DOI: 10.51634/2307-5201_2024_4_23
УДК 341.231.14
ГРНТИ 10.09.91

INTERNATIONAL HUMAN RIGHTS: DIVISIBLE OR INDIVISIBLE?[1]

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The *relevance* of the study stems from the ongoing debate around the justifiability of the existence of two separate covenants in international human rights law: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The *subject* of the article is the question of the divisibility or indivisibility of international human rights. The *purpose* of the paper is to analyse the reasons for the creation of two separate covenants and whether international human rights are divisible or indivisible. In addition, the study aims to examine how the formation of the two-covenant system affected state practice and international human rights obligations. The *novelty* of the research lies in the fact that it provides a new look at the reasons, justification and some practical consequences of the existence of the two-covenant system. The paper contributes to the understanding of the relationship between civil and political rights and economic and social rights in light of contemporary challenges in the field of human rights and globalisation.

Keywords: human rights, ICCPR, ICESCR, Cold War, civil and political rights, economic and social rights, free-market economy, indivisibility of rights.

Introduction

More than seventy years ago, the UN General Assembly (GA) adopted the Universal Declaration of Human Rights (1948) (UDHR). Despite the high level of aspirations during its acceptance and the fact that its text emphasises the importance of political, civil, economic, social and cultural rights altogether, due to various factors, the most important of which will be described below, later, in 1966, the world became witness to adoption by the GA for signature by states of two different covenants – the ICCPR and the ICESCR.

As it is known, the origin of CP rights are the basic rights doctrines protecting life, integrity, liberty and freedom of expression [4, p. 350]. That said, some of the rights enlisted in the ICCPR, such as the right to life and freedom, are based on the rich heritage of Western law philosophy and the painful experiences of humanity (such as World War II). Maybe because of that, the content of ICCPR met explicit support from the GA members and states that signed it.

However, this was not the case with the ICESCR. When it came to the preparation of the covenant, which would fix as binding the rights to work, strike, social security, an adequate standard for living, education, physical and mental health, and some others enlisted in the UDHR, the support from the international community was not so broad, there was even resistance. Economic and social rights were more acceptable to non-Western (Communist) states, whereas Western states generally recognised them for their citizens [20, p. 365]. Nevertheless, the main opposition to conferring the binding force to ESC was from Western governments, especially the United States.

The main reasons why we have a two-covenant system are an ideological confrontation between the Western and Communist states, the different approaches of the West (neoliberal economy) and the USSR (planned economy) to the realisation of ES rights in their societies, the influence of the global political economy and globalisation, and finally, a dispute that arose about the justiciability of ES rights. Several discourses are involved in a debate about the divisibility or indivisibility of human rights: the evolutional, priority level, dependence on available resources, free-market economy, negative and positive rights, vague parameters, and states' experience.

Despite some disadvantages articulated in undermining the value of the UDHR, misunderstandings between human treaty bodies, and monitoring difficulties, adopting the formal separation of human rights was a compromise with some practical benefits: acceptance by the international community of all human rights as a binding; facilitating the development of customary international human rights law; providing establishment and productive activities of human rights treaty bodies; igniting further scrutiny about essence, the implementation problem and other disputes in human rights discourse.

Basic Provisions

Materials and Methods

This work adopts a mainly doctrinal method of analysing the legal, ideological, and historical reasons for branching human rights in the ICCPR and the ICESCR. The primary data come from the main international legal acts, namely, the UDHR, ICCPR, and ICESCR, and their General Comments, as well as other international soft law, such as the Maastricht Guidelines and the Limburg Principles. Other sources of information are academic literature, comments, and case-law analyses at the national and international levels. Historical contextualisation helped frame how ideological and economic contingencies such as the Cold War and neoliberal globalisation conspired to create the divide.

Results

I. The emergence of the two-covenant system: some aspects

After adopting the UDHR, the objective was to incorporate the rights mentioned in the UDHR into an international treaty [46, p. 20]. During the Cold War, for Western states, CP rights were more important, while for socialist and developing states, ES rights were of primary concern [39, p. 49].

Nonetheless, the necessity of different treatment of CP and ES rights in terms of criticisms of their achievement and compulsion was understood by both developing and developed states [41, p. 134]. Moreover, it was acknowledged that the progressive achievement of ES rights would provide developing states some freedom in meeting their economic commitments. Still, there was also worry that developed states and international actors may use the same notion to warrant the provision of 'stilted or restricted (or no) assistance' to developing countries, thereby halting the realisation of ES rights protection in those states [41, pp. 153-154]. Nevertheless, eventually, a two-covenant system was adopted. There might be several reasons for this.

Firstly, if there was no support from communist countries could be that the ICESCR would not exist, and we would have only the ICCPR. Concerning the essence of human rights, there were two dominant ideologies – the Western and the Soviet's notion [18, p. 944]. For the Western states with a free-market economy, the primary importance was CP rights. However, the free social welfare system of the USSR, embodying many ES rights, resulted from its political ideology, state organisation [4, p. 414], and planned economy. For example, due to the ideology of communism, many ES rights, such as the right to education, shelter, healthcare, work, and leisure time contained in the ICESCR, were enlisted in the Soviet Constitution in 1936.

Thus, even though economic and social rights were never in the USSR 'meant to be granted,' the ICESCR was passed by the United Nations (UN) in 1966 with the backing of the USSR and Third World non-aligned movement [14]. Therefore, one of the reasons why we have a two-covenant system today is, among others, the result of ideological differences.

Secondly, there was dominance among the Western states of the conception of neoliberalism or a free-market economy. At the same time, the fact that the West did not support much in the 1960s the adoption of a legally binding treaty on some of ES rights does not mean that all the Western states did

not protect them in their legal systems. However, the doctrine of fulfilling ES rights in those states differs significantly from the USSR's experience [4, p. 414]. For example, the right to work and adequate living standards are conditioned on the forces of a free-market economy, which are based on private enterprise, non-interference of the state, and the support of the business. It is supposed that a well-working free-market economy would provide enough workplaces and material resources for all [4, p. 414] without interfering with the state.

Still, it was not for nothing that Western states in the 1960s feared the binding force of the ICESCR. According to the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (2000): "The obligation to protect includes the state's responsibility to ensure that private entities or individuals, including transnational corporations over which they exercise jurisdiction, do not deprive individuals of their economic, social and cultural rights. States *are responsible* for violations of economic, social and cultural rights that result from their failure to exercise due diligence in controlling the behaviour of such non-State actors (emphasis added)" [45]. Furthermore, non-state actors 'to the extent that they effectively discharge economic and social rights in substitution for the state they have been viewed by some courts as legitimate duty-holders and have thus accepted the justiciability of claims brought against them' [4, p. 432]. Thus, current international law puts more and more pressure on states to make non-state actors (including private entities) provide ES rights.

Thirdly, the economic-related side of globalisation also had a significant influence on ES rights. Globalisation prevents the development of economic and social rights in Western countries while hindering their springing in developing states [37]. Globalisation is inclined to change state's domestic politicians with an 'unaccountable', 'economic policy-elite' with no 'instinct' to advocate economic and social rights [40, p. 87]. As a result, the contest amongst states to gain foreign investments has sometimes led to stress on labour rights [13, p. 586], which may also affect other ES rights and may be why states prefer an *infirm* 'duty to protect' ES rights [7]. Moreover, within the post-World War II global political economy, economic and social rights were 'decisively rejected' by some states because these rights must be realised through taxation [28, p. 238]. Hence, ES rights fit far from ideal with some features of economic globalisation, which might affect the emergence of the two-covenant system.

Fourthly, the disputes about justiciability. From the beginning, even when the text of the UDHR was under elaboration, the content was raised about the extent of the justiciability of ES rights. In Eleanor Roosevelt's opinion, ES rights could not be justiciable on the same account as CP rights, but she consented to include them in the UDHR [33, p. 213]. Afterwards, during the design of the international treaty on human rights, Western states argued that only CP rights were justiciable and that the 'dichotomy' of the fundamental difference between two sets of rights should be reflected in two distinct treaties [27, p. 162]. For instance, Christian Tomuschat notes, 'the rationale behind the decision to split the body of human rights law into two pieces was the realisation that the enforcement system could not be the same' [46, p. 20]. In addition, ES rights may be: impractical; seriously unclear; if implemented, they might sometimes do more harm than good; 'incompossible'; have uncertain or implausible theoretical justifications; having vague or unreasonable obligations; not universal human rights, rather desirable social goals or legal rights (in some societies) [20, p. 366].

Therefore, ideological clashes among global powers, the difference between the free-market economy and planned economy, the economic-related aspects of the international political economy and globalisation, and the disputes around justiciability may be the main reasons for the emergence of the two-covenant system.

II. Are human rights divisible or indivisible?

According to Article 22 of the UDHR: "Everyone, as a member of society, has the right to social security and is entitled to realisation, *through national effort* and international co-operation and in *accordance with the organisation and resources* of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality (emphasis added)."

Thus, by adding 'through national effort' and conditioning the realisation of ES rights to a state's resources, UDHR's authors might signal that ES rights are not the same as CP rights in terms of importance and achievable level of realisation. As Casla puts it, 'by creating two separate documents [ICCRP and

ICESCR], it was clear that the drafters wanted to introduce differences between these rights' [7]. In Joseph and Castan's opinion, 'despite the rhetoric of interdependence and indivisibility in the Covenants' preambles, there is no doubt that the ICCPR is the stronger of the two' [27, p. 162]. At the very least, the 'indivisibility of human rights is in dispute' [31, p. 74].

Are CP rights and ES rights different, or is the existence of two-covenant systems just the wish of politicians? The scrutiny revealed different discourses that may help to shape an answer: evolutional, priority level, dependence on available resources, free-market economy, negative and positive rights, vague parameters, and states' experience.

Evolutional discourse

As it is known, there is an approach that CP rights are the 'first' generation of rights, and ES rights are the 'second' generation. According to Vasak's classification, first-generation rights were enacted due to the French Revolution (freedom), and second-generation rights' development started after the Russian Revolution of 1917 (equality). [42, p. 4].

First-generation rights can be considered a solidifying achievement of the culmination of efforts to protect humans from the threat of potential tyranny of the state machine, and second-generation rights can be considered protection from industrial capitalism [42, p. 12]. Considering the evolutional approach, the very similar view is that human rights develop in a gradual evolutionary process: firstly, the appearance of civil rights as the protection from interference from the state; after, the emergence of political rights as a means of voting and shaping government; finally, the developing of ES rights as the 'insurance' against disease, infirmity and poverty [37, p. 29].

According to another opinion, the first generation of rights reflects the doctrine of a 'liberal' state, giving society freedom from interference and providing law and order. In contrast, the second generation urges the state to improve social justice [46, p. 21]. Thus, aforementioned historical aspects and an current struggle on the acknowledgement of so-called 'third-generation' rights support the evolutionary approach to the development of human rights.

However, as Alston notes, generational analysis cannot explain why the International Labour Organization (ILO) was established 19 years before the adoption of the UDHR (1948). For instance, by 1921, through ILO, several conventions had been adopted concerning industry work hours (No. 1 of 1919), unemployment (No. 2 of 1919), and the right of association in agriculture (No. 11 of 1921). Four years after the adoption of the UDHR, the ILO opened for signature The Social Security (Minimum Standards) Convention (1952), which protects against sickness, unemployment, old age, injury and disability [37, p. 24]. Only afterwards, the ICCPR and the ICESCR were adopted simultaneously in 1966 [2, p. 317].

Priority level discourse

There were 'significant differences between UN members on the relative importance' of CP rights versus ES rights [44, p. 25]. In the modern international human rights system, CP rights may possess 'undoubted predominance' over ES rights [27, p. 231]. For instance, although the UDHR contain both CP and ES rights, the attentive reader may notice that in the General Comments of the Committee on Economic, Social and Cultural Rights (CESCR) are more mentions about indivisibility and interdependence of all human rights than in the General Comments of Human Rights Committee (HRCtee). This may mean that the HRCtee does not need to emphasise the importance of CP rights, which may be evident for state parties, while the CESCR must constantly remind the state parties of the necessity of giving due attention to ES rights.

Another example of little attention to ES rights from states relates to the state's legislation. Usually, most of the severe sanctions of a state's criminal code include punishments for committing homicide, torture, and crimes against personal integrity – CP rights. Therefore, it is not surprising that there is 'little doubt' that the rights to life and prohibition of torture are more crucial than the rights to leisure and rest [5]. Additionally, the very existence of the jus cogens notion, which includes the forbidding of torture and cruel and inhuman treatment but includes no ES rights, is one more argument in favour of a belief that CP rights may have a higher level of priority for the international community, societies, and states than ES rights.

Interestingly it is that such formal separation may be why law enforcement institutions and the judiciary system have a 'lack of consciousness about ESC rights as rights' [48, p. 1242]. For example, due to 'generally low expectations of what was required,' the ICESCR may become a 'poor cousin' of the ICCPR as it happened in Australia [15, p. 192].

However, according to Amnesty International, all CP and ES rights are 'more or less fundamental'. Thus, they cannot be 'ranked in a hierarchy', as CP rights are 'meaningless' in a society where 'basic survival needs' are not provided [16]. The existence of human rights categories may correlate more to 'conceptual premises' than to real life. People can enjoy rights only if there is freedom from fear and freedom from want [5, p. 135]. For example, the CESCR often reiterates that the 'rights to adequate housing cannot be viewed in isolation from other human rights contained in the two International Covenants'[10] and '[the right to water] is a prerequisite for the realisation of other human rights'[12].

According to research carried out by Henry Shue, fundamental rights include some CP rights and some ES rights, such as the right not to be tortured, the right not to be assaulted, the right to food, the right to shelter, and the right to health care [43]. MacNaughton noted that economic inequality is closely connected with political inequality [32, pp. 289-290]. For example, despite the US having the official 'non-supportive' position during the elaboration and adoption of the set of ES rights, there was a good understanding of the importance of the interdependence of freedom and economic security by the 42nd US President. In his 1944 State of the Union Message, President Roosevelt stated: "We have come to a clear realisation of the fact that true individual freedom cannot exist without economic security and independence. 'Necessitous men are not freemen.' People who are hungry and out of a job are the stuff of which dictatorships are made" [3, p. 287].

In states' national legislations (for example, in criminal law) and in the *jus cogens*, greater attention is paid to CP rights than ES rights. However, the actions of international human rights agencies, human rights treaty bodies, some scholars, and even some politicians emphasise the equal importance of both categories of human rights.

Dependence on resources' availability

Both the UDHR and the ICESCR acknowledge the dependence of the ES rights on material resources. According to Article 2 of the ICESCR, each state party should use 'the maximum of its available resources' to provide the ES rights. According to the Office of the High Commissioner for Human Rights, ES rights sometimes require a *high level of financial and human investment* to fulfil their enjoyment [38]. At the same time, there is no mention of resources in provisions directly related to CP rights in the UDHR or the ICCPR.

The lack of available resources may be *an excuse* for the state's failure even in ensuring minimum core obligations related to ES rights if the state could demonstrate that it made 'every effort [] to use all resources that are at its disposition' [9]. In Limburg Principles, in para 70, the requirement bar of minimum core obligations was interpreted as a 'generally accepted international minimum standard', which the state should meet if it is 'within its powers to meet' [29].

Similarly, according to Para 41 of the General Comment 15 (The Rights to Water) and Para 17 of the General Comment 12 (The Rights to Adequate Food) of the CESCR, the answer to the question of whether the state complies with its obligations depends on not *de facto* ensuring the rights for water or food, but if the state made all possible actions trying to achieve it. Thus, the responsibilities of the state are 'directly tied to available resources' [24, p. 269].

As Freeman explains, a right may exist if there is a possibility of achieving the particular state of affairs that the right implies. Securing CP rights for states is possible, but many states are too poor to realise ES rights for all their people. Somalia is not comparable to Sweden [19, p. 79]. Thus, resource issues are often used as an excuse for 'inaction or retreat' on ES rights [17, p. 200].

In contrast, no excuses are accepted for failing to guarantee the CP rights. For example, the HRCtee 'has not generally accepted economic relativist' excuses [27, p. 237]. In Para 4 of the General Comment 21 (Humane Treatment of Persons Deprived of Their Liberty), the HRCtee has declared that the treatment of detainees concerning their human dignity 'cannot be dependent on the material resources available in the State party' [27, p. 238].

Nevertheless, ensuring CP rights may also demand material expenses. For instance, protecting people from harm by others or carrying out elections are 'quite costly' activities for states [34, p. 8]. To be ensured, civil rights presuppose the efficient existence of state organs, such as police and courts, which means significant budgetary spending. Both categories of rights require the state to engage in varying degrees of activity and resources [33, p. 242].

Free-market economy

Most current states have adopted a free-market economy concept, which limits the state's role in market regulation. This results in a free market where inequality of outcome is normal. Moreover, it is 'an essential driver of ambition and reward for success' [24, p. 277].

In contrast, the ICESR requires everyone to have an adequate standard of living and the highest attainable health and education using the maximum available resources. Thus, we can see some conflict between some ICESCR requirements and the pillars of the free-market economy concept.

Furthermore, the situation gets more complicated by financial globalisation, which also influences human rights. As the CESCR in General Comment 2 notes, 'the debt burden and of relevant adjustment measures' has an 'adverse impact' on ensuring ES rights in many countries [8].

However, debt burden and adjustment measures are one of the results not only of globalisation but also of the existing neoliberal global economic order. Even international financial organisations, whose main aim is to provide economic development and equality, cannot ignore the principles of a free market. For example, the International Monetary Fund's (IMF) economic 'reform' packages for populous Asian countries use devaluation and mass unemployment as principal instruments. The World Trade Organization's (WTO) mandate and sanctions (if used) have 'considerable [negative] actual and potential impacts' on health, environment and employment [17, p. 198]. Therefore, it is not surprising that the ILO notes that 'far from promoting equal enjoyment of rights, neoliberal globalisation has been associated with growing inequality between and within nations' [1].

As it is known, a free-market economy concept means the business is 'free' from state interference in promoting its self-interest (making money as much as possible) through a competitive process. According to the principles of a free-market economy concept, a state cannot directly interfere with market functioning. For instance, it cannot adopt compulsory legislation for private medical entities to provide essential medical services for all people.

In contrast, in a state with a socialist (planned) economy, it is much easier to make entities provide free services for all, as (1) in socialist states, there are no private companies, only state-controlled; (2) the material resources in socialist society are distributed only by the state. Therefore, it is much easier for the centrally planned communist states to promise to provide ES rights for the entire population. At the same time, the reality of a free-market economy makes it difficult for Western states to make private entities offer free services or interfere with free-market functioning.

Negative and positive rights

Another possible difference between human rights is the view that CP rights are negative and ES rights are positive rights [44, p. 25]. The point is that negative obligations (CP rights) mainly require only 'entrenchment in the legal order' of states, and they are enforceable and justifiable before the judiciary system [4, p. 413] as they mostly need from the state simply to non-interfere to the process of realisation. In contrast, many ES rights demand definite steps to fulfil them, which was also emphasised several times in the text of the ICESCR.

However, both categories of rights may require, obviously, non-interference or active actions. For instance, even property rights, which are classically considered as negative civil rights, need not only non-interference of a state but also state actions in legislative, judicial and administrative fora to provide protective measures; the right to shelter requires a negative obligation from the state not to demolish someone's house and under some circumstances, also means a positive obligation to ensure the right to housing [31, p. 69]. Moreover, in General Comment 31 (The Nature of the General Legal Obligation Imposed on States Parties to the Covenant), HRCtee notes that besides CP rights, Article 26 (right to be protected from discrimination) of ICCPR is applied to the right to work and housing [26].

Consequently, asserting that CP rights are purely negative and ES rights enlist only positive rights would be false. All human rights imply specific actions to be carried out by a state and its organs. It is impossible to ensure the protection of life by doing nothing or providing the right to water polluting the water sources.

Vague parameters

One reason that sows doubt about the indivisibility of human rights is that some ES rights, unlike CP rights, sometimes may be characterised by vagueness. In other words, they may not be practically 'convenient' as aims for realisation.

Explaining the resistance of the US to include economic and social rights to the Covenant, Eleanor Roosevelt stated that such rights were 'impractical and unachievable', 'specifying the nature of such rights was impossible', and that 'procedures used for receiving petitions' on CP rights could not be used for ES rights [28, p. 230]. Later, the Reagan and Bush administrations also believed that ES rights were not real rights but desirable social goals [16].

ES rights have been claimed to be more policy-oriented and set of 'aspirational goals, rather than immutable minimum standards' [41, p. 134]. The vagueness of parameters and, as a result, "lack of interpretation of States' obligations" are the main reasons the ICESCR guarantees remained 'normatively and jurisprudentially underdeveloped' compared to the contemporary CP rights [27, p. 162].

Furthermore, notwithstanding that both covenants possess binding force, assessing states' compliance with their obligations is not an easy task. Under the ICCPR, states should take immediate measures to fulfil their obligations. But, as it is known, the ICESCR obligations depend on the state's resources and generally envisage states making 'progressive steps' to fulfil their commitments, making it 'difficult to assess' the state's compliance [7]. The 'relative softness' of the requirements of the ICESCR expressed in the conditioning of the state parties' responsibility on the availability of resources and 'permission' of the ICESCR to fulfil ES rights in a 'progressive' manner – might be a reason for international and national 'nihilism' and underestimation in the relation of ES rights.

In contrast, there are no compromises in the case with the provisions of the ICCPR – each state party took an obligation without any concessions (except derogations) to fulfil CP rights. The commitments to the requirements of the ICCPR 'significantly improved' the states' respect for the freedoms of assembly, speech, association, and religion [30, p. 469]. In the case of the developing states, such improvements may relate to the fact that they 'have freely consented' to fulfil their obligation under Article 2(1) of the ICCPR *immediately,* not waiting for the 'satisfactory development condition' [27, p. 233] or availability of resources.

Therefore, claiming that all ES rights possess the same practicality and clearness of requirement as CP rights may be hard. For example, it is generally straightforward for everyone what to do to not cause physical harm to others. At the same time, if we compare the level of minimum wages to living with dignity in different countries, we may observe different results.

States' experience

Despite the 'overwhelming majority of human rights abuses in the world are violations' of ES rights [21, p. 256], the states' experience concerning the protection and enforcement of ES rights is ambiguous. The history of the European states' experience of human rights protection is somehow similar to the two-covenant system history. For example, the European Convention on Human Rights (1950) was mainly dedicated to CP rights. It was accompanied by a 'relatively resourceful' European Court of Human Rights. The European Social Charter (1961) was adopted more than ten years later and controlled by the 'much weaker' European Committee of Social Rights [7].

At the domestic level, for example, the Human Rights Act 1998 of the United Kingdom provides judges with opportunities to use the European Convention on Human Rights. Still, the United Kingdom does not have the means to apply the European Social Charter or the ICESCR, even though it ratified both treaties [7].

In *Government of the Republic of South Africa v. Grootboom*, the Constitutional Court of South Africa declined to approve a minimum core standard for the right to adequate housing. The Court justified this

by saying that different people have different needs. Instead, the Court evaluated 'whether the measures taken by the state' to provide rights to adequate housing 'are reasonable' [23].

As the result of scrutinising the practice of national high courts of Canada, New Zealand and Israel, Hirschl adds together: "In sum, judicial interpretations of constitutional rights appear to possess *a very limited capacity* to advance progressive notions of social justice in areas such as employment, health, housing, and education, which require greater state intervention and more public expenditure. However, as far as 'negative' rights are concerned – especially those rights associated with the protection of privacy and personal autonomy, formal equality, economic activity, movement and property, all of which require that the state refrain from interfering in the private human and economic spheres – judicial interpretation of rights is inclined to be *much more generous*, and thus has the potential to plant the seed (emphasis added)" [25, p. 1098].

Moreover, a two-covenant system may cause misunderstandings even between human rights treaty bodies. For example, as the CESCR has interpreted, Article 11 of the ICESCR allows the lawful eviction from a house if the state party ensures the individual's right to adequate housing. However, HRCtee holds an opinion that the right to adequate housing under Article 11 of the ICESR 'was similar to the prohibition of arbitrary interference with the home' in Article 17 of the ICCPR and coupled with moments mentioned in CESCR General Comment 7 (The right to adequate housing (Art.11.1)) and stated that 'the threatened eviction should be condemned as arbitrary' [36, p. 44].

However, for courts, sometimes it is 'reasonably common' to find a law violation in social programs [48, p. 1217]. For example, in the *Brown v. Board of Education* case, the US Supreme Court decided that 'separate educational facilities are inherently unequal' [6]. In the *Minister of Health v. Treatment Action Campaign,* the Constitutional Court of South Africa ordered the government to prolong Nevirapine treatment for the prevention of mother-to-child transfer of HIV, spread such practice to the entire population, and implement a unique plan for it [35].

Thus, it can be claimed that in countries where ES rights are implemented into national constitutions, the judiciary system cultivated a considerable amount of case law confirming that ES rights are justiciable [4, p. 430]. Also, there is an opinion that nowadays, 'enforcement of ES rights' in Western Europe's courts is common [48, p. 1217].

Furthermore, ombudsmen are also widening their mandates to inquire and use political pressure in cases of violations of ES rights [48, p. 1213]; the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child integrated *all* human rights [38]. Moreover, in 2008, the UN General Assembly adopted the Optional Protocol to the ICESCR, which allowed the CESCR to consider individual complaints. Nowadays, it has been signed by 46 states and ratified by 29 [47].

Discussion and Conclusion

The decision to divide human rights formally into two separate covenants – the ICCPR and the ICESCR – created continuous debates over the divisibility versus indivisibility of human rights. While the UDHR established a coherent stance regarding human rights, this division reflected far deeper ideological and economical differences in international community.

One of the key drivers of the two-covenant structure is the conceptual cleavage between the West and the Soviet bloc during the Cold War. Whereas Western states focused on CP rights as cornerstones of individual freedom and democracy, socialist countries, particularly the USSR, emphasised ES rights, which were crucial for social equality and collective welfare. The Soviet Union's commitment to ES rights was also entwined with political and economic structures wherein state command over resources made the realisation of rights to education, health, and shelter more readily achievable. On the other hand, the Western states in free-market economic systems were more cautious regarding codifying such rights as legally binding, given concerns about the extent to which state intervention and resource distribution would be affected.

The justiciability of ES rights has remained a very debated topic. Whereas CP rights, for example, the right to life or freedom of speech, are considered self-executing and, therefore, more easily justiciable, ES rights have long been viewed as mere aspirations dependent upon the availability of state resources. It can be claimed that the vagueness as to the content of the parameters in ES rights, together with progressive

realisation, has led to more defective measurement mechanisms for those rights. This is partly because the ICESCR allows obligations to be undertaken progressively compared to the ICCPR, which imposes obligations to be applied immediately. However, as the international human rights discourse continues to mature, the sense that the two sets are interrelated has grown. For example, the right to education belongs to ES rights while, at the same time, it is a pre-requisite for the effective exercising of the right to political participation, a CP right.

Globalisation and the international political economy have also been major factors in the practical implementation of ES rights. With minimal state intervention in the market, the neoliberal global order has often militated against efforts to realise ES rights, mainly in developing countries. The IMF and the World Bank have put forward such policies as structural adjustment programs, which often have resulted in cuts in social welfare programs and, therefore, weaken states to meet their economic and social obligations. Furthermore, on the global level of competition for investment and suppression of labour rights shows the tension between economic globalisation and the realisation of ES rights.

However, even while considering the drawbacks of the formal division of human rights into two covenants, bifurcation has, on the whole, proved beneficial in a few ways. For one thing, elaborating two binding international human rights treaties helped codify human rights into international law, giving states a clear framework of responsibilities. This has also facilitated the creation of special human rights treaty bodies, such as the HRCtee and the CESCR, which have acted as pacing mechanisms in ensuring compliance and giving significant boosts to the normative development of human rights. It has also raised greater awareness and generated more debate on what constitutes the scope and definition of human rights.

Yet, the two-covenant system is not without its problems. The practical difficulties in ensuring compliance with ES rights are enormous, as, inter alia, is the less significant political will to enforce these rights. In most legal systems, strong partiality towards CP rights over ES rights reflects the ongoing disequilibrium in the balance between these two rights. However, the development of international and national human rights jurisprudence points to a likely direction toward an integrative turn in human rights protection.

Finally, it is hard to predict if, in 1966, one binding covenant containing both CP and ES rights would be adopted or, due to disagreements, no binding covenant protecting ES rights would be adopted at all. If it were a single covenant, then for many developing states, it would be almost impossible to fulfil its requirement concerning some of ES rights immediately, leading to increasing breaches of the covenant by such state parties, thereby undermining the value of the covenant itself, and the provisions related to CP rights as well. Alternatively, if we did not have a binding treaty on human rights, it would not be the best scenario for promoting international human rights, including ES rights.

Ж.Р. Темірбеков, PhD in Jurisprudence, LLM in International Law, Teaching professor (Қазақстан Республикасы, Астана қ.): Халықаралық адам құқықтары: бөлінетін бе, әлде бөлінбейтін бе?

Зерттеудің *өзектілігі* халықаралық адам құқықтары құқығында екі бөлек құжаттың: Азаматтық және саяси құқықтар туралы халықаралық пактінің және Экономикалық, әлеуметтік және мәдени құқықтар туралы халықаралық пактінің бар екендігіне қатысты жалғасып жатқан пікірталастардан туындайды. Мақаланың *пәні* – халықаралық адам құқықтарының бөлінетіндігі немесе бөлінбейтіндігі туралы мәселе. Зерттеудің мақсаты бөлек екі пакт құрудың себептерін және халықаралық адам құқықтарының бөлінетін немесе бөлінбейтіндігін талдау болып табылады. Сонымен қатар, зерттеу екі пакт жүйесінің қалыптасуы үкімет тәжірибесіне және адам құқықтарына қатысты халықаралық міндеттемелерге қалай әсер еткенін зерделеуге бағытталған. Зерттеудің *жаңалығы* – екі пакт жүйесінің қалыптасуының себептеріне, негіздемесіне және кейбір практикалық салдарларына жаңа көзқарас. Мақала адам құқықтары саласындағы мен жаһанданумен байланысты қазіргі заманға мәселелер тұрғысынан азаматтық және саяси құқықтар мен экономикалық және әлеуметтік құқықтардың арақатынасын түсінуге үлесін қосады.

Қысқаша тұжырымдар: 1) Халықаралық адам құқықтарының екі пактқа бөлінуі негізінен идеологиялық және экономикалық факторларға байланысты. 2) Барлық адам құқықтарының теориялық бірлігіне қарамастан, экономикалық және әлеуметтік құқықтармен салыстырғанда азаматтық

және саяси құқықтардың маңыздылығы халықаралық құқық пен мемлекеттік тәжірибеде қалай қарастырылатындығында айырмашылықтар бар. 3) Адам құқықтарын қорғау саласындағы қазіргі халықаралық және ұлттық сот тәжірибесінде құқықтардың бөлінбейтіндігін мойындау тенденциясының белгілерін байқауға болады.

Түйін сөздер: адам құқықтары, АСҚХП, ӘӘМҚХП, қырғи-қабақ соғыс, азаматтық және саяси құқықтар, экономикалық және әлеуметтік құқықтар, нарықтық экономика, құқықтардың бөлінбейтіндігі.

Ж.Р. Темирбеков, PhD in Jurisprudence, LLM in International Law, Teaching professor (Республика Казахстан, г. Астана): Международные права человека: делимые или неделимые?

Актуальность исследования вытекает из сохраняющихся споров вокруг обоснованности существования двух отдельных пактов в международном праве прав человека: Международного пакта о гражданских и политических правах (МПГПП) и Международного пакта об экономических, социальных и культурных правах (МПЭСКП). *Предметом* статьи является вопрос о делимости или неделимости международных прав человека. *Целью* исследования является анализ причин создания раздельных двух пактов и того, являются ли международные права человека делимыми или неделимыми. Кроме того, исследование направлено на то, чтобы изучить как формирование системы двух пактов повлияло на государственную практику и международные обязательства в области прав человека. *Новизна* исследования заключается в том, чтобы по-новому взглянуть на причины, обоснование и некоторые практические последствия существования системы двух пактов. Статья вносит вклад в понимание взаимосвязи между гражданскими и политическими правами и экономическими и социальными правами в свете современных проблем в сфере прав человека и глобализации.

Краткие выводы: 1) Разделение международных прав человека на два пакта во многом было обусловлено идеологическими и экономическими факторами. 2) Несмотря на теоретическое единство всех прав человека, все еще существуют различия в том, как международное право и государственная практика трактует важность гражданских и политических права по сравнению с экономическими и социальными правами. 3) Современная международная и национальная судебная практика в области защиты прав человека имеет признаки тенденции к признанию неделимости прав.

Ключевые слова: права человека, МПГПП, МПЭСКП, Холодная война, гражданские и политические права, экономические и социальные права, экономика свободного рынка, неделимость прав.

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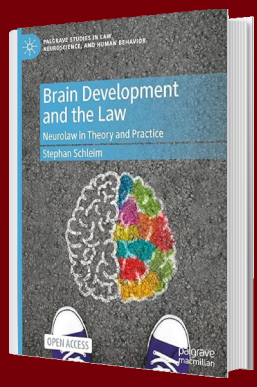
Для цитирования и библиографии: Temirbekov Zh. International Human Rights: Divisible or Indivisible? // Право и государство. № 4(105), 2024. – С. 23-34. DOI: 10.51634/2307-5201_2024_4_23

Материал поступил в редакцию 7.10.2024.



НОВЫЕ КНИГИ

Brain Development and the Law: Neurolaw in Theory and Practice. By Stephan Schleim. Publisher Palgrave Macmillan, 2024. – 176 p.

SBN-13 978-3031723612

This open access book is the first to offer a systematic overview of the different methods for assessing brain development and a comparative review of how such assessments have already influenced the law. Lawmakers prefer to draw clear distinctions, but biology is characterized by continua: both in terms of how development proceeds within a person and how it differs from other people. However, this does not mean that age limits are arbitrary. This book extends the author's previous research on the Dutch juvenile criminal law, which was founded on the brain development of adolescents and has been in use for more than a decade. The role of age limits in death and life sentences in the US and the new cannabis legislation in Germany are also analyzed in depth. This project combines biological, psychological and social knowledge and puts forward a pragmatic proposal to connect the two fields of brain development and law. It will be of interest to researchers, professionals (e.g. judges, legislators) and students alike.