
On 'Indivisibility' of Human Rights

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Arambulo, Kitty, *Strengthening the Supervision of the International Covenant on Economic, Social and Cultural Rights. Theoretical and Procedural Aspects*. Antwerpen, Groningen, Oxford: Intersentia, Hart Publishers, 1999. Pp. 450, £51.

Toebe, Brigit C.A., *The Right to Health as a Human Right in International Law*, Antwerpen, Groningen, Oxford: Intersentia, Hart Publishers, 1999. Pp. 417, £47.

Merali, Isfahan, and Valeri Oosterveld (eds), *Giving Meaning to Economic, Social and Cultural Rights*. Philadelphia: University of Pennsylvania Press, 2001. Pp. 279, £31.50.

Skogly, Sigrun I., *The Human Rights Obligations of the World Bank and the International Monetary Fund*, London, Sydney: Cavendish Publishing Ltd, 2001. Pp. 225, £71.50.

The four books under review describe the shift in the conceptualization of international human rights towards a holistic rights framework, emphasizing the universality, interdependence, 'indivisibility' and justiciability of civil, political, economic, social and cultural human rights. All four books address the challenge for international law of responding more effectively to the globalization of human rights, including the right to a democratic exercise of government powers, by holding not only national but also international actors accountable for human rights obligations.

The volume by Kitty Arambulo, based on her doctoral dissertation, provides a brief introduction (Chapter I) and overview of the historical development of the protection of economic, social and cultural rights in the UN (Chapter II), and then goes on to convincingly criticize the arguments against the 'justiciability' of economic, social and cultural rights and against an individual complaint procedure for the International Covenant on Economic, Social and Cultural Rights (ICESCR, Chapter III). Based on a thorough documentation of relevant UN human rights practice (such as the 'General Comments' and 'Concluding Observations' of the UN Committee on ESCR), she reaffirms the interdependence and indivisibility of all human rights and

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demonstrates the justiciability of economic and social ‘core rights’ and ‘core obligations’ by using the right to food and the right to education as examples (Chapter IV). Chapter V describes the inadequacies of the supervisory mechanism of the ICESCR (which is based on consideration of country situations in the framework of the reporting procedure, sometimes even in the absence of a state report) and explains the need for an individual complaint procedure in the form of an Optional Protocol to the Covenant. Based on her comprehensive comparative analysis of other existing or proposed complaint procedures (both inter-state as well as individual complaint procedures) and inquiry procedures, the author elaborates another text of a draft Optional Protocol for a complaint procedure for individuals and groups which, together with earlier drafts (such as the 1994 and 1997 drafts prepared by the UN Committee on ESCR and the 1995 Utrecht draft Optional Protocol to the ICESCR), is reproduced in the Annexes to this excellent, thought-provoking study.

Brigit C. A. Toebes’ doctoral thesis contributes significantly to a conceptual clarification of the international human ‘right to health’ (relating notably to basic health services and underlying preconditions for health, such as access to safe water and sanitation, environmental and occupational health, health education and adequate nutrition). Chapters I and II provide a survey of the historical evolution of rights to health care and to protection from certain threats to health, and of their protection in various UN human rights instruments and other international treaties (such as the Constitution of the World Health Organization and regional human rights treaties). Chapter III discusses the implementation of the right to health through international reporting procedures. Chapter IV illustrates the justiciability of certain ‘core rights and obligations’ to respect, protect and fulfil rights to health on the basis of the still scant volume of case law of national and international (quasi-)judicial bodies. Chapter V clarifies the ‘core content’ and general limitation clauses (e.g. in Article 4 ICESCR) of the right to health, as well as overlaps between the right to health and other human rights (including the right to life, physical integrity and privacy, education and information, housing, food and work). Chapter VI defines the corresponding ‘core obligations’ of states to respect, protect and fulfil the right to health and illustrates these obligations by a number of possible violations. The final Chapter VII draws conclusions and recommends improvements in the implementation of the right to health. In Annex I, the author presents a draft proposal for a ‘General Comment on the Right to Health in Article 12 ICESCR’, which facilitated and influenced the elaboration of ‘General Comment No.14: The Right to the Highest Attainable Standard of Health’ adopted by the UN Committee on ESCR in May 2000.¹

The volume edited by Merali and Oosterveld takes as its starting-point the fact that, while the 1966 UN Covenants divided human rights into two distinct categories (civil and political rights, and economic, social and cultural rights) with distinct levels of justiciability and requirements for realization, the more recent UN Conventions on the Rights of the Child (CRC) and on Elimination of All Forms of Discrimination Against Women (CEDAW), as well as regional human rights treaties, aim at integrating civil,

¹ UN Doc. E/C.12/2000/4, CESCR, 4 July 2000.

political, economic, social and cultural rights within their realm of protection. The book examines how an integrated approach to the six major UN human rights treaties, and stronger institutional cooperation among the six treaty bodies, might produce a more meaningful analysis of individual economic, social and cultural rights, as well as of 'implied rights' and obligations (e.g., of non-state actors) not explicitly mentioned in specific treaty provisions but, as Craig Scott puts it, implied 'between rights'.

Chapter 1 by Craig Scott on 'Institutional Integration of the Core Human Rights Treaties' perceives human rights as an 'integrated bundle of fundamental interests' and argues for a 'radical breaking down of the normative boundaries among the categories framed by each of the human rights treaties', as well as for a complementary 'interactive reformation of the treaties' institutional orders in order to harness the benefits achievable through dialogue across diverse perspectives in the juridical construction of human rights knowledge' (at 7). The six human rights committees should 'consider their six treaties as interconnected parts of a single human rights "constitution" and thereby consider themselves as partner chambers within a consolidating supervisory institution' (at 8) so as to enhance the partial human rights perspectives of each treaty through dialogue with the other committees and 'normative synergy among the treaties' (at 11). The annual meetings and joint statements of the chairpersons of the six committees are commended as a welcome beginning of the institutional evolution of an integrated human rights treaty order (at 15). The state-centred UN human rights treaties should evolve into a 'global constitutional order' monitoring the human rights accountability of all governance regimes (at 37).

Chapter 2 by Chisanga Puta-Chekwe and Nora Flood makes additional recommendations for integrating, and increasing respect for, economic, social and cultural rights as basic rights. They rightly criticize the fact that 'the marginalization of economic, social and cultural rights has served to marginalize further the poorest, most vulnerable groups in society' (at 40). Moreover, the 'failure of the international community to elaborate the content of economic, social and cultural rights has perpetuated the notion that these rights are less essential to dignified personhood than civil or political rights' (at 43). State compliance with reporting obligations under the ICESCR remains relatively poor. The General Comments elaborated by the UN Committee on ESCR, and the integrated approach to human rights in the Universal Declaration on the Right to Development as well as in the CRC, are praised for reinforcing the fact that all human rights are equally essential to the protection of human dignity.

Chapters 3 to 7 illustrate the indivisibility of human rights — and notably the negative as well as positive duties; immediately or progressively realizable standards; obligations of conduct as well as obligations of result deriving from economic and social rights — by cross-cutting analyses of women's economic and social rights (Chapters 3 and 6); labour rights and human rights obligations of transnational corporations (Chapter 4); the role of human rights and of gender equity in market

reforms (Chapter 5); and the degree of consistency of Canada's new child support guidelines with Canada's international law obligations to children (Chapter 7).

The book concludes with case-studies on the protection and justiciability of economic, social and cultural rights through national ombudsmen and other national human rights institutions (Chapter 8); through invocation of human rights (e.g. to housing and education) by Palestinians in occupied Jerusalem and Israel (Chapter 9); and through conflicts between governments and indigenous inhabitants over the latter's claims to the lands and resources developed by transnational corporations (Chapter 10).

The various case-studies offer innovative new perspectives on the potential synergies between market reforms and human rights (notably liberty rights, property rights, non-discrimination rights and new 'globalization rights'), as well as on pervasive 'market failures' (for instance, as regards protection of women's rights and children's rights) which require legislative, administrative and judicial interventions so as reconcile market competition with moral and legal human rights imperatives (see Chapter 5 by Kerry Rittich). 'Indivisibility' of human rights implies not only a rejection of claims for a legal hierarchy of civil and political rights over economic and social rights. 'Indivisibility' also requires, as Dianne Otto argues, that we 'expose and contest hierarchies of a more profound order which results in the exclusion of certain rights from the universal register of human rights', such as 'the failure of the "neutral" (i.e. masculinist) human rights regime to adequately recognize and protect the rights of women' (at 54). Unfortunately, the 'structural indivisibility', in the sense of 'interconnections between the political, economic, environmental and security priorities of the international order and violations of human rights', Otto continues, 'has attracted even less political commitment than that mustered to the project of gender inclusivity' (at 54–55).

The human rights obligations of worldwide organizations, another neglected and controversial area of human rights law and accountability, is discussed in the book by Skogly. The author convincingly shows that the International Monetary Fund (IMF) and the World Bank — as international organizations with international legal personality whose member states are legally bound by treaty law and general international law to respect, protect and fulfil human rights — are required by general international law to respect the human rights obligations of their member states and the human rights of individuals affected by the operational activities of the IMF and the Bank. While the IMF does not use human rights language at all, the Bank has claimed to have 'always taken measures to ensure that human rights are fully respected in connection with the projects it supports' (at 40). Neither the Fund nor the Bank have as yet acknowledged or clarified their own human rights obligations, nor have they undertaken systematic human rights evaluations of their programmes. Even though Skogly admits that 'it is too early to claim that there is a universal right to a general development assistance' (at 59), she rightly criticizes the 'legal accountability deficiency' for holding the Fund and the Bank responsible in case of violations of human rights (such as the rights to food, housing, health care, education, non-discriminatory treatment and due process of law). In view of Article 103 of the

UN Charter, the human rights obligations under the UN Charter may be legally superior, in case of conflict, to obligations of debtor countries vis-à-vis the Fund and the Bank (cf. at 107). Even though the UN Covenants do not impose direct treaty obligations on the IMF and the Bank, the ICESCR envisages an active role for UN bodies in 'international assistance' to promote human rights.

Skogly's detailed analysis of the human rights obligations of the Fund and the Bank emphasizes the substantive and procedural obligations 'to respect human rights' in their operational activities, 'as it would not be feasible to argue that the two institutions will have an obligation to *promote* or to *fulfil* human rights as this is not mentioned in the institutions' statutes, and promotion of human rights will require a much more active human rights policy operation than the institutions have been set up to handle' (at 151). This conclusion, namely 'that the two institutions are under an obligation to respect human rights in their operations, but not to protect or to fulfil' (at 193), may be challenged as being too modest, especially in light of the universally agreed definition of 'development' in terms of fulfilment of human rights (for instance, in the UN Declarations on the Right to Development). Whatever the precise scope of the human rights obligations of worldwide organizations, 'the institutions themselves need to acknowledge these obligations', and 'redress possibilities must be made available' in order to make the human rights obligations operable (at 169).

A final note: indirect discrimination against women, and the need to fight for women's and children's rights, remain so obvious in many areas of economic and social rights that it may be no coincidence that all four books under review were written or edited by women. The alleged 'neutrality' of traditional human rights doctrines deserves many more academic challenges in order to transform the political commitment to the 'indivisibility' of human rights into legal, economic and social reality.