CHAPTER FOUR

THE PROTECTION OF THE RIGHT TO EDUCATION BY INTERNATIONAL LEGAL INSTRUMENTS

1. General

Now that arguments in support of the social aspect of the right to education and economic, social and cultural rights have been advanced, it is proposed to provide an overview of the protection of the right to education by instruments of international law. For present purposes, the term “instrument” refers to both treaties, which, as international agreements, legally bind states parties thereto, and to soft-law documents, such as resolutions, declarations or standard rules adopted by international bodies, which, although not binding in a legal sense, often bind in a “political” sense. Instruments which protect the right to education have been adopted at the international and regional levels. At the international level, instruments have generally been prepared by the UN. At the regional level, instruments have notably been prepared in the European, American and African contexts. Instruments at the international level include those adopted by the Specialised Agencies of the UN, presently the United Nations Educational, Scientific and Cultural Organisation (UNESCO) and the International Labour Organisation (ILO). The relevant provisions of the legal instruments will be briefly introduced in this and the following two Chapters. The present Chapter deals with the protection of the right to education by international instruments, the next Chapter with its protection by regional instruments, and the Chapter thereafter with its protection by instruments of the UN Specialised Agencies. The space available, unfortunately, only allows for a treatment which examines the most significant aspects of the various provisions. A few words will also be said on which body supervises each particular instrument and which supervisory procedures are available. It will be indicated whether there exists a system of state reports, of interstate petitions or of individual petitions, or a combination of such systems. Reporting procedures obligate states parties to an international instrument to prepare reports in which they set out the progress achieved and the difficulties experienced in implementing the provisions of the instrument. The reports are then examined by a supervisory organ which evaluates the reports and comments on the degree of realisation of the rights
protected in the instrument in states parties. The same organ may be competent to receive and consider interstate or individual petitions. Interstate petition procedures entitle states parties to complain that another state party does not fulfil its obligations under the instrument. Individual petition procedures entitle individuals to complain that their rights under the instrument are violated by a state party.¹

2. Introduction²

Several legal instruments, adopted at the international level, contain provisions on the right to education. In the discussion below, the provisions on the right to education of the International Bill of Human Rights will be dealt with first. The International Bill of Human Rights consists of the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966 and the International Covenant on Economic, Social and Cultural Rights of 1966. Article 26 of the Universal Declaration of Human Rights recognises that everyone has a right to education. This constitutes the first ever recognition of a general right to education in an international instrument in explicit terms. Article 26 has subsequently been reaffirmed and made more detailed by articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights. Whereas article 13 generally recognises the right to education and lays down the general obligations of states parties in pursuing the realisation of the right to education, article 14 articulates specific state obligations with regard to primary education. Articles 13 and 14 are comprehensive provisions. In fact, they feature among the most elaborate rights provisions of the ICESCR. Articles 13 and 14 may be viewed as constituting a codification of the right to education in international law. Also the International Covenant
