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Jean-Marc Thouvenin, Anne Trebilcock (eds.), *Le droit international social: Droits économiques, sociaux et culturels*, Brussels, Bruylant, 2013, 2072pp., ISBN 2802738461 (paperback), 175 €.

A few years ago, Olivier De Schutter, UN Special Rapporteur on the Right to Food, wrote how the dissemination of the European Social Charter (ESC) through research and teaching would ‘contribute to the building of a more social and inclusive Europe’.¹ A new book in French will facilitate this dissemination and will constitute a valuable tool for all those who intend to teach, research and study international and European social law.

Solving ‘problems of a social character’ is part and parcel of the *raison d’être* of the United Nations.² Yet, the social dimensions of international law occupy a modest place within international legal education and research. While most law schools teach aspects of human rights law as part of their basic international law modules, this does not automatically mean that students are introduced to ‘international social law’ in any systematic way. For instance, most students in Europe will be familiar with the European Convention on Human Rights (ECHR) or the basic sources of European Union law, but it is much less certain that they are aware of the ECHR’s sister treaty, the ESC.

¹ O. De Schutter (ed.), *The European Social Charter: A Social Constitution for Europe* (2010), at 1.

² United Nations Charter, Art. 1(3).

The reviewed two-volume work attempts to counter the relative oversight of social law in current international law. *Le droit international social: Droits économiques, sociaux et culturels*, edited by Jean-Marc Thouvenin and Anne Trebilcock, provides a detailed examination of the history, sources and substance of the international social law from the establishment of the International Labour Organization (ILO) to the present day. Published in French by Bruylant, the book provides a massive wealth of information for those who are looking for an overview of international and European social law.

The editors of *Le Droit international social* compiled a comprehensive 2072 page overview of international social law and economic, social and cultural rights (ESCR). Many of the more than 70 contributors are academics (most of them based in Paris), experts from UN agencies, the ILO, or the World Trade Organization. Coordinated from the *Centre de droit international de Nanterre*, the editors asked the contributors to examine whether international social law is more programmatic than obligatory, more soft law than law. The overall answer provided throughout the two volumes is that international social law is efficient and that states have been willing to be bound to various obligations in the social realm despite recent tendencies to disengage (p. 96).

After a general introduction, volume I focuses on the history, specificities and actors of international social law. Readers who are interested in social law and relatively new to the international legal system in general will find this volume

useful. Volume II extensively deals with the various specific obligations of international social law. Seven detailed chapters are dedicated to social law *ratione materiae*: work, social security, health, the right to an adequate standard of living and the protection and assistance of families, education, science and culture, as well as leisure, tourism and sports.

The main strength of the two volumes is that they provide a *tour d'horizon* of the actors, history and substance of the 'social rights dimensions' of contemporary international law. The editors appropriately begin the book by situating social law within public international law (p. 31). By emphasising that social law is part of general international law as a whole and by presenting the manifold interactions between international social law and national jurisdictions, the contributors justify why social law deserves to be treated by international law textbooks and teaching on the same footing as other international law topics.

'International social law' is not easy to define and it is interesting to note what the editors consider to be part of international social law. Social law is sometimes understood to be limited to the body of law dealing with social security and labour law. The book reviewed here takes a much broader approach.³ Thouvenin and Trebilcock explain that their definition of social

³ This is also the approach of a statute book that recently appeared on the French market – published by another publisher within the Belgian Groupe De Boeck: Achim Seifert, *Code de droit social européen et international*, Brussels, Larcier, 2012. An innovative aspect of the Larcier Code is the prominent place allocated to instruments that attempt to regulate the behaviour of multinational enterprises.

law includes ‘its economic, social and cultural aspects’ (p. 26). As the subtitle of their book reveals, the editors consider all ESCR to be part of social law. The editors explain that they came up with this definition by ‘following the footsteps of the drafters of the International Covenant on ESCR of 1966’ (p. 26). Hence, they imply that international social law is defined with reference to all the rights mentioned in the Covenant on ESCR (p. 26). The editors justify the subsumption of all ESCR within their definition of social law by explaining that these rights have ‘an eminently social preoccupation’ (p. 26).

There are pros and cons of such a definition of international social law. On the one hand, the definition is pragmatic. It ensures that the book appeals to those who are primarily interested in labour and social security law as well as those who have an interest in ESCR more broadly. In addition, defining social law as essentially the same as ESCR is not an invention of the editors if one considers the example of the ESC which only refers to social rights in its title, but also contains many economic and some cultural rights. On the other hand, the idea that social law is distinguishable from other bodies of law because it has a ‘social preoccupation’ is a potentially problematic suggestion with theoretical implications. While the above is certainly correct about ESCR, couldn’t it be said that all human rights (or even legal norms in general) have a social preoccupation – at least depending on one’s interpretation of the old maxim *ubi societas ibi jus*? If law is indispensable to every society, law in general has a ‘social preoccupation’. What the difficulties of defining social

law or social rights seem to confirm first and foremost is that putting human rights into boxes is analytically unsatisfactory yet hard to avoid for publication purposes. At the same time, another difficulty with the editor's explanations is that defining social law by reference to a collective social preoccupation may cement the view that there are distinct sets of human rights. As is well known, ESCR have long been (and for some continue to be) considered a separate category of human rights that is legally distinct from their civil and political counterparts. It is regrettable that the various contributors to the two volumes make contradictory statements with regard to the longstanding debate on the nature of social rights. According to Marjorie Beulay, author of an introductory section on the evolution of international social law, the social preoccupation of social law implies that social rights are inherently distinct from other human rights:

Présentés également comme des droits de deuxième génération, les droits sociaux sont des droits-créances c'est-à-dire des « droits à ». (...) En effet, l'optique est différente de celle des droits civils et politiques: l'homme est placé au centre d'une collectivité, il n'est plus seulement envisagé comme une entité individuelle mais également comme la composante d'un ensemble au sein duquel il dispose de droits notamment au regard de sa condition matérielle et dans la relation qu'il entretient avec la société. (p. 66)⁴

This description of social rights is contradicted by other contributions within the reviewed book. The UN Committee on ESCR, a considerable number of

⁴ 'Also called second generations rights, social rights are "claims on the state". (...) Indeed, the perspective is different from the one for civil and political rights: the individual is placed in the centre of a community. He or she is no longer seen as a single entity but as a component of a whole in which the individual has rights related to his or her material condition and in his or her relationship with society.' (p. 66) (Translation by the author)

domestic and regional decisions, and many academic commentators have long argued, and in some instances demonstrated in practice, that social rights impose negative as well as positive obligations and that they are also individual rights. Many ESCR obligations have to be progressively realised over time and give considerable discretion to each state about how best to achieve such realisation depending on the available resources. However, it is incorrect to derive from the emphasis on progressive realisation that ESCR exclusively contain positive obligations and that this would inherently distinguish them from other human rights. Trebilcock, for instance, explains later in the book how states have the obligation to *respect* social rights, understood as the negative duty to refrain from interfering with an individual's existing access to the enjoyment of rights (p. 106). The same is repeated by other contributors (e.g. p. 855 or various discussions of negative aspects of ESCR, such as the explicit treatment of the negative obligations related to the right to health on p. 1627ff).

Last but not least, one could have hoped that vocabulary dividing human rights into 'generations' is no longer employed. In various places, ESCR are called 'second generation rights' (e.g. p. 66, 68, 224, 852). The generational analogy has fallen into disrepute with many human rights scholars or practitioners as it seems to presume the prioritisation of civil and political rights (the so-called first generation rights) and the idea that ESCR are less well established in positive international law. The classification has been

rightfully criticised for being ‘inconsistent with the principles of universality, indivisibility and interdependence of human rights’ and for assuming that human rights are exclusively the product of post-enlightenment Western liberal thought.⁵

These shortcomings aside, *Le Droit international social* is undoubtedly among the most exhaustive French language presentations of international social law to the present day and the editors successfully present the diversity of topics and international sources relevant for the protection of the individual’s social well-being. A timely and welcome addition to the literature, the two volumes will be of interest to advanced law students, lawyers, officials at government agencies, professors, and researchers who are looking for a detailed exposition of the history, content and sources of international social law, how it interacts with domestic jurisdictions and what potential it has to contribute to one of the fundamental aims of the United Nations by ‘solving problems of a social character’.

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⁵ For instance, J. Mubangizi, ‘Towards a New Approach to the Classification of Human Rights with Specific Reference to the African Context’, (2004) 4 African Human Rights Law Journal 93, at 93, 97.

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