conduct fact-finding missions, upon the basis of which reports are produced for the consideration of the Commission on Human Rights. The best-known procedure is the **confidential "1503 proceedings"**, that deals with communications alleging that governments have shown a "consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms".

This paper, however, will deal mainly with non-political, treaty-based, multilateral, state reporting systems.

### CHAPTER 1

## AN IMPLEMENTATION MECHANISM FOR INTERNATIONAL HUMANITARIAN LAW DURING PEACETIME?

The Geneva Conventions of 1949 and the Additional Protocols of 1977 do not provide for any reporting system that evaluates the measures taken by a State

party in peacetime to implement humanitarian law. The duties of States parties are clearly stated in the Conventions and Protocols: States must make official translations, adopt national laws and regulations, disseminate and instruct the armed forces and make material preparations.<sup>1</sup> This should already be done in peace-time and States parties should communicate the results of their efforts to one another through the depositary (during armed conflicts through the Protecting Power).<sup>2</sup> States have so far not done enough to meet this obligation.<sup>3</sup> .

Based on its mandate to work for the faithful application of IHL (International Humanitarian Law), the ICRC has collected information on national measures to repress violations of humanitarian law; the use and protection of the Red Cross/Crescent emblem; and dissemination activities. The ICRC submitted reports of these subjects on the basis of reports submitted by States parties to the International Conference of the Red Cross and the Red Crescent.<sup>4</sup>

During the 1974-1977 Diplomatic Conference (which resulted in the adoption of the Additional Protocols), the ICRC drafted Article 83 of Protocol I,<sup>5</sup> on dissemination, to include a reporting obligation every four years on measures taken in the area of dissemination. This proposal was not accepted by States.<sup>6</sup>

In 1986, during the XXVth International Conference of the Red Cross and the Red Crescent, Resolution V was adopted. States parties were urged to fulfil their obligation to adopt or supplement the relevant national legislation, as well as to inform one another of the measures taken or under consideration for this purpose. The ICRC received the mandate to “gather and assess” information submitted by Governments and National Societies, and subsequently to report regularly on the follow-up at the International Conferences.<sup>7</sup> Resolution V also invites National Red Cross/Crescent Societies to assist and cooperate with their governments to submit reports.

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<sup>1</sup> GC I, 23, 26, 44, 47, 48, 53; GC II, 39, 45, 48, 49; GC III, 127, 128; GC IV, 144, 145; AP I, 6, 12 to 31, 80, 82, 83, 84, 87; AP II, 19.

<sup>2</sup> GC I, 48; GC II, 49; GC III, 128; GC IV, 145; AP I, 84.

<sup>3</sup> M.T. Dutli, *Mechanisms for the Implementation of International Humanitarian Law*, Expert Meeting on Certain Weapon Systems and on Implementation Mechanisms in International Law (Geneva, 30 May-1 June), Report drawn up by the ICRC, July 1994, 120-127.

<sup>4</sup> K. Drzewicki, “National Legislation as a Measure for Implementation of International Humanitarian Law”, in F. Kalshoven, Y. Sandoz, eds., *Implementation of International Humanitarian Law. Research Papers by participants in the 1986 Session of the Centre for Studies and Research in International Law and International Relations of the Hague Academy of International Law* (1989), 109-131.

<sup>5</sup> Article 72, paragraph 3, read: The High Contracting Parties shall report to the depositary of the Conventions and to the International Committee of the Red Cross at intervals of four years on the measures they have taken in accordance with their obligations under this article.

<sup>6</sup> See note 3.

<sup>7</sup> K. Drzewicki, 1989, 127, *IRRC*, No. 255, November-December 1986, p. 346.

The ICRC followed up on this Resolution by requesting States parties and National Societies to inform the ICRC on the measures being taken to fulfil obligations stemming from the Conventions and, where applicable, from one or both Protocols. 62 Governments and 30 National Societies replied to the 160 letters sent to governments, but only a few sent substantive answers. As a result, proposals were made to States parties and National Societies on possible follow-up that could be given to the ICRC's move. One of these proposals was to institute a system of periodic reporting. States would submit initial reports on all measures adopted or being examined, and updates at regular intervals. The reports and the information contained could be assessed, by the ICRC with the help of specialists on different existing legal systems.<sup>8</sup> In all, 24 States and 7 National Societies reacted to this letter. The ICRC also drew up a detailed list of measures to be taken to fulfil the obligations under the Conventions and the Protocol, sent it to States parties and National Societies and published it.

## 1.1 Conclusion

It is not yet possible to speak of a reporting system under humanitarian law. The efforts that have been undertaken by the ICRC have an *ad hoc* character, although they are based on the mandate of Resolution V of 1986, and no discussion with the governments was possible since the 1991 International Conference had to be postponed.

However, governments, in the Final Declaration of the International Conference for the Protection of War Victims in 1993, reaffirmed:

“... the necessity to make the implementation of international humanitarian law more effective. In this spirit, we call upon the Swiss Government to convene an open-ended intergovernmental group of experts to study practical means of promoting full respect for and compliance with that law,...”.

This group of experts will convene in January 1995 for the first and only time.

This study further examines possibilities for reporting procedures, with a view to identifying a cost-effective reporting system appropriate to the characteristics of international humanitarian treaty law. Accordingly, this study will focus on the practical aspects of reporting systems used by different international organizations.

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<sup>8</sup> *Implementation of International Humanitarian Law, National Measures*, document drawn up by the ICRC (Doc. 1991 C.I/4.1/1), Geneva, 1991, 7-8.

CHAPTER 2

MONITORING OF UNITED NATIONS CONVENTIONS  
ON HUMAN RIGHTS

Within the United Nations framework, there are several International Human Rights Conventions. To supervise, investigate and monitor the implementation of the provisions of international legal instruments and standards, several mechanisms are used, both treaty-based and non-treaty-based. This paper deals only with treaty-based mechanisms. These are:

- (a) reporting procedures;
- (b) inquiry procedures;<sup>9</sup>
- (c) inter-state complaints;<sup>10</sup>
- (d) communications procedures.<sup>11</sup>

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<sup>9</sup> The Convention against Torture has an optional *inquiry procedure* under Article 20. If it appears to the Committee that torture is being systematically practised in the territory of a State, the Committee invites that State to cooperate in its examination of the information and, to this end, the Committee may designate one or more of its members to make a confidential inquiry, which may include a visit to its territory, and hearing of witnesses. The findings are submitted to the Committee, which transmits them, together with its own comments or suggestions, to the State party. The Committee may also decide to request additional information, either from the representatives of the State concerned or from governmental and non-governmental organizations, as well as individuals, for the purpose of obtaining further elements on which to form an opinion. It invites that State to inform the Committee of actions it has taken with regard to the Committee's findings. After all the proceedings regarding an inquiry have been completed, the Committee may decide to include a summary account of the results of the proceedings in its annual report. Only at that stage is the work of the Committee made public. An inquiry was conducted on Turkey. The procedure was started on the basis of an Amnesty International report. At present another inquiry procedure has been initiated.

<sup>10</sup> Three instruments provide for an *inter-state complaints* procedure according to which States parties recognize the competence of a Committee to receive and consider communications from a State party claiming that another State party is not fulfilling its obligations under the instrument concerned: (a) the International Covenant on Civil and Political Rights, Article 41 (optional); 43 States have made the declaration; (b) the Convention on the Elimination of All Forms of Racial Discrimination, Articles 11, 12 and 13 (obligatory); (c) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 21 (optional); 36 State parties have made the declaration. To date, these procedures have not yet been resorted to.

<sup>11</sup> The *communications procedure* is optional under the First Optional Protocol to the Covenant on Civil and Political Rights, under Article 14 of CERD and under Article 22 of CAT (35 States accepted). A fourth procedure is envisaged under Article 77 of the Migrant Workers Convention, which is not yet in force. Individuals subject to the jurisdiction of States parties can complain to the Committee on the violations of their rights. The Communications Branch of the United Nations Centre of Human Rights makes a preliminary analysis of the Communication to decide to which Committee the communication should be submitted. Communications complaining only of torture or racial discrimination are more rare. Most complaints contain an element of civil and political rights. For that reason, most complaints are directed to the Human Rights Committee.

The five United Nations Conventions on Human Rights, with State **reporting procedures** and a secretariat in Geneva, which will be treated in this paper are:

1. the International Covenant on Civil and Political Rights and its Optional Protocol (HRC);
2. the International Covenant on Economic, Social and Cultural Rights (CESCR);
3. the Convention on the Rights of the Child (CRC);
4. the Convention on Elimination of All Forms of Racial Discrimination (CERD);
5. the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

Three Conventions will not be discussed extensively in this paper. The Convention of Elimination of All Forms of Discrimination Against Women (CEDAW), whose secretariat is in New York. The International Convention on the Suppression and Punishment of the Crime of *Apartheid* hardly functions, and in Chapter 9 a lesson is drawn from it. The Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families has not yet entered into force.

## 2.1 Reporting procedures under the Conventions

In general, all state reporting systems of the Human Rights Conventions follow similar procedures. Within one or two years after ratification, a State party has to submit an **initial report** and thereafter every four or five years a **periodic report**.

The reports are submitted to a monitoring body of 10 to 18 independent experts, serving in their personal capacity. This body is usually called a Committee. To ensure that all principal legal systems are represented, the Committee members are chosen on the basis of equitable geographical distribution.<sup>12</sup> A Committee member is responsible for analysing the report from a certain State, for preparing questions and for leading the discussion when its report is taken up for consideration by the Committee.

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<sup>12</sup> The members are elected by a secret vote, so it is possible that equitable geographical distribution is not realized.

All Committees have established **guidelines** regarding the form and contents of initial and periodic reports. Every report should be preceded by a “**core document**”. This document submits basic information on the conditions and circumstances in a State. A core document, once prepared and updated, can be used for all reports under the UN human rights system to facilitate the reporting.<sup>13</sup> As yet, there are only 35 States who have produced a core document.

For some Committees, before a report is considered, a list of questions is prepared by a pre-sessional **working group**, to give a State a better chance to participate constructively in the dialogue with the Committee, and to identify in advance the questions that might most usefully be discussed with the representatives of the reporting States. The list is sent directly to a representative of the State concerned. States parties are asked to provide the replies to the list of issues in writing, if possible, and to do so sufficiently in advance of the session at which their respective reports are to be considered, in order to enable translation and distribution to the members of the Committee. It is made clear that the list is not exhaustive.

The State report is then presented to a Committee in a public session by a team of representatives from the reporting government, which is questioned on specific issues and situations. In their questions and comments, the Committee members may take into account information supplied by other sources than the state report, for example, information from other UN bodies, other international organizations or NGOs. The Committee on the Rights of the Child works with an NGO coordinator, who has also published a handbook for NGOs on how to help the reporting system under the CRC. A special NGO called ARIS (Anti-Racism Information Service)<sup>14</sup> helps other human-rights groups and individuals by giving information on CERD, notifying the appropriate organs when their country will be discussed, and sending press releases immediately after the discussion in CERD to the major news media in the countries concerned.

After the presentation of the State report and deliberations by the Committee, suggestions, concluding observations or general recommendations are adopted. They are drafted by the designated country rapporteur, with the help of the Secretariat. The text reflects the views of the Committee as a whole. The form of the suggestions is according to the guidelines established by the Human Rights Committee.<sup>15</sup> The practice of adopting concrete recommendations has only recently developed.

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<sup>13</sup> U.N. Doc. CAT/C/X/Misc.3/Rev.1.

<sup>14</sup> There are 7 members of CERD in the ARIS Advisory Committee.

<sup>15</sup> See note 13.

In the concluding observations and general recommendations, the Committee draws attention to the progress achieved since examination of the previous report and expresses its concern over factors and difficulties impeding the application of the provisions of the Convention and subjects of concern. Most importantly, the concluding observations contain specific suggestions and recommendations on steps which the government should take to implement the treaty in question more effectively.

The observations, which are made public after a short delay, serve as a suggested "programme of action" to be undertaken by the State before its next report and are given as wide a circulation as possible. It is now much easier for States to follow up the suggestions of a Committee and it is also much easier for NGOs and other pressure bodies to confront governments with certain shortcomings. Each Committee reports on its findings to the Economic and Social Council or the General Assembly.

The follow-up to a report can take different forms: States that have requested help can be given **advisory services** and/or **technical assistance**. The CRC is empowered to transmit, as it may consider appropriate, to the specialized agencies and other competent bodies, any reports from States parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions. CERD can send a **mission** of experts to a State, between reports, to provide technical assistance in preparing the next report and in devising means to eliminate racial discrimination; it may also help to prompt a dialogue for a peaceful solution of issues concerning racial discrimination.<sup>16</sup>

Under the CESC, when a State is very long overdue with its reports, or if a serious situation gives rise to concern, the State is requested to accept a mission consisting of 1 or 2 members of the Committee, to collect information, to continue a constructive dialogue with the State party, and to enable it to prepare the next report. The decision to send a mission is taken only after the Committee has satisfied itself that no other adequate approach is available and that the information in its possession warrants such an approach. The Committee identifies specific issues in relation to which the representatives have to gather information from all available sources.<sup>17</sup> Missions have been requested to the Dominican Republic twice, and to Panama and the Philippines once each. These States have so far rejected every offer of assistance, but the dialogue is kept open.

A Committee may bring a State under review, or keep it under continuing review, by requesting it for further or **additional information**. Such a request

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<sup>16</sup> See note 13.

<sup>17</sup> See note 13.

may also be applied in cases where a State has fallen far behind in its reporting obligations. This procedure has been recently developed by a number of Committees in an effort to respond to serious human rights situations, with a view to preventing further violations, particularly where there is a risk of escalating violence or armed conflict.

The **urgent action** procedure is used by the CRC and the HRC in relation to a State party in a serious situation, when there is a risk of further violence. The situation has to be brought up by a UN body or another competent body or *ex officio* by the Committee itself. The Committee considers the urgent action procedure as part of the reporting system. So far, all States have complied with the Committee's request and have participated in consideration of the report requested under an urgent action procedure.

A Committee can only use persuasion to compel States to submit their **overdue reports**. When a report is four to six months overdue, a reminder is sent to the Minister of Foreign Affairs, after which the Chairperson of the relevant Committee sends a personal letter to the Minister of Foreign Affairs. At the same time or a little later, Committee members use their personal contacts with state representatives to urge them to submit a report. CESCR, CERD and the HRC have developed a special practice in dealing with States whose reports are long overdue. It has been proposed that States whose reports are more than 4/5 years overdue might be reviewed on implementation of the Convention in the absence of their reports, and invited to send representatives to participate in the relevant meetings. States who decide to send in their reports after such a long time can submit their initial and second reports in one document. In addition, States with long overdue reports are invited to avail themselves of the technical assistance of the UN Centre for Human Rights. As a result of this change in policy, two States, whose reports were long overdue, have asked for advisory services and technical assistance in preparing the reports. As a first step, their representatives will be sent to an international course specifically aimed at training government officials in the mandatory reporting system, to be held at the ILO's International Training Centre in Turin in November 1994, within the context of the Fellowship Programme of the Centre for Human Rights.<sup>18</sup>

## 2.2 Functions of the Secretariat

Each Committee is serviced by the International Instruments Branch of the United Nations Centre for Human Rights in Geneva. In principle, every Con-

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<sup>18</sup> Based on the draft annual report of the 12th session in April 1994, CAT/C/XII/CRP.1/Add.3.

vention has a Secretariat comprising 2 professionals (graded P4 and P2) and 1 general-service staff member. In practice, however, a Convention is serviced by 1 professional and a (part-time) secretary.

The Secretariat **organizes** the sessions of the Treaty bodies. It does this by sending *notes verbales* to States parties: to request reports, to remind States that they have to submit reports, and to invite States to the sessions. The Secretariat also prepares the reports, the documents for the sessions and the documents containing States' reports. This entails reading, adding references, giving symbol numbers, translating and distributing. It likewise organizes the days of general discussion for the CESCRC and the CRC and coordinates the sessions calendar. It keeps track of the status of the Conventions and the reservations, lists the state reports received, and compiles the relevant international instruments. When a Committee is in session, all the servicing staff of the other Committees help to prepare drafts, answer questions in the sessions and assist in any way that is necessary.

On a substantive level, the Secretariat offers service to Committee members by collecting information on countries, analysing the information, asking UNICEF, the ILO, NGOs and other relevant organizations, even regional or local bodies, for additional information. It researches academic articles and consults with experts. When a State party needs assistance with the preparation of a report, it is the Secretariat that provides this help. It drafts the list of issues that is the guideline for every Committee meeting and the agenda, as well as the general comments, suggestions, general recommendations and concluding observations. It drafts the annual or bi-annual report to the General Assembly, also the reports to ECOSOC and the Commission. In addition, the Secretariat prepares reports on actions taken pursuant to the decisions adopted by Committees at previous sessions.<sup>19</sup> The Secretariats of the CRC and of the CESCRC produce country analyses and country files.

### 2.3 Reservations concerning the system

The reporting systems relating to UN human rights give rise to the following observations:

- (1) The number of overdue reports will not decrease as long as the capacity of the Secretariat to process reports is not increased.<sup>20</sup>

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<sup>19</sup> Resolution A/47/41, page 2 paras 2 to 8.

<sup>20</sup> As long as this is the case the Committees will not put overmuch pressure on States to submit their reports.

- (2) There is reporting fatigue, since States sometimes have to report up to six times a year on closely related fields.
- (3) The effectiveness of the system is impeded by the absence of a consistent follow-up procedure.
- (4) A good diplomat will be able to explain away all allegations of a Committee, without any relevant changes taking place in human rights within a State.
- (5) Six working languages constitute a heavy burden for the UN.
- (6) The Committee's experts are not paid for their services, apart from travel and living expenses. So far this has not been a problem, but when Committee sessions take up more than three months a year a normal salary may be required.<sup>21</sup>

## 2.4 Concluding remarks

States should see the reporting procedure as a useful way of taking stock, by assembling national experts and evaluating progress. The reporting systems are undergoing major changes now that the Cold War has ended: for many years the East-West controversy paralysed the decisiveness of the Committees.

The reporting procedure is a door towards advisory services and technical assistance, provided by the Centre for Human Rights. This is true, for example, for Vietnam, which changed its juvenile justice system with international technical assistance, on the recommendation of the Committee on the Rights of the Child.

The experiences of the CERD and the CAT demonstrate that it is not wise to make the funding of the Committees dependent upon the States parties, since it has led to curtailment of Committee sessions, due to the non-compliance of some States parties with their financial obligations. Instead, complete funding should come from the regular budget of the United Nations.

From the CERD it can also be learned that it is best to keep reporting procedures as flexible as possible. A rigid system has a tendency to become obsolete.<sup>22</sup>

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<sup>21</sup> The experts for the Council of Europe are paid at D1/D2 level.

<sup>22</sup> CERD has a gentleman's agreement with the States parties that one report per 4 years is enough, not, as is stated in the Convention, every two years (Article 9, para. 1). A brief updating report can be submitted in the intervening years.

The system whereby a permanent body is installed, to be convened when needed, functions much better than an *ad hoc* body.<sup>23</sup>

For the CRC, it is possible to note progress in legislation, in coordination mechanisms put in place, and in a certain didactic effect.

A Committee is not a tribunal. It neither passes judgement nor does it condemn. The purpose of the presentation and the examination of the report is to start a constructive dialogue with the reporting State. The Committee wants to establish the *de jure* and the *de facto* situation in the reporting State, which it endeavours to assist to abide by the obligations assumed with ratification of or accession to the Convention. Committees therefore expect their observations to be duly transmitted by the representatives of the reporting State participating in the dialogue to all relevant national authorities involved in implementation of the Conventions.<sup>24</sup>

### CHAPTER 3

## ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

The OECD is the main forum for monitoring economic trends in its 25 member countries, representing the free-market economies of North America, Western Europe and the Pacific. The aim of the OECD is to achieve the highest sustainable level of economic growth and employment by coordination of national policies and by stimulation and harmonization of aid to developing countries. Member countries report constantly on trends and data in their territories. On the basis of analyses of these data, they coordinate their policies. The procedure of sharing

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<sup>23</sup> The Group of Three, established by the Convention against Apartheid is an *ad hoc* body and meets only once every 2 years. The problem with such an *ad hoc* group is that between meetings there is no body to take any action. This has become painfully obvious during the recent elections in South Africa, when the body could not convene, because at that time the Group of Three did not have any members.

<sup>24</sup> — *Manual on Human Rights Reporting*, U.N. Doc. HR/PUB/91/1, (1991), 187-188.  
— *Orientation Manual, The U.N. Commission on Human Rights, its Sub-Commission, and related procedures*, Minnesota Advocates for Human Rights (1993).  
— *A Guide for Non-Governmental Organizations Reporting to the Committee on the Rights of the Child*, The NGO Group for the Convention on the Rights of the Child (1994).

observations and information is a slow one, but after 33 years there are enough results for the member countries not to want to change the system.

### 3.1 Organization of the OECD

The main body of the OECD is the **Council**, assisted by the **Executive Committee**. In 150 specialized **committees, expert groups and working parties**, the major part of the Organization's work is carried out. There are, moreover, 5 **semi-autonomous bodies** within the framework of the OECD. These bodies are, as a rule, composed of representatives either from the capitals or from the permanent delegations to the OECD. All these bodies are serviced by the international **Secretariat**, headed by the Secretary-General of the OECD. This Secretariat forms the major part of the OECD.

Member countries meet every 2 weeks at ambassador level in the **Council**. Each member country maintains a permanent diplomatic delegation headed by an ambassador. The ambassadors are appointed especially to the OECD; delegations vary in size from 5 diplomats (UK) to more than 60 (Japan).

The Council meets once a year on ministerial level with the Ministers of Economic Affairs and of Foreign Affairs. Once a year there is also a high-level<sup>25</sup> meeting on development. Every 2 years there is a high-level meeting on a subject to which a Committee wants to focus the attention of the member States. The Council, which operates on the principle of consensus, produces Decisions (legally binding on member countries) and Recommendations (expressions of political will). Member countries implement the Decisions and Recommendations in their national policies.

There are **committees** on Economic Policy, on Economic and Development Review, on Development Assistance, on Trade, Capital Movements and Invisible Transactions, and on 20 other subjects.

The delegates to the committees, working parties and expert groups all require statistical and other background papers. The OECD therefore gathers these data and policy information and standardizes them. It makes them available to member countries and to the public in an internationally comparable form. On the basis of these data, suggestions are made for policies in a member country. After a certain period the member country will make an assessment report on

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<sup>25</sup> High-level, because not every country has a separate ministry for development.

the results of the applied policy. Committees do not have official rules of procedure, they have only unofficial working methods, which have developed over the years; their unofficial nature makes the committees very flexible.

Of the **various bodies**, the Development Assistance Committee is the most interesting for the ICRC, since last year it included in its research some observations on landmines, which they had conducted with the help of the ICRC.

The staff of the **Secretariat**, which uses 2 official languages, French and English, is drawn from all member countries. Traditionally, the upper echelons of the OECD are geographically distributed, but lower down in the organization this is not the case. The Secretariat disseminates and analyses reports. It organizes 4,000 meetings a year to discuss the reports. The Secretariat, based in Paris, consists of 1491 people (829 at the professional level) and has an annual budget of FFR 1,453,006,097 (1992). The Secretariat is divided into ten specialized Directorates, corresponding broadly to the principal committees, which themselves mirror the main departments of national governments.<sup>26</sup>

### 3.2 Reporting mechanisms

Reporting systems have been developed in most bodies of the OECD. The three main reporting systems of the OECD will be described and the reporting mechanism of one body will be studied in detail, following the same method as for the United Nations Human Rights Treaties.

The reports to the **Economic and Development Review Committee** (EDRC), to the **Development Assistance Committee** (DAC) and to the **Committee on Competition, Law and Policy** (CCLP) are identified as the three main reporting procedures of the OECD. Once every 4 years an environmental analysis is also requested.<sup>27</sup>

The reporting procedures for these three Committees are similar. For each country, reports are prepared by three teams: the Secretariat of the OECD; the country itself; and the experts or examiners, who are people from two other countries designated to make a report on the third country. These three reports are combined into one report by a major economist of the OECD, and the

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<sup>26</sup> From the leaflet, *OECD in Brief*. Further information was obtained from interviews with Mrs. Ballivet, of the Geneva office of the OECD, and from *The Annual Report of the OECD 1992*.

<sup>27</sup> By Mrs. Ballivet, of the Geneva Office of the OECD.

combined report is then presented to the Committee, which discusses it and publishes a summary.

Usually two or three countries are treated by one major economist, aided by approximately 10 junior economists. Such a cluster of economists is called a desk. There are 12 desks for EDRC and 12 desks for DAC. CCLP works with heads of division and 7 major economists. There are many OECD experts who give advice on specific areas touched upon by the reports.

The EDRC monitors and assesses economic policies of individual countries on an annual basis. It is a multilateral surveillance process covering both macroeconomic and microeconomic policy issues. This annual examination is the main instrument for the Organization's surveillance of overall economic policies in each member country. Special issues in specific countries are also reviewed. Exceptionally, surveys of Non-Member States are conducted, e.g., when such countries wish to become OECD members. The reports are published in the *OECD Economic Surveys*. In 1994, 8 surveys were published, in 1993, there were 15, making 23 in all, those for Belgium and Luxembourg being published together. Surveys were also published of "Partners in Transition": for Poland in 1992; Hungary in 1993 and the Czech and Slovak Republics in 1994. A non-member survey was also made of Mexico in 1992, before Mexico became a full member of the OECD.

In the Committee, questions can be asked on the functioning of different economic systems in a country. For example, Switzerland is always asked to explain its financial system.

Once every two years a Member State has to report to the CCLP. This Committee reviews developments in competition policy, law and jurisprudence in OECD member countries at each of its semi-annual meetings. During 1989/90 and 1990/91, 20 and 19 reports, respectively, were reviewed. The country reports are made available to the public by the individual governments. The summary is made available to the public on the authority of the Secretary-General of the OECD.

Every 2 years, the DAC reviews the quantity and quality of development aid given by a country to other countries. There are no fixed dates of publication and there is no list of reports that have been published. This makes it impossible, at present, to give more details on this reporting procedure.

The reporting mechanism of the **Financial Action Task Force (FATF)** will be examined in detail. The FATF is not a real OECD body, but was established by the G7 Economic Summit in Paris in 1989. It consists of representatives of States that are interested in decisive action against the drug problem and that

therefore wish to examine measures to combat money laundering. The secretariat is provided by the OECD, though not all members of the FATF are OECD members.

In April 1990, the FATF issued a report with 40 Recommendations. Evaluation of the progress made by FATF members in implementing the 40 Recommendations is the only area relevant to this paper of the three main areas of work on which the Task Force has focused its attention. The Task Force monitors the performance of its members using two methods of reporting, agreed in 1991: annual self-assessment by member countries, and a mutual evaluation process.

Self-assessment by member countries is conducted on the basis of questionnaires dealing with the Recommendations on legal and financial matters. These questionnaires have become specific and detailed, inviting countries to supply appropriate narrative information. Most members take the opportunity to do so. The FATF Secretariat draws up two grids of the responses, showing the state of implementation of the Recommendations. These results are then discussed in working groups. Although there inevitably remain some differences in interpretation of some of the questions, the exercise now provides a generally objective analysis of the performance of members in implementing the 40 Recommendations.

The **mutual examination process** has already examined 12 countries. The goal is to examine each member once, over the period 1991-1994. The procedure is as follows: the chairman of the FATF selects the FATF members to be examined in the coming year. In consultation with the country to be examined, the Chairman of the FATF selects at least three examiners (country representatives), taking into account the expertise and the background of the examiners and their countries. Each evaluation team should include examiners from at least two different countries.

First, all relevant quantitative and qualitative information is assembled and processed in an analytical assessment, in order to secure an objective assessment of the situation in a given country. This is achieved on the basis of the information provided by the examined country itself, through its response to a comprehensive and standardized *mutual evaluation questionnaire*. The information-gathering process is completed through a variety of interviews carried out by the examiners during an *on-site visit*. Subsequently, the Secretariat is in a position to write a confidential draft report in the light of the examiners' assessments and under their responsibility.

The draft report contains a tentative evaluation, which is submitted to the examined country, and then discussed in a joint meeting of the legal and financial

working groups. The examiners present their report to the joint group, and other FATF members are selected to lead the discussion. The purpose of this phase is to verify the validity of the facts and the state of implementation. This intensive peer review is a necessary means for reaching a clear and unbiased assessment of where the country stands and of the areas in which further efforts are warranted. The report is then revised as necessary by the Secretariat in the light of these discussions, and the conclusions are reflected in the final report, to be approved by the FATF plenary. The report itself remains confidential, but an executive summary thereof is prepared and included in the annual report of the FATF.

This is the reporting mechanism for the FATF. To preserve the informality of the FATF, membership will not be increased.

### **3.3 Conclusion**

In principle, the reporting procedures of the OECD are voluntary. However, the Organization admits a State only after it has made sure that it fits into the “working tradition/atmosphere” of the OECD. This means that failure to report as agreed is frowned upon. Compliance with the reporting procedure is guaranteed not by official regulations, but by unofficial peer pressure. When a member country fails to produce an expected assessment report, the Council will continue to ask for the reasons.

States also send all statistical information produced by their ministries to the OECD, which processes it. Non-compliance, therefore, cannot be hidden. Furthermore, field missions can be sent to a country, and the OECD sponsors research on specific topics (e.g., agriculture) in a Member State. In this way the OECD remains constantly aware of the most recent trends and the best possible reactions to them.

The ultimate aim of the reports is economic development, which is not a sensitive issue. Every country wants to learn more on how to achieve economic growth, and information is shared willingly. Policy meetings are conducted at ministerial level or just below. This makes for easy implementation, when decisions have been taken.

Meetings are in general confidential; only some reports of committees are published. The results of the reporting procedures are usually stated only in general terms. The confidentiality encourages openness in States that might not want to share some policies with the press. The OECD does not wish States to report when there are elections, since in the past OECD reports have been used in campaigns, a practice of which the Organization strongly disapproves.

The OECD puts a lot of effort into a small number of countries. It works in a very concentrated field, not a broad one such as that of the Human Rights Conventions. It works closely, when it so chooses, with all kinds of related international organizations. It does not hesitate to establish regional units to keep the original entity small and workable. This might explain the 150 committees, working groups and agencies that form part of the OECD.

The reporting procedures for the OECD appear, at first glance, to be extremely successful in their goal of implementing the planned recommendations. However, some comment is called for. First, the recommendations that the OECD makes and tries to implement are usually not very far-reaching, and often States have already decided to do something about the issue. It is not really the OECD that initiates innovative actions. Second, the amount of attention focused on countries that have to report is tremendous: for each reporting country and each working group there are two procedures to check implementation, backed up by studies of the newest developments in the field and the possibility of on-site inspections. These enormous efforts explain the size of the OECD, and the size of its budget. It is an effective body, but it functions at high cost.

## CHAPTER 4

### THE INTERNATIONAL LABOUR ORGANISATION

The ILO is committed to ensuring that all human beings, irrespective of race, creed or sex, are able to pursue their material well-being and their spiritual development in conditions of freedom, dignity, economic security and equality. The ILO is a tripartite organization; States' delegations to the International Labour Conference consist of representatives of employers' and workers' organizations, as well as of governments. The Conference adopts Conventions and Recommendations to translate the constitutional objectives into more specific rules and guidelines.

The ILO has a reporting system, known as a **supervisory procedure**, and a complementary complaints system, called **special procedures**, all geared towards implementation of international labour standards.

Under the **supervisory procedure**, reports are prepared and supplied by governments, but national organizations of employers and workers are entitled (under the tripartite system) to make written observations which, together with the reports of the governments, are examined by the **Committee of Experts on the Application of Conventions and Recommendations** (CEACR). The CEACR studies annual reports under Article 22 of the ILO Constitution, on

implementation of Conventions to which States are party; under Article 19, on the implementation of Conventions and Recommendations that are not ratified by States but adopted by the Conference; and under Article 35, on non-metropolitan territories.

The CEARC consists of 20 independent persons nominated in their personal capacity by the Director-General and appointed by the Governing Body of the ILO. The CEARC meets once a year, in private sessions, and conducts entirely written proceedings. It is a very technical body. A report with comments is submitted to the **Committee on the Application of Conventions and Recommendations of the Conference (CACRC)**, usually unanimous except for the occasional dissenting opinion. To reduce the workload of the Committees, the reporting frequency has been brought down. Most remarks are directly communicated to governments (**direct requests**) and only the most essential comments (**observations**) are put in the reports.

The CACRC plays a more political role, and discusses the findings of the CEACR. It considers breaches of the obligations by member States and possible remedies, in the presence and with the participation of representatives of the governments concerned. The CACRC is a tripartite committee, the members of which are appointed by the Conference each year. Its meetings are public, its proceedings are conducted orally, and it may hear and examine witnesses. The CACRC's terms of reference are laid down in Article 7 of the Conference Standing Orders. The CACRC concentrates now only on specific subjects and breaches. It publishes a special list showing States in which progress has been made, those in which no progress has been made, and States facing specially difficult situations.

The criterion for this reporting system is the time that has elapsed since the last report and the ratification of a Convention. Flagrant injustices brought to the attention of the ILO may give rise to a request for an additional report from the relevant government.

There are now 6,000 ratifications of the Conventions and the supervisory bodies have registered more than 2,000 cases of progress, i.e., cases of national legislation and practice being changed to meet the requirements of a ratified Convention as a result of comments by the supervisory bodies.

**One example of special procedures** is the **representation procedure**, where an employers' or workers' organization may submit allegations of failure by a Member of the Organisation to adopt satisfactory measures within its legal system for the application of a Convention to which it is a party. If the representation meets the formal requirements of admissibility, it is sent to the government concerned and the case is submitted for examination by a tripartite

committee set up for the purpose within the Governing Body. Its conclusions and recommendations may be published.

The **complaints procedure** is more elaborate than the representation procedure in terms of the rules of the Constitution that govern it. Under this procedure, any member State of the ILO may file a complaint to the Office against another member which, in its opinion, has not adopted the necessary measures to give proper effect to a Convention ratified by both members. This procedure provides all the guarantees of a regular procedure. It should be pointed out that the complaints procedure may also be initiated by the Governing Body on its own initiative, or by a delegate to the Conference.

Complaints are referred to commissions of inquiry appointed specifically for each case and composed of independent persons of international repute. The conclusions and recommendations of a commission are published in the ILO Official Bulletin and may be challenged before the International Court of Justice, whose ruling is final. If a Member fails within the prescribed time-limit to give effect to the recommendations of the commission of inquiry or the decisions of the International Court of Justice, the Governing Body may recommend to the Conference any measures it deems necessary to ensure that the recommendations are observed. The government against which the complaint is filed may at any time inform the Governing Body that it has taken the necessary measures to implement the recommendations of the commission of inquiry or the Court's decision. In practice, no economic or other sanctions have been applied in the context of this procedure.

There is also a special procedure for **complaints concerning freedom of association**, which rests on the fundamental principles deriving from the Constitution. There are two supervisory bodies for this special procedure, the Fact-Finding and Conciliation Commission on Freedom of Association and the Committee on Freedom of Association, a tripartite committee that has become the centre of activity. A special procedure that has never yet functioned deals with equal treatment.

## 4.1 Conclusion

The ILO is best known for its supervisory procedure. The number of reports and the willingness of States to report is impressive. On the one hand, this can be attributed to the long-standing practice of reporting, on the other hand to the tripartite system, whereby at national level the governments can be pressured into reporting, though it is not obvious how active the workers' and employers' organizations are in pressuring the governments to submit a report. It should be

noted that governments are extremely lax in meeting their obligation to send copies of their reports to the workers' and employers' organizations, and this task very often falls to the ILO.

The system has some noteworthy characteristics. The legal discussion of the reports by the CEACR is followed by a political discussion at the International Labour Conference, which draws the conclusions. The annual reports also cover unratified Conventions and Recommendations. When comments have been made on a situation in a State, the ILO will continue to enquire whether the situation has been resolved, sometimes over periods of more than 30 years.

The ILO trains government officials through seminars and informal advisory missions, among other things on the preparation of reports. The UN Committees sometimes direct government officials to the ILO training centre in Turin, as a form of technical assistance. It is unclear how useful this is, since the officials are individuals within their governments. It might be more effective to invite officials from two or more departments or ministries, so that they get to know each other and are able to combine their knowledge in a well-prepared report.

## CHAPTER 5

### UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

UNESCO has three major Conventions: the Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954), the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Cultural Property (1970), and the Convention Concerning the Protection of the World Cultural and Natural Heritage (1972).

#### 5.1 The 1954 Convention

The 1954 Convention was modelled on the 1949 Geneva Conventions. States undertake to **safeguard** and **respect** movable and immovable cultural property. "Safeguarding" means making preparations, in time of peace, such as the training of armed forces, marking of cultural property, inclusion in the "International Register of Cultural Property under Special Protection" kept by the Director-General for special protection. "Respect" applies in times of armed conflict, whether international or not. No military action may cause harm to cultural

property; it will be protected against thieving and plunder; and no reprisals will be conducted against it.

There are 81 States parties to the Convention and 66 States parties to its Protocol. The "International Register of Cultural Property under Special Protection" includes sites in the Netherlands, Austria, Germany and the Holy See (Vatican).

In Article 26, paragraph 2, a simple reporting system is laid down. Paragraph 1 stipulates that States shall communicate official translations of the Convention, while paragraph 2 states that every four years the States shall forward a report to the Director-General of UNESCO,

"...giving whatever information they think suitable concerning any measures being taken, prepared or contemplated by their respective administrations in fulfilment of the present Convention and of the Regulations for its Execution".

The Director-General has invited States to forward their reports to him on six occasions, and these reports were published in 1962, 1967, 1970, 1979, 1984 and 1989.

Germany is the only State with a 100% record (i.e., it has contributed to each of the five reports compiled and used since it ratified the Convention in 1967). Poland has submitted 5 reports out of a possible six, the Holy See, The Netherlands, Switzerland and Syria have each submitted four out of a possible six. On the other hand, 39 States have never submitted a report (though it should be noted that several of these have become parties to the Convention by accession or succession since the last compilation of national reports was prepared in 1989). It is difficult to calculate the exact number of periodic reports that should have been submitted, because of the differing rates of completion of the ratification process, but it appears that only 20% of those that should have been prepared by States parties according to the requirements of the Convention have actually been submitted.<sup>28</sup>

An analysis of informational content of the reports shows that the geographical spread of information is uneven, and that those States apparently least exposed to the danger of war, owing to their status or their geographical position, sometimes announce a multitude of measures that would be more useful in other countries.

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<sup>28</sup> P.J. Boylan, *Review of the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague Convention of 1954)* (1993), 89-90.

There are several reasons why the reporting system does not function very well.<sup>29</sup> The Convention does not specify what kind of peace-time preparations are meant.<sup>30</sup>

No guidelines on the reporting procedure have been produced, also because the UNESCO Division of Physical Heritage, with a staff of three professionals, deals with the 1954 and the 1970 Conventions and 10 Recommendations.

Reports are addressed to the Director-General. There has been a proposal to establish a committee of independent experts to examine the reports and to make comments on them which are transmitted to States. So far this idea has not been put in practice.<sup>31</sup>

At times, the contents of a report have been in total contradiction with the facts observed by a rescue mission conducted by UNESCO and this has made staff wary of the truthfulness of the reports. However, no supplementary measures are taken to promote the Convention and its observance. The procedures for the "special protection list" are so stringent that States are hindered from adding sites to it. Furthermore, the procedure has been misused for political ends, and the fact that the system cannot protect itself against this has not helped.

Another criterion for the effectiveness of the Convention is its application in times of armed conflict. UNESCO can act in three ways:

- (1) Initiatives by the Director-General: Croatia; El Salvador/Honduras, 1969; India/Pakistan, 1971; Greece/Turkey on Cyprus, 1974; Iran/Iraq 1980. In 2 cases the authorities responded that they would honour their obligations. Nigeria, faced with an internal conflict in 1968, responded that it observed the Conventions.
- (2) Technical cooperation: Kampuchea; Israel/Egypt 1957; Cambodia 1970; Tyre 1982;
- (3) The establishment of control procedures such as Protecting Powers and/or a Commissioner-General (used once in a Israel/Arab conflict).

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<sup>29</sup> K.J. Partsch, in *Istituto internazionale di diritto umanitario, La protezione internazionale dei beni culturali/The international protection of cultural property/ La protection internationale des biens culturels*, "Acts of the Symposium organized on the occasion of the 30th Anniversary of the Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict", Rome (1986), 196.

<sup>30</sup> See note 28.

<sup>31</sup> See note 29.

In view of the extent of cultural heritage threatened by armed conflicts, this is not a long list.

Until the Gulf War the 1954 Convention was considered to be more or less dormant. Since then the Convention has received more attention, also because it has been invoked in the conflict in former Yugoslavia. However, there has been no noticeable effect on the submission of reports by States, since so far, only six States responded to the latest request to report (deadline 1st of June 1994).

## 5.2 The 1970 Convention

The 1970 Convention applies in peacetime and in times of conflict, but to movable property only. Each State party establishes regulations regarding operations that affect property situated in its territory and decides which transfers of ownership, import or export are legal and which are not legal. There are 77 States parties to this Convention.

Under Article 16, States have to submit periodic reports on legislative and administrative provisions that they have adopted and other action that they have taken for the application of this Convention, together with details of the experience acquired in this field. The reports must be submitted to the General Conference of UNESCO, which decides the manner and the dates of submission of these reports.

Hitherto, this Convention has been dormant. Ratification has been slow, and mainly by art-exporting countries. The Executive Board of UNESCO created a Committee on Conventions and Recommendations (Resolution 104 ex. 3.3 of 1978) to examine the reports and to make comments on them which are transmitted to the States,<sup>32</sup> but because the Convention (especially core Article 3) is very vague, States do not adhere to it. The reporting procedure has for the moment been abandoned. Considering that illegal trade in and export of cultural property occupy second place in the global list of illegal activities (first place being taken by the trade in narcotics), it is clear that the need for this Convention has not disappeared.

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<sup>32</sup> Commission IV, Examination of Item 8.4, Reports of Member States on the Action Taken by Them to Implement the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), Record of the General Conference, Reports, Bd.2, 24th session, Paris, 20 Oct.- 20 Nov. 1987. Report of the Committee on Conventions and Recommendations of the Executive Board on Proposals for the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 22 C/93.

### 5.3 The 1972 Convention

The 1972 Convention works to limit damage to immovable natural and cultural heritage, i.e., damage not only as a result of man-made disasters (e.g., war), but also of natural disasters. To this end, the Committee for the Protection of Cultural and Natural Heritage of Outstanding Universal Value (the World Heritage Committee) was created.

This Committee established a World Heritage List and a List of World Heritage in Danger, on the basis of inventories drawn up by States parties. States can ask the Committee for information, assistance in preservation or restoration. A World Heritage Fund has also been established: this is a UNESCO trust fund financing the Convention and its organs. There are 132 States parties to the Convention, and the World Heritage List contains 411 properties (309 cultural sites, 87 natural sites and 15 mixed sites). The UNESCO World Heritage Centre and several advisory bodies (for example, international NGOs) are used to execute the Convention.

General practice is that monitoring takes place on an *ad hoc* basis, when there is a crisis. The Centre reacts to information from diverse sources, such as NGOs, States and individuals. Crises may be of various kinds, e.g., poaching in wildlife parks, military action, civil disorder, industrial development, logging, or natural disasters. A crisis may be serious or extremely serious. When the situation is **extremely serious**, experts from the World Heritage Centre are sent to investigate, if the States parties so request. One or two missions of this kind are undertaken every year. For example, the USA recently requested a mission to the Everglades. When the situation is **serious**, a report is produced by technical experts, usually those belonging to the World Conservation Union (IUCN) or to the International Council on Monuments and Sites (ICOMOS) network in the field. In both cases, the situation is verified with the State party. Replies by the States parties differ in accuracy.

The World Heritage Centre and the IUCN present reports to the World Heritage Committee. To date, 50 reports were the result of missions and 100 reports have been produced by local IUCN representatives.

In serious situations, several solutions are available, such as technical assistance (professionals, money or equipment training), and emergency relief, all funded by the World Heritage Fund with a budget of \$3,000,000 a year. The Fund also supports promotion of the Convention and training. The World Heritage Centre hopes to increase the Fund's budget five or ten fold with the help of professional fund raisers.

Another solution for a serious situation is to put a site on the List of World Heritage in Danger. At the moment there are 6 natural sites and 10 cultural sites on this list. There are 20 sites that were on the list and that have been taken off it, because the situation had improved.

The UNESCO World Heritage Centre has a staff of 22 people, of whom 10 are professionals and 12 provide support and promotion. The World Heritage Committee comprises 21 States elected by the 138 States parties to the Convention for a six-year period; every two years, one third of the States are replaced or re-elected. Once every two years there is a Conference of States parties, which reports to the General Conference of the UNESCO.

The World Heritage Centre organizes the sessions of the World Heritage Committee and of the States parties; it facilitates communications on the Convention among the States parties; it receives nominations for the World Heritage List, and sends them on to the NGOs who make the actual technical evaluation.

The World Heritage Committee meets once a year in December, while the Bureau, five members of this Committee, meet for 6 days in Paris in between Committee sessions and for two days before each meeting. Committee members are not funded, since they are State representatives, unless they come from a developing country, when the World Heritage Fund can grant them a daily subsistence allowance.

Under Article 29 of the Convention, the States parties and the Committee must submit reports to the General Conference regarding the measures they have taken and the experience they have gathered. Systematic reporting is something that has not been practised for over ten years, but recently steps have been undertaken to revive the procedure. Three kinds of monitoring are envisaged:

- (1) a self-evaluating report produced every 4 to 5 years by the State parties, with the help of outside observers;
- (2) a reactive monitoring procedure like the *ad hoc* system currently functioning; and
- (3) an administrative reporting procedure that keeps track of the follow-up given to decisions by the Committee.

## 5.4 Conclusion

The 1954 Convention and the 1970 Convention reporting systems are, for various reasons, to a large extent inactive. The 1972 Convention can be considered a success, with more and more sites placed under its protective provisions,

but its reporting procedure does not function adequately either, due to lack of attention, of personnel and of funding.

## CHAPTER 6

### THE WORLD INTELLECTUAL PROPERTY ORGANIZATION

The purpose of the WIPO is the promotion of respect for and the protection and use of intellectual property through cooperation among States. Its main activities consist in establishing international norms and standards in the field of intellectual property, especially through international treaties or model laws; administering treaties that embody such norms and standards, also treaties that facilitate the filing of applications for the protection of inventions, trademarks and industrial designs; and providing information on industrial property, especially the legal-technical information contained in patent documents and in the International Register of Trademarks. The WIPO also carries out a substantial programme of legal and technical assistance to developing countries and countries in transition to a market economy.

The most important WIPO treaties are the Paris Convention for the Protection of Industrial Property (1883) and the Bern Convention for the Protection of Literary and Artistic Works (1971) (Paris and Bern Conventions). For a State to become a party to one of the Conventions, its national laws on the protection of industrial property (Paris) or on copyrights (Bern) must comply, largely, with the said Conventions. The incentive for States to become party is the fact that their national rights are protected in all countries party to this Convention. There are 106 States party to the Bern Convention and 120 States party to the Paris Convention, while 147 States are members of the WIPO.

A State sends a draft law to the International Bureau of the WIPO, which makes comments and recommendations on the compatibility of the law with the Convention. The State then revises the draft until the law is compatible and the State can become party to the Convention. In the Copyright Department, some 10 professionals and 3 or 4 secretaries and, in the Industrial Property Division, some 15 professionals and 6 or 7 secretaries deal with draft laws. Revised drafts may be produced by the States or by the WIPO, and revision may be done in the WIPO office in Geneva or by missions sent to States.

There are two other means of implementing the Conventions. Every two years a circular letter is sent to Member States, with a request for information on new laws. Approximately 60% of the States respond to these requests.<sup>33</sup> It

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<sup>33</sup> From an interview with Mr Eckstein, WIPO Geneva.

is also possible that a State already party to a Convention wishes to change obsolete laws and asks the WIPO for advice.

The WIPO has an extensive mechanism for helping States, at their request, to implement the intellectual property Conventions they have signed. The laws have to be constantly updated, because the Conventions change regularly. This aspect of the work of the WIPO is the responsibility of the Development Co-operation Department, which assists in setting standards and in changing laws and institutions in countries. It has regional bureaus in Geneva (for Africa, Asia and Eastern Europe, for example), which have already provided much legal advice to developing countries and are now concentrating on the former socialist countries in Central and Eastern Europe.

The WIPO works with sponsored NGOs. ATRIP (Association for Teaching and Research of Intellectual Property) is an NGO that organizes lectures, meetings and fora. Close contact is also kept with universities.

The WIPO has no complaints procedure. This is one of the reasons for US criticism of the WIPO. Some of the WIPO mandates appear likely to be transferred to the new World Trade Organization (WTO), and some WIPO operations will then be terminated. The GATT (General Agreement on Tariffs and Trade), the predecessor to the WTO, has an enforcement system, the Treaty on the Settlement of Disputes: this works with panels of independent experts who make a report on a given situation; a follow-up report, describing how the State reacts to the first report, is sent to the Assembly. The WIPO has a similar system ready in draft form.

Most of the work of the WIPO consists in registration of trademarks under the industrial-property Conventions, work to which 67% of the staff and thus of the staff budget are allocated. Under the internal budget, the WIPO is spending Sfr. 1,915,000 in 1994 on setting standards and procedures for the protection and enforcement of intellectual property rights. Probably the real cost is higher, since the budget is subdivided into various activities that might turn out, on closer study, to be related to implementation.

The WIPO charges fees for helping industries to protect their trademarks under the national laws of countries. Although these fees are sufficient to cover WIPO expenditure Member States have insisted that they wish to continue to pay contributions, in order to be able to exert control over the organization. The Patent Cooperation Treaty Section is the department that helps industries to protect their patents in foreign countries; it is paid by these industries for its services. The WIPO consistently balances its budget.

*(To be continued)*