

The background of the book cover is a solid light blue. It is decorated with two horizontal bands of white silhouettes. The top band, located above the title, shows a variety of human figures in different poses, including standing, walking, and interacting. The bottom band, located below the editors' names, features more specific silhouettes of people in social or educational settings, such as a group of adults, children playing with a jump rope, and a person reading a book. The overall design is clean and modern, emphasizing human diversity and social interaction.

Economic, Social and Cultural Rights

A Textbook
Second Revised Edition

Edited by
Asbjørn Eide
Catarina Krause and
Allan Rosas

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A TEXTBOOK

SECOND REVISED EDITION

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The second and revised edition has been updated and revised, as well as supplemented with a number of new chapters. These include Chapter 4 on the domestic realization of economic and social rights, Chapter 24 on the UN Committee on Economic, Social and Cultural Rights, Chapters 26 and 27 on economic and social rights in the European Union as well as Chapter 32 on multinational enterprises and economic, social and cultural rights. Furthermore, a number of chapters have been written by new authors as the author of the chapter in the first edition was not in the position of updating the chapter. These chapters are Chapter 10 on the right to health, Chapter 17 on human rights and protection of the environment, Chapter 18 on women and Chapter 28 on international development finance institutions. Chapter 29 on indicators has not been updated for the second edition. Instead, it has been supplemented with a new chapter on the use of indicators in the practice of the Committee on Economic, Social and Cultural Rights (Chapter 30).

The style of the second revised edition owes a great deal to the persons who took part in the editorial work for the first edition. *Theresa Swinehart* (Washington, D.C.) took an active part in the planning and editing process in 1994/1995 and was responsible for the language and style of the first edition. *Paul W. Harrison* (Turku/Åbo) has checked the language and style of the new Chapters 10, 18, 27, 28 and 30. We thank him for his excellent work. The Institute for Human Rights at Åbo Akademi University and its staff have been instrumental in the editing process. We owe special thanks to *Raija Hanski* (Turku/Åbo) who has done a remarkable job in the technical editing of the book, including the subject index and the bibliography. Last but not least, we are indebted to all the authors to the individual chapters as well as our publisher, who once again demonstrated their willingness to cooperate.

Oslo, Turku/Åbo and Brussels

Asbjørn Eide

Catarina Krause

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ABBREVIATIONS

AAA	American Anthropological Association
ACHR	American Convention on Human Rights
ACP	African, Caribbean and Pacific States
AfCHPR	African Charter on Human and Peoples' Rights
BCLR	Butterworths Constitutional Law Reports
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCPR	International Covenant on Civil and Political Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CESCR	International Covenant on Economic, Social and Cultural Rights
CFSP	Common Foreign and Security Policy (European Union)
C.M.L.R.	Common Market Law Reports
CRC	Convention on the Rights of the Child
CSCE	Conference on Security and Cooperation in Europe
EC	European Communities (European Community)
ECE	United Nations Economic Commission for Europe
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)
ECOSOC	United Nations Economic and Social Council
ECPT	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ECR	European Court Reports
EEA	European Economic Area
EEC	European Economic Community
EIA	Environmental Impact Assessment
EMU	European Monetary Union
ESC	European Social Charter
ETS	European Treaty Series
EU	European Union
FAO	Food and Agriculture Organization
FIVIMS	Food Insecurity and Vulnerability Information and Mapping System
GATT	General Agreement on Tariffs and Trade

GSP	Generalised Scheme of Preferences (European Union)
Habitat	United Nations Centre for Human Settlement
HRC	Human Rights Committee
IAEA	International Atomic Energy Agency
IBRD	International Bank for Reconstruction and Development
I.C.J.	International Court of Justice
ICRC	International Committee of the Red Cross
ICSID	International Centre for Settlement of Investment Disputes
IDA	International Development Association
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
IFDA	International Foundation for Development Alternatives
ILA	International Law Association
I.L.M.	International Legal Materials
ILO	International Labour Organisation
IMF	International Monetary Fund
IWGIA	International Work Group for Indigenous Affairs
LNTS	League of Nations Treaty Series
MAI	Multilateral Agreement on Investment
MIGA	Multilateral Investment Guarantee Agency
MNE	multinational corporate enterprise
NGO	non-governmental organization
OAS	Organization of American States
OAU	Organization of African Unity
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
OECD	Organization for Economic Cooperation and Development
OIDEL	Organisation Internationale pour le Developpement de la Liberté d'Enseignement
OJ	Official Journal (of the European Communities)
OSCE	Organization for Security and Cooperation in Europe
P.C.I.J.	Permanent Court of International Justice
TEU	Treaty on European Union
TNC	transnational corporation
TNE	transnational corporate enterprise
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNDP	United Nations Development Programme
UNDRO	United Nations Disaster Relief Office
UNEP	United Nations Environment Programme

UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Fund for Population Activities
UNHCR	United Nations High Commissioner for Refugees
UNHRP	United Nations Housing Rights Programme
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
UNITA	National Union for the Total Independence of Angola
UNRISD	United Nations Research Institute for Social Development
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNTAC	United Nations Transitional Agency in Cambodia
UNTAD	United Nations Conference on Trade and Development
UNTS	United Nations Treaty Series
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

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I CONCEPTS AND PRINCIPLES

1. ECONOMIC, SOCIAL AND CULTURAL RIGHTS: A UNIVERSAL CHALLENGE

The adoption by the General Assembly of the Universal Declaration of Human Rights (UDHR) on 10 December 1948, constituted a major step forward in the advancement of civilization at the international and national levels. The Declaration comprises in one consolidated text nearly the entire range of what today are recognized as human rights and fundamental freedoms.

When the United Nations Commission on Human Rights had completed its work on the Declaration and started to draft conventions on human rights which would be legally binding on the states ratifying them, the Commission split on the question of whether there should be one or two covenants. The question was turned over to the General Assembly, which, in a resolution adopted in 1950, emphasized the interdependence of all categories of human rights and called upon the Commission to adopt a single convention.¹ The next year, however, the Western states were able to reverse the decision, asking the Commission to divide the rights contained in the UDHR into two separate international covenants, one on civil and political rights (CCPR) and the other on economic, social and cultural rights (CESCR).²

As a result, it has become common to consider the International Bill of Rights to consist of two distinct categories of human rights. In the years that have since gone by, civil and political rights have attracted much attention in theory and practice, while economic, social and cultural rights have often been neglected. This is regrettable, for a number of reasons; it is our hope that the present volume can help to somewhat remedy the situation. At the time when the General Assembly decided to make the distinction by adopting two different covenants, it also passed a resolution emphasizing that the different sets of human rights were interrelated and indivisible. This has been repeated ever since in United Nations fora, more

¹ General Assembly Resolution 421 (V) of 4 December 1950.

² General Assembly Resolution 543 (VI) of 5 February 1952. See on this question, *inter alia*, M. Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 1993, p. xx. The arguments for this controversial decision are examined by A. Eide, 'Economic, Social and Cultural Rights as Human Rights', Chapter 2 in this volume, at pp. 9–11.

recently at the World Conference on Human Rights in 1993, in which 171 states took part and which, in its Vienna Declaration and Programme of Action, states that 'all human rights are universal, indivisible and interdependent and interrelated'.³ The interrelation between the different sets of rights can also be documented in practice, but much more is needed to give substance to the affirmation of their indivisibility and interdependence so often repeated by the United Nations.

Economic, social and cultural rights have become part and parcel of international human rights law, not only at the universal but also at the regional level. They are contained in the European Social Charter, in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, and in the African Charter on Human and Peoples' Rights. In more recent global instruments, the two sets of rights have been re-integrated in one common text. The Convention on the Rights of the Child, adopted in 1989, is one example of an instrument where both sets of rights are found side by side.

It has been asserted that economic, social and cultural rights constitute a 'second generation' of human rights, the first generation being civil and political rights, and that later on a third generation of solidarity rights has been added, such as the right to self-determination and the right to development. This notion of three generations, which was first put forward by Karel Vasak in 1979, appeared quite suggestive and has been repeated by many.⁴ The editors of this volume, however, do not adhere to the notion of 'generations'. The history of the evolution of human rights at the national level does not make it possible to place the emergence of different human rights into clear-cut stages. Efforts to do so would in any case make it necessary to distinguish also between civil and political rights, since the political rights were accepted as human rights much later than some of the civil rights, in some countries even later than economic and social rights.⁵

The interrelationship between civil and political rights on the one hand, and economic, social and cultural rights on the other, is brought out in many of the contributions to this book. Trade union rights and property rights are often mentioned as rights which are difficult to classify according to the two-fold distinction. In the European system, the right to education and cultural rights are

³ World Conference on Human Rights: Vienna Declaration and Programme of Action, UN doc. A/CONF.157/23, Part I, para. 5.

⁴ It is also referred to by many authors in this volume. See, e.g., K. Drzewicki, 'The Right to Work and Rights in Work', Chapter 13; and M. Nowak, 'The Right to Education', Chapter 14.

⁵ See, e.g., A. Rosas, 'Democracy and Human Rights', in: A. Rosas and J. Helgesen (eds.), *Human Rights in a Changing East-West Perspective*, 1990, pp. 17–57; A. Rosas, 'Article 21', in: G. Alfredsson and A. Eide (eds.), *The Universal Declaration of Human Rights: A Common Standard of Achievement*, 1999, pp. 431–451.