

Preface

This coursebook is intended to introduce the student to the established and developing international law governing the protection of human rights. There is now a substantial body of this law, which encompasses substantive norms, procedural rules, and national, regional, and global institutions whose mandate it is to promote, monitor, and supervise international human rights. In this increasingly interdependent world, in which human rights issues are a concern of nearly every country's foreign ministry, human rights law has become an integral part of international law *per se*, and no one with pretensions of being an international lawyer can ignore its content entirely.

At the same time, international human rights law — as it is generally understood — does not encompass every social good or even every international norm whose purpose is to improve the human condition. Among the issues that are extremely relevant to the lives of millions of people but that are not addressed in depth in this coursebook are theories of economic development, trade and employment, refugees, and migration. And, of course, many moral, social, and philosophical issues appropriately lie beyond the reach of international law of any kind.

The materials in this book are organized around a number of problems, selected to illustrate the real issues that face human rights lawyers and to demonstrate how and why human rights law has developed in the way that it has. Most of the 13 chapters are organized around a specific factual situation, and each is accompanied by selected readings, comments, and questions designed to raise the most significant contemporary human rights issues. The situations presented are intended to serve as points of departure for the exploration of the relevant principles, procedures, and policies for protecting human rights through the international legal process. They are not intended to provide a comprehensive survey of the subject, and the goal is simply to concentrate the student's attention on how international law can be invoked to protect human rights in concrete cases. The coursebook is thus a teaching tool, not an encyclopedia or bibliography.

The first five chapters consider the substantive content of international human rights law today. The first three chapters examine the development of human rights law historically and its gradual definition through treaties, customary law, and so-called "soft law" instruments. Chapter 4 introduces the student to the related norms of international humanitarian law (or the law of war), in the context of the "war on terror" proclaimed in the aftermath of September 11, 2001. Chapter 5 examines the scope of a state's obligations under international human rights law, as well as the obligations that might be imposed on other actors, including international organizations, transnational and national corporations, and even individuals.

The next section of six chapters deals with various aspects of the implementation of human rights norms. Chapter 6 considers the crucial element of domestic enforcement, focusing on developments in U.S. jurisprudence over the past 30 years. The next three chapters deal with supervisory mechanisms created by the United Nations and two of the three regional human rights regimes; the third regional system of protection (Africa) is considered by way of example in Chapter 5. Chapters 10 and 11 examine the most extreme forms of enforcement: coercion against governments, through the imposition of sanctions and even the use of military force, and holding individuals criminally accountable for human rights violations that also constitute international or domestic crimes.

The final two chapters address particular issues of human rights implementation that combine law and politics. Chapter 12 analyzes issues associated with fact-finding by both nongovernmental organizations and international bodies. Chapter 13 surveys the complex issue of how human rights concerns have been (or should be) integrated into a country's relations with other states.

This coursebook is designed primarily for use in a one-semester, three-hour course or seminar at the law school or university level. With some omissions, it also could be used in a shorter seminar, although balancing depth and breadth of coverage is always difficult. While a background in international law would certainly be helpful to both students and teachers, it is not required for an adequate understanding of most of the materials. Some of the particularly technical legal issues, such as domestic implementation, might be omitted if the book is used in a school or department of international relations, as opposed to a law school or faculty.

The problem-oriented nature of the materials is designed to engage the student in concrete issues and the application of human rights law to the "real world." Philosophical issues are addressed at various points in the book, but our primary purpose is to explore the *practice* of human rights in depth, rather than the theory. Many of the problems lend themselves to student role-playing, and the materials present different perspectives and positions on many of the more hotly contested issues in human rights. For all of its sophistication, human rights law — indeed, international law in general — is in constant movement, and many of the materials present the student with alternatives that are actively under discussion rather than offering the "correct" answer to every question.

Finally, this casebook attempts primarily to present a picture of international human rights law as it is, not as we might wish it to be, while understanding it is constantly evolving. Human rights advocates can justifiably claim a great deal of success over the past 50 years, and the shield of sovereignty that protected states from external criticism over how they treated their own citizens is gone forever. At the same time, however, merely adopting new declarations or citing the progressive opinions of independent experts does not automatically create binding, effective international law. International law is under challenge today from many quarters, and human rights law is not immune from that challenge. Only with a full understanding of the constraints on international law can students (and activists) move forward in the most effective manner possible. There is no dichotomy between realism and idealism, since both are necessary; however, neither cynicism disguised as *realpolitik* nor willfully exaggerated claims for the power of law are useful.

The first edition of this book was published in 1979, when issues such as domestic enforcement of human rights norms, international criminal accountability, and the use of force against human rights violators were little more than theories. It is a tribute to the prescience of the authors of that first edition, Richard Lillich and Frank Newman, that the subjects addressed 25 years later have largely remained the same. Of course, those who have used previous editions will notice that the great majority of material in this edition is different from that in the third edition, as the past decade has brought significant changes and challenges to the field of human rights.

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