

*Ben Saul / David Kinley / Jaqueline Mowbray (eds.): The International Covenant on Economic, Social and Cultural Rights – Commentary, Cases and Materials*, Oxford University Press, Oxford, 2014, 1360 pages, GBP 187,50, ISBN 978-0-19-964030-0

Economic, Social and Cultural Rights (ESCR) have for a long time not been taken as seriously in international human rights law as they deserve. In his foreword to the book on review here, Professor Philip Alston discusses the United Nation's guiding idea that ESCR belong to the same, indivisible human rights canon as civil and political rights and chronicles the development of ESCR, for a long time seen as the 'poor cousin' of civil and political rights.

Alston explains that this perceived status of ESCR is one of the reasons for the lack of scholarship on these rights. Others include the absence of jurisprudence on the International Covenant on Economic and Social Rights (ICESCR), due to the relatively late creation of the Committee on Economic and Social Rights (CESCR) and its confinement to monitoring activities and the issuance of statements on the covenant's articles. Several important works have examined the content of the International Covenant on Civil and Political Rights (ICCPR) in detail and explored its historical development and current application, as per abundant case law, whereas the literature on the ICESCR remains scarce.

However, things have started to pick up over the last few years, both in the realms of academia and practice, culminating in the adoption of the Optional Protocol to the ICESCR.

It entered into force in 2013 and established a review mechanism by which the CESCR can pronounce on individual and inter-state complaints and also begin an inquiry at its own volition concerning grave violations of the covenant. The publication of the book at hand, although it could not yet incorporate the Committee's responses to specific complaints, comes at the right moment, a time of growing awareness of the importance of ESCR within the wider human rights framework.

Ben Saul, David Kinley and Jaqueline Mowbray have produced the first comprehensive oeuvre on the scope and content of all rights enumerated in the ICESCR, incorporating a wealth of materials on its history and jurisprudence. This singularity is indeed one of the aspects that make this book stand out from the legal scholarship on human rights.

The authors' introduction provides a very brief but concise 11-page overview over the developments of the ICESCR since drafting of a single international covenant on human rights began in 1950, eventually culminating in the two major human rights covenants, the ICCPR and the ICESCR. It also lays out concept and methodology and highlights differences between the scholarly treatment of the ICCPR and the ICESCR, which are mostly due to the limited number of primary materials on the latter. A more detailed introduction could have served to acquaint those with no or few prior knowledge of international human rights law with the field of economic, social and cultural rights. However, the authors' purpose was not to create an introductory textbook. The considerable length and breadth of this

scholarly piece will place it firmly in the hands of academics and practitioners looking for detailed information on specific norms.

The authors have opted for an approach on the basis of an article by article analysis, which enables the reader looking for information on a specific norm to easily access its drafting history as well as the CESCR's relevant general comments and concluding observations, assessments of the periodic reports, which states regularly provide to the Committee.

Additionally, the commentary draws on several sources to elucidate the articles' normative content, including the views of other human rights treaty bodies and related mechanisms within the United Nations system, the jurisprudence of regional and domestic courts and treaties, as well soft law documents and standards developed by international organizations, all of which together concretize the obligations arising from the covenant's norms.

Although the article by article approach is kept up throughout the book, the structure includes a useful feat. Where the ambits of articles overlap, they are treated together.

This approach makes it extremely easy for the reader to grasp the connection between these articles and understand how they influence each other. For example, Article 1 on The Right of Peoples to Self-Determination and Article 25 on The Right to Freely Utilize Natural Resources are analyzed together in chapter 2. Chapter 7 deals with Articles 4, 5 and 24 under a single heading: Limitations on ICESCR Rights and 'No Prejudice' Clauses.

Article 25 protects the right of all peoples to enjoy and utilize fully and freely their natural wealth and resources. The article's wording mirrors that of Article 1 (2) on the disposition over natural wealth and resources as part of self-determination. The latter norm, however, is qualified, by a clause, which states the disposition over natural wealth is without prejudice to obligations under economic co-operation. In order to clarify the articles' dogmatic relation, the authors analyze both norms together, taking into consideration the drafting process of Article 25, which essentially pinned developing states, arguing for an absolute right of self-determination against developed states, who felt such an extensive interpretation would compromise Article 1's stance on expropriation of foreign property and compensation, drafted more than a decade earlier. The authors succinctly describe the historical background that has led to the current understanding of the interplay between both articles from all angles and highlight current challenges, such as the impact of the rising area of international investment law on these issues.

Chapter 7 on Article 4, 5 and 24, the two former dealing with limitations of the ICESCR rights, the latter clarifying that the Covenant does not prejudice the UN Charter or constitutions of the specialized agencies also groups several articles together where they treat similar issues.

However, in this chapter, the authors leave out Article 2(3) and Article 25 although they also include limitations on ICESCR rights. This structural flexibility is sensible, as Article 25 is more closely related to Article 1 (2) and Article 2 (3) on economic rights of non-nationals in developing states is analyzed within the overarching framework of Article 2.

The authors thus succeed in treating norms together where this fits the covenant's dogmatic background (such as Articles 1 and 25, artificially separated because drafted at different times) and enhances the reader's understanding but do not give in to the temptation of artificially splitting up articles (such as Article 2), which enhances the book's clarity.

My own research prompted me to immerse myself in Chapter 13 on the right to an adequate standard of living (Article 11) and parts of Chapter 2 on self-determination and natural resources (Articles 1 and 25) as well as Chapter 17 on cultural rights (Article 15). All of these chapters are representative of the methodological advantages of the authors' comprehensive approach.

For example, addressing the protection of indigenous peoples' rights, Chapter 2 first summarizes a selection of important concluding observations by the CESCR. The authors then compare these to the Human Rights Committee's practice concerning Article 1 IC-CPR.

Further, the chapter conveniently provides the most important norms from the International Labor Organization's Convention 169 on Indigenous and Tribal Peoples, referenced by the CESCR and explores implications of the more recent UN Declaration on Indigenous Peoples. Comparing these and other related instruments, the authors highlight the variety of approaches towards protecting indigenous rights, some under the right to self-determination and some by the right to culture (more closely discussed in Chapter 17). They also include references to views and statements of other human rights treaty bodies and regional tribunals, such as the Inter American Court of Human Rights, that have been instrumental in advancing the law on indigenous peoples. The reader thus finds a wealth of information on indigenous rights, including developments beyond the scope of the Covenant.

All in all, the book makes for an excellent compendium, guiding the reader through the various primary and secondary sources that play a role in shaping economic, social and cultural rights today. It will be an invaluable tool for practitioners active in this field, particularly those engaged in handling complaints under the new Optional Protocol procedure, academics looking to acquaint themselves with the state of the art of specific norms and topics as well as governmental and non-governmental organizations working on projects involving economic, social and cultural rights.

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