



Summary of the third session of the OEWG to consider options regarding an OP to the ICESCR, February 6- 17, 2006, Geneva

International NGO Coalition for an Optional Protocol to the ICESCR

From February 6 to 17, 2006 the Open-ended working group (hereafter the OEWG) with a mandate to consider options regarding the elaboration of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR) met for the third time in the Palais des Nations in Geneva. The OEWG has been created by a resolution of the UN Commission on Human Rights in 2003. Its mandate has been renewed in 2004 for a period of two years. The 2006 session was therefore the last one under the current mandate to look at options.

The two first sessions of the OEWG have been dedicated to discuss different aspects of the protection and promotion of ESC Rights. Those discussions have not been very focused and included debates on various issues, notably on the justiciability of ESC rights and the modalities of a complaint mechanism. The second session of the OEWG asked the Chair of the OEWG (Mrs. Catarina de Albuquerque) to prepare a so-called “elements paper” addressing various issues related to ESC-Rights, the creation of an OP-ICESCR and the procedures it could entail.

(see http://www.ohchr.org/english/issues/escr/docs/report2006_wg2advedit.doc)

The elements paper served as basis for discussions during the third session of the OEWG, which were very focused and looked at issues such as the scope of rights to be subject to an OP-ICESCR, standing, admissibility criteria, international cooperation or interim measures (the programme of work of the OEWG can be seen at :

<http://www.ohchr.org/english/issues/escr/docs/progofwork2006.doc>).

When discussing the scope of rights under an OP-ICESCR, a large majority of states, including the African and Latin American (GRULAC) Groups and some Western states like Azerbaijan, Croatia, Finland, Portugal, Italy, Belgium, the Russian Federation and Spain, supported the so-called “comprehensive approach”. According to this approach, the procedures created under the Optional Protocol should cover all rights and all levels of States obligations (respect, protect and fulfil) enshrined in the ICESCR.

In relation to the question of who could bring a case under an OP-ICESCR, an overwhelming majority of States expressed themselves in favour of a broad standing, acknowledging the importance of including individuals, groups of individuals and organisations acting on their behalf (NGO, Trade Unions, etc...).

Regarding admissibility criteria, many States were in favour of not reinventing the wheel and of taking stock of admissibility criteria under other Optional Protocols to human rights treaties, such as the exhaustion of domestic remedies, the exclusion of ill-founded and anonymous complaints or the question of time limits.

The debate on the possibility to allow reservations was quite lively. NGOs and most of the supporters of the “comprehensive approach” argued that allowing reservations would result in introducing an “à la carte approach” from the backdoor. However, some States also saw

the possibility of introducing reservations as a way of getting universal ratification and in allowing more States to become party to an OP-ICESCR.

Two other issues were subject of intense discussions, i.e. the one of resource allocation and how the UN Committee on Economic, Social and Cultural Rights (CESCR) would deal with this question, as well as the one of international cooperation.

Indeed, major concerns were expressed by States that the decisions of the CESCR on specific cases could interfere with States' reserved domain within democratic systems, i.e. policy choices and resource allocation. NGOs and some delegations addressed these arguments by giving more clarity on the scope of decisions and role of the CESCR. Some States were in favour of having their margin of appreciation recognised by the CESCR and in the text of an OP-ICESCR, while some others proposed that the CESCR applies the standard of reasonableness.

Finally, concerning the issue of international cooperation, the GRULAC and African Group made strong interventions on the crucial role that this cooperation, as enshrined in the ICESCR (article 2.1), should play in the implementation of ESC Rights and of the CESCR decisions under an OP-ICESCR. The idea of a voluntary fund was promoted by the African group to support States in their efforts to guarantee ESC rights for all and to allow them to implement the CESCR decisions under an OP-ICESCR.

At this third session, a majority of States supported a renewal and change of the OEWG mandate to draft a comprehensive OP-ICESCR (which means allowing complaints by individuals, groups and /or their representatives for violations of any of the rights guaranteed in the ICESCR and concerning all levels of state obligations). Indeed, all Latin American and African countries, along Azerbaijan, Belgium, Croatia, Finland, Italy, Iran, Portugal, Slovenia, Timor Leste and Turkey were all in favour starting drafting an OP-ICESCR. Furthermore, broad support was also provided to base the drafting exercise on a draft text to be elaborated by the OEWG Chair.

The three sessions of the OEWG have allowed gaining momentum towards the elaboration of an OP-ICESCR and have highlighted that time has come to move towards drafting this instrument. In this respect, the need for an OP-ICESCR was officially identified for the first time in 1993 at the Vienna Conference on Human Rights. Since then, the process towards the adoption of an OP-ICESCR has been dormant or very slow. In 2003, the decision to create a working group has thus been seen as a revitalization by NGOs and has led to the creation of the international NGO Coalition for an OP-ICESCR (to learn more about the Coalition, the ESCR Protocol Now Campaign, our positions and to find useful information, please visit our web site : www.escrprotocolnow.org)

An OP-ICESCR, once adopted, will finally put an end to the unequal protection of ESC-Rights in comparison to civil and political rights. Indeed the International Covenant on Economic, Social and Cultural Rights is one of the last human rights treaties which do not have any procedures allowing for inquiries and complaints against violations of ESC-Rights.

To conclude, the broad political support which has been expressed by many states participating in this year OEWG is crucial at this moment of the UN Reform. Indeed, during the last and third session of this working group, a large majority of states have spoken out in favour of a renewal of the working group's mandate and an adjustment to the mandate so as to start negotiations on a draft OP-ICESCR. And, even if more years will pass by before we have the Optional Protocol adopted by states, the drafting mandate is a necessary and crucial step forward in the process. Unfortunately, the mandate's extension and change were planned for decision at this year's session of the Commission on Human Rights which will be dissolved in a few days. The Commission will be replaced by a New Human Rights Council (see the UN Resolution :

<http://daccessdds.un.org/doc/UNDOC/LTD/N06/245/90/PDF/N0624590.pdf?OpenElement>)

In this context, the strategy supported by the international NGO Coalition for an OP should be to focus advocacy efforts on the first session of the Human Rights Council (June 2006). There, the renewal and extension of the mandate of the UN working group on the Optional Protocol should be adopted as a matter of priority.

For detailed and individual positions of states, please refer to state positions Chart of the International NGO Coalition for an OP-ICESCR. (See the State Positions Chart at <http://www.escrprotocolnow.org/advocacywork.htm>)

For detailed positions of the NGO Coalition for an OP-ICESCR on the various issues that have been discussed during the third session of the OEWG, please refer to documents under UN Open-Ended Working Group to consider options for the elaboration of an OP-ICESCR-Third session (06-17 February 2006) at <http://www.escrprotocolnow.org/resources.htm>