

Protocol Instituting a Conciliation and Good Offices Commission to be responsible for seeking a settlement of any disputes which may arise between States Parties to the Convention against Discrimination in Education

Adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 10 December 1962

Entry into force: 24 October 1968, in accordance with article 24

The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 9 November to 12 December 1962, at its twelfth session,

Having adopted, at its eleventh session, the Convention against Discrimination in Education,

Desirous of facilitating the implementation of that Convention, and

Considering that it is important, for this purpose, to institute a Conciliation and Good Offices Commission to be responsible for seeking the amicable settlement of any disputes which may arise between States Parties to the Convention, concerning its application or interpretation,

Adopts this Protocol on the tenth day of December 1962.

Article 1

There shall be established under the auspices of the United Nations Educational, Scientific and Cultural Organization a Conciliation and Good Offices Commission, hereinafter referred to as the Commission, to be responsible for seeking the amicable settlement of disputes between States Parties to the Convention against Discrimination in Education, hereinafter referred to as the Convention, concerning the application or interpretation of the Convention.

Article 2

1. The Commission shall consist of eleven members who shall be persons of high moral standing and acknowledged impartiality and shall be elected by the General Conference of the United Nations Educational, Scientific and Cultural Organization, hereinafter referred to as the General Conference.
2. The members of the Commission shall serve in their personal capacity.

Article 3

1. The members of the Commission shall be elected from a list of persons nominated for the purpose by the States Parties to this Protocol. Each State shall, after consulting its National Commission for UNESCO, nominate not more than four persons. These persons must be nationals of States Parties to this Protocol.

2. At least four months before the date of each election to the Commission, the Director-General of the United Nations Educational, Scientific and Cultural Organization, hereinafter referred to as the Director-General, shall invite the States Parties to the present Protocol to send within two months, their nominations of the persons referred to in paragraph 1 of this article. He shall prepare a list in alphabetical order of the persons thus nominated and shall submit it, at least one month before the election, to the Executive Board of the United Nations Educational, Scientific and Cultural Organization, hereinafter referred to as the Executive Board, and to the States Parties to the Convention. The Executive Board shall transmit the aforementioned list, with such suggestions as it may consider useful, to the General Conference, which shall carry out the election of members of the Commission in conformity with the procedure it normally follows in elections of two or more persons.

Article 4

1. The Commission may not include more than one national of the same State.

2. In the election of members of the Commission, the General Conference shall endeavour to include persons of recognized competence in the field of education and persons having judicial experience or legal experience particularly of an international character. It shall also give consideration to equitable geographical distribution of membership and to the representation of the different forms of civilization as well as of the principal legal systems.

Article 5

The members of the Commission shall be elected for a term of six years. They shall be eligible for re-election if renominated. The terms of four of the members elected at the first election shall, however, expire at the end of two years, and the terms of three other members at the end of four years. Immediately after the first election, the names of these members shall be chosen by lot by the President of the General Conference.

Article 6

1. In the event of the death or resignation of a member of the Commission, the Chairman shall immediately notify the Director-General, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

2. If, in the unanimous opinion of the other members, a member of the Commission has ceased to carry out his functions for any cause other than absence of a temporary character or is unable to continue the discharge of his duties, the Chairman of the Commission shall notify the Director-General and shall thereupon declare the seat of such member to be vacant.

3. The Director-General shall inform the Member States of the United Nations Educational, Scientific and Cultural Organization, and any States not members of the Organization which have become Parties to this Protocol under the provisions of article 23, of any vacancies which have occurred in accordance with paragraphs 1 and 2 of this article.

4. In each of the cases provided for by paragraphs 1 and 2 of this article, the General Conference shall arrange for the replacement of the member whose seat has fallen vacant for the unexpired portion of his term of office.

Article 7

Subject to the provisions of article 6, a member of the Commission shall remain in office until his successor takes up his duties.

Article 8

1. If the Commission does not include a member of the nationality of a State which is party to a dispute referred to it under the provisions of article 12 or article 13, that State, or if there is more than one, each of those States, may choose a person to sit on the Commission as a member ad hoc .

2. The States thus choosing a member ad hoc shall have regard to the qualities required of members of the Commission by virtue of article 2, paragraph 1, and article 4, paragraphs 1 and 2. Any member ad hoc thus chosen shall be of the nationality of the State which chooses him or of a State Party to the Protocol, and shall serve in a personal capacity.

3. Should there be several States Parties to the dispute having the same interest they shall, for the purpose of choosing members ad hoc , be reckoned as one party only. The manner in which this provision shall be applied shall be determined by the Rules of Procedure of the Commission referred to in article 11.

Article 9

Members of the Commission and members ad hoc chosen under the provisions of article 8 shall receive travel and per diem allowances in respect of the periods during which they are engaged on the work of the Commission from the resources of the United Nations Educational, Scientific and Cultural Organization on terms laid down by the Executive Board.

Article 10

The secretariat of the Commission shall be provided by the Director-General.

Article 11

1. The Commission shall elect its Chairman and Vice-Chairman for a period of two years. They may be re-elected.

2. The Commission shall establish its own Rules of Procedure, but these rules shall provide, inter alia , that:

(a) Two thirds of the members, including the members ad hoc , if any, shall constitute a quorum;

(b) Decisions of the Commission shall be made by a majority vote of the members and members ad hoc present; if the votes are equally divided, the Chairman shall have a casting vote;

(c) If a State refers a matter to the Commission under article 12 or article 13:

(i) Such State, the State complained against, and any State Party to this Protocol whose national is concerned in such matter may make submissions in writing to the Commission;

(ii) Such State and the State complained against shall have the right to be represented at the hearings of the matter and to make submissions orally.

3. The Commission, on the occasion when it first proposes to establish its Rules of Procedure, shall send them in draft form to the States then Parties to the Protocol who may communicate any observation and suggestion they may wish to make within three months. The Commission shall re-examine its Rules of Procedure if at any time so requested by any State Party to the Protocol.

Article 12

1. If a State Party to this Protocol considers that another State Party is not giving effect to a provision of the Convention, it may, by written communication, bring the matter to the attention of that State. Within three months after the receipt of the communication, the receiving State shall afford the complaining State an explanation or statement in writing concerning the matter, which should include, to the extent possible and pertinent, references to procedures and remedies taken, or pending, or available in the matter.

2. If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Commission, by notice given to the Director-General and to the other State.

3. The provisions of the preceding paragraphs shall not affect the rights of States Parties to have recourse, in accordance with general or special international agreements in force between them, to other procedures for settling disputes including that of referring disputes by mutual consent to the Permanent Court of Arbitration at The Hague.

Article 13

From the beginning of the sixth year after the entry into force of this Protocol, the Commission may also be made responsible for seeking the settlement of any dispute concerning the application or

interpretation of the Convention arising between States which are Parties to the Convention but are not, or are not all, Parties to this Protocol, if the said States agree to submit such dispute to the Commission. The conditions to be fulfilled by the said States in reaching agreement shall be laid down by the Commission's Rules of Procedure.

Article 14

The Commission shall deal with a matter referred to it under article 12 or article 13 of this Protocol only after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognized principles of international law.

Article 15

Except in cases where new elements have been submitted to it, the Commission shall not consider matters it has already dealt with.

Article 16

In any matter referred to it, the Commission may call upon the States concerned to supply any relevant information.

Article 17

1. Subject to the provisions of article 14, the Commission, after obtaining all the information it thinks necessary, shall ascertain the facts, and make available its good offices to the States concerned with a view to an amicable solution of the matter on the basis of respect for the Convention.

2. The Commission shall in every case, and in no event later than eighteen months after the date of receipt by the Director-General of the notice under article 12, paragraph 2, draw up a report in accordance with the provisions of paragraph 3 below which will be sent to the States concerned and then communicated to the Director-General for publication. When an advisory opinion is requested of the International Court of Justice, in accordance with article 18, the time-limit shall be extended appropriately.

3. If a solution within the terms of paragraph 1 of this article is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached. If such a solution is not reached, the Commission shall draw up a report on the facts and indicate the recommendations which it made with a view to conciliation. If the report does not represent in whole or in part the unanimous opinion of the members of the Commission, any member of the Commission shall be entitled to attach to it a separate opinion. The written and oral submissions made by the parties to the case in accordance with article 11, paragraph 2 (c), shall be attached to the report.

Article 18

The Commission may recommend to the Executive Board, or to the General Conference if the recommendation is made within two months before the opening of one of its sessions, that the International Court of Justice be requested to give an advisory opinion on any legal question connected with a matter laid before the Commission.

Article 19

The Commission shall submit to the General Conference at each of its regular sessions a report on its activities, which shall be transmitted to the General Conference by the Executive Board.

Article 20

1. The Director-General shall convene the first meeting of the Commission at the Headquarters of the United Nations Educational, Scientific and Cultural Organization within three months after its nomination by the General Conference.
2. Subsequent meetings of the Commission shall be convened when necessary by the Chairman of the Commission to whom, as well as to all other members of the Commission, the Director-General shall transmit all matters referred to the Commission in accordance with the provisions of this Protocol.
3. Notwithstanding paragraph 2 of this article, when at least one third of the members of the Commission consider that the Commission should examine a matter in accordance with the provisions of this Protocol, the Chairman shall on their so requiring convene a meeting of the Commission for that purpose.

Article 21

The present Protocol is drawn up in English, French, Russian and Spanish, all four texts being equally authentic.

Article 22

1. This Protocol shall be subject to ratification or acceptance by States Members of the United Nations Educational, Scientific and Cultural Organization which are Parties to the Convention.
2. The instruments of ratification or acceptance shall be deposited with the Director-General.

Article 23

1. This Protocol shall be open to accession by all States not Members of the United Nations Educational, Scientific and Cultural Organization which are Parties to the Convention.
2. Accession shall be effected by the deposit of an instrument of accession with the Director-General.

Article 24

This Protocol shall enter into force three months after the date of the deposit of the fifteenth instrument of ratification, acceptance or accession, but only with respect to those States which have deposited their respective instruments on or before that date. It shall enter into force with respect to any other State three months after the deposit of its instrument of ratification, acceptance or accession.

Article 25

Any State may, at the time of ratification, acceptance or accession or at any subsequent date, declare, by notification to the Director-General, that it agrees, with respect to any other State assuming the same obligation, to refer to the International Court of Justice, after the drafting of the report provided for in article 17, paragraph 3, any dispute covered by this Protocol on which no amicable solution has been reached in accordance with article 17, paragraph 1.

Article 26

1. Each State Party to this Protocol may denounce it.
2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General.
3. Denunciation of the Convention shall automatically entail denunciation of this Protocol.
4. The denunciation shall take effect twelve months after the receipt of the instrument of denunciation. The State denouncing the Protocol shall, however, remain bound by its provisions in respect of any

cases concerning it which have been referred to the Commission before the end of the time-limit stipulated in this paragraph.

Article 27

The Director-General shall inform the States Members of the United Nations Educational, Scientific and Cultural Organization, the States not Members of the organization which are referred to in article 23, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance and accession provided for in articles 22 and 23, and of the notifications and denunciations provided for in articles 25 and 26 respectively.

Article 28

In conformity with Article 102 of the Charter of the United Nations, this Protocol shall be registered with the Secretariat of the United Nations at the request of the Director-General.

Done in Paris, this eighteenth day of December 1962, in two authentic copies bearing the signatures of the President of the twelfth session of the General Conference and of the Director-General of the United Nations Educational, Scientific and Cultural Organization, which shall be deposited in the archives of the United Nations Educational, Scientific and Cultural Organization, and certified true copies of which shall be delivered to all the States referred to in articles 12 and 13 of the Convention against Discrimination in Education as well as to the United Nations.

The foregoing is the authentic text of the Protocol duly adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization during its twelfth session, which was held in Paris and declared closed the twelfth day of December 1962.

In faith whereof we have appended our signatures this eighteenth day of December 1962.