

**THE ANALYSE OF NATURE AND
IMPLEMENTATION OF ECONOMIC, SOCIAL AND
CULTURAL RIGHTS AND CIVIL AND POLITICAL RIGHTS
IN INTERNATIONAL HUMAN RIGHTS LAW**

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ABSTRACT

After World War II The International Society established United Nations for promoting peace and Human Rights in the World. It has declared Universal declaration of Human Rights which was a standard setting document and was not legally binding on signatory states. In 1966 two legally binding treaties International Civil and Political Rights and International Convention on Economic, social and cultural rights came into force. However, economic, social and cultural rights have been neglected comparing the efforts spent for the civil and political rights. This was mainly a result of struggle between two ideological blocs during the Cold War.

Although they have been regulated under two different covenants, whether there is a core distinction between the two groups of rights or not is a question in the International Human Rights academic world.

KEY WORDS: *Economic, Social and Cultural Rights, Positive Responsibility, Cold War, Civil and Political Rights.*

**ULUSLARARASI İNSAN HAKLARI HUKUKUNDA
ECONOMİK, SOSYAL VE KÜLTÜREL HAKLAR İLE
MEDENİ VE SİYASAL HAKLARIN DOĞASI VE
GERÇEKLEŞTİRİLMELERİNİN ANALİZİ**

ÖZET

Uluslararası İnsan Hakları Hukukunun gelişimi 2. Dünya savaşından sonra Birleşmiş Milletlerin kurulması ile birlikte çok hızlı olmuş ve derinleşmiştir. Evrensel İnsan Hakları Bildirgesi Kabul edilmiş ancak bu belgenin imzacı devletler açısından hukuki bağlayıcılığa sahip olmamasından kaynaklanan problem 1966 yılında BM tarafından ikiz

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sözleşmeler olarak adlandırılan hukuki bağlayıcılığa sahip Medeni ve Siyasal Haklar Sözleşmesi ile Ekonomik, Sosyal ve Kültürel Sözleşmesinin imzalanması ile giderilmeye çalışılmıştır. Özellikle soğuk savaş dönemindeki ideolojik kamplaşmaların bir sonucu olarak medeni ve siyasi haklara nazaran ekonomik, sosyal ve kültürel haklar ihmal edilmişlerdir. Literatürde doğası gereği medeni ve siyasal haklar ile ekonomik sosyal ve kültürel haklar arasında bir fark olup olmadığı tartışılmıştır. Bu makalade bu iki insan hakları kategorisinin tabiatı ve gerçekleştirilmelerine ilişkin analizi ile bir fark olup olmadığı sorusuna cevap aranacaktır.

ANAHTAR KELİMELEER: *Ekonomik, sosyal ve kültürel haklar, pozitif yükümlülük, soğuk savaş, Medeni ve siyasal haklar*

I. Introduction

The human beings received his/her human rights related to their nature after long struggles and philosophical debates. After World War Two the General Assembly of the newly established United Nations declared these rights on 10 December 1948 with the Universal Declaration of Human Rights. This declaration is not legally binding which contains both civil and political rights and economic, social and cultural rights. To comply with the need of legally binding convention on ratifying states, by the effect of two different ideological perspectives, two separate covenants were prepared. The covenant on civil and political rights on the one hand and the covenant on the economic, social and cultural rights on the other signed in 1966 and came into force in 1976.

Generally spoken economic, social and cultural rights have been neglected comparing the efforts spent for the civil and political rights. This was mainly a result of struggle between two ideological blocs during the Cold War.

Although they have been regulated under two different covenants, whether there is a core distinction between the two groups of rights or not is a question in the International Human Rights academic world.

For analysis of this question I will examine the problem under several headings which captures historical, conceptual, technical and ideological perspectives.

II. The Historical Perspective

All articles and books, which start with history of Human rights say that after World War 2 and experiment of Nazi and other dictatorships mainly western states wanted to establish an international machinery, which would protect the human rights also.²

The United Nations was established in 1945 by the Charter of UN. United Nations adopted the Universal Declaration of Human rights on 10 December 1948, which is not binding on adopting states. This was an important step for protecting fundamental Human Rights. This declaration contained both sets of Human Rights, which we call today as civil and political rights on the one hand, and economic, social and cultural rights on the other. It was understood from the UDHR that there wasn't a distinction between two sets of rights.

UN commission on Human Rights completed its works on UDHR and then began to prepare convention, which would be binding on state parties ratifying. At that time, the commission confronted by a question whether it should be one convention or two conventions. Mostly socialist countries suggested that it should be one covenant, which also include economic, social and cultural rights besides civil and political rights.³ UN General Assembly in its resolution adopted in 1950 stated that all human rights are independent and asked the commission to draft a single convention.⁴ However the next year, western states affected the draft proceedings and were able to adopt a new GA resolution⁵, which

² Harris, O'Boyle, Warbrick; *Law of the European Convention on Human rights*, (London, Dublin, Edinburgh, Butterworths, 1995) p.1; Robertson and Merrills, *Human Rights in the World*, (Glasgow, Bell & Bain Ltd, 1996) p,1 and so on.

³ Foreign Policy Document, No: 127, *The balance between civil and political rights and economic, social and cultural rights*. International Research Department , Commonwealth Secretariat, December 1978.

⁴ GA Res.421(V) 4 December 1950

⁵ GA Res.543 (VI) 5 February 1952

required the commission to divide the rights into two different international covenants. These covenants were the international covenant on civil and political rights and the international covenant on economic, social and cultural rights. There were disputes about real reason of two covenants being to make possible at least ratifying one covenant by states which weren't fond of economic, social and cultural rights. Deciding two sets of rights reflected certain ideological and political differences between two major groups of negotiating states.⁶ However, it should be bear in mind that, at the same time General Assembly adopted resolution and expressed that all human rights are interrelated and indivisible. UN repeated this concept several times. GA resolution in 1977 (32/130) stated that all human rights were indivisible and interdependent and that equal attention should be given to the implementation, promotion and protection of both civil and political and economic, social and cultural rights. Furthermore it noted that full realisation of civil and political rights without enjoyment of economic, social and cultural rights was impossible. Most recently 171 states took part at the World Conference on Human Rights in 1993, in Vienna and unanimously adopted Vienna Declaration and Programme of Action. In this declaration again it was stated that 'all human rights are universal, indivisible and interdependent and interrelated'.⁷

There is a broadly accepted belief that economic, social and cultural rights were created by Soviet states after World War II. David Weissbrodt argue that in the 19th century by the developing of socialism the scope of human rights expanded. This progress led to realising economic, social and cultural rights. So-called economic, social rights first took part in the constitutions of Mexico (1917) and Russia (1918).⁸ As opponent of this view Craven says that although the soviet states championed economic, social and cultural rights, these rights

⁶ Sieghart, Paul; *The International law of Human rights*, (Clarendon Press, Oxford, 1983) p.25

⁷ The world Conference on Human rights: Vienna Declaration and Programme of Action, UN doc.A/CONF.157/23, part 1, para.5.

⁸ Weissbrodt, David; "Human Rights: an historical perspective" in Davies, Peter (ed.) *Human rights* (Routledge, Great Britain, 1991) p.6

certainly were not created by socialist block.⁹ On the contrary these rights originated from American Law Institutes draft International Bill of rights, President Roosevelt's proposal for an 'Economic Bill of rights', the works of the International Labour Organisation founded in 1919 and such western human rights movements.¹⁰ It is the fact that western states predominantly spent efforts to promote rights, yet after socialist revolutions they didn't emphasise on economic, social and cultural rights. The Cold war deepened these different approaches to the rights. During that time, Soviet bloc emphasised on economic, social and cultural rights.¹¹ These different approaches of ideologies caused the negligence of economic, social and cultural rights. The states, which are entirely in favour of free market ideology, have difficulties with implementing economic, social and cultural rights.¹²

III. Classifying the Rights

The notion of dividing the rights into the generations was firstly used by Karel Vasak in 1977.¹³ This classification broadly accepted and used by authors who write about these issues. In this respect, the rights are divided into three generations. Civil and political rights are made up of first generation rights and economic, social and cultural rights of second-generation rights. Recently a third generation rights group was added to this agenda. The third generation rights include so-called solidarity rights which are environment and development rights. Edith Brown Weiss called these third generation rights as planetary

⁹ Craven, M, *The international Covenant on Economic, Social and Cultural Rights: A Perspective on its development*(1959) quoted from Hunt, Paul; *Reclaiming Social Rights: International and Comparative perspective*, (Dartmouth, Aldershot, 1996) p.4

¹⁰ Hunt, Paul; *Reclaiming social Rights: International and Comparative Perspectives* (Dartmouth, Aldershot, 1996) p.4

¹¹ *ibid* p.7

¹² Alston, Philip; "Making economic, social and cultural rights count: A strategy for future" *.political studies* , p.188-190

¹³ Eide, A; Krause, C; Rosas, A; *Economic, Social and Cultural Rights: a textbook* (Dordrecht/Boston/London, 1995) p.16

rights.¹⁴ At this point I would like to say that it is not possible to make clear and certain distinctions between that sets of rights. To illustrate, it is difficult to truly classify the right to trade union and the right to property in one group of rights. The right to education and cultural rights classified among the civil and political rights but not among the economic, social and cultural rights by the ECHR.¹⁵ On the contrary, The UN system gave place to the right to education among the economic, social and cultural rights.¹⁶

Convention of civil and political rights called generally on individuals rights; e.g. “ Every human being has the inherent right to life”; “ No one shall be held in slavery”; “All persons shall be equal before the courts and tribunals” and so on. On the other hand, the covenant on economic, social and cultural rights speaks to the states; “The State Parties to the present covenant recognise the right to work”; “The State Parties...undertake to ensure...the right of everyone to form trade unions”; “The States Parties recognise...the right to everyone to education” and so on. Having opinion that there is not clear distinction between two sets of rights I also have opinion that such classification is beneficial for educational purposes.

IV. The nature of human rights

To understand argument about distinctions between two sets of rights we should examine whether there is a difference between the human rights and legal rights. Human rights are sometimes confused with legal rights. Human rights are inherent in every human being. Human being receives these rights solely by his or her birth and human dignity. There is no need to any authority or government for providing these rights. Albie Sach says:

“No one gives us rights. We win them in struggle. They exist in our hearts before they exist on paper. Yet intellectual struggle is one of

¹⁴ Edith Brown Weiss, “Planetary Rights” in Claude, R. P; Weston B.H (eds.) ;*Human rights in the world community*,(UPP,Philadelphia,1992) p.187-197

¹⁵ ECHR,protocol 1,Article 2;Brownlie,Ian;*Basic documents on Human Rights*

¹⁶ ICESCR Article 13,ibid

the most important areas of the battle for rights. It is through concepts that we link our dreams to the acts of daily life.¹⁷

Firstly the authors in theories and writings on natural law have sought that all human rights are inalienable and equal because of human being. Locke's *Second treatise on Government* (1968) is often regarded the first major work on natural law theory.¹⁸

Positive law is not source of these rights, the only source is the nature of human being. The purpose of human rights is to prevent abuses of power. Hence the main targets of any and every litigation are abuses of power which can be defined as human rights violations, such as deaths by starvation.¹⁹ As a result, these rights are not only the civil and political rights but also economic, social and cultural rights.²⁰

V. Implementation

It has been argued that two sets of rights have different natures so they should have different instruments of implementation.²¹ Civil and political rights were considered to be 'absolute' and 'immediate' whereas

¹⁷ Sach, A. *Protecting Human Rights in a New South Africa*, (Capetown, Oxford University Press, 1990) quoted from Tomasewski, K. "The justiciability of economic, social and cultural rights" in *The Review, International Commission of Jurists Vol.55/December 1995, special Issue* "A careful and tedious analysis of what is –and what is not – a human rights is an inherent part of this intellectual struggle.

¹⁸ Arambulo, K. *Strengthening the Supervision of the International Covenant on Economic, Social and Cultural Rights*, (Antwerpen-Groningen-Oxford, Intersentia-Hart, 1999) p.10

¹⁹ The 1982 UN report on the world social situation included in its section on civil and political rights deaths by starvation, alongside executions and forced resettlement, amongst political killings. E/CN.5/1983/3 and St/ESA/125 p.202 cited from Tomasevski ibid

²⁰ Hausermann, Julia, "The realisation and implementation of economic, social and cultural rights" in Ralph Beppard and M. Hill Dilys (eds.) *Economic, Social and Cultural Rights Progress and Achievement (Hong Kong, 1992)* p.47

²¹ Dudziak, Mary, L, *Cold war Civil Rights: Race and image of American Democracy*, (Princeton University Press, 2011), Benyishay, Ariel and Betancourt, Roger R. 'Civil liberties and economic development' in *Journal of Institutional Economics*, (2010). Vol. 6, pp 281-304.

economic, social and cultural rights were assessed to be 'programmatic', to be realised gradually and therefore not a matter of rights.²² Vierdag in his article²³ argued that economic, social and cultural rights are not legally enforceable considering the implementation of these provisions as a political matter but not a matter of law. The machinery of implementation of two covenants supports this argument to some extent. At the time of drafting two covenants, an optional protocol which provide individual complaints about civil and political rights was prepared and adopted, whereas for economic, social and cultural rights such a machinery was not prepared. I will examine this argument under the heading of the justiciability.

The obligations of states for human rights are generally classified in three levels. These levels are the obligation to respect the right, the obligation to protect and the obligation to fulfil. At the first stage, that is, the obligation to respect required the state to be negative actor. It should avoid doing anything, which violates the rights of the individual. For its obligation to protect, state should take positive measures and protect the individual from the actions of others. And at the last stage, the obligation to fulfil, state should be absolutely active and take necessary measures to ensure each person's rights.²⁴ Article 2(1) of ICESCR reads as follow:

"Each state party to the present covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, *to the maximum of its available resources*, with a view to achieving progressively the full realisation of the rights recognised in the present covenant by all appropriate means, including particularly the adoption of legislative measures."

It is understood from this provision that states may not be able to full and immediate realisation of economic, social and cultural rights.

²² Vierdag, E.W "The legal nature of the rights granted by the international covenant on economic, social and cultural rights" *Netherlands Yearbook of the International Law*, Vol.9 91987) p.103

²³ supra note 17

²⁴ Eide, Asbjorn; "Realization of social and economic rights and the minimum threshold approach" in *Human Rights in the world community* (UPP, Philadelphia, 1992) p.158-166

Therefore the state parties have obligation to take steps using maximum of their available resources to get progressive achievement of the full realisation of these rights.²⁵

The economic, social and cultural rights are broadly formulated as obligations of result rather than specific obligations of conduct. This has advantages and disadvantages. Allowing for flexibility so possibility for states to comply with their obligations in ways which suitable to their situation is a major advantage of them. The disadvantages are that they can be neglected and it is difficult to complete obligations for states. An obligation of conduct (active or passive) emphasises on behaviour, which the state should follow or abstain from. An obligation of result is concerned with the being active, but more concerned with the results the state should achieve or avoid. State agents are obliged not to torture that is an obligation of conduct. States and its agents should take measures to avoid from hunger, that is an obligation of result.²⁶

VI. Justiciability

Generally spoken, if a right is justiciable, that is, if violation of those rights can be brought before a court or tribunal, that right also can be implemented properly. Therefore, justiciability is a most important aspect of any legal system. Justiciability means not only bringing social-matter characteristic cases before judicial tribunal, but also it covers the right to bring communications concerning violations before quasi-judicial organs, such as, UN Human Rights Committee and ombudsman etc.²⁷ It

²⁵ Hausarmenn, Julia. "A human rights approach to development " in *Rights and Humanity* (London,1998) p.29

²⁶ Eide, A."Realization of social and economic rights and the minimum threshold approach" in Claude, R..P. and Weston, B.H. *Human Rights in the World* (Philadelphia,UPP,1992) p.158-159; Craven, M. *The International Convention on Economic, Social and Cultural Rights: A Perspective on its Development*, (Oxford, Clarendon Press, 1995) p.107

²⁷ Reclaiming Social Rights, supra note 9 p.24-25 Leary, A. V. "Justiciability and beyond; Complaint Procedures and the right to Health" in *International Commission of Jurists The Review*, Vol.55 Special Issue, December 1995

²⁷ supra note 12 p.41

has been argued and generally accepted that implementation of civil and political rights has the justiciability of that rights. On the other hand, some authors have the idea that economic, social and cultural rights are not in the scope of justiciability. Among them, Vierdag argues that implementation of economic, social and cultural rights is a political matter but not a legal matter.²⁸ Leary argues the common arguments raised against the justiciability of the social rights. These arguments are that, these rights are promotional requiring positive measures and government programmes and such measures and programmes are not susceptible to implement these rights by means of courts or similar formal procedures. They must be handled legislatively or administratively. One other argument, inter alia, is that social rights are vague and undefined so can not be implemented through justiciable procedures.²⁹ Authors argue to be two main reasons for undevelopment of justiciability of international economic, social and cultural rights treaties; a) the wording of these provisions b) Weak-monitoring mechanisms when compared with the that of civil and political rights.³⁰ In this regard, committee on economic, social and cultural rights in 1992 argued for an individual right of complaint and expressed in that year's report that complaint procedures would contribute to the development of the law in the field of economic, social and cultural rights.³¹ Economic, social and cultural rights are an important part of International Human Rights agenda. These rights took part in the UDHR, other general universal conventions, regional conventions and in the other treaties, which aimed to eradicate discrimination. Those treaties are legally binding, so the state parties have legal obligations.³²

Limburg principles created an important approach regarding justiciability of economic, social and cultural rights. Paragraph 8 of Limburg principles reads as follow:

²⁸ supra note 19

²⁹ supra note 22

³⁰ supra 12, p.42

³¹ Leary, A. Virginia, "Justiciability and beyond; Complaint Procedures and the right to Health" in *International Commission of Jurists The Review*, Vol.55 Special Issue, December 1995

³² supra note 12 p.41

“Although the full realisation of the rights recognised in the covenant is to be attained progressively, the application of some rights can be made justiciable immediately while other rights can become justiciable overtime.”³³ Furthermore 17 paragraph of that principles required the states parties at national level to use all appropriate means; legislative, administrative, judicial, economic, social and educational measures to fulfil their obligations under the covenant. According to the Limburg Principles it is clearly understood that economic, social and cultural rights are justiciable. In addition, the concept of indivisibility and interrelating of human rights necessitated the justiciability of economic, social and cultural rights. Current intergovernmental environment is hostile towards efforts to institutionalise the justiciability of economic, social and cultural rights as a category.³⁴

The Justiciability of Economic, Social and Cultural Rights through treaties on Civil and Political Rights Treaties

The justiciability of economic, social and cultural rights, at least for some elements of them, has provided by means of civil and political rights mechanisms in the international area.

2. Non-discrimination (Article 26 of the ICCPR)

In international human rights arena justiciability of economic, social and cultural rights has been conducted under non-discrimination provision. The Human Rights Committee with regard to the three Dutch cases; *Danning v. Netherlands*, *Zwaan de-Vries v. Netherlands* and *Broeks v. Netherlands* which are related social security, after long discussions reached its final decisions on 9 April 1987 and made a major progress for justiciability of economic, social and cultural rights. Human Rights Committee in that decisions for the first time, settle that the non-discrimination provision in Article 26 of the ICCPR is also applicable in relation to the enjoyment of economic, social and cultural rights.³⁵

³³ The Limburg Principles, UN Doc.E/CN.4/1987/17

³⁴ Tomaszewski, K. ”Justiciability of economic, social and cultural rights” in *International commission of jurists The Review*, Vol.55 Special issue, December 1995

³⁵ supra note 12, p.44

3. The approach of European Court of Human Rights

European Court of Human Rights in its some judgements extended the protection of Article 6(1) the right to a fair trial to the social characteristic rights. In Airey case³⁶ European Court emphasised the social dimension of free legal assistance, the element of the right to a fair trial. Strasbourg in that case also argued the relationship between civil and political rights and economic, social and cultural rights.

“Whilst the convention sets forth what are essentially civil and political rights, many of them have implications of a social or economic nature...[T]he mere fact that an interpretation of the convention may extend into the sphere of social and economic rights should not be a decisive factor against such interpretation; there is no water-tight division separating that sphere from the field covered by the convention.”³⁷

In the *Feldbrugge v. Netherlands*³⁸ and *Deumeland v. Germany*³⁹ the Strasbourg took its first major step in extending the protection Article 6(1) to social security benefits.⁴⁰ Article 6(1) provides a protection in ‘individuals determination of his civil and political rights and obligations’. In *Feldbrugge* case, the applicant was refused to given health insurance allowances. Because of the restrictive terms of relevant appeal boards, applicant had not been able to a procedure fulfilling the requirements of the Article 6(1) to European Convention on Human Rights. Court first of all, dealt with the concept of the civil rights. Although health insurance was regulated under Dutch Public Law, Strasbourg found out that this insurance scheme receives premiums as a requirement of applicant’s employment contract, so predominantly it has civil law character, which was covered by Article 6(1). The European Court had reached the same conclusion in the same arguments in *Deumeland* case. It is worth to note at this point that, in these case since court found civil character of element of cases it had reached such a judgement. However, The Strasbourg in the cases *Salesi v. Italy*⁴¹ and

³⁶ Judgement of 9 October 1979, Series A, No: 32

³⁷ *ibid.* Para.26

³⁸ 29 May 1986 Series a No:99

³⁹ 29 may 1986 Series A No:100

⁴⁰ *supra* note 12 p.46-47

⁴¹ Judgement of 26 February 1993 series A No; 257.E

Schuler-Zgraggen v. Switzerland⁴² in 1993 extended the protection of Article 6(1) to statute-based social security benefits with a public law character. This was the further step to the earlier judgements.⁴³

Under the European systems and other regional and universal systems the protection of economic, social and cultural rights can be provided under the other similar field of civil and political rights treaties .For instance, the right to health can be protected under the right to life. General comment 6 on the right to life gives us such an approach. General Comment 6 para.16 (d) reads as follow:

“The committee has noted that the right to life has been too often narrowly interpreted. The expression “inherent right to life” can not properly be understood in a restrictive manner, and the protection of this right requires that states adopt positive measures. In this connection, the committee considers that it would be desirable for states parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.”⁴⁴

4. The Approach of The Indian Supreme Court

The development of the Indian Supreme Court in the area of justiciability of social rights is widely recorded in the literature. Directive principles of Indian Constitution contain economic, social and cultural rights and it was expressly stated that these rights are non-justiciable. However, The Indian Supreme Court used the explicitly non-justiciable directive principles to justify its broad interpretation of the right to life.⁴⁵

Indian Supreme Court has constructed creative remedies and means of assisting the promotion of economic, social and cultural rights.

Considering the improving of justiciability for economic, social and cultural rights in the international and national arena we can

⁴² Judgement of 26 June 1993 Series A No: 263

⁴³ supra note 12 p.48-49

⁴⁴ Official records of the General assembly, thirty seventh session supplement, No:40, (A/37/40) (1982)

⁴⁵ Scott, Craig; “The Interdependence and permeability of Human Rights: Towards a partial fusion of the International Covenants on Human Rights.” In *27 Osgoode Hall Law Journal*, 767(1980) quoted from Leary supra note 22

come across that at least some elements of economic, social and cultural rights are justiciable.

VII. Funding

The realisation of two groups of rights is brought about in different ways due to the differences in character and substance of these rights. Bossuyt consider that civil and political rights are absolute, fundamental and have an invariable content because they are inherent to the human dignity. As a result they basically required negative obligations of on States. In this regard the realisation of civil and political rights do not vary from one state to another and minimum of obligations of state is sufficient.⁴⁶ Bossuyt on the other hand, argues that economic, social and cultural rights are relative rights, the realisation of which can solely be conducted progressively. As being subject to the differences in socio-economic and political systems of the different states they are vary to one state to another. These rights impose positive obligations on a state and to realise them and it required financial expenditures of state. Whereas, the civil and political rights do not require financial effort of the state. This argument one of the most mentioned by authors to make differences between two groups of rights. This argumentation was criticised. Eide stated that this view results from a very narrow understanding of the nature of these rights and of the corresponding state obligations.⁴⁷

As stated in the Declaration on the right to Development⁴⁸ the individual is the active subject of all economic and social development. The individual is expected through his or her own efforts and by use of his/her own resources to satisfy his or her own needs. As we mentioned before the, the state has three level of obligations for human rights. These are the obligation of respect, the obligation of protect and the obligation of fulfil. On the ground of the economic and social rights State's obligation of respect required that State must respect the resources owned by individual and his or her freedom of taking the necessary actions and

⁴⁶ Arambulo, K. *Strengthening the supervision of the International Covenant on Economic, Social and Cultural Rights*(Antwerpen-groningen-Oxford,intersentia-hart,1999) p.71

⁴⁷ supra note 12 p.36

⁴⁸ GA Resolution 41/128 4 December 1986 Article 2

use the necessary resources to satisfy his/her own needs, and this level doesn't make any cost for State. The obligation of States to protect is the most important aspect of state obligations also with regard to economic, social and cultural rights alike the role of the State for civil and political rights. At the final level, the State's obligation is to assist and to fulfil the rights of everyone as being active. The argument that economic, social and cultural rights required more funding results from assumption that economic, social and cultural rights are observed at final level (the obligation to fulfil) while civil and political rights are observed on the primary level (the obligation of respect). However this assumption is arbitrary, because some civil and political rights require state at all levels. On the other hand, in many circumstances the economic, social and cultural rights can be protected at state's first level obligation the obligation of respect. The non-interference of the state in those cases is sufficient.⁴⁹

VIII. The Human Nature and Human Rights

Under the heading of nature of Human Rights concept I examined the nature of human rights. Here I would like to state my opinion on the relation between nature of human being and human rights. As we know the human is made up of two structure. One is physical body the other is spiritual, psychological structure. Both these structures of man have different needs. Although there is no a clear distinction, I think that we can see a rough distinction. I have opinion that civil and political rights (for example liberty) comply with the needs of spiritual body whereas the economic, social and cultural rights (food, housing, clothing etc) comply with the needs of physical body.

I also would like to mention that as a whole human nature is indivisible although has two different structure physical and spiritual. In this regard I have opinion that similarly, the human rights are indivisible and because of their nature they have different character.

IX. Conclusion

Economic, social, and cultural (ESC) rights are those that enable people to meet basic human subsistence and socioeconomic needs. The ESC rights in the ICESCR include the rights to work, to

⁴⁹ supra note 12 p.36-37

favorable working conditions, to form and join trade unions, to social security, to protection and assistance for family, to adequate standards of living and health, to education, and to participation in cultural life. Civil and Political Rights (CP) rights, in contrast, relate to the protection of individual liberties. The ICCPR establishes basic CP rights like the rights to life and to freedom from slavery and compulsory labor, but also establishes protections for individual participation in political and civil matters, including freedom of movement, thought, and expression, freedom from arbitrary arrest, the right to equal protection before the law, and the right to peaceful assembly and association.

Examined different approaches of authors, historical, ideological and technical perspectives and comments made by UN bodies I came across that all human rights are indivisible, interdependent and interrelated. Solely because of human nature and nature of human rights they may be divided into two groups. This doesn't effect their indivisibility and being human rights.

I have opinion that having two separate conventions is useful to understand the concept of human rights. There is not a superiority of one group to other. Both sets of rights result from nature of human rights and each group responds one aspect of human being.

From the wording of two covenants and arguments of authors we mentioned we see that civil and political rights are easier to define and subsequently to implement than economic, social and cultural rights. However, many of the economic, social and cultural rights can be claimed before national and international judiciary tribunals as we mentioned in the case before the Indian Supreme Court and the UN-Committee on Human Rights concerning three Dutch cases.

Even though economic, social and cultural rights have been neglected due to ideological approach shaped by Cold War, it must be kept in mind that these are rights as equal as civil and political rights.

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