Monitoring, supervision and coordination of the standard-setting instruments of UNESCO

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1. INTRODUCTION

Monitoring, supervision and coordination mechanisms play a key role in ensuring respect for the rule of law. Within international organizations, they provide the means by which these organizations supervise the establishment and implementation by States of the international standards to which they have subscribed on joining the organizations and of those that are subsequently adopted.

These mechanisms are intended to promote compliance with the law, to ensure backup for such compliance and to provide a response to any violation. They are instrumental in verifying compliance with international obligations and in identifying needs with respect to such compliance; they can also help to stop violations of the law by calling on a State to put an end to a situation of non-compliance. They are not the only guarantees of effective compliance with the law. It is in this sense that the complementary nature of the relationship between these mechanisms and those relating to the settlement of disputes or to the provision of technical or financial assistance should be understood. Besides the aspects of legal compliance, these mechanisms make it possible to ensure that the objectives set out under the various instruments are achieved.

This chapter describes the diversity and characteristics of the mechanisms for the monitoring and supervision of UNESCO instruments. Beginning with a look at the competent bodies, it goes on to cover the range of monitoring and supervision procedures. It concludes with an analysis of the coordination among international organizations and its impact on compliance with, and monitoring of, UNESCO instruments.

1. The standard-setting instruments adopted at UNESCO are diverse and varied. This chapter does not discuss the legal scope of international obligations arising from these instruments.
2. **Multifocal** Monitoring and Supervision System

The 'multifocal' character of monitoring, supervision and coordination mechanisms stems from the diversity of UNESCO's standard-setting instruments. Each of the UNESCO conventions, recommendations and declarations may be subject to specific monitoring, supervision and coordination mechanisms. This situation is attributable particularly to the broad range of bodies responsible for the monitoring, supervision and coordination of UNESCO's standard-setting instruments. In some cases, a body is responsible for ensuring the monitoring and supervision of different categories of standard-setting instruments, as is the case with the Executive Board's Committee on Conventions and Recommendations. In others, certain standard-setting instruments provide for the establishment of bodies with specific competencies.

2.1. Monitoring and Supervising UNESCO's Conventions and Recommendations

Unlike declarations, the monitoring of which is not subject to any uniform procedure, the monitoring and supervision of UNESCO conventions and recommendations are governed by the *Rules of Procedure concerning Recommendations to Member States and International Conventions Covered by the Terms of Article IV, Paragraph 4 of the Constitution*.

The system for the monitoring and supervision of UNESCO recommendations and conventions is based largely on Articles 17 and 18 of the aforementioned Rules of Procedure. Under these provisions, Member States are required to submit, by the dates specified by the General Conference, reports on the measures they have adopted in respect of each convention in force and each recommendation adopted. The General Conference may also invite the Secretariat to assist the Member States in monitoring and supervising the convention or recommendation concerned and in the preparation and follow-up of such reports. The General Conference entrusts the examination of reports received from Member States to the Executive Board. The Executive Board, in turn, transmits the reports to the General Conference or, if the General Conference so decides, their analytical summaries, together with its observations or comments and any comments the Director-General may make.

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2. The *Rules of Procedure concerning Recommendations to Member States and International Conventions Covered by the Terms of Article IV, Paragraph 4 of the Constitution* state that recommendations are the instruments in which 'the General Conference formulates principles and norms for the international regulation of any particular question and invites Member States to take whatever legislative or other steps may be required — in conformity with the constitutional practice of each state and the nature of the question under consideration — to apply the principles and norms aforesaid within their respective territories' (Article 1(b)). The primary objective of the recommendations is therefore to influence the development of national practices and laws through the formulation of international norms and principles.
The system for monitoring and supervising the conventions and recommendations of UNESCO may also draw on specific provisions contained in certain conventions and recommendations. Often, a special committee is established with the task of monitoring and supervising a recommendation or convention; it may also happen that this task is entrusted to an existing committee.

\textit{a) A Monitoring and Supervisory Body with General Competence: the Committee on Conventions and Recommendations}

It was in 1965, at its seventieth session, that the Executive Board, having taken note of Resolution 16.1 adopted by the General Conference at its thirteenth session, decided that the reports submitted by governments shall be analysed by [...] a special committee of the Executive Board [...] \footnote{See Doc. 70 EX/Decision 5.2.1 of the Executive Board of UNESCO.} At its seventy-first session, the Board thus decided to establish a ‘Special Committee [...] to examine the reports of Member States on the implementation of the Convention and Recommendation against discrimination in education.’ The name of this committee has changed over the years. A similar committee was established by the Board at its seventy-fifth session, called the ‘Special Committee on Discrimination in Education.’ \footnote{See Doc. 71 EX/Decision 3.2.}

At its one hundred fourth session in 1978, the Board decided that the committee would thenceforth be designated as ‘the Committee on Conventions and Recommendations.’ Finally, at its one hundred twenty-second session, it became a permanent commission of the Board. \footnote{See Doc. 75 EX/Decision 6 II.}

The Committee on Conventions and Recommendations was given the following mandate:\footnote{See Doc. 122 EX/Decision 3.6 and 123 EX/Decision 4.}

\begin{itemize}
  \item (a) to examine periodic reports by Member States on their implementation of the Convention and Recommendation against Discrimination in Education,
  \item (b) to examine communications addressed to UNESCO in connection with specific cases alleging a violation of human rights in education, science and culture,
  \item (c) to examine the report of the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendation concerning the Status of Teachers,
  \item (d) to examine the reports of the Joint Expert Group (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education once a year.
\end{itemize}

The Committee thus has a dual mandate. It is responsible, on the one hand, for considering all questions relating to the implementation of those UNESCO standard-setting instruments entrusted to it by the Executive Board (in accordance with the provisions of Article 18(1) of the Rules of Procedure concerning recommendations to Member States and international conventions). In other words, the Committee examines
the reports received from Member States, particularly those relating to the right to education and to the exercise of that right, this function being commonly referred to as 'the first aspect of the terms of reference.' On the other hand, it is responsible for examining communications relating to cases and questions concerning the exercise of human rights in UNESCO's fields of competence, this being the second aspect of its terms of reference.

The creation of the Committee on Conventions and Recommendations has consequently resulted in a kind of homogenization of the monitoring and supervision of UNESCO's recommendations and conventions. Indeed, until the thirty-second session of the UNESCO General Conference, the Committee on Conventions and Recommendations was responsible only for the examination of the periodic reports that were expressly entrusted to it, whereas the initial special reports that were submitted to the first regular session of the General Conference, following the adoption of the convention or recommendation concerned, were examined by the Legal Committee of the General Conference. The General Conference, in 32 C/ Resolution 77, adopted in October 2003, decided that it would henceforth entrust to the Executive Board, and in particular to the Committee on Conventions and Recommendations, the consideration of the reports on conventions and recommendations that it requested of Member States. This decision did away with the distinction between periodic reports and special reports. The reports adopted by the Committee on completing its consideration are submitted to the General Conference, as are the reports of Member States or their analytical summaries (if so decided by the General Conference), together with the comments of the Executive Board.

Moreover, since 2003, the terms of reference of the Committee on Conventions and Recommendations have been expanded. Eight conventions now fall within its competence, whereas previously there were only two, and thirty-one recommendations instead of the previous five.⁸

b) Monitoring and Supervisory Bodies with Specific Competence

Certain conventions have an institutional procedure of their own, in the sense that a specific body is responsible for the monitoring and supervision of their stipulated obligations. With regard to UNESCO conventions, a noteworthy example is the Convention for the Protection of the World Cultural and Natural Heritage of 1972, which established the World Heritage Committee. This Committee plays an important role in monitoring and supervision. It may, as a last resort, decide to remove a property from the World Heritage List if that property has deteriorated to the extent that it has lost the characteristics that determined its inclusion in the List. Such a decision will be taken only under specific circumstances, since the main objective of the Convention is to ensure the safeguarding of protected cultural and natural sites. However, the threat of the possible removal of a property from the World Heritage List can serve as a means of exerting

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⁸ See Executive Board, Proposed new procedures specifically for the monitoring of the implementation of UNESCO conventions and recommendations for which no specific institutional mechanism is provided, Doc. 174 EX/22 of 3 March 2006, Part II, Paragraph 11.
pressure on a State, since that State would no longer be able to boast of having on its territory a site recognized as being of value to humanity. Another possible consequence of such a removal is that a State may no longer be in a position to benefit from financial resources granted for the conservation of a site included in the World Heritage List.\(^9\) By means of the monitoring and supervision procedure, the World Heritage Committee seeks to pressure State Parties to comply with their obligations to conserve and protect the world's heritage.

The importance of establishing a body with specific competence and responsibility for monitoring and supervision is also highlighted by the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 (hereafter 'the Hague Convention of 1954').\(^10\) This instrument provides only for the submission of periodic reports by the Member States as a monitoring and supervisory measure. However, this system has revealed its weaknesses over the years, as was shown by the destruction of cultural property during the conflicts that destroyed Yugoslavia in the early 1990s. Following the deliberate destruction of the Old City of Dubrovnik and the Old Bridge of Mostar, UNESCO initiated a review of the system for monitoring and supervising the protection of cultural property during armed conflict.\(^11\)

The Second Protocol to the Hague Convention of 1954 (1999)\(^12\) provides for the creation of an institutional framework designed to strengthen compliance with standards established to protect cultural property in the event of armed conflict. This institutional

\(^9\) See S. Maljéan-Dubois, 2003 La mise en œuvre du droit international de l'environnement, Les Notes de l'Institut du Développement Durable et des Relations Internationales, No. 4 p. 43.

\(^10\) The Convention of 1954 and its two Protocols of 1954 and 1999 were adopted by diplomatic conferences convened by UNESCO. They are not, therefore, texts adopted under the terms of Article IV, Paragraph 4 of the UNESCO Constitution. Resolution III, adopted by the Diplomatic Conference of 1954, called upon the Director-General of UNESCO to convene the first meeting of the High Contracting Parties to the Convention. See Intergovernmental Conference on the Protection of Cultural Property in the Event of Armed Conflict, Actes de la conférence convoquée par l'UNESCO tenue à La Haye du 21 avril au 14 mai 1954, The Hague, 1961, p. 80. See also Article 27 of the Hague Convention of 1954, which reads as follows: '[t]he Director-General of the United Nations Educational, Scientific and Cultural Organization may, with the approval of the Executive Board, convene meetings of representatives of the High Contracting Parties. He must convene such a meeting if at least one fifth of the High Contracting Parties so request.'


framework is based on the creation of an intergovernmental committee for the protection of cultural property in the event of armed conflict and on the establishment of a fund.

2.2. Monitoring and Supervising the Declarations of UNESCO

Declarations (also known as 'charters' in certain cases) are normative texts, which, like recommendations, are not binding on Member States. However, their form, content and function are different. As a rule, declarations have a simple structure consisting of a preamble and a series of principles. The wording of declarations may be more restrictive than that of recommendations. The purpose of declarations is to underline the importance that the Organization attaches to the issue addressed (by a declaration) and to the principles that should guide the actions of Member States and of the Organization. Thirteen declarations have been adopted to date. The elaboration, adoption and monitoring of declarations are not subject to any pre-existing rule of procedure.

a) Approaches to the Monitoring and Supervision of UNESCO Declarations

The monitoring and supervision of UNESCO declarations are characterized by a relative heterogeneity of arrangements. In the case of some declarations adopted by the General Conference of UNESCO, there is no provision at all for monitoring and supervision mechanisms. Two such examples are the Declaration of Guiding Principles on the Use of Satellite Broadcasting for the Free Flow of Information, the Spread of Education and Greater Cultural Exchange of 15 November 1972 and the Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid

13. This Committee is modelled on the World Heritage Committee and represents the successful conclusion of a project that has long been under discussion. In particular, in his study, Boylan affirmed the usefulness of the creation of such a committee in implementing the Convention of 1954; see Boylan, op. cit., p. 134. Article 27 of the Second Protocol to the Hague Convention of 1954 sets out the functions of the Committee. Article 27, Paragraph 1(d) provides that the Committee should ‘consider and comment on reports of the Parties, to seek clarifications as required, and prepare its own report on the implementation of this Protocol for the Meeting of the Parties.’ The Committee exercises its functions in cooperation with the Director-General of UNESCO and shall be assisted by the Secretariat of UNESCO which shall prepare the Committee's documentation and the agenda for its meetings and shall have the responsibility for the implementation of its decisions. See articles 27(2) and 28 of the Second Protocol.

14. This Fund is modelled on the World Heritage Fund. It is intended to provide financial assistance in support of preparatory or other measures taken in peacetime and in relation to emergency, provisional or other measures to be taken in order to protect cultural property during periods of armed conflict. See Article 29 of the Second Protocol of 1999.

15. Adopted by the General Conference of UNESCO in 17 C/Resolution 4.111.
and Incitement to War of 28 November 1978. Given UNESCO’s approach to monitoring and supervision, this situation is an exception.

In another approach, the system for monitoring and supervising UNESCO declarations calls for voluntary action by States. One such example is the Declaration of the Principles of International Cultural Cooperation of 4 November 1966. Here, the General Conference recommends the Declaration to the attention of Member States and Associate Members and invites them to publish its text in their respective languages and to ensure that it is distributed, displayed, read, and commented on. The plenary body also requests Member States to use their best efforts to implement the provisions of the Declaration. Lastly, it authorizes the Director-General to arrange for the widest possible circulation of the text of the Declaration in Member States and among Associate Members and international organizations, and to study the ways and means of giving effect to its principles.

Some arrangements for monitoring and supervising UNESCO declarations are more procedural in nature. In such cases, the declaration supplies ‘rules’ and ‘procedures’ for monitoring and supervising, although the terms ‘rule’ and ‘procedure’ are not used explicitly or in their strict sense. A case in point is Annex II to UNESCO’s Universal Declaration on Cultural Diversity of 2 November 2001, which contains the ‘Main Lines of an action plan for the implementation of the UNESCO Universal Declaration on Cultural Diversity.’

The document urges the Member States to promote the Declaration’s principles by means of its action plan, to facilitate their application, and to communicate regularly to the Director-General all relevant information on the measures taken to apply the Declaration’s principles and action plan. Furthermore, 31 C/Resolution 25 invites the Director-General of UNESCO to heed the Declaration’s principles and action plan when implementing UNESCO’s programmes, and to ensure dissemination of, and follow-up on, the Declaration and its plan of action, in particular as regards the institutions of the United Nations and other concerned intergovernmental and non-governmental organizations. The action plan also provides that Member States consider the advisability of an international legal instrument on cultural diversity; as a result, the Member States negotiated and adopted the Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 20 October 2005.

b) Characteristics of the System for the Monitoring and Supervision of UNESCO Declarations

UNESCO practice reveals certain specific features with respect to the monitoring and supervision of declarations. In general, resolutions in which declarations are adopted or which relate to the monitoring and implementation of declarations urge the UNESCO Member States to take all appropriate legislative, administrative or any other measures to give effect to the principles set forth in a given declaration. Resolutions also invite the

17. Adopted by the General Conference of UNESCO in 14 C/Resolution 8.1.
Director-General to take into consideration the principles set forth in the declarations and to take the measures necessary to ensure their widest possible dissemination.

Certain declarations may provide for specific monitoring and supervision mechanisms. They include the drawing up of a plan of action for implementation or even action by special UNESCO committees in formulating recommendations addressed to the General Conference and providing advice concerning the monitoring of a given declaration. For example, Section G of the *Universal Declaration on the Human Genome and Human Rights* of 11 November 1997 (19) provides that the International Bioethics Committee (IBC) of UNESCO, created in 1993, should contribute to the dissemination of the principles set out in the Declaration and to further examination of the issues raised by their applications and by the evolution of the technologies in question; organize appropriate consultations with Parties concerned; make recommendations addressed to the General Conference, in accordance with UNESCO’s statutory procedures; and give advice concerning the monitoring of the Declaration, in particular regarding the identification of practices that could be contrary to human dignity, such as germ-line interventions.

Since 1998, the International Bioethics Committee has had rules of procedure and statutes that define its mandate, membership and procedures. The Director-General of UNESCO convenes IBC at least once a year. At its sessions, and with the help of its working groups, IBC provides opinions and recommendations on specific matters relating to monitoring and supervision, which are widely disseminated and submitted to the Director-General so that he may communicate them to the Member States, the Executive Board and the General Conference.

The *International Declaration on Human Genetic Data* of 16 October 2003 (20) is a further example of a declaration that provides for monitoring and supervision by a specific body. Section F of the Declaration contains a series of rules relating to its monitoring and supervision. Article 25 places particular emphasis on the contribution of the International Bioethics Committee (IBC) and of the Intergovernmental Bioethics Committee (IGBC) to the implementation of the Declaration and the dissemination of its principles. The two committees are responsible, on a collaborative basis, for its follow-up and for the evaluation of its implementation, *inter alia* on the basis of reports provided by States. They are responsible, in particular, for the formulation of any opinion or proposal likely to further the effectiveness of the Declaration.

As can be seen, the monitoring and implementation of declarations vary from one declaration to another. If greater attention were given to the monitoring of declarations in general, their impact could be strengthened. With these factors in mind, the General Conference, at its thirty-third session in 2005, adopted a Resolution relating to the Multi-stage procedure for the elaboration, examination, adoption and follow-up of declarations, charters and similar standard-setting instruments adopted by the General Conference and not covered by the Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV,

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19. Adopted by the General Conference of UNESCO in 29 C/Resolution 16.
20. Adopted by the General Conference of UNESCO in 32 C/Resolution 22.
Paragraph 4 of the Constitution. Stage 4 of this procedure concerns the ‘Follow-up of declarations, charters or similar standard-setting instruments adopted by the General Conference’ and provides that the Director-General should ensure that the text of the declaration, charter or similar standard-setting instrument adopted by the General Conference be disseminated as widely as possible. If the text of a declaration does not provide for a follow-up mechanism, the General Conference may, if it so wishes, invite the Director-General to submit to it a report on the measures taken by the Member States to give effect to the principles set forth in the declaration or similar standard-setting instrument.

3. A MULTIFORM MONITORING AND SUPERVISION SYSTEM

The system used to monitor and supervise UNESCO's standard-setting instruments is also characterized by diversity in its forms of action both inside and outside the Organization, owing to the variety of stakeholders and forums of action involved.

3.1. Multiformity of Monitoring and Supervision Arrangements

a) 'Internal' Monitoring and Supervision

i) The Reporting System

‘Internal’ monitoring and supervision at UNESCO are based mainly on the submission of reports. The periodic reporting procedure is one of the oldest forms of monitoring States' fulfillment of their international obligations. It is also the procedure that is no doubt the least 'prejudicial' to their sovereignty, since it rests on submission by the States themselves of reports on action taken to fulfill their commitments. The procedure has the advantage of reminding public authorities of deadlines and obligations to be met. As the UNESCO Secretariat has explained, 'the role of the reports is not merely to bring about monitoring of Member States’ fulfillment of their international obligations. It is also a means of promoting respect for international standards and of informing the Organization.

The practice of reporting at UNESCO is based on the Constitution itself, which provides in Article VIII, as amended at the seventeenth session of the General Conference (1972), that:

- [e]ach Member State shall submit to the Organization, at such times and in such manner as shall be determined by the General Conference, reports on the laws,
regulations and statistics relating to its educational, scientific and cultural institutions and activities, and on the action taken upon the recommendations and conventions referred to in Article IV, Paragraph 4.

It has frequently been observed that few reports are sent in, whether the Member States have been merely invited to provide them or whether they are under an obligation to do so. According to a study by the UNESCO Secretariat in 2002, the response rate to requests for reports was around 20% (with significant differences according to regional group).

UNESCO has on several occasions expressed concern about this state of affairs. As early as its eleventh session, the General Conference invited Member States to take all necessary steps to fulfil the constitutional obligation laid down in Article VIII of the Constitution. The Director-General echoed the same concern in various documents submitted to the General Conference. Pursuant to a Resolution adopted by the General Conference in 1985, the Office of International Standards and Legal Affairs sent Member States a questionnaire relating to any difficulties they might encounter in drawing up their reports on the implementation of standard-setting instruments and in actually applying them, which itself elicited few replies.

The UNESCO Secretariat has often also criticized the fact that the reporting procedure does not always take into consideration actual information-gathering conditions in the reporting State. Two main criticisms have been levelled. First, the long period of time granted to each State to draw up its report—which is justified by the scope of the information requested—can lead to questionnaires being forgotten or disappearing during the administrative transmission process. Second, the information requested may be scattered among several administrations or institutions (some maintaining tenuous relations with UNESCO or none at all), requiring the establishment of an interministerial fact-finding coordination body. Many Member States whose administrative structures are often inappropriate and whose staff is overworked will shrink from the difficulty, since the stakes are low.

In this context, it would be worth strengthening the UNESCO Secretariat’s role in providing assistance to States that encounter difficulties in drawing up their periodic reports. Such technical assistance could help them to understand the standard-setting instrument whose implementation is being monitored and to set out and draw up the report.
Provision should also be made for complementing the reporting system. In contemporary international practice, other more direct forms of monitoring (such as survey or verification procedures, quasi-judicial techniques for dealing with individual complaints or claims, procedures to deal with non-observance and even recourse to judicial proceedings) are provided for and have been put into practice without, however, superseding the conventional national reports procedure. The situation at the International Labour Organization (ILO) is a case in point.

The reporting procedure could, for example, be supplemented by a procedure involving communications from persons, groups of persons or non-governmental organizations similar to the procedure instituted by 104 EX/Decision 3.3 to address violations of human rights. UNESCO would thus take action in specific cases of non-compliance, with standards to encourage the States concerned to correct the behaviour of their authorities.  

ii) The Individual Communication System
In 1978, the Executive Board of UNESCO introduced a confidential procedure for the examination of communications (complaints) received by the Organization concerning alleged violations of human rights in its fields of competence, namely, education, science, culture and communication. The procedure is laid down in 104 EX/Decision 3.3 and falls within the competence of the Committee on Conventions and Recommendations.

The need for a mechanism to protect human rights was felt at UNESCO as early as 1952. At that time, the Director-General had received complaints of violations of human rights, particularly educational and cultural rights, from private individuals or associations. In response to the request made by the General Conference, which had recommended in two resolutions that a system be established for the protection of human rights in UNESCO's fields of competence, the procedure for the examination of communications relating to human rights in UNESCO's fields of competence was introduced in 1978 by the Executive Board, on the recommendation of a working Party.

The aim of the procedure is to seek an amicable solution to cases brought to UNESCO's attention, on the one hand, by establishing dialogue with the governments concerned so that cases may be examined in full confidentiality and, on the other, since UNESCO may not play the role of an international court, by acting in a spirit of international cooperation, conciliation and mutual understanding. The idea is to avoid a litigious and adversarial procedure, for the aim is to improve the situation of the alleged victims and not to condemn the governments concerned, nor a fortiori to sanction them.  

requisite information. See, for instance, Article 10 of the Montreal Protocol on Substances that Deplete the Ozone Layer and Article 8.2 of the Framework Convention on Climate Change.

31. This proposal was made by the Committee on Conventions and Recommendations. See Executive Board, Proposals by the Committee on Conventions and Recommendations on the Conditions and Procedures Applicable to the Examination of Questions relating to the Implementation of UNESCO's Standard-setting Instruments, Doc. 164 EX/23 of 8 April 2002, Paragraph 43.

32. Docs. 19 C/Resolution 6.113 and 19 C/Resolution 12.1.

33. Paragraph 7 of 104 EX/Decision 3.3.
b) 'External' Monitoring and Supervision

'External' monitoring and supervision are based on the idea that the monitoring and supervision of a UNESCO standard-setting instrument provide an opportunity for other actors, in particular non-governmental organizations, to become involved. The monitoring and supervision of a standard-setting instrument can also be ensured by other international agencies in whose fields of competence they fall.

i) The Involvement of Many Actors

Other international actors (States and international organizations) and non-State actors may become involved in monitoring and supervising to ensure the effectiveness of the control system. This may be referred to as 'inter-actor monitoring.' For instance, the Declaration on the Responsibilities of the Present Generations Towards Future Generations of 12 November 1997 provides, in Article 12, for a monitoring and supervision procedure that calls on many different actors. States, the United Nations system, other intergovernmental and non-governmental organizations, individuals and public and private bodies are encouraged to assume their full responsibilities in promoting, in particular through education, training and information provision, respect for the ideals laid down in the Declaration and to facilitate by all appropriate means their full recognition and effective application.

The provision of information by non-governmental organizations (NGOs) can contribute to the monitoring and supervision of UNESCO's standard-setting instruments. NGO action guarantees an indirect form of control, which may be exercised over States that might not be in compliance with their obligations by confronting them with information from third-Party sources.

The Convention for the Protection of the World Cultural and Natural Heritage is an example of the formalization of the role of NGOs in the UNESCO context. In particular, two organizations, ICOMOS (International Council on Monuments and Sites) and IUCN (World Conservation Union) - the latter with a very specific legal status, it must be said - have advisory status with the World Heritage Committee. They play an

35. Adopted by the General Conference in 29 C/Resolution 44.
36. See Articles 8.3, 13.7 and 14.2 of the Convention for the Protection of the World Cultural and Natural Heritage.
37. See Article 8.3 of the Convention for the Protection of the World Cultural and Natural Heritage. See also Rule 6 of the Rules of Procedure of the World Heritage Committee, which reads as follows: 'a) representative of the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM), a representative of the International Council on Monuments and Sites (ICOMOS) and a representative of the World Conservation Union, formerly International Union for Conservation of Nature and Natural Resources (IUCN), to whom may be added, at the request of States Parties to the Convention meeting in General Assembly during the ordinary sessions of the General Conference of the United Nations Educational, Scientific and Cultural Organization, representatives of other intergovernmental or non-governmental organizations, with similar objectives, may attend the meetings of the Committee in an advisory capacity.'
important role in monitoring the Convention by participating in the verification of the state of conservation of the properties included in the World Heritage List, as well as in the procedure for including properties in the List. They take part in the analysis of requests for international assistance made by States in order to implement the Convention. The Committee can also call on other international and non-governmental organizations with appropriate competencies and expertise to help it in the implementation of its programmes and projects.

Likewise, under the procedure known as 'reactive monitoring', which is initiated each time exceptional circumstances occur or work is undertaken which may have an effect on the state of conservation of property on the World Heritage List, the role of NGOs has been reinforced. This is because the procedure, which is a sort of 'alarm system', is set off by the submission of reports on the state of conservation of particular World Heritage sites by the Secretariat of the 1972 UNESCO Convention (called the UNESCO World Heritage Centre) or by the non-governmental organizations with advisory status with the Committee. After the reports have been submitted, the State on whose territory the endangered site is located is requested to produce within a set time period specific reports and impact studies to assess the state of conservation of the property on the List. The function of the 'reactive monitoring' mechanism is to allow State Parties to the 1972 Convention to inform or notify the World Heritage Committee of their intention to undertake or authorize in an area protected under the Convention major restoration work or new construction that may affect the outstanding universal value of the property. Notice should be given as soon as possible (for instance, before drafting basic documents for specific projects) and before making any decisions that would be 'difficult to reverse', so that the Committee may assist in seeking appropriate solutions to ensure that the outstanding universal value of the property is fully preserved.

Another crucial aspect of monitoring and supervision 'external' to UNESCO is the opportunity it gives the Organization to benefit from the cooperation of other international organizations to ensure that States abide by their obligations under UNESCO's standard-setting instruments. A significant example is in the Bystroé Canal construction project in the Ukrainian part of the Danube Delta. The Danube Delta enjoys special protection as it is a World Heritage site and falls under UNESCO's Programme of Procedure of the World Heritage Committee, adopted by the Committee at its first session (Paris, 1977) and amended at its second (Washington, D.C., 1978), third (Luxor, 1979), twentieth (Merida, 1996), twenty-fourth (Cairns, 2000) and twenty-fifth (Helsinki, 2001) ordinary and sixth extraordinary (Paris, 2003) Sessions, available at: http://whc.unesco.org/pg.cfm?cid=223

38. Article 13.7 of the Convention for the Protection of the World Cultural and Natural Heritage.
40. Regarding this procedure, see: Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage, Operational Guidelines for the Implementation of the World Heritage Convention, 2 February 2005, WHC.05/2, Paragraphs 169-176.
41. Ibid., Paragraph 169.
42. Ibid., Paragraph 172.
on Man and the Biosphere (MAB Programme). The Delta is also covered by the Convention on Wetlands of International Importance especially as Waterfowl Habitat (the Ramsar Convention). A joint study was carried out by the Ramsar Convention Secretariat and the MAB Programme at the invitation of the Ukrainian Government in October 2003. In 2005, the MAB International Coordinating Council and the UNESCO World Heritage Committee called upon Ukraine to abide by its international obligations. The actions UNESCO started to implement have been complemented and strengthened by those of other institutional mechanisms, such as the decisions adopted by the meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), the Ramsar Convention and the Parliamentary Assembly of the Council of Europe. In addition, other international organizations, including the European Union and the International Commission for the Protection of the Danube River, have become actively involved in the system of monitoring and supervising the project by calling for compliance with relevant obligations.

43. The October 2003 report of the joint mission of the Ramsar Convention and the UNESCO MAB Programme noted that the Bystroe alternative 'would represent the worst solution' and that a comprehensive environmental impact assessment should be produced since 'the reports already established and presented to the mission do not yet fulfil this need.' The report is available on the site of the Ramsar Convention Secretariat at the following address: http://www.ramsar.org/ram/ram_rpt_53e.htm

44. Report of the International Coordinating Council of the Programme on Man and the Biosphere, eighteenth session, Paris, 2005, SC-04/CONF.204/14, p. 18. The decision of the World Heritage Committee 'requests the authorities of Ukraine to fully respect the Convention,' in particular Article 6.3 and not to take any action to threaten the values and integrity of a property located on the territory of another State Party to this Convention,' further requests both States Parties of Romania and Ukraine to provide to the World Heritage Centre, by 1 February 2006, an updated report on the existing navigable canal systems and proposed projects in Danube Delta, covering the territory of both States Parties and dealing with the totality of the threats as well as on transboundary collaboration regarding the conservation of the property, for examination by the Committee at its thirtieth session (Vilnius, 2006). 'Decision adopted by the World Heritage Committee at its twenty-ninth session, Durban, 2005, 29 COM 7B.18, p. 50.

45. See the report of the second meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Decision II/5b, Almaty, 2005, Doc. ECE/MP.PP/2005/2/Add.8. The decision was adopted following the report of the Aarhus Convention Compliance Committee, 2005, Doc. ECE/MP.PP/2005/13.


47. See Res. 1444, 'Protection of European Deltas,' adopted by the Parliamentary Assembly of the Council of Europe in 2005, which recalls the international commitments of Ukraine under the UNESCO Convention for the Protection of the World Cultural and Natural Heritage and the MAB Programme. See also Committee on the Environment, Agriculture and Local and Regional Affairs of the Parliamentary Assembly of the Council of Europe, rapporteur: Mr Leo Platvoet, Doc. 10542 of 4 May 2005.
ii) Joint Monitoring and Supervision

The monitoring and supervision of UNESCO's standard-setting instruments may be carried out through the establishment of joint bodies by UNESCO and other international organizations. Such is the case of the cooperation between the International Labour Organization (ILO) and UNESCO regarding the monitoring and supervision of the 1966 Recommendation concerning the Status of Teachers.\(^{48}\) To that end, the Joint ILO-UNESCO Committee of Experts on the Application of the Recommendation concerning the Status of Teachers (CEART) was created. CEART examines reports on the application of the Recommendation submitted by governments, national organizations representing teachers and their employers, the ILO and UNESCO, and relevant intergovernmental or non-governmental organizations. It then communicates its findings to the ILO and UNESCO, so that they may take appropriate action.

In 2001, the mandate of the Joint ILO-UNESCO Committee of Experts on the Application of the CEART was expanded to include monitoring of the Recommendation concerning the Status of Higher-Education Teaching Personnel (1997). Pursuant to 162 EX/Decision 3.2.2 of the Executive Board, the Committee is now called the 'Joint ILO-UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART).'

CEART originally based its monitoring and supervision work on a questionnaire sent to Member States. Its working methods were revised in 1991 to include surveys on specific themes, in-depth ILO and UNESCO studies, regional meeting reports and consultations with employers and teachers' organizations. Another aspect of CEART's work is the examination of allegations from teachers' organizations on non-observance of the Recommendation's provisions in Member States. After consideration of the content of the allegation, CEART issues its findings and recommendations for the resolution of the problems or conflict.

The existence, among the joint bodies, of the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education, established by the Executive Board in 2001, is also worth underscoring.\(^{49}\) It is composed of two representatives of the Committee on Economic, Social and Cultural Rights (CESCR), which is responsible for monitoring implementation of the International Covenant on Economic, Social and Cultural Rights, and two representatives of the Committee on Conventions and Recommendations (CR). This body has the task, among others, of formulating practical suggestions for monitoring and promoting the right to education in all its dimensions.

iii) Monitoring and Supervision by Other Institutions

The 'external' monitoring and supervision of UNESCO's standard-setting instruments brings into play various channels through which the rights and obligations contained in

48. Information about the Joint ILO-UNESCO Committee may be found at the following electronic address: http://www.ilo.org/public/english/dialogue/sector/techmeet/ceart/about.htm
49. 162 EX/Decision 5.4.
various instruments may be applied. Two types of channel, in particular, will be analysed: the ‘penal’ and the ‘financial’ channels.

The penal channel or penal ‘follow-up’ involves prosecuting the perpetrators of ‘cultural’ war crimes. In this context, the Strugar verdict handed down by the International Criminal Tribunal for the Former Yugoslavia (ICTY) in 2005, which took the unprecedented decision to punish an offender for the destruction of cultural property, is an interesting example.50 The judgement demonstrates that the destruction of, and damages caused to World Heritage sites placed under the auspices of UNESCO’s 1972 Convention, such as the Old City of Dubrovnik, are punishable under international criminal law.51

The financial channel or financial ‘follow-up’ involves international financial institutions insofar as they take into account (in particular in their operational policies or in instruments relating to the conditions for funding projects) the principles and norms contained in UNESCO’s standard-setting instruments. Loan agreements signed between such institutions and borrowing States can be a way for them to encourage or pressure a State to abide by its commitments in the fields of environmental protection or preservation of cultural property.52 Given the increased importance of the social, cultural and environmental dimension of their activities, these institutions have over the years developed instruments to guide their conduct in project funding. For instance, the operational policies developed by the World Bank, originally designed as instruments setting out ‘good practices’ for internal application at the Bank, have become crucial parameters in evaluating the quality of projects funded by the Bank. They set out important benchmarks for assessing the conduct of States benefiting from loans from the Bank.53

For instance, Operational Policy OP 4.11 (Physical Cultural Resources)54 requires that funding for projects not come at the expense of the obligations of borrower States towards


51. The Old City of Dubrovnik was damaged by the armed conflict in the 1990s and became the subject of a major restoration programme coordinated by UNESCO. Thanks to an international safeguarding campaign launched by the Organization, the Mostar Bridge was entirely rebuilt and the most significant monuments in the Old City of Dubrovnik restored. See Inauguration du pont de Mostar, UNESCO Flash Info 123-2004, 24 July 2004.


54. Available at: http://www.worldbank.org
cultural heritage protection. To that end, reference is made to the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage. The application of this operational policy accordingly contributes to the ‘external’ monitoring and supervision of the Convention.\(^55\) Of interest here is the case brought before the Inspection Panel of the World Bank in 2001 concerning the construction of the Chad-Cameroon Pipeline. The allegations of the applicants included the charge that the Bank had violated *Operational Policy Note 11.03 (OPN 11.03)* - a document subsequently replaced by OP 4.11 - on management of cultural property in Bank-funded projects. In its investigation report, the Inspection Panel recalled that on the basis of OPN 11.03 the Bank’s role regarding cultural property ‘is to assist in their preservation, and to seek to avoid their elimination.’ Bank staff must take into account ‘the cultural property aspects of the proposed project site.’\(^56\)

Procedures such as those of the World Bank Inspection Panel make it possible for non-governmental organizations and groups of individuals to bring actions to demonstrate that their rights and interests have been directly affected by an action or omission of the funding institution in the projects it finances.\(^57\) The outcome of such a procedure can lead the organization to modify its behaviour; and this can prompt it to put pressure on a borrower State to ensure that it complies with its international obligations, in particular those arising from UNESCO’s standard-setting instruments.

Furthermore, owing to the relations they maintain with borrowing countries, in particular through the conclusion of loan agreements, international funding agencies gather information on compliance with the norms of international law. This gives funding agencies the opportunity to remind the States concerned of the need to comply with their international commitments and to contribute effectively to the monitoring and supervision of international instruments.

### 3.2. The Multiform ‘Functions’ of Coordination

Coordination can contribute to the monitoring and supervision of UNESCO’s standard-setting instruments. At this point, our examination will focus more particularly on the functions of coordination.

**a) Ex ante Coordination**

*Ex ante* coordination involves what might be called ‘anticipatory’ monitoring. In other words, *ex ante* coordination means that from the moment drafting begins on a UNESCO


\(^{56}\) See the Investigation Report of the Inspection Panel, *Chad-Cameroon Petroleum and Pipeline Project (Loan No. 4558-CD); Petroleum Sector Management Capacity Building Project (Credit No. 3373-CD); and Management of the Petroleum Economy (Credit No. 3316-CD)*, 17 September 2002, Paragraphs 203-209, pp. 58-60.

standard-setting instrument, consideration should be given to its consistency and coexistence with other international instruments. Checking for consistency or coherence is particularly important in cases where the protected rights and obligations provided for in a UNESCO standard-setting instrument may come into conflict with other rights and obligations provided for in international instruments negotiated within, and adopted by other forums. Failing to carry out *ex ante* coordination may hinder the effective monitoring and supervision of an instrument. In this sense, monitoring and supervision are largely dependent on coordination.

The idea of ‘anticipatory’ monitoring, where *ex ante* coordination is the aim, is clearly illustrated in the *Universal Declaration on Bioethics and Human Rights* of 19 October 2005. The first intergovernmental meeting of experts aimed at finalizing a draft Declaration on universal norms on bioethics had already emphasized the need for a preambular clause in the Declaration that would ensure its coherence with other relevant international instruments in the area of bioethics. That is the case, for example, of Article 27(2) of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS) of the World Trade Organization (WTO), which has a substantial impact on the conceptualization of the patentability of human genome sequences. It is also the case for a large number of the instruments relating to bioethics that have been adopted within the framework of the United Nations and its specialized agencies, the World Health Organization (WHO) and the Food and Agriculture Organization of the United Nations (FAO). The Declaration takes the idea of *ex ante* coordination even further since it makes reference to instruments adopted outside the United Nations system and even outside the interstate system. Instruments fashioned outside the United Nations include the World Medical Association’s *Declaration of Helsinki on Ethical Principles for Medical Research Involving Human Subjects*, the *Convention on Human Rights and Biomedicine* of the Council of Europe and the *International Ethical Guidelines for Biomedical Research Involving Human Subjects* of the Council for International Organizations of Medical Sciences (CIOMS) in cooperation with WHO. The range of instruments cited in the Preamble to the *Universal Declaration on Bioethics and Human Rights* bears witness to the concern with guaranteeing coherence and coordination among instruments in terms of monitoring and supervision.

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b) Ex post Coordination

Ex post coordination also involves ensuring that UNESCO's standard-setting instruments are consistent with other international instruments. However, in contrast to ex ante coordination, where norms set out in relevant instruments are integrated into a new standard-setting instrument at the drafting stage, ex post coordination is particularly concerned with the establishment of institutional (inter-institutional cooperation) and normative (standardization) linkages to ensure coherence in the implementation of the standard-setting instrument. Such linkages are founded on principles in statu nascendi, such as mutual supportiveness, complementarity and non-subordination, as well as on principles more deeply rooted in lex lata, such as the non-modification of rights and obligations, as laid down in other international agreements.\(^{60}\)

An example of ex post coordination of standard-setting instruments is offered by the Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 20 October 2005. The Convention is a new tool for the promotion of cultural diversity. It sets out common rules, principles and references with regard to cultural diversity at the global level. This is the first time that the international community has been able to reach such a consensus. Among other things, the Convention is instrumental in recognizing the role and legitimacy of public policy in the protection and promotion of cultural diversity, in acknowledging the importance of international cooperation for addressing situations of cultural vulnerability, especially where developing countries are concerned, and in ensuring the effective implementation of the Convention by coordinating it appropriately with the other international instruments. Moreover, the Convention lays the foundations for a new vision of culture as consubstantial with sustainable development.

The Convention lays down the principle of the sovereign right of States to 'formulate and implement their cultural policies and to adopt measures to protect and promote the diversity of cultural expressions and to strengthen international cooperation [...].\(^ {61}\)

\(^{60}\) See on the content and scope of these principles, L. BOISSON DE CHAZOURNES and M.M. MBENGUE, Trade, Environment and Biotechnology: on Coexistence and Coherence, in Genetic Engineering: Challenges posed by a New Technology to the World Trading System, Cambridge, forthcoming.

\(^{61}\) Article 5, Paragraph 1 of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.
This sovereign right offers State Parties the possibility of restricting international trade of cultural goods and services. Consequently, a problem of coherence or even coexistence could arise between the Convention on the Protection and Promotion of the Diversity of Cultural Expressions and the WTO agreements, in particular the 1994 General Agreement on Tariffs and Trade (GATT) and the General Agreement on Trade in Services (GATS). A problem of coherence might also arise in the relationship between the UNESCO Convention and the World Intellectual Property Organization (WIPO), where there are ongoing discussions on the appropriation and privatization of traditional skills and knowledge.

It is to avoid the risks of inconsistency that Article 20 of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions includes expressis verbis the principles of mutual supportiveness, complementarity and non-subordination with regard to other international instruments.62 The approach adopted in the Convention on the Protection and Promotion of the Diversity of Cultural Expressions differs from customary practice, especially in international instruments relating to the protection of the environment, which consists in introducing the principles of mutual supportiveness and non-subordination in the preamble and not in the text of the treaty. The incorporation of these principles into the text of the Convention gives them special legal force. Another unusual aspect is that the Convention emphasizes ex post coordination to the point of requiring State Parties to promote its objectives and principles "in other international forums."63 This vision of ex post coordination and the momentum thereby created for such coordination strengthen the monitoring and supervision of the Convention. A first step in that direction would be to reinforce cooperation between UNESCO and other international organizations, especially the WTO.

62. Article 20 reads as follows: 'Article 20 — Relationship to other treaties: mutual supportiveness, complementarity and non-subordination: 1. Parties recognize that they shall perform in good faith their obligations under this Convention and all other treaties to which they are parties. Accordingly, without subordinating this Convention to any other treaty, (a) they shall foster mutual supportiveness between this Convention and the other treaties to which they are parties; and (b) when interpreting and applying the other treaties to which they are parties or when entering into other international obligations, Parties shall take into account the relevant provisions of this Convention. 2. Nothing in this Convention shall be interpreted as modifying rights and obligations of the Parties under any other treaties to which they are parties.'

63. Article 21 reads as follows: 'Article 21 — International consultation and coordination: Parties undertake to promote the objectives and principles of this Convention in other international forums. For this purpose, Parties shall consult each other, as appropriate, bearing in mind these objectives and principles.'
4. CONCLUSION: WHAT TYPE OF MONITORING AND SUPERVISION MIGHT BE MOST APPROPRIATE FOR UNESCO'S STANDARD-SETTING INSTRUMENTS?

Several techniques and mechanisms are used to monitor international obligations. One of the most widely used methods – and here UNESCO is no exception to the rule – is periodic reporting by States. There are, however, limits to this procedure. To strengthen the monitoring of the implementation of legal instruments, other procedures and mechanisms have been devised, which UNESCO bodies could take as a model. For example, in the field of environmental protection, specific mechanisms and procedures exist for cases of 'non-compliance' with convention obligations, thus complementing and indeed going beyond the State reporting procedure by putting response procedures in place should promotion mechanisms prove inefficient in dealing with violations of the law. These procedures reflect States' desire to avoid litigation procedures similar to conventional procedures under international law to deal with violations of the law, while providing for mechanisms to promote compliance with the law and even to exert pressure on States that do not see reason.

The establishment of an appropriate system to monitor and supervise the standard-setting instruments of international organizations can be highly problematic. In this context, in order to improve and strengthen the system of monitoring and supervising UNESCO's standard-setting instruments, an answer must be found to the prior question of what function the monitoring and supervision system should perform. Should its goal be to promote compliance with specific standards (incentive function), to monitor such compliance (monitoring function) or simply to provide information to the Organization (information function)? It is important to determine which of these functions should be given priority. The incentive function does not stand alone, since it is an integral part of

64. See S. Maljean Dubois, 2003, La mise en oeuvre du droit international de l'environnement, Les Notes de l'Institut du Développement Durable et des Relations Internationales, No. 4, p. 29. The desire to improve the monitoring of the application of law can also be seen in other areas of international law. For example, in the field of disarmament a mechanism was established under the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction to ensure compliance with the Convention and to remedy any situation of violation; see A. Chayes and A. Handler Chayes, 1995, The New Sovereignty: Compliance with International Regulatory Agreements, Cambridge.

65. The Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer broke new ground by adopting a non-compliance procedure in 1992 (see Boisson de Chazournes, Desgagné, Mbengue, Romano, op. cit., pp. 730-733). Other standard-setting instruments, such as the Kyoto Protocol, have adopted a similar mechanism as well as a more refined one (ibid., pp. 733-745). Under the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, adopted in 1998 under the auspices of the United Nations Economic Commission for Europe, a monitoring mechanism has been established on the same model, but with some distinctive features (ibid., pp. 746-752).

the other two functions. In other words, the scales will be tipped mainly between the monitoring and the information functions of the monitoring and supervision system. That being the case, whatever the option chosen, it should be noted that the efficiency of the UNESCO monitoring and supervision system is contingent on the Organization's ability to develop and strengthen coordination and cooperation with other international actors. The rationale behind the monitoring and supervision of standard-setting instruments should be to achieve a 'knock-on effect' enabling UNESCO to rely on outside channels, which will lead to better account being taken of the 'interconnection' and interdependence of commitments undertaken by States at the international level.