

Contents

<i>Table of Cases</i>	xv
<i>Table of Treaties, Legislation, and Other Relevant Instruments</i>	xxiii
<i>List of Abbreviations</i>	xxvii
<i>List of Contributors</i>	xxxix

I. INTRODUCTION

1. The Development of Economic, Social, and Cultural Rights in International Law	3
<i>Eibe Riedel, Gilles Giacca, and Christophe Golay</i>	

II. CHALLENGES IN THE PROTECTION OF ESC RIGHTS IN TIMES OF CRISIS

2. The Sovereign Bond Markets and Socio-Economic Rights: Understanding the Challenge of Austerity	51
<i>Mary Dowell-Jones</i>	
3. Economic and Social Rights in the ‘Great Recession’: Towards a Human Rights-Centred Economic Policy in Times of Crisis	86
<i>Sally-Anne Way, Nicholas Lusiani, and Ignacio Saiz</i>	
4. Realizing Economic, Social, and Cultural Rights for All	111
<i>Sandra Ratjen and Manav Satija</i>	
5. Gender and Economic, Social, and Cultural Rights	134
<i>Christine Chinkin</i>	

III. INTERNATIONAL DIMENSION OF ESC RIGHTS OBLIGATIONS

6. The Nature and Meaning of ‘International Assistance and Cooperation’ under the International Covenant on Economic, Social and Cultural Rights	163
<i>Takhmina Karimova</i>	
7. Corporations and Economic, Social, and Cultural Rights	193
<i>Olivier De Schutter</i>	

IV. THE RELATIONSHIP BETWEEN ESC RIGHTS AND OTHER LEGAL REGIMES

8. Trade and Investment Agreements: What Role for Economic, Social, and Cultural Rights in International Economic Law?	227
<i>Hans Morten Haugen</i>	

9. Economic, Social, and Cultural Rights in the World Trade Organization: Legal Aspects and Practice <i>Holger P. Hestermeyer</i>	260
10. From the Other Shore: Economic, Social, and Cultural Rights from an International Environmental Law Perspective <i>Stéphanie Chuffart and Jorge E. Viñuales</i>	286
11. The Relationship between Economic, Social, and Cultural Rights and International Humanitarian Law <i>Gilles Giacca</i>	308
12. Economic, Social, and Cultural Rights: International Criminal Law's Blind Spot? <i>Larissa van den Herik</i>	343
V. CONCEPTS AND TOOLS TO MEASURE THE PROGRESSIVE REALIZATION OF ESC RIGHTS	
13. Budget Analysis and Economic and Social Rights <i>Aoife Nolan</i>	369
14. Human Rights Impact Assessments: Emerging Practice and Challenges <i>Simon Walker</i>	391
VI. TRENDS IN THE JUSTICIABILITY AND MONITORING OF ESC RIGHTS AT THE NATIONAL AND INTERNATIONAL LEVEL	
15. Judicial Review in National Courts: Recognition and Responsiveness <i>Malcolm Langford</i>	417
16. The Intersection of Economic, Social, and Cultural Rights and Civil and Political Rights <i>Ioana Cismas</i>	448
17. Building Bridges: National Human Rights Institutions and Economic, Social, and Cultural Rights <i>Allison Corkery and Duncan Wilson</i>	473
18. Transitional Justice Without Economic, Social, and Cultural Rights? <i>Frank Haldemann and Rachelle Kouassi</i>	498
<i>Index</i>	517

Detailed Contents

<i>Table of Cases</i>	xv
<i>Table of Treaties, Legislation, and Other Relevant Instruments</i>	xxiii
<i>List of Abbreviations</i>	xxvii
<i>List of Contributors</i>	xxxix

I. INTRODUCTION

1. The Development of Economic, Social, and Cultural Rights in International Law	3
<i>Eibe Riedel, Gilles Giacca, and Christophe Golay</i>	
1. Introduction	3
2. Historical Setting	5
3. The Practice of the Committee on Economic, Social and Cultural Rights	8
4. The Nature of Obligations under the ICESCR	12
5. Sources of ESC Rights other than Treaties	20
6. Using Indicators in Monitoring ESC Rights	23
7. International Adjudication of ESC Rights: the OP-ICESCR	28
8. Outline of the Book: Contemporary Issues and Challenges	35
9. Conclusion	48

II. CHALLENGES IN THE PROTECTION OF ESC RIGHTS IN TIMES OF CRISIS

2. The Sovereign Bond Markets and Socio-Economic Rights: Understanding the Challenge of Austerity	51
<i>Mary Dowell-Jones</i>	
1. Introduction	51
2. The Noticeable Absence of Human Rights in the Age of Austerity	52
3. The Challenges Facing Public Finances in the Advanced Economies	56
4. Austerity and the ICESCR	61
5. Austerity and Sustainable Human Rights	65
6. The Role of the Financial Sector in the Debt Crisis	68
7. Reconciling Rights and Austerity	80
8. Conclusion	84
3. Economic and Social Rights in the ‘Great Recession’: Towards a Human Rights-Centred Economic Policy in Times of Crisis	86
<i>Sally-Anne Way, Nicholas Lusiani, and Ignacio Saiz</i>	
1. Introduction	86

2. The Global Economic Crisis as an Economic and Social Rights Crisis	87
3. Human Rights Law as a Normative Framework to Guide Economic Policy in Times of Crisis	91
4. Operationalizing Human Rights Law in Economic Policy in Times of Crisis	98
5. Challenges to Implementing Human Rights in Economic Policy	102
6. Conclusion: The Elusive Promise of a Human Rights-Centred Economic Policy in Times of Crisis	110
4. Realizing Economic, Social, and Cultural Rights for All <i>Sandra Ratjen and Manav Satija</i>	111
1. Introduction	111
2. The Virtual Circle: Non-Discrimination, Equality, and the Advancement of Economic, Social, and Cultural Rights	113
3. Exercising Rights: Harmonizing the Individual and Collective Dimensions of ESC Rights	126
4. Conclusion: Drawing Some Lessons	131
5. Gender and Economic, Social, and Cultural Rights <i>Christine Chinkin</i>	134
1. Introduction: Human Rights, Sex, and Gender	134
2. Legal Framework	137
3. Equal Enjoyment of Economic, Social, and Cultural Rights	140
4. Temporary Special Measures	156
5. Implementation of Economic, Social, and Cultural Rights	157
6. Conclusion and the Way Forward	158

III. INTERNATIONAL DIMENSION OF ESC RIGHTS OBLIGATIONS

6. The Nature and Meaning of 'International Assistance and Cooperation' under the International Covenant on Economic, Social and Cultural Rights <i>Takhmina Karimova</i>	163
1. Introduction	163
2. Controversies concerning the Legal Status and Meaning of International Assistance and Cooperation	164
3. International Assistance and Cooperation: Towards a Minimalist or Maximalist Approach?	169
4. The Question of Cooperation for Development and the ICESCR	174
5. Subsequent Practice	177
6. Completing the Legal Picture with 'Any Relevant Rules of International Law'	184
7. Conclusion	192

7. Corporations and Economic, Social, and Cultural Rights <i>Olivier De Schutter</i>	193
1. Introduction	193
2. Does International Human Rights Law Apply to Corporate Actors?	195
3. May Positive Duties be Imposed upon Corporations with regard to Economic and Social Rights?	198
4. How to Define the Scope of Positive Duties Imposed on Corporations?	203
5. May Courts Enforce Economic and Social Rights Against Corporate Actors?	218
6. Conclusion	223
IV. THE RELATIONSHIP BETWEEN ESC RIGHTS AND OTHER LEGAL REGIMES	
8. Trade and Investment Agreements: What Role for Economic, Social, and Cultural Rights in International Economic Law? <i>Hans Morten Haugen</i>	227
1. Introduction	227
2. Human Rights and IEL	231
3. WTO, FTAs, and BITs: Are Human Rights Explicitly Recognized?	242
4. How Can Human Rights be Included in the Reasoning of an IEL Dispute Settlement Body?	248
5. Jurisprudence of Investment Tribunals	253
6. Conclusion	257
9. Economic, Social, and Cultural Rights in the World Trade Organization: Legal Aspects and Practice <i>Holger P. Hestermeyer</i>	260
1. Introduction	260
2. Analysing Human Rights Obligations of the WTO	263
3. The ICESCR in WTO Dispute Settlement	268
4. The ICESCR in the Discourse of Political Organs of the WTO	275
5. Conclusion	283
10. From the Other Shore: Economic, Social, and Cultural Rights from an International Environmental Law Perspective <i>Stéphanie Chuffart and Jorge E. Viñuales</i>	286
1. Introduction	286
2. International Environmental Law Broadens the Substantive Scope of ESC Rights	287

3. International Environmental Law Broadens the Way We Think about ESC Rights	291
4. International Environmental Law Broadens the Palette of Enforcement Mechanisms	295
5. Conclusion	307
11. The Relationship between Economic, Social, and Cultural Rights and International Humanitarian Law <i>Gilles Giacca</i>	308
1. Introduction	308
2. ESC Rights Embodied in IHL Rules	312
3. The General Articulation of the Relationship between ESC Rights and IHL	315
4. Relevance of ESC Rights in the Application of IHL	318
5. The Role of IHL in Interpreting ESC Rights' Obligations in Practice	320
6. Conclusion	341
12. Economic, Social, and Cultural Rights: International Criminal Law's Blind Spot? <i>Larissa van den Herik</i>	343
1. Introduction	343
2. The Kinship between International Criminal Law and Human Rights Law	344
3. Revisiting the Disconnect between International Criminal Law and ESC Rights	348
4. Criminalizing the Socio-Economic and Cultural Dimensions of Conflict	352
5. Conclusion	365
V. CONCEPTS AND TOOLS TO MEASURE THE PROGRESSIVE REALIZATION OF ESC RIGHTS	
13. Budget Analysis and Economic and Social Rights <i>Aoife Nolan</i>	369
1. Introduction	369
2. ESR-Based Budget Analysis: A Term with Multiple Definitions	372
3. The Challenges with Budget Analysis	373
4. Conclusion: Budget Analysis After the Economic Crisis	388
14. Human Rights Impact Assessments: Emerging Practice and Challenges <i>Simon Walker</i>	391
1. Introduction	391
2. Human Rights Impact Assessment	391

3. Some Contemporary Issues in Human Rights Impact Assessment	406
4. Conclusion	413
 VI. TRENDS IN THE JUSTICIABILITY AND MONITORING OF ESC RIGHTS AT THE NATIONAL AND INTERNATIONAL LEVEL 	
15. Judicial Review in National Courts: Recognition and Responsiveness <i>Malcolm Langford</i>	417
1. Introduction	417
2. Recognition	420
3. Responsiveness	426
4. Conclusion	447
16. The Intersection of Economic, Social, and Cultural Rights and Civil and Political Rights <i>Ioana Cismas</i>	448
1. Introduction	448
2. On Intersection	449
3. The History of a Separation Wall	452
4. Intersection in Practice	461
5. Conclusion	472
17. Building Bridges: National Human Rights Institutions and Economic, Social, and Cultural Rights <i>Allison Corkery and Duncan Wilson</i>	473
1. Introduction	473
2. The Institutional Significance of National Institutions	476
3. The Promotion and Protection Functions of National Institutions	479
4. Effectiveness of NHRIs	488
5. Responding to Current Contexts	491
6. Conclusion	496
18. Transitional Justice Without Economic, Social, and Cultural Rights? <i>Frank Haldemann and Rachelle Kouassi</i>	498
1. Introduction	498
2. Framing the Debate	500
3. Unpacking the ESC Rights Thesis	502
4. Debating the ESC Rights Thesis	508
5. Conclusion: The Case for Legal Humility	514
 <i>Index</i>	 517