THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Commentary, Cases, and Materials

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Introduction

Despite the much-emphasized indivisibility of human rights, economic, social and cultural rights have long been seen as the poor cousins of civil and political rights. The different trajectory of each category of rights was set by the splintering of human rights into the two separate covenants of 1966, in the protracted and complicated process of juridifying the Universal Declaration of Human Rights (UDHR) of 1948. The story is well known. Civil and political rights were largely seen as immediately applicable and typically justiciable, whereas economic, social and cultural rights were viewed as subject only to progressive realization through measures of state policy. Civil and political rights were often viewed as negative freedoms from state interference, whereas economic, social and cultural rights were thought to involve positive obligations on the state, which in turn implied politically sensitive claims on public resources. Civil and political rights were also more familiar to many national constitutional and legal traditions (as the 'first generation' of individual rights), whereas economic, social and cultural rights were more novel and less familiar (sequentially 'second' generation, and partly 'collective' in orientation). These fault lines were ultimately reflected in differences in state obligations of implementation between the International Covenant on Economic, Social and Cultural Rights (ICESCR or 'the Covenant') and the International Covenant on Civil and Political Rights (ICCPR).

The burgeoning scholarship in recent decades has exhaustively demonstrated how these supposed fault lines are both too simplistic and overly deterministic.[1] Civil and political rights also involve positive demands on the state as much as negative freedoms from interference; they too can be expensive (for instance, to run a prison service which ensures humane conditions of detention, or to fund an accessible law enforcement and judicial system capable of protecting rights from interference). On the other hand, many aspects of economic, social and cultural rights are immediately applicable and capable of judicial application or supervision (for example, protecting the freedom of association of trade unions and their members, prohibiting forced labour or unjustified dismissal, or guaranteeing non-discrimination in access to education or health services).

[1] See, eg, Matthew Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development* (Clarendon Press, Oxford, 1995), 7–9; Jeff Kenner, 'Economic and Social Rights in the EU Legal Order: The Mirage of Indivisibility' in Tamara Hervey and Jeff Kenner (eds), *Economic and Social Rights under the EU Charter of Fundamental Rights* (Hart, Oxford, 2003), 1–4; Conor Gearty and Virginia Mantouvalou, *Debating Social Rights* (Hart, Oxford, 2011), 97–107; Daphne Barak-Erez and Aeyal M Gross, 'Introduction: Do We Need Social Rights? Questions in the Era of Globalisation, Privatisation, and the Diminished Welfare State' in Daphne Barak-Erez and Aeyal M Gross (eds), *Exploring Social Rights: Between Theory and Practice* (Hart, Oxford, 2011), 5.

Further, it has become clear that the principle of progressive realization is not an unbounded or elastic prerogative of states to choose, at their discretion, when they wish to confer or withhold rights. The United Nations Committee on Economic, Social and Cultural Rights (CESCR) has demonstrated that 'progressive realization' requires a rational devotion of state effort to achieve rights within the maximum of available resources, in the shortest possible time, while preserving a minimum irreducible core of rights and safeguarding the most vulnerable. These components of progressive realization are themselves amenable to judicial oversight of various kinds.

If socio-economic rights were historically unfamiliar to many legal systems, that too has changed: there are now numerous judicial or quasi-judicial applications of such rights, and an evolving jurisprudence at the national, regional and international levels. Even the assumption of the novelty of such rights is problematic. Our own country, the developed welfare state of Australia, which still has no bill of rights, is a case in point. There, certain socio-economic rights were well protected by statute long before many civil and political rights, including those in relation to work and trade unions, social security, education, health and an adequate standard of living (encompassing rights to food, water, clothing and housing). Yet, there is still no enforceable freedom from arbitrary or indefinite detention in Australia, or from cruel, inhuman or degrading treatment;[2] and even torture was only prohibited a few short years ago.

At the same time, socio-economic rights discourse and practice have also demonstrated that judicial enforceability is not the litmus test of what is truly 'law' in this field of rights. Many socio-economic rights are well advanced through national policies and action plans, and often more ably so than through the narrow aperture of courts. In addition, the international community's preoccupation with economic development in recent decades has focused increased attention on the achievement of economic and social rights in 'development'. As a result, such rights can no longer be considered 'novel' or marginal within international law, but are rather central to the mainstream of international development activity, including in its economic and financial dimensions.

An increasing interest in a 'human rights-based approach' to development has also led donors and international actors to develop more 'scientific' technical indicators or benchmarks to measure the implementation of socio-economic rights, potentially giving more traction to their implementation and enforcement. Conspicuous inattention to socio-economic rights has also provoked much controversy in this context. For instance, the absence of express reference to human rights in the Millennium Development Goals (MDGs) and in the suggested means and methods of their attainment has spawned much debate, including whether—and if so, to what extent—this omission matters in terms of rights outcomes. Similarly, the now thirty-plus year debate over the international community's formal recognition of a 'right to development' has been dogged by

[2] See *F.K.A.G. et al v Australia*, HRC Communication No. 2094/2011 (26 July 2013); *M.M.M. et al v Australia*, HRC Communication No. 2136/2012 (25 July 2013).

the rude intrusion of unavoidable political and economic realities upon the high principles of economic equity and fairness between states, peoples and individuals. Like the idea of happiness, few would deny its desirability for all; but equally few can agree upon whom the responsibility lies to achieve it, and how they ought to go about getting there.

Overall, though, economic, social and cultural rights have moved from the subject of theoretical debates (are they 'real' and 'enforceable' rights?) to being increasingly accepted as important international norms with significant practical application. The adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights in 2008 (and its coming into force in May 2013) is indicative of this change in perception, with individuals now able to complain to the CESCR of violations of their Covenant rights.

One purpose of this book is to respond to this shift: to look beyond the more abstract and ideological discussions of the nature of socio-economic rights in order to engage empirically with how such rights have manifested in international practice. In doing so, the book takes its cue from the sophisticated and influential resources which have long existed in respect of the ICCPR, Manfred Nowak's encyclopedic *CCPR Commentary*,[3] and Sarah Joseph and Melissa Castan's utilitarian *ICCPR Cases, Materials and Commentary*.[4] The former engages in depth with the drafting records as well as the supervisory practice of the UN Human Rights Committee; the latter focuses principally on the Human Rights Committee's practice and particularly its 'views' in individual communications under the ICCPR Optional Protocol complaints procedure. Further, while Nowak digests and analyses the key decisions and materials, Joseph and Castan extract key passages from the primary materials with the aim of letting them speak for themselves, while also providing a certain amount of critical commentary.

This book hybridizes these two approaches in examining the ICESCR. It examines the drafting records (acknowledging the more detailed treatment of much, though not all, of the drafting by Matthew Craven's *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development*);[5] considers the supervisory practice of the CESCR; extracts key primary materials; provides a critical commentary; and generally builds on Craven's excellent, but more restricted and somewhat dated, 1995 work. While this book is something of a companion tome to Joseph and Castan's work on the ICCPR, it is entitled *Commentary, Cases and Materials* (not *Cases, Materials and Commentary*) to reflect that the book is comparatively less weighted towards extracting primary materials and contains a proportionately higher analytical content. The book also strikes out in certain new directions, not least necessitated by the availability and limitations of relevant primary source materials.

[3] Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (2nd edn, Clarendon Press, Oxford, 2005).

[4] Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (3rd edn, Oxford University Press, Oxford, 2013).

[5] Craven, *The ICESCR*.

Methodologically, in interpreting the ICESCR, an obvious starting point is the drafting records. Following the drafting of the UDHR between 1947 and 1948, the UN Commission on Human Rights (UNCHR) commenced drafting an international covenant on human rights in 1950, with an almost exclusive focus on civil and political rights. By February 1952, it was apparent that it would be necessary to draft two separate instruments because of division over the appropriate means of implementing civil and political compared with economic, social and cultural rights. The drafting of a covenant on the latter commenced in 1953 in the UNCHR. The drafting discussions were then spread across the UNHCR and the General Assembly's Third Committee between 1954 and 1966, with some overall direction provided by the General Assembly. This book makes reference to the drafting debates where relevant, including occasional consideration of the drafting of comparable ICCPR provisions (such as the extent and immediacy of legal obligations, self-determination, non-discrimination and equality, the prohibition on forced labour and freedom of association/trade union rights).

Looking beyond the drafting, this book next looks to the products of the ICESCR's monitoring system, and particularly the work of the CESCR. The ICESCR entered into force on 3 January 1976. Part IV of the ICESCR provides for the Economic and Social Council (ECOSOC) to monitor states' implementation of their obligations. It requires states to submit regular reports on the measures they have taken and the progress they have made in implementing the ICESCR. Upon entry into force of the Covenant, monitoring of state reports was conducted by ECOSOC, first by its Sessional Working Group on the Implementation of the ICESCR, and from 1982 by the Sessional Working Group of Governmental Experts on the Implementation of the International Covenant.

The supervision system was modernized in 1985, when an ECOSOC resolution established the CESCR as a subsidiary body of ECOSOC, to assume the monitoring functions.[6] The CESCR's legal pedigree is thus somewhat more precarious than that of the Human Rights Committee, which is embedded in the ICCPR itself. But the composition and functions of the two committees are comparable. The CESCR consists of eighteen members, 'experts with recognized competence in the field of human rights, serving in their personal capacity', elected with 'due consideration . . . to equitable geographical distribution and to the representation of different forms of social and legal systems'.[7]

The CESCR is the body ultimately responsible for the international interpretation and supervision of the ICESCR, and so this book relies extensively on its documents as evidence of the meaning and application of the Covenant. First, the CESCR's guidelines for state reporting, issued in 1991 and revised in 2008 (after

[6] ECOSOC Res. 1985/17, Review of the Composition, Organisation and Administrative Arrangements of the Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights, E/RES/1985/17 (28 May 1985).

[7] Review of the Composition, Organisation and Administrative Arrangements of the Sessional Working Group of Governmental Experts on the Implementation of the ICESCR, [b].

reforms to simplify UN treaty body reporting as a whole),[8] give a brief indication of the scope of each right in setting the parameters of reporting.

Secondly, with respect to a number of rights and issues, the CESCR has issued authoritative statements of its opinions and practice in the form of twenty-one 'General Comments' between 1989 and 2009. These General Comments, which draw on the CESCR's experience in monitoring state reports, are not formally binding, but are highly influential in setting out the scope of rights and standards under the ICESCR, and provide an excellent starting point for examining its normative content. This is particularly the case with respect to more recent General Comments, which are more detailed and comprehensive than some of the earlier ones. There are, however, still significant gaps in their coverage. In particular, there are no General Comments on the rights to just and favourable conditions of work (Article 7), to form and join trade unions and to strike (Article 8), and to the protection of families, mothers and children (Article 10).

Thirdly, the CESCR has issued over 300 Concluding Observations or like-comments in its monitoring of states' periodic reports, and these constitute the majority of the core primary materials that this book relies upon to build up an interpretive picture of the ICESCR. States are required to produce their initial report within two years of becoming parties to the ICESCR, and to report every five years thereafter. We collected and analyzed the CESCR's observations on all reporting states between the years 1989 and 2012 inclusive. We also analyzed a good number of observations produced between 1980 and 1989.

Concluding Observations in their present form have been issued since at least 1992, when states' objections to issuing state-specific comments—previously seen as interference in domestic affairs—eroded after the end of the Cold War.[9] Before then, the CESCR's dialogue with states was recorded in collective comments addressed to states in general and sometimes by publication of the entire dialogue between the CESCR and a state party.[10] The increasing sophistication of the current form of Concluding Observations, which has been broadly uniform since 2002, provides a more elaborate understanding of what the ICESCR requires. Examining the Concluding Observations in their totality, across all states and over time, enables the repeated core concerns of the CESCR to be identified. It also highlights what is considered more peripheral or has not thus far received attention at all. In this book we have given a little more prominence to more recent Concluding Observations, in part because the CESCR's approach has tended to become more comprehensive and sophisticated as it has refined its consideration of issues. But we also identify earlier practice in order to chart shifts in the CESCR's approach over time.

[8] CESCR, Guidelines on Treaty-Specific Documents to be Submitted by States Parties under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/2008/2 (24 March 2009).

[9] See Michael O'Flaherty, 'The Concluding Observations of the United Nations Human Rights Treaty Bodies' (2006) 6(1) *Human Rights Law Review* 27, 29–30.

[10] O'Flaherty, 'Concluding Observations', 27 and 29.

Thus far, the book largely follows the methodology of Nowak, Joseph and Castan, and Craven in focusing on the drafting of one of the twin covenants and the work of its committee as guides to interpretation. Where we depart substantially from their script is in the scope and breadth of primary materials considered. This is for two reasons. The first is that, unlike the ICCPR, the ICESCR has not yet given rise to a body of 'jurisprudence' stemming from Views issued by the CESCR in deciding communications under an individual complaints procedure. Between 1979 and mid 2013, the Human Rights Committee issued almost 800 Views under the Optional Protocol to the ICCPR. These provide the core content for Joseph and Castan's work and (beyond the drafting) Nowak's. In contrast, the Optional Protocol to the ICESCR, allowing individual communications, only entered into force in May 2013, and so there is as yet no such jurisprudence, although complaints are already rolling in.

At the same time, the CESCR's General Comments and Concluding Observations are typically limited to consideration of systemic issues at a certain level of abstraction, and rarely grapple with socio-economic rights at the level of individual disputes, controversies or cases. As a result, we have had to look elsewhere for the kind of granular, fact-specific jurisprudence capable of more fully fleshing out the meaning of the ICESCR. Consequently, this book makes extensive use of a comparative, analogical and legally liberal methodology (with all the risks of imprecision that this entails).

In the first place, this book draws extensively on primary materials from other UN human rights treaty bodies (particularly the Human Rights Committee, Committee on the Elimination of All Forms of Discrimination against Women, and Committee on the Elimination of All Forms of Racial Discrimination, but also those concerning children, migrant workers and persons with disabilities). While each of the UN human rights treaties establishes its own formally autonomous legal regime, we have chosen to read them consistently or harmoniously as far as their legal texts permit, on the basis that the UN treaties are also an inter-related normative system as much as islands unto themselves.

Those other bodies have often produced more specialized guidelines on the application of socio-economic rights to the groups in question, which are of benefit in unpacking the ICESCR. At the level of individual jurisprudence, we have drawn on relevant Human Rights Committee communications under the ICCPR where the ICESCR shares the norms in question (for instance, in relation to self-determination, non-discrimination and equality, the prohibition on forced labour, trade union rights and cultural rights). The book also considers the relevant UN special procedures or mechanisms in the area of socio-economic rights, such as special rapporteurs and independent experts whose thematic mandates have engaged directly with ICESCR rights (including mandates which scrutinize adequate housing, cultural rights, education, extreme poverty, health, and water and sanitation).

Secondly, the book also draws upon the decisions of regional and domestic courts, tribunals or bodies which have considered socio-economic rights, particularly where the language of the relevant legal standards approximates those of the ICESCR. European social rights jurisprudence features particularly prominently (under the European Social Charter and Revised European Social Charter), since those instruments are the closest mirror of the ICESCR at the regional level. But jurisprudence is also drawn from regional systems with a predominant focus on civil and political rights, as under the European Convention on Human Rights, American Convention on Human Rights, African Convention on Human and People's Rights, and very occasionally the Arab Charter on Human Rights, the Commonwealth of Independent States' Human Rights Convention, and the Association of Southeast Asian Nations (ASEAN) Declaration on Human Rights. This strategy allows the book to provide a richer, deeper account of the range of possibilities available when interpreting economic, social and cultural rights, particularly where there are gaps in the CESCR's practice to date, and to illustrate where the CESCR's practice is more progressive—or has gone wrong.

Thus, as will be seen, the global picture is one of convergence and divergence: whereas private prison labour is permitted under European human rights law, the ICESCR forbids it; and whereas Europe has permited restrictions on one's freedom not to join a trade union (in order to advance collective trade union interests), the ICESCR takes a stricter approach and privileges individual over collective rights.

Thirdly, the ICESCR is a more open-textured legal instrument than certain other human rights treaties; it is far from being a self-contained normative regime. As a result, certain ICESCR rights can only be understood against the background of special norms in the particular area. For instance, the right of self-determination is necessarily shackled to general international law and UN principles on self-determination. The various work-related rights (Articles 6 to 9), the right to social security (Article 9), and certain rights of families, mothers and children (Article 10) are closely connected to the numerous International Labour Organization (ILO) conventions and soft law standards developed over the more than ninety years since the establishment of the ILO in 1919. The ICESCR provisions simply make no sense without reference to the ILO standards.

This is true also in other areas, such as with respect to UNESCO's standard setting in the areas of education and culture, the work of the World Health Organization in the field of health, the efforts of the Food and Agriculture Association in relation to the right to food, UNICEF on disabilities and socio-economic rights, UNHCR on refugees and socio-economic rights, and so on. Further, the connection between socio-economic rights and development means that these rights must be understood in the context of international work to promote development and alleviate poverty, such as the UN Guiding Principles

on Extreme Poverty and Human Rights[11] or the work of the UN Development Programme. This book therefore draws heavily on the pertinent norms and practices of relevant specialized regimes and organizations.

Finally, perhaps due to the historical controversy as to the status and meaning of economic, social and cultural rights, or to the historical scarcity of 'jurisprudence' on these rights, the work of independent human rights experts has been particularly influential in providing normative guidance on interpreting and implementing the ICESCR and identifying the current state of the law. Particularly significant 'soft law' materials developed by experts include the Limburg Principles on the Implementation of the ICESCR[12] and the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights,[13] which have been embraced by international bodies and influenced national legal systems. Other sources include the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights 2011[14] and the Montréal Principles on Women's Economic, Social and Cultural Rights.[15] All of these reflect efforts to progressively develop or clarify some of the ambiguities or controversies under the ICESCR.

Throughout this book, we also invoke the views of jurists from time to time, although our main purpose is not to reproduce scholarly critiques, but to agglomerate the primary legal materials in an effort to divine their cumulative essence, coherence and contradiction. Where the state of the law is in flux or problematic, we also permit our own critical voices to intrude occasionally, in an attempt to explain and resolve competing interpretive or policy differences, and perhaps even to nudge the development of the law in the 'right' direction.

In that context, it is perhaps worth saying something of how we see the field of economic, social and cultural rights evolving. Clearly, the most significant impact on the ICESCR over the coming years will be the effect of the entry into force of the Optional Protocol in May 2013. The process of drafting the Optional Protocol reopened many familiar debates about the justiciability of economic, social and cultural rights, with some states remaining skeptical about the appropriateness of

[11] Human Rights Council, Final Draft of the Guiding Principles on Extreme Poverty and Human Rights, submitted by the Special Rapporteur on extreme poverty and human rights, A/HRC/21/39 (18 July 2012).

[12] Limburg Principles on the Implementation of the ICESCR, reproduced in UN Commission on Human Rights, Note Verbale dated 5 December 1986 from the Permanent Mission of the Netherlands to the UN Office at Geneva addressed to the Centre for Human Rights, E/CN.4/1987/17 (8 January 1987).

[13] CESCR, Substantive Issues Arising in the Implementation of the ICESCR: Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, E/C.12/2000/13 (2 October 2000).

[14] Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (28 September 2011), reproduced in Olivier de Schutter, Asbjorn Eide, Ashfaq Khalfan, Marcos Orellana, Margot Salomon and Ian Seiderman, 'Commentary to the Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights' (2012) 34(4) *Human Rights Quarterly* 1085, 1085–98.

[15] International Federation for Human Rights, Montréal Principles on Women's Economic, Social and Cultural Rights (December 2002), reproduced in (2004) 26 *Human Rights Quarterly* 760.

a communications procedure.[16] Despite this, an Optional Protocol encompassing all ICESCR rights was adopted, thus providing a strong affirmation of the quasi-'justiciability' of economic, social and cultural rights (even if the final Views are not strictly binding, like under the ICCPR Optional Protocol), and creating an important future means of standard setting under the ICESCR.

The Optional Protocol establishes three new procedures for the protection and enforcement of rights under the ICESCR: an individual complaints procedure; an inter-state complaints procedure; and an inquiry procedure that is engaged when the CESCR receives 'reliable information indicating grave or systematic violations'. The individual complaints mechanism largely mirrors that under the ICCPR, with some minor differences: there is express provision for communications to be submitted on behalf of groups,[17] and communications may be declared inadmissible where they are 'manifestly ill-founded, not sufficiently substantiated or exclusively based on reports disseminated by mass media',[18] or submitted more than one year after the exhaustion of domestic remedies.[19] There is also a discretion not to consider a communication that does not reveal a 'clear disadvantage' to the author, unless the CESCR considers 'that the communication raises a serious issue of general importance'.[20]

The inter-state communication mechanism allows a state party to refer a matter to the CESCR if it considers that another state is not fulfilling its obligations under the Covenant.[21] The mechanism can only be invoked where both states have made declarations that they recognize the competence of the CESCR to hear such communications. The provisions under the Optional Protocol are modelled on, and very similar to, the equivalent (but seldom used) procedure in Article 41 of the ICCPR.

In contrast, the further inquiry procedure established under Article 11 of the Optional Protocol has no equivalent in the ICCPR system, although there is an almost identical mechanism under the Optional Protocol to the Convention on

[16] While a comprehensive approach to the enforcement of all ICESCR rights was ultimately settled on, many states pushed strongly for what was deemed an *à la carte* approach, where states could either opt-in to, or opt-out of, the enforcement of specific rights, depending on the model chosen: see Commission on Human Rights, Elements for an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: Analytical paper by the Chairperson-Rapporteur, Catarina de Albuquerque, E/CN.4/2006/WG.23/2 (30 November 2005), 4. Some states also displayed a strong reluctance to permit any interference by the CESCR in national decisions on resource allocation (see Commission on Human Rights, Status of the International Covenants on Human Rights: Report of the independent expert (Mr Hatem Kotrane), E/CN.4/2002/57 (12 February 2012), [18]), and insisted that the 'reasonableness' of the steps taken by the state party should be considered before a violation was found (see Explanatory Memorandum in Human Rights Council, Draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, A/HRC/7/WG.4/2 (23 April 2007), [29]).

[17] Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (adopted 10 December 2008, entered into force 5 May 2013), Article 5(2)(b).

[18] Optional Protocol to the ICESCR, Article 3(2)(e).

[19] Optional Protocol to the ICESCR, Article 3(2)(a) (unless the author can demonstrate that it was not possible to meet that time limit).

[20] Optional Protocol to the ICESCR, Article 4.

[21] Optional Protocol to the ICESCR, Article 10.

the Elimination of All Forms of Discrimination against Women.[22] Under this procedure, the CESCR may designate one or more of its members to conduct an inquiry into reports of grave or systemic violations of rights under the Covenant and report urgently to the CESCR. However, a country must opt-in to the inquiry procedure,[23] and an inquiry can only include a visit to a state's territory with its consent.[24]

These procedures, and particularly the individual communications mechanism, will provide important opportunities for the CESCR to clarify the meaning and scope of the ICESCR. As more states ratify the Optional Protocol, and individual communications are submitted and decided, the CESCR's Views in communications will become an increasingly important guide to interpretation. In future editions of this book, we will integrate and analyse these Views, and address the communications procedure (including admissibility) in more detail.

In addition to the influence of the Optional Protocol, the future development of economic, social and cultural rights seems likely to be shaped by the CESCR's approach to a number of emerging issues. Foremost among these will be the role of non-state actors, especially corporations, and their impact (both positive and negative) on the rights guaranteed by the ICESCR. In recent years, the CESCR (as well as a number of special rapporteurs holding related mandates) has increasingly focused on the effects of corporate actions (and inactions) on peoples' enjoyment of economic, social and cultural rights, and especially the implications for states' obligations under the Covenant.

From the evolving jurisprudence of the Human Rights Committee, as well as that of the regional human rights systems in Europe and the Americas, it now seems clear that states can be held responsible, under certain circumstances, not only for rights-infringing actions of private actors within their territory, but also extra-territorially. The nature and dimensions of these circumstances and attendant conditions will certainly be matters of interest and debate for the CESCR for years to come, particularly given the economic and social effects of globalization. The precise extent and weight of states' responsibilities to render 'international assistance and cooperation' as demanded by Articles 2(1) and 11 (and by implication, 12 and 13) of the Covenant is also likely to tax the jurisprudential boundary-setting capabilities of the CESCR.

The accumulation and systematization of primary legal materials in this book establishes beyond doubt that there is now a fairly comprehensive, integrated and sophisticated international law of social, economic and cultural rights. Such rights are no longer the poor cousins of civil and political rights, even if there is much room for further consolidation and refinement of the jurisprudence; and more room still for the strengthening of mechanisms, institutions and procedures for their implementation, enforcement and protection.

[22] Optional Protocol to the ICESCR, Article 8.
[23] Optional Protocol to the ICESCR, Article 11(1).
[24] Optional Protocol to the ICESCR, Article 11(3).

Interest in the theory and practice of the ICESCR is set to accelerate with its coming of age through the cases arising under the Optional Protocol. This process of concretising or grounding rights will be assisted by the coalescence of the many vanguard international human rights issues already mentioned: the implications of globalization and economic development; public sector responsibilities for private sector rights violations; states' extra-territorial obligations; and the inter-relationship between the ICESCR and relevant specialized norms and legal regimes.

While this book is far from the last word on the Covenant, its modest aim is to provide a detailed guide to how, where and when the Covenant's journey began, where it has gone thus far, and where it may travel in future.

Sydney, September 2013