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Development of international legal standards in the field of economic and social human rights: Historical and legal analysis in the context of scientific discussion in the journal "Human Rights Quarterly"

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■ **Abstract.** The relevance of the study is conditioned by the lack of scientific consensus on the legal content and possible ways to implement social and economic human rights and the intensification of discussions around them in scientific and public discourse. The purpose of the study is a historical and legal analysis of the process of development of international legal standards in the field of economic and social human rights, options for their rationing in the text of international treaties that were developed based on the results of discussions in the late 1940s-early 1950s. The study involved archival materials of meetings of the Third Committee of the UN General Assembly and the Commission on Human Rights, which was based on the use of a set of methods of qualitative and quantitative analysis, synthesis, and a comparative legal method. The conducted research gave grounds to come to several reasoned conclusions. On the one hand, the analysis of individual papers and fairly broad scientific discussions helped to identify several main conceptual approaches to understanding the processes of developing and consolidating the most important legal norms that are aimed at regulating the sphere of economic and social human rights at the international level. On the other hand, based on a study of the protocols of meetings of both the Third Committee of the UN General Assembly and the Commission on Human Rights, it was established that the process of developing and adopting framework international covenants, which aimed to consolidate fundamental, legally binding norms of law, went through different stages and covered different conceptual approaches of participants in this process. Given the analysis of modern studies on the subject matter, the prerequisites

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and components of the process of development of international legal standards in the field of economic and social human rights which regulate it to this day were identified. The findings are of value primarily for other scientific developments devoted to the field of human rights, but they can also be applied in the process of law-making in accordance with the field of law

■ **Keywords:** Universal Declaration of Human Rights; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; UN Commission on Human Rights

■ Introduction

One of the ways to overcome the negative trends in ensuring human rights that emerged in the middle of the 20th century and are essential for the development of this sphere, as of 2023, was the consolidated position of the international community to establish and develop common international legal standards in the field of human rights. Solving the problem of ensuring human rights and freedoms has ceased to be a matter of legal regulation of a domestic nature, but has acquired all the signs of legal globalisation in the form of doctrines, standards and norms of international law. From the very beginning of the process of fixing in international law all the basic norms that are designed to ensure human rights and freedoms, the problem of establishing the individual as a subject of international law also arises. Given that the subject of international law is mainly interstate relations, the creators of the first international legal acts faced a difficult problem of adequately resolving this situation. The theoretical justification for solving this problem in the preparation of the first international laws and regulations in the field of human rights was the application of the principles of unity, indivisibility, and interdependence of rights. It was around both the interpretation and application of this principle that the main debate was held during the preparation and adoption of the main international covenants in the field of human rights. This aspect of the problem has become one of the main components of considering the topic of this study.

According to P. Rabinovych (2021), in the 21st century, approaches to the legal understanding of fundamental human rights are being reconsidered, new definitions are being introduced, the approach to determining the classification of rights standards is changing, and the range of interpretation of terminological concepts is significantly expanding. In particular, the understanding of international legal concepts of human rights regulation is developing. A good example is the approach by A. Nakonechna (2018), which considers the international law on rights in the context of the concept of "human needs", building a certain structure and classification of them in accordance with the content and provisions of fundamental international human rights instruments. There is a process of modification of the more applied component aimed at certain aspects of the application of human rights. Thus, in modern realities, changes in both legislation and law enforcement in relation to the rights of people with disabilities are being updated, which is demonstrated by N. Aliabieva & L. Kerymov (2022). In the context of understanding changes in approaches to social and economic rights, it is necessary to mention the paper by K.G. Young (2019), which has both predictive and summarising features. Considering the current state and trends in the development of the social and economic sphere of human rights, the researcher offers a rather original view of the needs and opportunities for changes in this area.

A characteristic feature of the social and political reality of the 20th-21st centuries is the constant confrontation between the interests of the individual and society, society and the state, the state and the individual. This issue has been vividly discussed in the scientific literature and the academic and journalistic press for more than fifty years. The range of views and investigations is extremely wide. S. DeGooyer *et al.* (2018) emphasise the variability of interpretation of human rights concepts and the "right to have rights" (by Hannah Arendt), which provides a basis for reflection. This feature makes the problem of human rights and freedoms as universal legal values one of the most important in the development of legal theory and practice. However, along with this understanding, a position is increasingly emerging that calls into question the prospects for human rights development. The basis for many reflections in this area is the views associated with an individualistic approach to understanding society and social relations, as noted by K. Lipartito (2020). B. Golder (2021) substantiates the position that today there is an increasingly clear shift away from the absolutisation of human rights as a universal panacea for all social ills and a gradual turn towards a critical perception of how these rights are exercised.

Given the relevance of the study of the problems of ensuring human rights and ways to implement theoretical provisions in practice, it is necessary to conduct a historical and legal analysis of the process of development of international law in the field of economic and social human rights, the content of which in the 21st century cause intense debate among researchers and public figures. The purpose of the

study is to investigate the process of development of the main legal norms that form the foundation of international legal standards in the field of economic and social human rights in the light of modern scientific discussions on this topic.

Materials and Methods

In the process of studying this problem, the authors relied on a system of methods of scientific cognition. The preparation of the paper was based on general scientific research methods. Thus, the use of the method of qualitative and quantitative analysis allowed not only to work out an extensive source base of materials from meetings of the Third Committee of the UN General Assembly and the Commission on Human Rights, but also to form an understanding of trends in considering various aspects of the problem at different stages of preparation of International Covenant on Economic, Social and Cultural Rights. Classification and comparison methods were used in the same aspect. The synthesis was used to form a holistic view of the evolution of the positions of different parties to the discussion of norms and principles that should be the basis of the International Covenant on Economic, Social and Cultural Rights. An important role in the establishment of the empirical base of the study was played by the dialectical method, which isolated the place of economic and social human rights in the process of forming the regulatory framework for the protection of human rights.

Formal legal and comparative legal methods played an important role in the study. Their application helped to distinguish and clarify in international legal documents the concept that all types of human rights have equal value and are inextricably linked in the context of their mutual implementation. In this regard, it is worth paying attention to the wide application of the method of historiographic analysis, which allowed, on the one hand, to establish the historiographic base of the study, and on the other – to classify and generalise scientific approaches to the problem under consideration. Here it is worth noting that the scientific discourse has a rather multi-industry character and therefore the analysis of the array of scientific papers needed some systematisation, since literary reviews on this issue are presented in historiography extremely limited.

To achieve the goals of the study, the work was based on the analysis of the documentary database of meetings of the Third Committee of the UN General Assembly and the Commission on Human Rights, which is presented in the United Nations Digital Library. The Proceedings of the meetings of the Third Committee and the Commission on Human Rights for 1948-1951 were considered. In order to clarify certain aspects of the study, the authors turned to separate protocols for other years. When analysing the documents, the main attention was paid to identifying and studying the conceptual approaches of individual countries to the formation of the provisions of the International Covenant on Economic, Social and Cultural Rights. An important component was the analysis of the parties' discussions on the structure and content of the Covenant. The generally recognised classification of international acts, which are the main form of consolidating these standards and norms, is the definition of acts of a universal nature, acts of a special nature, and acts of a regional nature. According to the foundations of international cooperation, the provisions of these acts are directly or indirectly consolidated in national legal systems, which has become the subject of the study of many researchers, for example, C. Jung *et al.* (2014) or J. Koo & F.O. Ramirez (2009). Considering the specific weight of these materials during the preparation of the study, most of the information that was the basis of the work was obtained by the authors during the analysis of the minutes of meetings of the Third Committee of the UN General Assembly, although not all documentary sources could be presented within one paper.

Results

The search for answers to the global challenges of our time somehow leads to the need to develop a common policy of the world's states to create legal bases for regulating various spheres of international life. The main platform for finding such solutions was and still is the United Nations. From the very beginning of its existence, one of the main activities of the UN has been to ensure the full range of human rights declared in its Charter. Thus, Article 1, paragraph 3 of the Charter states: "To co-operate internationally in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion"[1]. It is necessary to pay attention to the fact that the Charter devotes a separate Chapter IX (Articles 55-60) to issues of international economic and social cooperation, and Chapter X (Articles 61-72) is devoted to such a structural division of the United Nations as the Economic and Social Council. Thus, even a cursory glance at the fundamental documents of the United Nations indicates the share of economic and social issues in its activities in general, and the problem of respect for human rights in these areas.

Considering the process of consolidating fundamental human rights in fundamental international legal instruments, N.B. Sedaca & K. Kennedy (2019)

[1] United Nations Charter. (1945, October). Retrieved from https://www.un.org/en/about-us/un-charter/chapter-1.

substantiate the origins and development of both the documents themselves and the genesis of the basic norms that make up their internal essence. This refers to the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights, and the Covenant on Economic, Social and Cultural Rights. However, the process of forming legal doctrines and standards that were supposed to form the basis of international legal acts in the field of human rights has passed quite a long and difficult path.

In 1946, the UN Human Rights Commission was established (in 2006 it was reorganised into the UN Human Rights Council). In 1976, as provided for in Article 28 of the Covenant on Civil and Political Rights[1], the Human Rights Committee was established to monitor states parties' compliance with the provisions of the Covenant. Compliance with the provisions of the Covenant on Economic, Social and Cultural Rights[2] is monitored by the Committee on Economic, Social and Cultural Rights, established by the UN Economic and Social Council in 1985. There are several other UN committees in this area, in particular the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, etc.

The international community's awareness of the objective need to ensure the protection of all spheres of human life was embodied in the development and adoption of the Universal Declaration of Human Rights in 1948[3]. It is a well-known fact that in this document, economic, social and cultural human rights occupy a smaller part (specifically Articles 22 to 27) and have a fairly generalised wording. It is also known that the Commission on Human Rights, when forming the legal framework for ensuring human rights, proceeded from the idea that the general provisions set out in the declaration should be detailed in legally binding forms and consolidated in a number of relevant international treaties, as indicated by E. Tistounet (2020).

However, the process of developing a common position and formalising it in legal documents was much more complex than is commonly assumed. From the very beginning, both the Commission on Human Rights itself and all the other organisations involved in the development of these fundamental legal acts did not have a clear conceptual vision of their structure and content. At the fifth session of the Commission on Human Rights, held in 1949, adopted a resolution by 12 votes to 3 abstentions and no votes against, that the entire range of human rights, i.e., civil, political, economic, social, and cultural, should be included in one international legal instrument[4]. However, already at its sixth session in 1950, the Commission, as a result of a complex debate, by 13 votes to 2, recognised the feasibility of creating two documents – one on the consolidation of civil and political rights, the other on economic, social and cultural rights[5].

Understanding the fundamental nature of the problem of the structure of international legal acts in the field of human rights, its discussion was put on the agenda of the Third Committee of the UN General Assembly during the fifth session of 1950. In contrast to the decision of the Commission on Human Rights, the Third Committee, by a majority vote, recommended that the General Assembly include civil, political, economic, social, and cultural human rights in one International Covenant, which was implemented in General Assembly resolution 421 (V). This decision was motivated by the interpretation of all these types of human rights as interrelated and interdependent. Resolution 421 (V) explicitly stated that civil and political rights on the one hand and economic and social rights on the other were directly interrelated and mutually conditioned, and depriving a person of economic or social rights would directly contradict the provisions of the Universal Declaration of Human Rights. That is why the resolution identified the need to include economic, social and cultural rights in the Covenant on Human Rights[6]. Overall, resolution 421 (V) was adopted by 38 votes to 7, with 12 abstentions. Section E of the resolution, which referred to the unification of all these types of human rights in one covenant, was adopted by 35 votes to 9, with 7 abstentions[7].

Thus, at that time, the General Assembly had clearly defined its position on understanding the indissolubility and interdependence of different types of human rights, which required their unification in

[1] International Covenant on Civil and Political Rights. (1966, December). Retrieved from https://www.ohchr.org/sites/default/files/ccpr.pdf.
[2] International Covenant on Economic, Social and Cultural Rights. (1966, December). Retrieved from https://www.ohchr.org/sites/default/files/cescr.pdf.
[3] Universal Declaration of Human Rights. (1948, December). Retrieved from https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf.
[4] Report of the 5th Session of the Commission on Human Rights, UN docs. E/1371 (E/CN.4/350). (1949, June). Retrieved from https://digitallibrary.un.org/record/574157.
[5] Report of the 6th Session of the Commission on Human Rights, UN docs. E/1681 (E/CN.4/504). (1950, March-May). Retrieved from https://digitallibrary.un.org/record/575150?ln=en.
[6] Resolutions and Decisions Adopted by the General Assembly During its 5th session, Supplement No. 20, UN docs. A/1775. (1950, September-December). Retrieved from https://undocs.org/en/A/1775%20(Supp).
[7] 317th Plenary Meeting of the General Assembly UNA(01)/R3. (1950, December). Retrieved from https://digitallibrary.un.org/record/737947.

one legal document. However, given the lack of unanimity in the adoption of this decision, the General Assembly, by the same Resolution 421 (V)[1], instructed the Economic and Social Council to conduct an expert assessment of the feasibility of combining all types of human rights into one international covenant. The consideration of the issue resulted in Economic and Social Council Resolution 349 (XII)[2], which recommended that the Commission on Human Rights proceed with the preparation of a single international treaty that would include all types of human rights.

The decisions set out in General Assembly Resolution 421 (V) and Economic and Social Council Resolution 349 (XII) not only failed to resolve the issue of the format of the future covenant, but also stimulated further escalation of the confrontation. It is worth highlighting two key problems that led to the radical division of the participating countries into irreconcilable antagonists. The main problem remained the discussion of the expediency of combining political, civil, economic, social, and cultural rights in one document, or dividing them into two international treaties.

The reverse side of the main problem was the need to solve ways to implement all types of human rights, without which the consideration of the problem lost its meaning. The solution of this issue directly depended on the different nature of these types of rights. The implementation of political and civil rights was fundamentally possible at that time through the implementation of legally binding norms in the main legislative acts. But the nature of economic, social and cultural rights required not only the ratification of international treaties, but also the creation of a special mechanism for the implementation of this category of rights by making a large number of agreed corrections and additions in various branches of the national legislation of the participating countries.

It is worth considering the aggravation of the ideological confrontation in the world at this time, due to the active deployment of the Cold War, which objectively complicated the process of finding compromise solutions. The Cold War between the Soviet and Western military-political blocs significantly polarised the world and brought the rivalry between them to the level of a priori rejection of virtually any initiatives expressed by the opposite side. This was clearly reflected in the participation of Western democratic countries on the one hand and the USSR and its satellites on the other in the discussions on the development and adoption of such fateful documents as human rights covenants. During 1950-1951, the Commission on Human Rights, the Economic and Social Council, and the Third Committee of the UN General Assembly launched a heated debate on the format for consolidating the entire range of human rights in international legal acts. In fact, a new round of confrontation began at the seventh session of the Commission on Human Rights, which is quite well traced in its official reports[3].

A number of countries have expressed categorical objections to the preparation of two international treaties, considering the separation of different types of human rights artificial and contrary to the principle of interdependence and indivisibility of rights, consolidated in the Universal Declaration of Human Rights[4]. In this context, examples can be given by the representative of Chile, whose argument was based on the generally accepted postulate that it is impossible to oppose one type of right to another[5]. The need to observe the internal interdependence of various types of rights from the standpoint of ensuring their full implementation was considered a fundamental point, which the Soviet delegation especially insisted on[6]. In this aspect, special attention should be paid to the fact that, as a rule, the existence of infringement of political or civil rights was accompanied by the impossibility of full implementation of economic, social and cultural rights. This thesis is also supported by contemporary researchers. J. Donnelly & D.J. Whelan (2020) note that the violation of economic, social and cultural rights is often a manifestation of the inability to fully implement political and civil rights.

Supporters of the concept of one treaty directly accused countries such as the United States, Great Britain, Canada and France of defending their own narrow national interests, which was manifested by their desire to divide one pact into two. A striking example was the speech of the representative of Poland at the meeting of the Third Committee during the fifth session of the General Assembly in 1950. His statement referred to a veiled attempt by these states

[1] Resolutions and Decisions Adopted by the General Assembly During its 5th session, Supplement No. 20, UN docs. A/1775. (1950, September-December). Retrieved from https://undocs.org/en/A/1775%20(Supp).
[2] Draft International Covenants on Human Rights and Measures of Implementation: Future Work of the Commission on Human Rights No. E/RES/349(XII). (1951, February). Retrieved from https://digitallibrary.un.org/record/212702?ln=ru.
[3] Report of the 7th Session of the Commission on Human Rights, UN docs. E/1992 (E/CN.4/640). (1951, May). Retrieved from https://digitallibrary.un.org/record/579458.
[4] Universal Declaration of Human Rights. (1948, December). Retrieved from https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf.
[5] 5th Session of the General Assembly, 3rd Committee, 297th Meeting, UN docs. A/C.3/SR.297. (1950, October). Retrieved from https://digitallibrary.un.org/record/816738.
[6] Ibidem, 1950.

through the actual rejection of the principle of interdependence and indivisibility of rights to reduce the importance of economic and social rights and delay the process of ratification of regulations[1].

However, no less weighty were the arguments of supporters of the idea of dividing the process of securing political, civil, economic, social and cultural rights into two treaties. The discussion papers on this issue at the meetings of the Third Committee during the fifth session of the General Assembly clearly show the position of states that supported the two separate covenants. Undoubtedly, the leaders in this group were the United States of America and the United Kingdom, but they were joined by other countries, such as the Netherlands and Canada[2].

The debate on the preparation of human rights covenants began with renewed vigour at the sixth session of the General Assembly. The Soviet Union and its allies focused mainly on criticising the position of countries that supported the adoption of two international treaties, focusing on the political component of the problem. The speech of the representative of the Ukrainian SSR can be considered indicative in this context. Presenting in fact the position of the USSR, he noted that attempts to conclude two pacts are nothing more than "a reason for evading any obligations in the economic and social spheres"[3].

Their opponents took a consolidated position based on a clear scheme of argumentation. Here two fundamental theses were defined, which formed the basis for the theoretical justification of the need to prepare and adopt certain international legal acts in the field of human rights. The starting point of the argument was the statement of the artificial nature of the thesis about the violation of the internal interdependence of different types of rights and the opposition of some types of rights to another. From the standpoint of proponents of this concept, the essential problem has already arisen at the level of definition of concepts. On the one hand, economic, social, and cultural rights, due to their rather specific nature, were more difficult to define than political and civil rights. On the other hand, the rationale for the adoption of the two covenants was based on the thesis that it is necessary to distinguish between the concepts of unity of rights themselves and uniformity in ensuring their implementation. In the context of this argument, it was also emphasised that it is necessary to consider the existence of essential differences between the very concept of the unity of human rights in principle and their differentiation in practical application. The speeches of representatives of New Zealand and Lebanon were notable[4].

A separate problem that made it inappropriate to adopt a single covenant was the impossibility of defining and applying at least more or less uniform mechanisms for the implementation of various types of rights. The source of this problem is objectively two interrelated positions. Firstly, as noted above, different types of rights had certainly different mechanisms for their practical implementation. This fact was often emphasised by representatives of those countries that insisted on the preparation and adoption of two international acts in the field of human rights[5,6]. This problem remains relevant to this day. In particular, L.Garcia-Martín (2022), M. Freeman (2022) and A.F. Bayefsky (2021) focused on finding new ways to implement economic and social human rights both through the adoption of new international legal acts and the transformation of national mechanisms for their implementation. Secondly, the fundamental problem in finding mechanisms for the implementation of economic, social and cultural rights was the huge gap in the level of development and the economic situation of different countries of the world. This made it almost illusory to hope to find at least more or less uniform ways to implement different types of human rights. This was very aptly stated by the representative of Liberia in his speech at the meeting of the Third Committee during the sixth session of the General Assembly[7].

Thus, the process of developing and adopting the first international legal acts that established the main standards in the field of human rights turned out to be very difficult, multifaceted and, one might say, multi-layered in its development. The analysis of the documentary base presented in the archives of the Third Committee of the UN General Assembly and the Commission on Human Rights showed that the discussions clearly identified two groups of antagonistic countries that had conceptually different approaches to understanding the principles of

[1] 5th Session of the General Assembly, 3rd Committee, 297th Meeting, UN docs. A/C.3/SR.297. (1950, October).Retrieved from https://digitallibrary.un.org/record/816738.
[2] Ibidem,1950.
[3] 6th session of the General Assembly, 3rd Committee, 394th meeting, UN docs. A/C.3/SR.394. (1952, January). Retrieved from https://digitallibrary.un.org/record/738869?ln=en.
[4] Ibidem,1952.
[5] 6th session of the General Assembly, 3rd Committee, 360th meeting, UN docs. A/C.3/SR.360. (1951, December). Retrieved from https://digitallibrary.un.org/record/738839?ln=en.
[6] 6th session of the General Assembly, 3rd Committee, 362nd meeting, UN docs. A/C.3/SR.362. (1951, December). Retrieved from https://digitallibrary.un.org/record/732501?ln=en.
[7] 6th session of the General Assembly, 3rd Committee, 366th meeting, UN docs. A/C.3/SR.366. (1951, December). Retrieved from https://digitallibrary.un.org/record/732503?ln=en.

concluding international treaties to consolidate human rights. Using the same legal basis, the opponents had a rather different interpretation of the fundamental principles and norms, which was primarily manifested in the example of discussing the application of the principle of interdependence and indivisibility of rights, and various aspects of opportunities in the implementation of these types of rights. The discussions that began on the sidelines of the United Nations in the middle of the 20th century have their echoes in the 21st century in modern scientific discourse.

Discussion

The scientific community has developed a large number of studies on this topic. It is advisable to focus on certain debatable aspects of discussing the problems of economic, social, and cultural human rights in periodicals. The problem of institutionalisation of economic and social human rights, and the process of their consolidation in international regulatory documents, was quite vividly discussed in journals in the field of political and legal sciences. In this context, it is worth paying attention to a fairly broad discussion that unfolded in the respected journal "Human Rights Quarterly". This discussion is fundamentally important for understanding modern approaches to the analysis of the processes that have unfolded in world politics in general, and in individual countries in particular, in the context of the development and adoption of framework international covenants in the field of human rights. It is important that this discussion was devoted to the issues related specifically to the consolidation of economic and social human rights and determined the areas of research on this issue for years to come.

The starting point of the scientific discussion was the paper by D.J. Whelan & J. Donnelly (2007). In general, the paper was aimed at refuting a fairly common thesis that the appearance of provisions in international covenants devoted to the consolidation of human rights that fixed economic and social rights became possible only due to the efforts of the USSR and its allies. D.J. Whelan & J. Donnelly (2007) based their concept on the fact that the countries of Western democracy, among which the United States and Great Britain played a dominant role, perfectly understood and accepted the need to consolidate social and economic rights at the international level, and their role in this process was even more significant than the countries of the Soviet bloc and their allies among the third world countries. Even more than that, D.J. Whelan & J. Donnelly (2007) argued that the question of the need to normalise economic and social rights at the international level was formed in the American and British institutions long before the end of World War 2. That is why the researchers defined the statement about the negative attitude of Western countries to the consolidation of economic and social rights, and at the same time their desire to level these rights, based on mercantile considerations of large corporations, as a "myth".

The study was based on the analysis of a wide source base and offered a new, at that time, narrative about the problem. Investigating the position of leading Western countries on the definition and consolidation of social and economic rights in international covenants, D.J. Whelan & J. Donnelly (2007) sought to justify the need to apply an evolutionary approach to the consideration of this topic. Taking the conclusion of the Atlantic Charter of 1941 as a reference point in their argumentation scheme, the researchers, step by step, demonstrated the presence of economic and social rights in all the fundamental documents that Western democracies and their allies prepared and proposed for international ratification. Together with this D.J. Whelan & J. Donnelly (2007) paid considerable attention to the value aspect of the problem. According to them, the consideration of economic and social rights is impossible without understanding not only the unity and interconnectedness of all human rights in a complex, but also without understanding the fact that the observance and development of these rights is one of the most important foundations of the ideology of a democratic world. Therefore, any narratives that promote the thesis of Western countries' refusal to consolidate economic and social human rights, according to the researchers, contradict not only historical facts and legal documents, but also common sense.

D.J. Whelan & J. Donnelly (2007) produced a number of research papers, some of which were a direct response to the researchers, and some were positioning on certain aspects of the problem that the researchers brought up for discussion. The first reaction to this paper was the publication by A. Kirkup & T. Evans (2009). One of the most fundamental comments made by researchers was the denial of the positive perception of the motivational foundations of US policy regarding the consolidation of economic and social human rights in international regulatory documents. Researchers suggest that in fact, the US position on economic and social rights (and especially economic ones) was far from as unambiguous as it was presented in the paper by D.J. Whelan & J. Donnelly (2007). A. Kirkup & T. Evans (2009) cite many stories that call into question both the general desire of the United States to support the economic bloc in the field of human rights and the unanimous support for securing these rights among American political elites and leading lawyers. The researchers defined the view of D.J. Whelan & J. Donnelly (2007) on the process of implementation of economic and social rights in international covenants as "distorted" and "limited". A. Kirkup & T. Evans (2009) categorically

rejected their position on the universality of human rights and the development of global principles for the implementation of these rights. The fundamental position of criticism was the thesis about the "isolation" of the position of opponents from reality, which consisted in the beginning of the development of post-war global markets and the struggle for the dominance of financial and business interests. In view of these processes, the US government, on the one hand, accepted the concept of economic and social rights as an integral basis for building a system of global human rights, but on the other hand, resisted the adoption of international treaties that would impose legal obligations on both the state itself and market participants (Kirkup & Evans, 2009).

In response to this criticism, the publication "Yes, a myth: A reply to Kirkup and Evans" was published by D.J. Whelan & J. Donnelly (2009b), based on the theses stated in the first article, followed the path of significantly expanding factual argumentation. As can be seen from the title, the authors have not deviated from their original position regarding the interpretation of the actions of the United States, Great Britain and their allies in the issue of fixing the block of social and economic rights in international legal documents. The researchers tried to provide the most complete response to the criticism expressed, especially in the context of the questioned desire of the United States to include economic rights in international covenants.

In the context of the discussion, it is worth paying attention to studies by S.L. Kang (2009). First, the researcher denies the thesis about the role of Western elites in the process of institutionalising economic and social rights expressed by D.J. Whelan & J. Donnelly (2007). In this context, S.L. Kang (2009) proceeds from the claim that American elites were not at all in favour of adopting a separate covenant on economic and social rights based on their corporate interests. Secondly, the researcher seriously criticises the statement about the priority of economic and social human rights both in the domestic policy and legislation of Western countries, and, accordingly, their foreign policy activities. Using the examples of the United States and Great Britain, the researcher sought to demonstrate that the recognition of economic and social rights was only the result of a social compromise aimed at maintaining stability in states, and not a reflection of deep ideological beliefs. Similarly, in the international arena, Western powers viewed this block of human rights as a derivative of political and civil rights (Kang, 2009). D.J. Whelan & J. Donnelly (2009a) built their response on the fact that their first paper already essentially defines all the main theses. In fact, the authors went by providing additional statistical arguments regarding the deep development by the governments of the United States and Great Britain of social programmes that were designed to protect the economic and social rights of citizens. D.J. Whelan & J. Donnelly (2009a) were deeply convinced that it was the countries of Western democracy that were the first to take the path of consolidating and implementing economic and social rights, and the conclusion of international pacts was the logical conclusion of this progress. Data and conclusions given by D.J. Whelan & J. Donnelly (2009a) correlates with other studies in this area. For example, K. Alper *et al.* (2021) conducted a thorough analysis of the development of relative market income poverty among the working-age population in 22 developed industrial democracies. The researchers came to the fundamental conclusion that it is the regulation of social rights that should be defined as the main determinants of poverty reduction processes in the world.

Also directly related to this discussion is the paper by S.-A. Way (2014), who worked for a long time at the Office of the United Nations High Commissioner for Human Rights. The researcher focused, on the one hand, on the analysis of the process of adopting major international covenants on human rights, and on the other – on the position of the United States in this process. S.-A. Way (2014) considers it exclusively in the context of her research, but she is quite clear about her own opinion on the issue. The researcher does not deny that the United States administration generally supported the inclusion of economic, social, and cultural human rights in the framework international covenants. However, an in-depth analysis of archival documents of both the UN itself and various US authorities has shown a very difficult way to change American proposals to international covenants on human rights or to change the position of the United States elites on these rights. Opinions on economic rights were particularly controversial, because they directly affected the interests of large businesses (Way, 2014).

In general, the study agrees with the opinion expressed by S.L. Kang (2009) and S.-A. Way (2014) on the importance of solving the problem of interdependence between corporate interests, state policy, and public interests in the field of economic and social rights of citizens. In this context, a number of papers that are consonant with their views can be cited. J. Curtis (2023) covers a much wider range of issues than the paper discussed above. However, given the interest in the question of the relationship between the state and individual rights, the study agrees with the researcher, who speaks about the insufficiency of the theoretical development of the legal doctrine of systemic neutrality. This doctrine is intended to justify, among other things, the possibility of exercising socio-economic rights in virtually any political and economic system. The researcher also suggests an approach to solving the contradictions of the neoliberal

model on this basis (Curtis, 2023). Another example of considering the problem of exercising this category of rights in the United States is the paper by F. Bignami & C. Spivack (2014), in which the researchers raise the question of how much the degree of protection of economic and social rights of citizens corresponds to international legislative acts. An important aspect that is raised in the article is the analysis of practical problems in the implementation of these types of human rights, which very often becomes a real stumbling block in the transition from theoretical provisions to their practical implementation. As noted by P. Gonalons-Pons (2022), the countries of Western democracy today face a whole host of similar problems, in particular, in the sphere of regulating the social and economic rights of hired domestic workers, which is closely related to the problems of migration, regulating wage labour, and the like. The researcher draws attention to the relationship between ensuring the legal regime of respect for human rights and the interests of society and the state in various spheres – from public well-being to state security.

The problem of inequality of countries and societies in world development has been and remains today one of the most controversial in the fields of both international organisations and scientific discourse. In this aspect, it is advisable to consider the conclusions obtained by J. Dehm (2019) when analysing the activities of UN human rights structures in the context of overcoming economic inequality between countries of the world in different historical periods. Analysing the period of development of human rights standards (1945-1968) and the discussions that accompanied these processes, the researcher emphasises the prolongation of existing problems and the need to consider errors in the search for solutions.

In the context of today's understanding of the realisation of economic and social human rights and the problems caused by inequality in world development, it is necessary to pay attention to the issue of poverty and the need to overcome it as an absolute component of ensuring basic economic and social human rights, as emphasised by L.D. Graham (2022). The content of this paper consists of six sections, each of which analyses different aspects of the problem of poverty, based on the application of an interdisciplinary methodology of legal research. In general, from the author's perspective, economic inequality creates not only significant challenges for the exercise of human rights, but also undermines the basic principles of human rights law consolidated in the international framework. In this case, it is extremely appropriate to consider the possibilities of applying the equalising potential of human rights both in the aspect of developing legal standards and in the aspect of forming global and regional strategies for the redistribution of economic opportunities.

Conclusions

The uncertainty and vagueness of many formulations of the Universal Declaration of Human Rights have become a source of quite significant differences in understanding the further development and consolidation of international law in this area. However, the international community was still able to reach a common denominator in solving this problem, which gave the basis for a modern system of consolidating human rights. The process of developing and adopting the framework documents was accompanied by lengthy discussions at the meetings of the Third Committee of the UN General Assembly and the Commission on Human Rights, during which conceptual approaches to understanding the nature, interdependence, and principles of implementing these types of rights were finally clarified. This paper traces the process of building a consensus on the understanding and acceptance that all types of human rights, civil, political, economic, social and cultural, have the same value and are inextricably linked in the context of their mutual implementation. As a separate component of the consensus process, the development of the provision that the nature of economic and social human rights is more complex than civil and political rights is considered. An important factor in the process of consolidating economic and social rights was determined to have too large a difference in the level of development of the world's states, which certainly entailed different opportunities in the implementation of political or economic rights. The effect of these factors has led to the recognition of the need for different mechanisms for the exercise of various types of rights, which is particularly pronounced in the field of economic rights. The harmonisation of these postulates established the basis for solving the problem of institutionalisation of economic and social rights in international covenants adopted under the auspices of the United Nations.

In the course of the analysis of modern studies, it was possible to identify the main conceptual approaches to understanding both the historical processes of developing and adopting international legal standards in the field of economic and social rights, and the main trends in the study of this issue today. On the one hand, there is still a fairly high level of invariance in the interpretation of the origins of the development of the basic principles of securing economic and social rights, which clearly requires further scientific research. On the other hand, the development of this issue has a fairly multi-industry spectrum, covering the scope of general theoretical research on the nature of economic and social rights, the specifics of their implementation, including consideration of regional differences, the ratio of corporate, state, and public interests, etc.

A significant expansion of the scientific horizon opens up opportunities for further research, where work in the field of combining the legal regulation of corporate, state, and public interests is particularly promising.

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Conflict of Interest

None.

References

[1] Aliabieva, N., & Kerymov, L. (2022). The right to social protection of persons with disabilities according to international standards. *Social and Legal Studios*, 5(1), 63-69. doi: 10.32518/2617-4162-2022-5-63-69.
[2] Alper, K., Huber, E., & Stephens, J.D. (2021). Poverty and social rights among the working age population in post-industrial democracies. *Social Forces*, 99(4), 1710-1744. doi: 10.1093/sf/soaa073.
[3] Bayefsky, A.F. (2021). *The UN Human Rights treaty system: Universality at the crossroads*. Norwell: Kluwer law international.
[4] Bignami, F., & Spivack, C. (2014). Social and economic rights as fundamental rights. *The American Journal of Comparative Law*, 62, 561-587. doi: 10.5131/AJCL.2013.0036.
[5] Curtis, J. (2023). Socioeconomic rights, competition, and systemic neutrality: Approaching the right(s) contribution to emancipatory social movements. *Indiana Journal of Global Legal Studies*, 30(1), 273-331. doi: 10.2979/gls.2023.a886169.
[6] DeGooyer, S., Hunt, A., Maxwell, L., & Moyn, S. (2018). *The right to have rights*. New York: Verso Books.
[7] Dehm, J. (2019). Righting inequality: Human rights responses to economic inequality in the United Nations. *Humanity: An International Journal of Human Rights, Humanitarianism, and Development*, 10(3), 443-459. doi: 10.1353/hum.2019.0022.
[8] Donnelly, J., & Whelan, D.J. (2020). *International Human Rights*. New York: Routledge. doi: 10.4324/9780429266072.
[9] Freeman, M. (2022). *Human rights*. Cambridge: Polity Press.
[10] Garcia-Martín, L. (2022). Agenda 2030 and sustainable development: Some reflections on its legal nature and implementation on international law for States and business. *Iberoamerican Journal of Development Studies*, 11(2), 126-142.
[11] Golder, B. (2021). Critiquing human rights. *Humanity: An International Journal of Human Rights, Humanitarianism, and Development,* 12(2), 226-238. doi: 10.1353/hum.2021.0014.
[12] Gonalons-Pons, P. (2022). Servants of production: The politics of domestic workers' labor rights. *Social Politics: International Studies in Gender, State and Society*, 29(3), 932-954. doi: 10.1093/sp/jxab047.
[13] Graham, L.D. (2020). *International human rights law and destitution: An economic, social and cultural rights perspective*. New York: Routledge.
[14] Jung, C., Hirschl, R., & Rosevear, E. (2014). Economic and social rights in national constitutions. *The American Journal of Comparative Law*, 62(4), 1043-1093. doi: 10.5131/AJCL.2014.0030.
[15] Kang, S.L. (2009). The unsettled relationship of economic and social rights and the West: A response to Whelan and Donnelly. *Human Rights Quarterly*, 31(4), 1006-1029. doi: 10.1353/hrq.0.0106.
[16] Kirkup, A., & Evans, T. (2009). The myth of Western opposition to economic, social, and cultural rights?: A reply to Whelan and Donnelly. *Human Rights Quarterly*, 31(1), 221-237. doi: 10.1353/hrq.0.0063.
[17] Koo, J., & Ramirez, F.O. (2009). National incorporation of global Human rights: Worldwide expansion of national human rights institutions, 1966-2004. *Social Forces*, 87(3), 1321-1354. doi: 10.1353/sof.0.0167.
[18] Lipartito, K. (2020). The ontology of economic things. *Enterprise & Society,* 21(3), 592-624. doi: 10.1017/eso.2020.42.
[19] Nakonechna, A. (2018). The International Bill of Human Rights through the lens of a needs-based approach. *Bulletin of the National Academy of Legal Sciences of Ukraine,* 25(3), 28-45. doi: 10.31359/1993-0909-2018-25-3-28.
[20] Rabinovych, P. (2021). Universal standards of humanity as a conceptual basis for anthropocentric legal understanding. *Law of Ukraine,* 1, 76-87. doi: 10.33498/louu-2021-01-075.
[21] Sedaca, N.B., & Kennedy, K. (2019). Human rights: Progress, opportunities, and challenges. *Georgetown Journal of International Affairs,* 20, 16-26. doi: 10.1353/gia.2019.0025.
[22] Tistounet, E. (2020). *The UN Human Rights Council, a practical anatomy*. Massachusetts: Edward Elgar Publishing.
[23] Way, S. (2014). The "Myth" and mystery of US history on economic, social, and cultural rights: The 1947 "United States suggestions for articles to be incorporated in an International Bill of Rights". *Human Rights Quarterly*, 36(4), 869-897. doi: 10.1353/hrq.2014.0052.
[24] Whelan, D.J., & Donnelly, J. (2007). The West, economic and social rights, and the global human rights regime: Setting the record straight. *Human Rights Quarterly*, 29(4), 908-949. doi: 10.1353/hrq.2007.0050.

[25] Whelan, D.J., & Donnelly, J. (2009a). The reality of western support for economic and social rights: A reply to Susan L. Kang. *Human Rights Quarterly*, 31(4), 1030-1054. doi: 10.1353/hrq.0.0110.
[26] Whelan, D.J., & Donnelly, J. (2009b). Yes, a myth: A reply to Kirkup and Evans. *Human Rights Quarterly,* 31(1), 239-255. doi: 10.1353/hrq.0.0054.
[27] Young, K.G. (Ed.). (2019). *The future of economic and social rights*. Cambridge: Cambridge University Press. doi: 10.1017/9781108284653.

Формування міжнародно-правових стандартів у сфері економічних і соціальних прав людини: історико-правовий аналіз у контексті наукової дискусії на сторінках журналу «Human Rights Quarterly»

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▪ **Анотація.** Актуальність дослідження зумовлена браком наукового консенсусу щодо правового змісту й можливих шляхів реалізації соціальних та економічних прав людини, а також загостренням дискусій довкола них у науковому і публічному дискурсі. Метою дослідження є історико-правовий аналіз процесу формування міжнародно-правових стандартів у сфері економічних і соціальних прав людини, варіантів їхнього унормування в тексті міжнародних договорів, які розробляли за результатами дискусій наприкінці 40-х – початку 50-х років минулого століття. Робота передбачала вивчення архівних матеріалів засідань Третього комітету Генеральної Асамблеї ООН і Комісії з прав людини, що ґрунтувалося на застосуванні сукупності методів якісного та кількісного аналізу, синтезу, а також порівняльно-правового методу. Здійснене дослідження дало підстави дійти низки аргументованих висновків. З одного боку, аналіз як окремих наукових праць, так і доволі широких наукових дискусій дав змогу виокремити декілька основних концептуальних підходів до розуміння процесів розроблення та закріплення найважливіших правових норм, які спрямовані регулювати на міжнародному рівні сферу економічних і соціальних прав людини. З другого боку, на основі дослідження протоколів засідань як Третього комітету Генеральної Асамблеї ООН, так і Комісії з прав людини встановлено, що процес розроблення та прийняття рамкових міжнародних пактів, які мали на меті закріпити принципові, юридично зобов'язувальні норми права, пройшов різні стадії та охопив різні концептуальні підходи учасників цього процесу. З огляду на аналіз сучасних наукових праць з порушеної проблематики, визначено передумови та складові процесу формування міжнародно-правових стандартів у сфері економічних і соціальних прав людини, які регулюють її донині. Отримані висновки мають цінність насамперед для інших наукових розробок, присвячених сфері прав людини, проте можуть бути також застосовані в процесі правотворчості відповідно до галузі права

■ **Ключові слова:** Загальна декларація прав людини; Міжнародний пакт про громадянські і політичні права; Міжнародний пакт про економічні, соціальні і культурні права; Комісія ООН з прав людини