

The Right to Education

International Legal Obligations

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Introduction

The right to education is provided for in a variety of instruments of UNESCO and the United Nations. These international instruments which contain provisions relating to the right to education can be divided in two broad categories: those having binding force in international law such as convention and treaties; and those lacking such binding force such as recommendations and declarations. The States parties to the conventions and treaties have international legal obligations to incorporate their provisions in domestic legal order; there is no such international legal obligation for Member States who have adopted recommendations or made declarations, as these have only moral force and carry political commitment. However, Member States adopting such instruments of soft law are expected to take action for giving them follow up in policies or develop national legislation accordingly. But they can not be held legally accountable for not so doing.

I. UNESCO Constitutional Mandate for the Right to Education and Normative Instruments

The right to education is an integral part of the UNESCO constitutional mandate. The Constitution of UNESCO expresses the belief of its founders in *full and equal educational opportunities for all* (emphasis added). The Organization is entrusted with the mission to give fresh impulse to popular education and to the spread of culture: by collaborating with Members, at their request, in the development of educational activities; by instituting collaboration among the nations to advance the ideal of equality of educational opportunity without regard to race, sex or any distinctions, economic or social; (and) by suggesting educational methods best suited to prepare the children of the world for the responsibilities of freedom.¹

UNESCO's constitutional mandate for the right to education becomes even more pertinent today. This is owing to increasing recognition of the centrality of education in people's lives. Education is considered to be of key importance: a human right in itself and an indispensable means of realizing other human rights.² It is essential to the socio-economic development process. The right to education is thus an overarching right. The ideal of education of humanity for justice and liberty and peace and 'full and equal opportunities for education for all', enshrined in UNESCO's Constitution, are of perennial importance.

A number of standard-setting instruments adopted by UNESCO in the field of education give expression to this mandate. They develop the right to education in its various dimensions,³ extending from initial or basic education to lifelong learning.⁴ UNESCO normative action reflects the right to education as *entitlement*, inextricably linked with the right to basic education as *empowerment*. Both the individual and the society are its beneficiaries.

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¹ Art. 1 para. 2 (b) of UNESCO's Constitution.

² General Comment No. 13 on the right to education (Article 13 of the Covenant), adopted by the Committee on Economic, Social and Cultural Rights at its twenty-first session in 1999. E/C. 12/1999/10, 2 December 1999 (para. 1).

³ Daudet, Y. and Singh, K. (2001), *The Right to Education: An Analysis of UNESCO's Standard-Setting Instruments*, UNESCO, Paris.

⁴ The World Education Report (2000): *The Right to Education: towards education for all throughout life*, UNESCO Publishing, Paris.

(a) Instruments of Binding Nature: Conventions

The Convention against Discrimination in Education (1960)⁵ which occupies the foremost place among UNESCO normative instruments, develops the fundamental principles of non-discrimination and equality of educational opportunities into international norms.⁶ Article 4 enjoins upon the States Parties to the Convention the obligation to ‘undertake furthermore to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education and in particular:

- (a) To make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; make higher education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law.
- (b) To ensure that the standards of education are equivalent in all public educational institutions of the same level, and that the conditions relating to the quality of the education provided are also equivalent.
- (c) To encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity.
- (d) To provide training for the teaching profession without discrimination’.

The Convention lays down the obligation of States to ‘assure compliance by all with the obligation to attend school prescribed by law’ (Article 4 para. a). It enjoins upon the States Parties to it ‘[t]o encourage and intensify by appropriate methods the education of persons who have *not* received any primary education or *who have not completed the entire primary education* course and the *continuation of their education* on the basis of individual capacity’.⁷ Thus, the Convention provides for the State obligation for expanding educational opportunities for all those who remain deprived of primary education.

Respecting the diversity of national education systems, the Convention protects the educational rights of national minorities. The States Parties to the Convention agree that ‘[i]t is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided however, (a) That this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty; (b) That the standard of education is not lower than the general standard laid down or approved by the competent authorities’ . (Article 5 para. 1 c) The States Parties to this Convention have undertaken to take all necessary measures to ensure the application of these principles.

The Convention is a key pillar in the context of the Education for All (EFA) process in as much as it reflects UNESCO’s constitutional mission: ‘full and equal educational opportunities for all’. The General Comment No. 13 on Article 13 (right to education)⁸ of the International Covenant on Economic, Social and Cultural Rights, elaborated by the United Nations Committee on Economic, Social and Cultural Rights (CESCR) in collaboration with UNESCO (December 1999), draws on UNESCO’s experience and dwells upon the Convention. Referring to its Article 3, the General Comment confirms that ‘the principle of non-discrimination extends to all persons of school age residing in the territory of a State Party, including non-nationals, and irrespective of their legal status’ (para. 34). It provides that education ‘must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds’ (para. 6).

The Convention on Technical and Vocational Education (1989) is another important instrument of UNESCO, having binding force in international law for the States parties to it. The Convention also reflects the principle of non-discrimination in education, as does the Convention against Discrimination in Education. Under the provisions of Article 1 (b) of the Convention, the Contracting States agree that: ‘this Convention applies to all

⁵ The Convention was adopted by the General Conference of UNESCO on 14 December 1960 at its eleventh session, held in Paris, and came into force on 22 May 1962. So far, 90 States have adhered to the Convention.

⁶ The Convention defines ‘Discrimination’ to include ‘any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose of nullifying or impairing equality of treatment in education’ (Art. 1 of the Convention).

⁷ Art. 4 para. c of the Convention. Emphasis added.

⁸ *O.c.* The text of the Convention and of the General Comment No. 13 on the Right to Education can be accessed on the UNESCO website on the Right to Education.

forms and levels of technical and vocational education provided in educational institutions or through co-operative programmes organized jointly by educational institutions, on the one hand, and industrial, agricultural, commercial or any other undertaking related to the world of work, on the other'. They agree that 'this Convention shall be applied in accordance with the constitutional provisions and legislation of each Contracting State'. (Article 1 c). Furthermore, under the provisions of Article 2 (1), the 'Contracting States agree to frame policies, to define strategies and to implement, in accordance with their needs and resources, programmes and curricula for technical and vocational education designed for young people and adults, within the framework of their respective education systems, in order to enable them to acquire the knowledge and know-how that are essential to economic and social development as well as to the personal and cultural fulfilment of the individual in society.'

(b) Recommendations and Declarations

Recommendations and declarations form another category of instruments elaborated by UNESCO. They can be characterized as soft law. They do not have the force of law, but are significant in terms of their moral force.

The Recommendation against Discrimination in Education, adopted by the UNESCO General Conference at the same time as the Convention against Discrimination in Education in 1960, also corresponds to UNESCO constitutional mandate to advance the ideal of equality of educational opportunities without regard to race, sex or any distinctions, economic or social.⁹ Barring differences in wording and in legal scope inherent to the nature of these two categories of instruments, the content of the Recommendation is identical to that of the Convention. Like the UNESCO Constitution, the Convention as well as the Recommendation prohibit discrimination in education based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth. Articles 1 to 7 of the Convention and the Recommendation contain similar provisions.

The Revised Recommendation concerning Technical and Vocational Education (2001) recognizes that the '[t]echnical and vocational education (...) is included in the term "education" as defined in the Convention and the Recommendation against Discrimination in Education (1960)'. This Recommendation should be understood as setting forth general principles, goals and guidelines to be applied by each individual country according to its socio-economic needs and available resources in a changing world (para. 4).

Certain instruments give expression to the concept of lifelong learning. The Recommendation on the Development of Adult Education¹⁰ (1976) and the Hamburg Declaration on Adult Learning (1997)¹¹ are aimed at promoting inclusive approaches to education. They provide for continuing education and learning opportunities for youth and adults. The Recommendation on the Development of Adult Education stipulates that the education of young people should 'progressively be oriented towards life-long education' and learning. The Recommendation stipulates that '[t]he place of adult education in each education system should be defined with a view to achieving a rectification of the main inequalities in access to initial education and training, in particular inequalities based on age, sex, social position or social or geographical origin. (...)'. Deep-seated changes that had occurred since the adoption of the Recommendation warranted the inclusion of the new concepts highlighted by the International Commission on Education for the Twenty-first Century, mentioned above. Steps in that direction were taken in 1997 when the Hamburg Declaration on Adult Learning (1997) was adopted. This Declaration postulates that the State remains the essential vehicle for ensuring the right to education for all, particularly for the most vulnerable groups of society, such as minorities and indigenous peoples, and for providing an overall policy framework. It develops the new conception of education that extends throughout life. The Declaration contains the main principles and concepts adopted so far in the context of the right to education and makes them generally applicable to the population as a whole.

As UNESCO's normative instruments show, equal opportunity, equitable and universal access to education are often inter-linked. This is illustrated by the World Declaration on Higher Education for the Twenty-first Century (1998).¹² This Declaration expresses the conviction that education is a fundamental pillar of human rights, democracy, sustainable development and peace, and shall therefore become accessible to all throughout life.

⁹ The Recommendation sought to take into account the difficulties that certain States might experience, for various reasons and in particular on account of their federal structure, in ratifying the Convention.

¹⁰ The Recommendation was adopted by the General Conference of UNESCO at its 19th session in Nairobi, on 26 November 1976.

¹¹ The Declaration was adopted at the Fifth International Conference on Adult Education (14-18 July 1997).

¹² The Declaration was adopted by the World Conference on Higher Education in the Twenty-first Century: Vision and Action, UNESCO, Paris, 5-9 October 1998.

Article 3 of the Declaration is entitled equity of access. Article 4 (d) provides that access to higher education for members of some special target groups, such as indigenous peoples, cultural and linguistic minorities, disadvantaged groups, peoples living under occupation and those who suffer from disabilities, must be actively facilitated, since these groups as collectivities and as individuals may have both experience and talent that can be of great value for the development of societies and nations. It is pertinent to note that the Recommendation concerning the Status of Higher-Education Teaching Personnel¹³ (1997) contains provisions relating to the duties and responsibilities of institutions (institutional autonomy and institutional accountability) and to the rights and freedoms of the teaching personnel (individual rights and freedoms, academic freedom, publication rights). The Recommendation states that higher education shall be directed to human development and to the progress of society, whose financing is a public investment. The interplay of ideas and information among higher education teaching personnel throughout the world is vital and should be encouraged. For the follow up provisions (Part X: Utilization and implementation), the Recommendation provides that Member States and higher education institutions should take all feasible steps to improve the conditions of higher education teaching personnel, and to apply the provisions to give effect, within their respective territories, to the principles set forth in this Recommendation. Besides, the Recommendation concerning the Status of Teachers (1966) is of critical importance in face of overall decline in the status of teachers. It provides that since education is a service of fundamental importance in the general public interest, it should be recognized as a responsibility of the State. (para. 10 c) It calls for the application of a set of common standards and measures which it sets out. The Recommendation stipulates that all facilities should be made available equally to enable every person to enjoy his right to education without discrimination on grounds of sex, race, colour, religion, political opinion, national or social origin, economic condition. (para. 10 b)

Thus, standard-setting instruments elaborated by UNESCO establish the right to education for all: for national, ethnic, religious and linguistic minorities, for the indigenous peoples, for socially and economically marginalized, for the vulnerable groups, for immigrants, for disabled and handicapped, for refugees, for the rural-urban poor and for millions of those deprived of education on account of poverty. Moreover, they provide normative bases for education in its diverse forms such as adult education, community education, special education, etc. They embody certain key concepts such as inclusive approaches to education as well as continuing education and life-long learning.

II. The United Nations Instruments and the Right to Education

The right to education is enshrined in the International Bill of Human Rights which provides the foundation for the United Nation's expanding human rights work. The moral foundations of the right of education are laid down in the Universal Declaration on Human Rights (1948). Article 26 of the Universal Declaration of Human Rights stipulates:

- '(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- (3) Parents have a prior right to choose the kind of education that shall be given to their children.'

The International Covenant on Economic, Social and Cultural Rights (ICESCR, 1976) provides for right to education.¹⁴ Other major United Nations instruments also carry provisions relating to this right.

¹³ The Recommendation was adopted by the General Conference of UNESCO in Paris on 11 November 1997.

¹⁴ Art. 13 provides that 'The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions

Article 13 of the International Covenant on Economic, Social and Cultural Rights covers the right to education comprehensively. It was drafted at the suggestion of the Director-General of UNESCO, and draws extensively upon the Convention against Discrimination in Education. It contains provisions similar to those of the Article 4 of the Convention. The States parties to the International Covenant recognize the right of everyone to education (Article 13 (1)), and undertake that with a view to achieving the full realization of this right, 'Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education' (Article 13 para. 2 d).

The provisions on the right to education are also contained in other instruments of the United Nations, notably in Article 26 of the Universal Declaration on Human Rights (1948); Articles 28-30 of the Convention on the Rights of the Child; and Article 10 of the Convention on the Elimination of All Forms of Discrimination against Women (1979). These instruments also reflect the principle of equality of educational opportunities. Thus, Articles 28-30 of the Convention on the Rights of the Child relate to the right to education. Article 28 in particular stipulates that 'States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (a) make primary education compulsory and available free to all; [...]'.¹⁵ (Article 28 para. 1) Similarly, the Convention on the Elimination of All Forms of Discrimination against Women (1979) provides that 'States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education (...)'. (Article 10)

As regards the recommendations and declarations, one can mention the Resolution adopted in December 2001 by the General Assembly on the United Nations Literacy Decade: education for all (2003-2012). Launched in 2003, the Decade is part of the global effort towards Education for All. The objective of the Decade is to promote the right to education for all and to create conditions for all for learning throughout life.¹⁶ The Resolution *appeals* to all governments to redouble their efforts to achieve their own goals of education for all by developing national plans in accordance with the Dakar Framework for Action.¹⁷ By this resolution, the General Assembly *decided* that UNESCO 'should take a co-ordinating role in stimulating and catalysing the activities at the international level within the framework of the Decade'. (para. 10) Providing opportunities for education and learning to youth and adults deprived of education and combating illiteracy are important dimensions of universalizing access to basic education, which the Decade will promote.

The importance of political influence of resolutions is indicated by the resolutions on the right to education, adopted by the Commission on Human Rights. These resolutions, though not having binding force, have great political weight, in recognition of the importance of the Commission as the apex body in the field of human rights. Resolution 2004/25 adopted in April 2004, mentions both the United Nations and UNESCO's instruments, notably the Convention against Discrimination in Education and the Dakar Framework for Action. It highlights the diverse aspects of the right to education in the present day context, while drawing upon the essential provisions in all the international instruments. Resolution 2004/25 reflects almost all dimensions of UNESCO's work in the field of education, as did the previous resolutions adopted in 2003 and 2002 – universalising access to education; qualitative aspects of education and learning achievements; gender-equity; lifelong learning; the United Nations Literacy Decade; morale and professionalism of teachers, etc. It lays stress upon achieving the right to education for all.

III. Right to Basic Education for all and its Normative Character

Normative bases of the right to education provided for in UNESCO's instruments were strengthened when governments, international organizations, agencies and groups at the World Education Forum (Dakar, 2000) reaffirmed education as a fundamental human right. They underlined the role of education in empowering individual and transforming societies. To that end, the Dakar Framework for Action, adopted at the Forum, carries collective commitments of the international community for making basic education universally accessible. The

of teaching staff shall be continuously improved.' (Art. 13)

¹⁵ As the Human Development Report 2000 puts it, 'to assert a human right to free elementary education is to claim much more than that it would be a good thing for everyone to have an elementary education – or even that everyone *should* have an education. In asserting this right, we are *entitled* to a free elementary education, and that, if some persons avoidably lack access to it, there must be some culpability somewhere in the social system'. Singer, Carol A. (2000), *Human Development Report 2000*, Oxford University Press, New York, p. 21.

¹⁶ United Nations General Assembly Resolution A/RES/56/116, entitled *United Nations Literacy Decade: education for all*, adopted on 19 December 2001.

¹⁷ *Ibid.*

realisation of the right to education is thus central to the EFA process which was launched at the World Conference on Education for All (1990) with the aim of making basic education accessible to all as of right and ensuring that before the end of the twentieth century, every child is put in school.¹⁸ Other Declarations, in particular of the nine high-population developing (E-9) countries, made as part of the EFA process, show the importance of normative action for basic education for all and the responsibility of governments. Thus, in the Delhi Declaration (1993),¹⁹ these countries committed themselves to ‘eliminate disparities of access to basic education arising from gender, age, income, family, cultural, ethnic and linguistic differences and geographic remoteness’. Recently at Beijing (Republic of China), in a Ministerial Review Meeting in 2001, the Ministers and representatives of E-9 countries committed themselves to the strategies to ‘reinforce action-oriented programmes to meeting the learning needs of disadvantaged groups such as children with special needs, migrants, minorities and the rural/urban poor’. One can thus see that the significance of normative action for EFA has consistently been recognized since the EFA was launched in 1990.

The World Education Forum imparted further dynamism to the global movement for achieving the right to basic education for all. The importance of the normative action was recognized soon after the World Education Forum. It was stipulated that with its mandate to take on a leading, normative role, UNESCO is well placed to promote policy discussions around basic education; set standards for principles of action and indicators of assessment; engage in high-level advocacy; strengthen partnerships with other EFA actors.²⁰ UNESCO has, therefore, placed the outcome of the World Education Forum (2000) at the heart of its activities and education for all (EFA) high on its agenda. Realisation of basic education for all has become priority area of action. Already the vision for education developed by UNESCO in 1990’s provided conceptual thrust to basic education for all. In its Report presented to UNESCO *Learning: The Treasure Within* (1996), the International Commission on Education for the Twenty-first century, stated that ‘[b]asic education is the first step in attempting to attenuate the enormous disparities affecting many groups – women, rural populations, the urban poor, marginalized ethnic minorities and the millions of children not attending school and working’.²¹

IV. International Legal Obligations for the Right to Education

The international legal obligations for States in the field of the right to education are embedded in the normative framework for the right to education established by standard-setting instruments elaborated by UNESCO and by the United Nations.

(a) State Obligations under International Law

Under the normative instruments adopted by the United Nations and UNESCO, the States have undertaken the international legal obligation for the realization of the right to education. It is incumbent upon Governments to take policy measures and provide full educational opportunities for the realization of the right to education. As UNESCO’s Medium-term Strategy (2002-2007) provides, ‘[a]dvancing the right to education as enshrined in the Universal Declaration of Human Rights is central to UNESCO’s mission. Free, compulsory and universal primary education for all is among the most clearly defined of these rights, which governments have duty and responsibility to make a reality’. Such responsibility underlies the objective set at the World Education Forum as well as Millennium Development Goal for universalising primary education in all countries by 2015.

The right to education, like all human rights, imposes three levels of obligations on States parties: the obligations to respect, protect and fulfill. In turn, the obligation to fulfill incorporates both an obligation to facilitate and an obligation to provide. The State obligation remains even in case of privatization of education. The obligation

¹⁸ Recalling that education is a fundamental right for all people, women and men of all ages, throughout our world the *World Declaration on Education for All* adopted at the Conference stipulates that basic education should be provided to all children, youth and adults. To this end, basic education services of quality should be expanded and consistent measures must be taken to reduce disparity (Art. 3). The Declaration provides that every person child, youth and adult shall be able to benefit from educational opportunities designed to meet their basic learning needs.

¹⁹ The Delhi Declaration was made on 16 December 1993 by the Education for All Summit of Nine High-Population Developing Countries. It is noteworthy that the E-9 countries, comprising Bangladesh, Brazil, China, Egypt, India, Indonesia, Mexico, Nigeria and Pakistan, account for more than 50 per cent of the world’s population.

²⁰ Recommendations of the UNESCO/UNICEF Joint Committee on Education, documents 160 EX/9 and Corr., UNESCO, Paris, September 2000 (paras 3 and 4).

²¹ The International Commission on Education for the Twenty-first century: The Report of the Commission presented to UNESCO (1996), *Learning: The Treasure Within*, UNESCO, Paris, p. 118.

to respect requires States parties to avoid measures that hinder or prevent the enjoyment of the right to education. The obligation to protect requires States parties to take measures that prevent third parties from interfering with the enjoyment of the right to education. The obligation to fulfill (facilitate) requires States to take positive measures that enable and assist individuals and communities to enjoy the right to education. Finally, States parties have an obligation to fulfill (provide) the right to education. As a general rule, States parties are obliged to fulfill (provide) a specific right in the Covenant when an individual or group is unable, for reasons beyond their control, to realize the right themselves by the means at their disposal. However, the extent of this obligation is always subject to the text of the Covenant.²²

With such a broad obligation, Article 13 of the International Covenant provides for the right to receive free and compulsory primary education, which should be made available to every one, and enjoins upon the State Parties to the Covenant the obligation for its progressive realisation. This obligation has been interpreted to be of continuing nature for moving as expeditiously and effectively as possible towards the realisation of this right and is of immediate effect.²³

Conventions and treaties have binding force in international law for the States which are parties to them. Thus, the Convention against Discrimination in Education is binding upon 90 States parties to it. Similarly, the International Covenant is binding upon 150 States parties to it. Conventions are by far the most clear-cut example of the instruments having binding force in international law. Once a convention has been ratified, accepted or acceded to in sufficient numbers (as stipulated by the convention itself) to enable it to enter into force, it ultimately, after some possible delay, becomes binding on the State that has performed such a formality; and once incorporation procedures have been completed, it can be brought into force within that State's internal order. Details of this may be found in Article 14 of the Convention against Discrimination in Education and Article 10 of the Convention on Technical and Vocational Education (1989). States are bound by the commitment they have made in ratifying or acceding to such conventions and are internationally responsible, according to the customary rules of international law, to account for any failure to comply with their obligations.

(b) Sanctioning the Right to Education

Discussing the matter of sanctioning the right to education raises questions as to the legal force of commitments made and the nature of the obligations imposed upon those in charge of its enforcement. When the right established for the individual benefit forms part of a convention that is properly ratified and incorporated into a State's internal order, thereby rendering it legally binding on that State, he or she can use every available legal means to secure compliance: recourse to law courts, for instance, where the judge ultimately has the power to examine whether there is a breach of the State's legal obligations, and to come to a decision. Technically speaking, of course, individuals do not necessarily have to take such action themselves: groups enjoying legal status and with a stake in the matter (unions, public service users or parents associations, etc.) may take such action on behalf of their members. Furthermore, general international law, irrespective of whatever specific mechanisms any particular instrument may have additionally established to ensure compliance, provides similar means of sanctioning the right to education internationally within the realm of inter-State relations. If, for instance, individuals living abroad find themselves to be the victims of discriminatory measures in their State of residence that prevent them from exercising their right to education as laid down in a legally binding instrument (e.g. the Convention against Discrimination in Education of 14 December 1960), and failing domestic remedies, their State of origin will be free to exercise diplomatic protection on their behalf with a view to ensuring that the State of residence meets its commitments. Hence, and, in a sense, indirectly, one State can be compelled to meet its treaty obligations by another.

The right to education has been devised to benefit both individual and society. The situation is different with respect to the society as its beneficiary for its development and for social progress, tolerance and harmony within the group to ensure that its members enjoy generalized access to education. Since society *per se* lacks legal status, however, it cannot claim the benefits of that right through the above-mentioned legal channels. As a matter of fact, the State tends to meet its obligations of its own accord because they help foster the well-being and progress for which it is responsible; and the only pressure that can be brought to bear is the political and moral influence exerted by society and its constituent parts.

²² General Comments No. 13 on the right to education (Article 13 of the Covenant), *o.c.* (paras 46-47).

²³ *Ibid.* (paras 43-44).

(c) State Obligations and Reporting Procedures in UNESCO Standard-setting Instruments in the Field of Education

The State obligations and reporting procedures in UNESCO's standard-setting instruments are stipulated both in conventions and recommendations.

The Convention against Discrimination in Education (1960) provides that '[t]he States Parties to this Convention undertake furthermore to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education...' (Article 4) It states in Article 7 that '[t]he States Parties to this Convention shall in their periodic reports submitted to the General Conference of the United Nations Educational, Scientific and Cultural Organization on dates and in a manner to be determined by it, give information on the legislative and administrative provisions which they have adopted and other action which they have taken for the application of this Convention, including that taken for the formulation and the development of the national policy defined in Article 4 as well as the results achieved and the obstacles encountered in the application of that policy'. Article 7 of the Recommendation carries similar obligations for Member States.²⁴

The Convention on Vocational and Technical Education (1989) states in Article 1 (c) that 'this Convention shall be applied in accordance with the constitutional provisions and legislation of each Contracting State'. It stipulates that '[t]he Contracting States shall specify, in periodic reports submitted to the General Conference of the United Nations Educational, Scientific and Cultural Organization at the dates and in the form determined by it, the legislative provisions, regulations and other measures adopted by them to give effect to this Convention'. (Article 7)

The Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to human rights and fundamental freedoms (1974) stipulates that '[t]he General Conference recommends that Member States should apply the following provisions, by taking whatever legislative or other steps may be required in conformity with the Constitutional practice of each State to give effect within their respective territories to the principles set forth in this recommendation (...)' . The Recommendation enounces that '[t]he General Conference recommends that Member States submit to it, by dates and in the form to be decided upon by the Conference, reports concerning the action taken by them in pursuance of this recommendation'.

The Recommendation on the Development of Adult Education (1976) provides that '[t]he General Conference recommends that Member States report to it, at such dates and in such form as shall be determined by it, on the action taken by them in pursuance of this Recommendation.'

The Revised Recommendation concerning Technical and Vocational Education (2001) '[r]ecommends that when developing and improving technical and vocational education, Member States should take whatever legislative or other steps may be required to give effect, within their respective territories, to the principles set forth in this Recommendation'. It '[i]nvites the Director-General to conduct future consultations with Member States concerning its implementation, together with the five-yearly assessments of the follow-up to the Seoul Congress'.

The Recommendation concerning the Status of Teachers (1966) stipulates that 'since education is a service of fundamental importance in the general public interest, it should be recognized as a responsibility of the State...' (Para. 10 (c)) It provides that 'all facilities should be made available equally to enable every person to enjoy his right to education without discrimination on grounds of sex, race, colour, religion, political opinion, national or social origin, economic condition.' (Para. 10 (b)) The Recommendation 'calls for the application of a set of common standards and measures' which it sets out.

The Integrated Framework of Action for Education for Peace, Human Rights and Democracy (1995) states that 'in order to create understanding between different groups of society, there must be respect for the educational rights of persons belonging to national or ethnic, religious and linguistic minorities, as well as indigenous people, and this must also have implications in curricula and methods as well as in the way education is organized'. (para. 29)

²⁴ It may be recalled that the Committee on Conventions and Recommendations (CR) was originally conceived as a 'Special Committee ... to examine the reports of Member States on the implementation of the Convention and Recommendation against Discrimination in Education' (71 EX/Decision 3.2). With this as its initial mandate, it was established originally as the Special Committee on Discrimination in Education (75 EX/Decision 6(II)).

The World Declaration on Higher Education for the Twenty-first Century (1998) provides for responsibilities of the ‘States, including governments, parliaments and other decision-makers’ to ‘establish, where appropriate, the legislative, political and financial framework for the reform and further development of higher education...’ so that it shall be ‘accessible to all on the basis of merit’ without any discrimination.

An analysis of the State obligations and reporting procedures in UNESCO standard-setting instruments (State obligations under conventions and treaties having binding force in international law and the political responsibility under recommendations and declarations) shows a certain interrelationship between them.

In this connection, it is noteworthy that Resolution 2004/25 (as previous resolutions) adopted by the Commission on Human Rights, mentioned above, seeks to promote normative action through engaging the States to give full effect to the right to education. What is crucial is that the Commission puts emphasis on the *legal obligation* of Member States.

(d) Legal and Political Force of Recommendations and Declarations

States and governments adopting declarations and recommendations also subscribe to moral commitments. Such instruments clearly state their intention to implement them, even though, as in the case of United Nations resolutions, there are no legal penalties for non-compliance. They demonstrate an indisputable moral resolve to abide by the commitments assumed by those States and their partners when voicing their intention to adopt a given set of guidelines, as seen in the World Declaration on Education for All (1990) or the Dakar Framework for Action (2000). The ethical basis and moral force of these declarations therefore needs to be recognized. Although not legally binding, agreed instruments have a normative character in their intent and effects and the States concerned regard them as political or moral commitments. The ethical value of such declarations is set to acquire increasing recognition.²⁵ The commitments that States and governments make in adopting standard-setting instruments need to be considered in the light of the legal and moral force of declarations in modern international law. United Nations doctrine considers a declaration to be formal and solemn instrument, suitable for occasions when principles of great and lasting importance are being enunciated [...] In view of the greater solemnity and significance of a declaration (as opposed to a recommendation), it may be considered to impart, on behalf of the (United Nations) organ adopting it, a strong expectation that members of the international community will abide by it. Consequently, insofar as the expectation is gradually justified by State practice, a declaration may by custom become recognized as laying down rules binding upon States.²⁶

In common with United Nations General Assembly resolutions, the successive declarations and recommendations on the right to education adopted by States and governments illustrate the gradual development of the right’s normative basis. Through persistent reiteration and reaffirmation of the right to education, the standard-setting instruments (declarations and recommendations) have also come to comprise an *opinio juris* component in international law. This makes for gradual consolidation of the normative basis of the right to education.²⁷ Meanwhile, the considerable moral commitments formally assumed through such standard-setting instruments serve to further the enforcement of that right.

These (non-legally binding) ‘declarations’ and ‘recommendations’ generally tend to be adopted by acclamation and convey a clear sense of commitment. Yet do such commitments involve legal liability? One thing is the adoption of a resolution by State representatives acting individually and collectively within the framework of an international organization; quite another is the adoption of a text by a ‘forum’ that unites, in a joint declaration, government representatives (e.g. education ministers) and international organizations (especially UNESCO) within the ambit of the principle of speciality, but also representatives of NGOs, various other groups, civil society and so on. In short, what we have is an array of entities lacking legal personalities in international law and which, as such, are clearly not in a position to adopt texts capable of bringing legally sanctioned obligations under international law to bear on sovereign States. However, even though not having the binding force in international law, the

²⁵ The Right to Education: An analysis of UNESCO’s Standard-setting Instruments, *o.c.*, pp. 42-48.

²⁶ UNESCO’s standard setting instruments, UNESCO, Paris, 1986 (General introduction, p. xiv).

²⁷ ‘The Court notes that General Assembly resolutions, even if they are not binding, may sometimes have normative value. They can, in certain circumstances, provide evidence important for establishing the existence of a rule or the emergence of an *opinio juris*. To establish whether this is true of a given General Assembly resolution, it is necessary to look at its content and the conditions of its adoption; it is also necessary to see whether an *opinio juris* exists as to its normative character. Or a series of resolutions may show the gradual evolution of the *opinio juris* required for the establishment of a new rule.’ International Court of Justice, Advisory Opinion, Legality of the Threat or Use of Nuclear Weapons, para. 70, 8 July 1996.

declarations, recommendations or frameworks for action adopted regarding the right to education may carry great political and moral weight.

The full political and moral force of the declarations, recommendations and, also, decisions adopted by UNESCO with respect to the right to education warrants attention. Member States regard themselves as bound by the instruments adopted not only through General Conference decisions or within the framework of intergovernmental conferences, but also in the form of decisions reached by the Executive Board. A key example of this can be seen in the procedure for the examination of complaints received by the Organization concerning alleged violations of human rights in its fields of competence, namely education, science, culture and information. This procedure is laid down in 104 EX/Decision 3.3 of the Executive Board of UNESCO and implemented by one of its subsidiary organs, the Committee on Conventions and Recommendations (CR). When a State becomes a Member of UNESCO, it is automatically taken to have recognized the authority of the CR: 'in practice, even non-Member States of UNESCO have of their own accord agreed to a communication concerning them being considered by the Committee'.²⁸

As far as upholding the right to education is concerned, one can only observe that it is certainly likely to hinge more on governments believing in the need to develop education policy than on their being concerned to respect a legal obligation, especially whose sanction in any case is quite uncertain. All in all, then, it is not so much an issue of instruments that are binding as against those that are not; what matters most is how they complement one another. Fortunately, UNESCO has understood this in employing the entire range at its disposal – albeit with a certain preference for recommendatory declarations and resolutions, in line with a brand of realism. This has also led to the development of procedures which, after long remaining unique, have since come into general use in the shape of monitoring and follow-up mechanisms.

(e) Responsibilities undertaken by Governments for Achieving Education for All (EFA)

The right to education as reaffirmed at the World Education Forum carries an obligation for Governments to ensure that basic education is made accessible to all. At the first meeting of the High Level Group on Education for All, convened at UNESCO Headquarter in October 2001 the Director General of UNESCO, Mr. Koichiro Matsuura, gave expression to 'the core responsibility of governments for education, and especially to provide free and compulsory quality basic education for all'. In the pursuit of EFA goals as a priority, the governments' responsibility for providing basic education for all is underlined in the Joint Statement of 26 April 2002, made by UNDP and the World Bank UNFPA, UNICEF – on the occasion of the second Dakar anniversary of the World Education Forum: governments have the responsibility of providing basic education for all. Access to education is a fundamental human right. Millions of people legitimately expect to have access to quality education (...) Indeed, moral and legal force of the Dakar Framework for Action adopted at the World Education Forum is analogous to the declarations and recommendations of the United Nations containing political commitments of the governments.

The interrelationship between the State obligations under conventions and treaties having binding force in international law and the political responsibility under recommendations and declarations is reflected when one compares Article 14 of the International Covenant Economic, Social and Cultural Rights with the Dakar Framework for Action. The state obligations Article 14 of the International Covenant are restated in the form of responsibility of Governments under the Dakar Framework for Action. As such, the implementation of Article 14 and the follow up to the Dakar Framework for Action is interlinked as regards formulation and application of national action plans. Primacy given by the Dakar Framework for Action to the national level action is very much akin to the spirit of Article 14 of the International Covenant relating to the right to education. This article requires each State party which has not been able to secure compulsory primary education, free of charge, to undertake, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory primary education free of charge for all.

The legal implications of the Dakar Framework for Action were examined during a meeting on the Right to Education and follow up to the World Education Forum, organized by CESCR in cooperation with UNESCO

²⁸ *Questions relating to the methods of work of the Committee on Conventions and Recommendations*, document 146 EX/7, para. 50 (footnote 1), UNESCO, Paris, 24 February 1995.

in May 2002. Although the Dakar Framework for Action might not have the legal force of an international convention, it constituted a strong moral obligation for signatories and was a powerful instrument for change when used in conjunction with existing legal obligations. It draws some legal force from references to relevant international instruments. It was clear from a comparison of the Dakar Framework for Action and the International Covenant that the political commitments undertaken under the former were also legal obligations under the latter. The Dakar Framework for Action could be taken as imposing legal obligations on signatories insofar as it was based on rights recognized in existing international instruments. CESCR and UNESCO should analyse legislative developments affecting the right to education and encourage the development of national legislation. The constitutional changes introduced by Governments in keeping with their responsibilities under the International Covenant and the Dakar Framework for Action should be analysed. Finally, the need to make the connection between the right to education and the Millennium Development Goals agreed upon at the Millennium Assembly (2000) must be recognized.

V. Implementation of the Right to Education

Questions related to the follow up to the World Education Form and implementation of the right to education were examined during the Informal Expert Consultation on Monitoring the Right to Education, organized at UNESCO Headquarters in March 2001.²⁹ The experts suggested that such follow up should be linked to the implementation of other international and regional instruments, underlining the importance of (i) examining the bases of the Dakar Framework for Action in both modern comparative constitutional law and conventional international law, and (ii) establishing the relationship between the Dakar Framework for Action and existing normative instruments as a continuity of existing law.

As mentioned above, the right to education is established in texts of a varying legal nature such as conventions, declarations and frameworks for action. These instruments do not, legally speaking, involve the same obligations but they all serve the same end: the promotion and development of the right of every person, without discrimination, to enjoy access to education. The right to education as provided for under international instruments can be availed by its beneficiaries when the State obligations under these instruments are incorporated into national legal system and their implementation is ensured effectively. It is therefore interesting to determine how and why, notwithstanding their differing legal nature, these texts still manage to organize efforts to achieve their intended goal in such a way as to preclude the possibility of only those of indisputable mandatory legal force being abided by, while others might easily be ignored.

(a) Monitoring and follow-up procedures of UNESCO

The international organizations have long had monitoring and follow-up procedures in place, and UNESCO in particular has developed a set of mechanisms designed to permit more effective application of provisions adopted and ensure better fulfilment of obligations. Importance attached by UNESCO to monitoring the implementation of conventions and recommendations in Member States is indicated by the fact that such monitoring is an integral part of UNESCO's constitutional mandate. UNESCO's Constitution provides that '[e]ach Member State shall submit to the Organization, at such time and in such manner as shall be determined by the General Conference, reports on laws, regulations and statistics relating to its educational, scientific and cultural institutions and activities, and on the action taken upon the recommendations and conventions (...)'. (Article VIII)³⁰ As a result, Member States have the obligation under conventions but also under recommendations to submit to the Director-General information on measures taken for the implementation.³¹

As already mentioned, the Convention against Discrimination in Education contains provisions that the State obligation under the Convention must be incorporated into national legal system. (Article 4) UNESCO monitors

²⁹ Recommendations of the Informal Expert Consultation on Monitoring the Right to Education, organized at UNESCO Headquarters in March 2001, Final Report, ED-2001 Paris, 2 May 2001.

³⁰ According to Art. IV (6), 'The General Conference shall receive and consider the reports sent to the Organization by Member States on the action taken upon the recommendations and conventions' which the Organization has adopted, or if it so decides, 'analytical summaries of these reports'.

³¹ For example, Art. 7 of the Convention against Discrimination in Education (1960).

its implementation, pursuant to the obligations of the States under the provisions of Article 7 of the Convention.³² In order to eliminate and prevent discrimination in education, the Convention requires the States Parties '[t]o ensure, by legislation where necessary, that there is no discrimination' in education. (Article 3) The periodic reports that States are asked to submit have the effect of informing UNESCO, and therefore all the States in the international community, of the measures they have taken domestically to fulfil their obligations under the conventions to which they are parties. Thus, to make it more effective, the States parties to the Convention, must give information in their periodic reports to the UNESCO General Conference on the legislative and administrative provisions which they have adopted and other action which they have taken for the application of the Convention. The implementation process does not make *de facto* distinction between convention and recommendation, notwithstanding legal nature of obligations under them.

If there are no obligations under conventions because the principles and standards are laid down in simple recommendations, declarations or frameworks for action, the report is not meant to verify whether a statutory obligation is being properly fulfilled but to indicate measures that a State has decided to take, to implement voluntarily the principles adopted in recommendations. Such behaviour may set an example, and, conversely, a State failing to act may be placed in a politically difficult situation. The reporting procedure therefore to some extent represents a means of applying pressure. It is apparent that the report produced derives from an obligation whose content will vary depending on the instrument (whether a convention or not) to which it relates. Insofar that the report will give a precise account of the laws, regulations and practices adopted and it is known that all this information will be closely examined by UNESCO, it is clear that States will tend to give the maximum possible effect to the recommendations concerned. Furthermore, dissemination of information is always useful through the comparison it allows between systems that might possibly be taken as models or that provide answers to questions that arise. Lastly, this procedure reveals any problems that States may encounter in implementing measures.

In order to ensure smooth operation of this procedure, UNESCO has set up subsidiary bodies responsible for examining the reports of Member States. Such is the role of the Committee on Conventions and Recommendations (CR) for the reports that are specifically entrusted to it by UNESCO's Executive Board.

The importance of national level action for giving effect to the conventions and recommendations needs no emphasis. Measures taken by Member States to implement the Convention contribute to providing equal educational opportunities for all and thus promote normative action. UNESCO has so far conducted six consultations with Member States on the implementation of the Convention, and the seventh consultation is in process. The sixth consultation focused on the basic education of four population groups, namely women and girls, persons belonging to minorities, refugees and indigenous people.³³ It revealed that the variety of educational laws and legislative texts adopted by Member States to prohibit discrimination in education is rooted in the historical, cultural, economic and political conditions specific to them. The normative action as a follow up to the Convention contributes to making education as the constitutional right irrespective of gender, ethnic, social, cultural, religious or linguistic affiliation or any other difference.

For the seventh consultation with Member States on the implementation of the Convention against Discrimination in Education and the right to education, EFA process provides overall conceptual framework. UNESCO's Medium-Term Strategy (2002-2007) stipulates that '[p]articular emphasis will be placed on ensuring that education becomes truly inclusive, in particular by effectively reaching the unreached – especially the poor, women and girls, rural populations, minorities, refugees and countries or populations victims of disasters and people with special needs'.³⁴ Concerns such as these deserve to be fully borne in mind while monitoring the implementation of the right to education. The importance of 'educating the poor, the excluded and the disadvantaged' – the rural poor but also children and youth in teeming urban slums must receive special consideration, with '*unequivocal commitment*' to ensuring their access to education.

³² This article carries obligation for the States parties to the Convention to submit periodic reports to 'give information on the legislative and administrative provisions which they have adopted and other action which they have taken for the application of this Convention, including that taken for the formulation and the development of the national policy defined in Article 4 as well as the results achieved and the obstacles encountered in the application of that policy'.

³³ Examination of the reports and responses received in the sixth consultation of Member States on the implementation of the Convention and Recommendation against Discrimination in Education, 156 EX/21, (paras 9-16), 17 March 1999, UNESCO, Paris and Sixth consultation of Member States on the implementation of the Convention and Recommendation against Discrimination in Education, 30 C/29, 24 September 1999, UNESCO, Paris.

³⁴ UNESCO's Medium-Term Strategy 2002-2007, (31 C/4, para. 62), UNESCO, Paris.

Monitoring the implementation of other instruments of UNESCO in Member States contributes to achieving the Dakar goals. Thus, as regards the implementation measures for the Hamburg Declaration on Adult Learning, the Agenda for the Future sets out commitment to develop adult learning, as well as a series of commitments on important themes such as ‘ensuring universal right to literacy and basic education’. The Follow-up Strategy in the Declaration stipulates that the learning needs of all young people and adults must be met through equitable access to appropriate learning and life skills programmes. It hardly needs to be emphasized that the concept of *lifelong learning* and *education throughout life* impart a new perspective for educational opportunities and for EFA. Similarly, the follow-up measures to the World Declaration on Higher Education for the Twenty-first Century³⁵ covers a range of activities. The Priority Action at National Level, provided for in the Declaration, underlines the responsibilities of the ‘States, including governments, parliaments and other decision-makers’ to ‘establish, where appropriate, the legislative, political and financial framework for the reform and further development of higher education’ so that it shall be ‘accessible to all on the basis of merit’ without any discrimination.

In this respect, it may be noted that as regards the application of the 1966 Recommendation concerning the Status of Teachers, the report of the Joint ILO/UNESCO Committee of Experts was examined by CR examined in April 2004. Besides, it is noteworthy that the United Nations Literacy Decade will be a major contribution to EFA in as much as it will serve as a stimulus to literacy action and an opportunity to raise awareness about the literacy challenge around the world while promoting action aimed at achieving literacy within the framework of EFA. UNESCO has the coordinating role for the monitoring and evaluating of the Decade and for the implementation of the Plan of Action. Normative action undertaken by UNESCO for education – both formal and non-formal – is thus highly significant as regards cooperation with the United Nations. In its drive for EFA, the New Literacy Initiative for the Excluded (LIFE) is of crucial significance, even as special attention has to be paid to quality and standards in higher education.

Questions relating to monitoring the implementation of UNESCO’s instruments more effectively have been discussed by CR. Proposals and procedures applicable to the examination of questions relating to the implementation of UNESCO’s standard-setting instruments,³⁶ which CR discussed recently, will no doubt provide more effective ways of monitoring, as the process of monitoring needs to be revitalized and strengthened. This is also a major concern of the United Nations system.

(b) UNESCO’s Collaboration with the United Nations system for the realization of the Right to Education

In the constellation of the United Nations system, UNESCO has a principal role and responsibility in the field of the right to education. The right to education is given high importance by CESC, ³⁷ which as a treaty body monitors the implementation of the International Covenant on Economic, Social and Cultural Rights. This also comprises the right to education in line with the State obligations contained in Articles 13 and 14 of the International Covenant. Every five years, each State party is obliged to submit a report to CESC which it considers in public session. The members of CESC have a ‘constructive dialogue’ with a view to helping the state better implement its legally binding obligations under the Covenant. At the end of this public process, CESC adopts ‘Concluding Observations’ about the State. These Concluding Observations acknowledge the obstacles the State is encountering e.g. the introduction of a structural adjustment programme. They identify CESC’s particular concerns e.g. low-levels of literacy or discrepancies between primary school enrolment rates for girls and boys. And they make recommendations and suggestions.

The importance given to normative action for basic education for all can be witnessed in a number of initiatives being taken as part of UNESCO’s collaboration with the UN system for promoting the right to education. The questions relating to EFA and equal educational opportunities figure prominently in UNESCO’s cooperation with the UN Office of the High Commissioner for Human Rights and especially with CESC. Ensuring complementarity in monitoring the implementation of the right to education in Member States is a matter of primary concern. As a result of UNESCO’s active participation in the work of CESC, prominence is given to the right to basic education for all in the dialogue CESC maintains with the States Parties to the International

³⁵ The Declaration was adopted by the World Conference on Higher Education: Vision and Action (September 1998) and contains a Framework for Priority Action for Change and Development in Higher Education.

³⁶ 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, 164 EX/23, UNESCO, Paris.

³⁷ The *General Comment No. 13 on the right to education* (Article 13 of the Covenant), (o.c.) lays emphasis on how the States are duty bound to implement the provisions enshrined in the International Covenant (Art. 13) and refers to the basic education for all.

Covenant, while examining reports presented by them on the progress realized in the implementation of the International Covenant.

Advocacy for normative action is a characteristic feature of UNESCO's action for EFA. Cooperation with the United Nations bears evidence to this. As a result of the Meeting on the Right to Education and the Follow up to the World Education Forum, organized jointly by CESCR and UNESCO in May 2002, certain areas for action were stipulated: there should be non-discrimination and equal treatment; second, education must be accessible to all, especially the most vulnerable groups; third, temporary special measures were needed to bring about *de facto* equality for men and women and for disadvantaged groups; fourth, immediate measures should be taken to provide free and compulsory primary education for all; and, fifth, basic education should be provided for all.

UNESCO's collaboration with CESCR focuses on linking more closely the Dakar Framework for Action with the international instruments relating to the right to education, especially the provisions of Articles 13 and 14 of the International Covenant.³⁸ It enables to give further *momentum* to the pursuit of the key objective, namely that every one has access to basic education as a fundamental human right. It underlines the importance of how the State obligations relating to the right to education under the International Covenant as well as under the Dakar Framework for Action are reflected in national legal system and how the constitutional and legislative bases of the right to education can be reinforced.

(c) Implementation of the Right to Education: Priority Considerations for EFA

For universalizing access to education, it is indispensable to ensure effective implementation of the right to education as an internationally recognized right. As mentioned above, the Convention against Discrimination in Education is a key pillar in the context of EFA process. In monitoring the implementation of UNESCO's instruments in the field of education, EFA is receiving predominant consideration. It is being brought to the center stage in the implementing process. Action is being oriented in that direction as a result of a new approach which should characterize the monitoring of the implementation of UNESCO's instruments in Member States.³⁹ Pursuant to the debate leading to the decision taken by UNESCO's Executive Board at its 165th session in November 2002, the implementation of UNESCO's conventions and recommendations in the field of education should be related to EFA as UNESCO's priority, 'with particular emphasis being given to the right to education, a right integral to UNESCO's institutional mission'. This decision also underlines the importance of creating greater awareness among Member States to respect their legal obligations under UNESCO's Constitution and express concern for improving the monitoring mechanisms. As a result, implementing the Conventions and the Recommendations in the field of the education would impart strength to basic education for all as UNESCO's priority.

Rationalizing reporting mechanisms and reducing state burden have been major concerns of CESCR and UNESCO. Main thrust of the collaboration has been to develop practical approaches for complementarity in monitoring the implementation of the right to education in all its dimensions. It was with this objective that the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education⁴⁰ was established by UNESCO's Executive Board in October 2001. India played a pioneering role in the creation of this Joint Expert Group.⁴¹ The Joint Expert Group is entrusted with the mandate to:

- (a) formulate practical suggestions for strengthening the growing collaboration between UNESCO (CR) and ECOSOC (CESCR) for the purpose of monitoring and promoting the right to education in all its dimensions;
- (b) suggest specific measures for cooperative action by the two bodies with a view to imparting synergy to the follow-up to the Dakar Framework for Action within the United Nations system;
- (c) consider the possibilities for reducing the reporting burden on States in relation to the right to education and identify ways in which arrangements could be both streamlined and made more effective;
- (d) advise on right to education indicators.⁴²

³⁸ This was brought into focus during the Day of Discussion on the Right to Education and the Follow up to the World Education Forum, organized by CESCR, in co-operation with UNESCO in May 2002 during the 28th session of CESCR, Geneva..

³⁹ Decision 6.2 taken by the Executive Board at its 165th session in November 2002 (165 EX/Decision 6.2), UNESCO, Paris.

⁴⁰ The Joint Expert Group was established by Decision 5.4 adopted by UNESCO's Executive Board at its 162nd session in October 2001 (162 EX/Decision 5.4) UNESCO, Paris

⁴¹ Statement by India's representative to UNESCO's Executive Board during its 166th session in April 2003 – summary records of the Executive Board, 166 EX/SR. 1-II, Paris 11 July 2003.

⁴² Report by the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education (167 EX/CR. 2, Paris, 21 August 2003), UNESCO, Paris.

In monitoring the right to education in all its dimensions, the Joint Expert Group⁴³ has recognized the importance of developing practical approaches for building complementarity in the work of CESCR and of UNESCO. A major concern in this collaborative endeavour is to reduce state burden in reporting. It also seeks to impart synergy to the EFA process in the United Nations system. EFA is a predominant concern in the work of the Joint Expert Group.

VI. International Legal Obligations and the Foundations of the Right to Education in National Legal Systems

Providing the right to education is an obligation of governments and requires that they translate their international commitments into legislation against which their citizens have legal recourse. Without legislation it is difficult to monitor and enforce obligations, so mobilizing governments to develop and modernize national legislation is a critical element of implementing the Dakar Framework for Action.⁴⁴ UNESCO, therefore, emphasizes the importance of the constitutional and legislative foundations of the right to education. The Organization has recently initiated activities aimed at providing advisory services to Member States in the process of constitutional reforms as well as modernizing/developing national legislation in the field of education, especially the right to education. While providing such assistance, foremost importance is given to principles and norms embodied in international instruments elaborated by UNESCO and the United Nations in the field of the right to education. UNESCO thus makes available its expertise with a view to giving prominence to State obligations and Government commitments for the realisation of the right to education for all. Such technical assistance enables further to link the international legal obligations under existing instruments with the national education policies and development process. Review of normative action in areas such as provision for free, compulsory primary education, the status and training of teachers; institutional responses to lifelong learning; gender equity, equal opportunity in education for all, inclusive education as also access to education by children in emergencies and difficult situations, etc. is crucial in a spirit to ensure that they are in conformity with the international legal obligations and political commitments of governments.

It is indeed essential that political and legal commitments undertaken at the World Education Forum are concretized into national level action. This makes it incumbent upon governments to take necessary legal and policy measures. The need for such action received priority consideration at the second meeting of the High-Level Group on Education for All (Abuja, Nigeria, November 2002). In the first Recommendation of the Communiqué issued at this meeting, the Ministers of Education state that '[a]s next steps we particularly recommend that: Governments in the South must ensure that free and compulsory primary education is a right reflected in national legislation and in practice. National strategies to achieve EFA goals must receive its necessary share of government budgets and benefit from all possible funding sources, including debt relief'.⁴⁵ Similar recommendations were made at the third meeting of the High Level Group on EFA organized in New Delhi (India) on 10-12 November 2003. The action agenda in the Communiqué issued after the meeting contains commitments by the Ministers who urge to give prominence, inter alia, to 'enacting national legislation to enforce children's right to free and compulsory quality education, prevent and progressively eliminate child labour, and prohibit early marriage'.

In order to advance and enrich this process, it must be supported by research and studies, especially as regards incorporating the State obligations on the right to education into national legal system and their enforcement. The Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education, mentioned above, has attached high importance to the foundations of the right to education in national legal system, in line with international legal obligations of Member States. The Joint Expert Group has suggested that it was important to:

- Create greater awareness about the need for and the importance of national laws on the right to education (seminars and meetings especially involving the lawmakers and the parliamentarians, etc.).
- Undertake detailed studies as regards the foundations of the right to education in national legal systems, including legislation on non-discrimination in and on accessibility to education and collaboration with the intellectual community.

⁴³ Report by the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education, 167 EX/CR. 2, Paris, 21 August 2003 and 167 EX/Decision 5.8.

⁴⁴ EFA Global Monitoring Report 2002, 'Education for All: Is the World on Track?', UNESCO Publishing 2002, p. 30.

⁴⁵ Para. 10 of the Communiqué of the second Meeting of the High Level Group on Education for All (EFA), Abuja, (Nigeria, 19-20 November 2002).

- Develop further UNESCO's pro-active role and technical assistance to Member States in response to emerging concerns for modernizing legislation and administrative processes, thus ensuring fulfilment of their State obligation.
- Expound legal questions and issues in universalising access to education, especially universal, free, and primary education.⁴⁶

In order to advance the right to education, raising public debate is necessary for more effective implementation of existing instruments and for creating greater policy awareness of the importance of constitutional/legal bases of the right to education as a fundamental human right. Fulfilling international legal obligations is a determinant factor in achieving the right to education. Its effective enforcement is dependant upon how the State obligations under existing instruments are incorporated into the national legal system.

⁴⁶ Report by the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education (167 EX/CR. 2, Paris, 21 August 2003), UNESCO, Paris.