Introduction to the *Research Handbook on International Law and Social Rights*

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The twenty-first century opened with the international community's realization that achieving *global* social justice constitutes a fundamental prerequisite for ensuring an equitable, inclusive and sustainable international legal order.¹ The idea of global social justice thus constitutes a common value of the international community and pursues the objective of overcoming previous inequalities and injustices in distribution. In comparison to earlier concepts of social justice,² the shift towards global (social) justice alters our understanding of the reach of (state) responsibilities, particularly in light of a series of new insights on causal impacts of institutional and structural design.³ Additionally, it acknowledges that, at least in part, the traditional state-centred structure of international law has been overtaken by the emergence of new institutions and actors.

From a rights-based perspective, the implementation of the ethical and philosophical postulate of global social justice is frequently attempted through social rights.⁴ While these two fields do not necessarily always overlap and conceptually lack a common methodology or approach towards prioritization and policy-making, they share important objectives. For example, the global social justice movement might argue for living wages, equal access to medication or climate justice; this can in turn partly be achieved through social rights (for example, the right to work, right to health and right to an adequate standard of living).⁵

¹ UNGA Res 55/2 (18 September 2000) 'United Nations Millennium Declaration', *inter alia* para 2: 'we have a collective responsibility to uphold the principles of human dignity, equality and equity at the global level'; paras 4–5; para 6 (emphasizing solidarity ('Global challenges must be managed in a way that distributes the costs and burdens fairly in accordance with basic principles of equity and social justice.')) as a fundamental value essential to international relations in the 21st century).

² In essence, social justice theories describe how a just society within a state should be conceptualized. As mentioned in the contribution by Manfred Nowak (Chapter 1), some of the delegates drafting the Universal Declaration of Human Rights even wanted to use 'social justice' in place of 'social security' in the UDHR's umbrella article on economic, social and cultural rights.

³ For a conceptualization and evaluation of the emergence of 'global justice' see the opening remarks by Thomas Pogge to a symposium on global justice included into the introduction of the corresponding volume published thereafter: Andreas Follesdal and Thomas Pogge, 'Introduction' in Andreas Follesdal and Thomas Pogge (eds), *Real World Justice – Grounds, Principles, Human Rights, and Social Institutions* (2005) 2ff.

⁴ On why this attempt fails in practice, see Samuel Moyn, *Not Enough – Human Rights in an Unequal World* (2018), noting that the value of distributive equality notably remains absent among the rights listed in the Universal Declaration of Human Rights and that the strive for a 'floor of protection' was merely achieved within some states, ill-suited as it stands to be transplanted to the global level. Similarly also Lanse Minkler, noting that economic and social rights aim at assuring an adequate standard of living for human dignity but do not address wealth, income, consumption or social status disparities (Lanse Minkler, 'Introduction: Why Economic and Social Human Rights?' in Lanse Minkler (ed.), *The State of Economic and Social Human Rights – A Global Overview* (2013) 1, 5).

⁵ Cf. David Petrasek, 'Human Rights and Social Justice – A False Dichotomy' in Doutje Lettinga and Lars van Troost (eds), *Can Human Rights Bring Social Justice – Twelve Essays* (2015) 89ff.

These interlinkages, among others, have resulted in a stark increase in focus on social rights in scholarship over the past two decades.⁶ Treated for a long time as a stepchild in comparison to civil and political rights, social rights have even been heralded as leading a ‘rights revolution’,⁷ as ‘essential for the maintenance of democracy’,⁸ as the most appropriate means of protection available against the current global economic system,⁹ and as a fitting companion to the changing nature of sovereignty (from rights to obligations).

Despite this increase in attention, the category of ‘social rights’ is not clearly defined. ‘Social rights’ certainly have a broad meaning, in the sense that no separate list of rights can be drawn up and oftentimes the use of terminology in this regard varies between social rights, economic and social rights, socio-economic rights and even welfare rights.¹⁰ In essence, ‘social rights’ and the ‘social rights dimension’ relate particularly to those rights/elements which are linked to the core of social rights protection, that is, achieving a society which protects and

⁶ It is impossible to list all volumes focusing on social rights protection in international law which have been published since the turn of the millennium. However, some of the most important include: Katherine G Young (ed.), *The Future of Economic and Social Rights* (2019), focusing on the adjudication of economic and social rights; Katie Boyle, *Economic and Social Rights Law – Incorporation, Justiciability and Principles of Adjudication* (2019); Malcolm Langford, César Rodríguez-Garavito and Julieta Rossi (eds), *Social Rights Judgments and the Politics of Compliance: Making it Stick* (2017); Christina Binder, Jane A Hofbauer, Flávia Piovesan, Anna-Zoe Steiner and Elisabeth Steiner (eds), *Social Rights in the Case Law of Regional Human Rights Monitoring Institutions* (2016); Markus Kaltenborn, *Social Rights and International Development – Global Legal Standards for the Post-2015 Development Agenda* (2015), discussing the increasing interlinkages between development policy and human rights following the Millennium Development Goals; Sakiko Fukuda-Parr, Terra Lawson-Remer and Susan Randolph (eds), *Fulfilling Social and Economic Rights* (2015); Ben Saul, David Kinley and Jaqueline Mowbray (eds), *The International Covenant on Economic, Social and Cultural Rights – Commentary, Cases and Materials* (2014); Gilles Giacca, *Economic, Social and Cultural Rights in Armed Conflict* (2014); Evelynne Schmid, *Taking Economic, Social and Cultural Rights Seriously in International Criminal Law* (2014); Eibe Riedel, Gilles Giacca and Christophe Golay (eds), *Economic, Social, and Cultural Rights in International Law* (2014); Lanse Minkler (ed.), *The State of Economic and Social Human Rights – A Global Overview* (2013); Malcolm Langford et al (eds), *Global Justice, State Duties: The Extraterritorial Scope of Economic, Social and Cultural Rights in International Law* (2013); Manisuli Ssenyonjo, *Economic, Social and Cultural Rights in International Law* (2009); Katherine G Young, *Constituting Economic and Social Rights* (2012); Jeff King, *Judging Social Rights* (2012); Daphne Barak-Erez and Aeyal M Gross (eds), *Exploring Social Rights – Between Theory and Practice* (2007); Mashood A Baderin and Robert McCorquodale (eds), *Economic, Social and Cultural Rights in Action* (2007).

⁷ Katherine G Young, ‘Introduction’ in Katherine G Young (ed.), *The Future of Economic and Social Rights* (2019) 1.

⁸ Nelson Mandela, ‘Foreword’ in Scott Leckie (ed.), *National Perspective on Housing Rights* (2003) xvii; CoE, ‘Exchange of views between Mr Giuseppe Palmisano, President of the European Committee of Social Rights (ESCR) and the Council of Europe Rapporteur Group on Social and Health (GR-SOC)’ (GR-SOC, 17 January 2019).

⁹ As highlighted also in Fukuda-Parr, Lawson-Remer and Randolph (n 6), 6.

¹⁰ Exemplary on this also Paul O’Connell, *Vindicating Socio-Economic Rights: International Standards and Comparative Experiences* (2012), noting that this in part is owed to the disciplinary background, in part to the applicable domestic framework; cf. Malcolm Langford, ‘The Justiciability of Social Rights: From Practice to Theory’ in Malcolm Langford (ed.), *Social Rights Jurisprudence – Emerging Trends in International and Comparative Law* (2008) 3 (fn 1); Eibe Riedel, Gilles Giacca and Christophe Golay, ‘The Development of Economic, Social, and Cultural Rights in International Law’ in Eibe Riedel, Gilles Giacca and Christophe Golay (eds), *Economic, Social, and Cultural Rights in International Law* (2014) 3, 8–10.

advances the enjoyment of basic human needs and ensuring the material conditions for a life in dignity, also sometimes described as a minimum standard of welfare.¹¹ Rights that aim for the protection of such basic human needs relate to important societal questions such as the just distribution of funds, or the provision of health care and other forms of social security, based on equality and non-discrimination. Additionally, they contain an inherent component of social equality, including the commitment to social integration and solidarity. Consequently, the protection of diversity in relation to groups in society is a central concern of the debate on social rights.

Hence, almost every human right has a ‘social dimension’, depending on the particular perspective one chooses. Thus, while rights traditionally considered ‘economic rights’, such as the right to work or the right to property, contain elements of freedom/independence, they of course also serve the purpose of ensuring an adequate standard of living. The right to education has a social, an economic and a cultural dimension. And likewise civil and political rights have important social dimensions. For example, as recognized by the Human Rights Committee in its new General Comment on the right to life, the right to life encompasses *inter alia* the obligation of states to ‘provide safe, legal and effective access to abortion where the life and health of the pregnant women or girl is at risk’¹² as well as the duty to take ‘appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity’.¹³ Therewith, obvious health dimensions are covered by the right to life.

The term ‘social rights’ therefore does not respond to a clear-cut distinction among different categories of human rights, a classification which in any case has been long overcome, but simply circumscribes the angle of analysis on the importance of achieving a more equal society.

With this in mind, one may observe that the advancement and protection of social rights has developed at a fast pace over the past years. However, in terms of success and effectiveness, the protection of social rights is still not on par with civil and political rights. The long prevailing opinion that social rights are goals to be achieved rather than legally enforceable rights has still not subsided entirely, despite significant advancements in recognition of the justiciability of social rights in domestic legal orders demonstrating the opposite.¹⁴ The international level has yet to follow suit to the same extent, though, with only 24 states having ratified the 2008 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights by May 2020, and others noting that the political decision to ratify said Protocol is a complex task given the ‘Covenant’s far-reaching implications’.¹⁵ Comments such as this are not only owed to ambiguities remaining as regards the nature of social rights obligations but also to the historical lack of international jurisprudence detailing the extent and scope of such rights

¹¹ Cf. Kaltenborn (n 6), 2.

¹² HRCtee, ‘General Comment No 36 on the Right to Life’ (30 October 2018) CCPR/C/GC/36, para 8.

¹³ *Ibid.*, para 26, listing as examples *inter alia* the degradation of the environment, deprivation of land, territories and resources of indigenous peoples, the prevalence of life threatening diseases, extensive substance abuse, widespread hunger and malnutrition and extreme poverty and homelessness.

¹⁴ Malcolm Langford (ed.), *Social Rights Jurisprudence – Emerging Trends in International and Comparative Law* (2008); Varun Gauri and Daniel Brinks (eds), *Courting Social Justice – Judicial Enforcement of Social and Economic Rights in the Developing World* (2008).

¹⁵ CESCR, ‘Periodic Report by Germany’ (16 March 2017) UN Doc E/C.12/DEU/6, para 14.

in practice.¹⁶ Challenges therefore remain on a number of oftentimes interrelated issues, such as the interpretation and application of universal and regional treaties and the question how social rights protection is achieved through these instruments, both conceptually as well as practically; the role of social rights in achieving social equality beyond the ‘individual’; the suitability and flexibility of social rights in response to unstable circumstances or situations of crisis; and the still ongoing process of mainstreaming social rights into other fields of international law.

These issues, among others, are at the core of this *Research Handbook* focusing on *International Law and Social Rights*. The *Research Handbook* is composed of 30 contributions by leading experts and promising young scholars in the fields of public international law and international human rights law. These contributions are divided into five parts.

The *Research Handbook* opens with a series of contributions on general aspects relating to the protection of social rights in international law. As Manfred Nowak notes in Chapter 1, ‘[s]ocial rights are at the centre of economic, social and cultural rights and suffer most under the current neoliberal economic system’. This sets the tone of the *Research Handbook*, which, *inter alia*, aims at finding pathways overcoming the still very real divide between normative standard-setting and practice, and between the long prevailing ideological divide among categories of human rights. The contributions in Part I therefore focus on, among others, identifying the scope of application related to and the nature of social rights obligations, from a historical, conceptual and practical perspective. It closes with Ralph Wilde’s contribution attempting to bridge the gap and make the connection between global justice and the extraterritorial application of human rights treaties.

The contributions in Part II of the *Research Handbook* explore the protection of social rights in international human rights law, both at the universal and regional levels. Together, they evidence the common trend that the traditional distinction that had been made subsequently to the adoption of the Universal Declaration of Human Rights (UDHR) into civil and political rights, on the one hand, and economic, social and cultural rights, on the other, has largely been overcome. Both at the universal and regional levels, an increasing number of cases can be identified which directly or indirectly afford protection to social rights. The contributions not only describe the mechanisms applicable in this regard, but also investigate the methodology applied by the respective quasi-judicial and judicial bodies and assess the extent to which progress has been made in specifying or developing different social rights standards. The contributors include several members of the respective bodies (Dzidek Kędzia as a member of the UN Committee on Economic, Social and Cultural Rights, Karin Lukas as a member of the European Committee of Social Rights, Flávia Piovesan as a member of the Inter-American Commission on Human Rights, Eduardo Ferrer Mac-Gregor as a judge and former President of the Inter-American Court of Human Rights), providing invaluable insights into the bodies’ workings. Additionally, Part II focuses on the role of social rights in the struggle to overcome inequalities and to protect and foster diversity. Four different groups are selected for this purpose: African descendants, persons with disabilities, stateless persons and minorities. The corresponding chapters offer excellent overviews of the multi-layered framework applicable in such circumstances, while at the same demonstrating the still persisting gaps in protection.

¹⁶ Cf. Joe Wills, *Contesting World Order? Socioeconomic Rights and Global Justice Movements* (2017) 70.

Overall, Part II solidifies the observation that social rights have become justiciable rights, though in practice there is often an implementation gap.

Part III sheds light on different avenues pursued to overcome said implementation gap concerning social rights between the ‘theoretical’ level of protection afforded at the universal and/or regional level and the ‘actual’ impact for the lives of individuals. The contributions range from the discussion of identifying and using indicators as adequate monitoring mechanisms, the role of domestic actors in ensuring the implementation and enforcement of social rights standards in more effective terms, the question how civil society can use strategic litigation or other forms of collaboration to promote the protection of social rights, to procedural rights of the individual to gain a more effective protection of social rights.

In Part IV of the *Research Handbook*, the contributions place emphasis on the role of social rights in situations that are marked by change, instability, turmoil or lack of regulation. This covers situations such as economic crises and the response by states (such as austerity measures, economic reforms or activation reforms), the role of business or governmental ethics in a global economic setting marked by a series of regulatory and normative gaps (both in relation to transnational corporations and corruption) and armed conflicts. The contributions, however, not only point to the endangerment of social rights, but in fact also highlight that ensuring the protection of social rights, for example through human and social rights impact assessments, is often also the path forward in overcoming such situations. Additionally, they demonstrate the need in some sectors to continue the work towards the drafting of new treaties or protocols in order to create binding legal standards.

Finally, the contributions in Part V deal with a variety of regime interactions and the question whether and how to streamline social rights into other fields of international law (investment law, international financial law, international environmental law and international criminal law). This sheds light on the question of the relationship between social rights and other fields of international law, while at the same time raising new points of discussion in relation to the nature of social rights obligations. Thus, the contributions highlight that overall convergence and streamlining seems to occur in practice – whether through judicial instruments such as systemic integration by means of treaty interpretation or through the drafting of new instruments – but that challenges may arise if, for example, economic growth subsidies, inequalities persist or accountability remains lacking. Among others, this cycles back to other parts of the *Research Handbook*, in the exploration of how ‘progressive realization of social rights’ is detailed in theory and practice or how the implementation and enforcement of social rights can be made more effective.

These interlinkages are among the reasons why we hope that this *Research Handbook* has the potential to make a qualified contribution to clarification of the *status quo* of social rights in international law, as well as inform its further development and respond to contemporary challenges. Indeed, while other human rights have been the object of detailed and well-developed research, social rights are still underrepresented in legal literature, a legacy of their historical neglect. Presenting the development of innovative legal solutions, recent achievements and the implementation challenges which have existed since the beginning of the twenty-first century are further goals of this work. After all, if the struggle for global social justice is a core value of the international community, social rights play a key role in an inclusive, equitable and sustainable development.

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