



**Dialogue on**  
**Globalization**

**CONFERENCE REPORT**  
**FES GENEVA**

**5th Roundtable Meeting of the  
UN Committee on Economic, Social and Cultural Rights  
and the  
ILO Committee of Experts on the Application of Conventions and  
Recommendations**

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***Great Minds Think Alike – and sometimes great UN institutions work alike.***

This can be a positive and reinforcing feature of the international system, but also bears the dangers of duplication and unnecessary overlap in the issues tackled.

In the case of the UN Committee on Economic Social and Cultural Rights (CESCR) and the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), there are some similarities in the substantive issues that are addressed by the committees, but the method of work differs greatly. In their review of Member State's compliance with the Covenant and the Conventions respectively, both committees address social and labor issues - which provides a strong link to the core concerns of FES.

But while the CESCR reviews the country's performance versus the Convention article by article, makes recommendations of relatively wide scope and elaborates General Comments, the CEACR, in addition to receiving States' reports, rather deals with concrete cases and creates a basis of case law through its published observations. Therefore the work of the two committees is to a great extent mutually reinforcing, at least as long as they keep informed about each others work and reflect it in their own deliberations. To strengthen this positive feature of common goals and similar concerns, FES Geneva organizes an annual meeting between the two committees to discuss upcoming issues for the next year. The 5<sup>th</sup> such roundtable meeting addressed the issues of Freedom of Association and mechanisms for control and follow up of reactions to complaints and communications.

***Freedom of Association***

In the context of the two committees, freedom of association means the freedom to form, join, choose and organize trade and employer unions nationally and internationally and to bargain collectively. Their activity is covered by the Covenant and the Conventions and should stand above national law, which sometimes excludes parts of the population from the right to strike, thereby depriving them from their bargaining power. Against this background, the Chairperson of the CESCR, Mr. Texier, raised the questions on a definition of essential services (which might be excluded from services to be picketed) and the question whether states would have the right and the duty to ensure essential

services and how this could be done without strike-breaking.

Highlighting the very elaborate nature of the ILO mechanisms and Conventions, Ms. Layton, Chairperson of the CEACR, asked the ILO secretariat to give an overview of the ILO's possibilities to promote and protect labor rights. The nature of the CEACR as a "semi-complaints" mechanism which can be addressed by all three ILO constituents (governments, employers and workers) was stressed, along with its non-political composition, compared to the tri-partite composition of other committees like the Committee on Freedom of Association, which was established by an accord between the UN and the ILO to become the appropriate place to deal with all problems concerning labor rights.

Getting back to the right to strike, Ms. Bellace, Member of CEACR, mentioned that this right was, contrary to Freedom of Association, not contained in the ILO Charter. Yet, for the concept of collective bargaining to become meaningful, a right to strike would be inherent to the former concepts. In the work of the CEACR, the right to strike was first mentioned in 1959. She also mentioned that CEACR case law provided that everybody who is by national law allowed to work has to be allowed to join a union as well. Referring to the provision of essential services, an understanding on how far essential services would be defined would have to be reached between the employers and workers, in her view.

In the following discussion wider issues were raised, e.g. the question, whether trade unions should be allowed to interfere into national politics aside of bargaining wages, and the question whether the power of workers would not in today's world lie rather in inter-industry competition than in organizing, given that in various industrialized countries the degree of organization is very low and still declining. Statements by Members of both Committees went into the direction of political engagement – in the case of unions who should participate at the wider political debates and on an action-oriented approach of the Committees and the ILO to support unionization of the workforce. Returning to the introductory remarks about a definition of essential services, a suggestion was made to define them as those services, whose provision does not depend on payment by individuals – meaning that services, which can be cut off in case of non-payment, would not be considered as essential and therefore could be picketed.

### ***Synergies in Complaint and Control Mechanisms***

Introducing the second issue of the meeting, Ms. Karakurt, director of FES Geneva and moderator of the discussions, posed the open question how synergies in the work of the Committees could be reached, and whether the reporting by States to both Committees would result in problems of overlap or unclear responsibilities and competencies. In response, Members of both Committees and their secretariats laid out the existing forms of interaction: the CESCR draws from ILO cases in the elaboration of General Comments and consults ILO reports on the matters in question. At the same time it was reiterated that CESCR aimed more on principles while CEACR dealt with specific cases. Also, the ILO secretariat is preparing specific briefings for the sessions of all UN treaty monitoring committees. The question of including the findings of ILO reports in the upcoming Universal Periodic Review of the Human Rights Council was mentioned as a possibility of positive engagement as well.

A more specific issue of possible overlap in the future was presented by Mr. Riedel of CESCR: the Optional Protocol on the International Covenant on Economic Social and Cultural Rights (OP-ICESCR), which is currently under negotiation. Arguments in favor of this OP are the equal standing of economic social and

cultural and civil and political rights and the proven justiciability of ESC rights. An Optional Protocol to the Covenant would provide the options of individual or collective complaints in regard to the non-fulfillment of ESC rights. The advanced status of negotiations on the OP makes it possible that it would enter into force by the end of 2008. Some fear that with its establishment it might duplicate the work currently done by the CEACR. As similar issues could be brought before both mechanisms, the danger of "forum shopping" might become imminent. Claimants could choose the forum where their chances might be higher or even address both bodies at the same time, probably creating conflicting legislation.

To avoid this problem, the OP-ICESCR requests not only the exhaustion of national measures before taking up a case, but also requires that no other international body be ceased with it (unless there is unreasonable delay in processing the case). Yet, the OP will leave a certain margin of appreciation, which will leave it to the practice of the mechanism and to the secretariat's decision where cases will be taken up. This is especially important because it could be imagined that States would prefer to have the cases dealt with at the "state-owned" UN institution and not at the ILO, where they represent only one of three constituents. How well this danger of duplication will be avoided only practical experience in the future will tell.

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