

INTERNATIONAL HUMAN
RIGHTS:
LAW, POLICY, AND
PROCESS

LEXISNEXIS LAW SCHOOL ADVISORY BOARD

Lenni B. Benson

*Professor of Law &
Associate Dean for Professional Development*
New York Law School

Raj Bhala

Rice Distinguished Professor
University of Kansas, School of Law

Charles P. Craver

Freda H. Alverson Professor of Law
The George Washington University Law School

Richard D. Freer

Robert Howell Hall Professor of Law
Emory University School of Law

Craig Joyce

*Andrews Kurth Professor of Law &
Co-Director, Institute for Intellectual Property and Information Law*
University of Houston Law Center

Ellen S. Podgor

*Professor of Law &
Associate Dean of Faculty Development and Electronic Education*
Stetson University College of Law

Paul F. Rothstein

Professor of Law
Georgetown University Law Center

Robin Wellford Slocum

*Professor of Law & Director,
Legal Research and Writing Program*
Chapman University School of Law

David I. C. Thomson

LP Professor & Director, Lawyering Process Program
University of Denver, Sturm College of Law

INTERNATIONAL HUMAN RIGHTS: LAW, POLICY, AND PROCESS

Fourth Edition

David Weissbrodt

*Regents Professor of Law and
Fredrikson & Byron Professor of Law
University of Minnesota Law School*

Fionnuala Ní Aoláin

*Dorsey & Whitney Professor of Law
University of Minnesota Law School*

Joan Fitzpatrick (1950–2003)

*Jeffrey & Susan Brotman Professor of Law
University of Washington School of Law*

Frank Newman (1917–1996)

*Justice, Supreme Court of California (retired)
Ralston Professor of International Law (emeritus)
University of California Law School (Berkeley)*

Library of Congress Cataloging-in-Publication Data

International human rights : law, policy, and process / David Weissbrodt ... [et al.].

p. cm.

Rev. ed. of: International human rights : law, policy, and process / Frank Newman, David Weissbrodt. c1990.

Includes bibliographical references and index.

ISBN 978-1-4224-1173-5 (hard cover : alk. paper) I. Human rights. I. Weissbrodt, David S. II. Newman, Frank C.

International human rights.

K3240.I5794 2009

341.4'8--dc22

2009020338

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

LexisNexis and the Knowledge Burst logo are registered trademarks and Michie is a trademark of Reed Elsevier Properties Inc., used under license. Matthew Bender and the Matthew Bender Flame Design are registered trademarks of Matthew Bender Properties Inc.

Copyright © 2009 David Weissbrodt and Fionnuala Ní Aoláin.

All Rights Reserved.

No copyright is claimed in the text of statutes, regulations, and excerpts from court opinions quoted within this work. Permission to copy material exceeding fair use, 17 U.S.C. § 107, may be licensed for a fee of 25¢ per page per copy from the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, telephone (978) 750-8400.

NOTE TO USERS

To ensure that you are using the latest materials available in this area, please be sure to periodically check the LexisNexis Law School web site for downloadable updates and supplements at www.lexisnexis.com/lawschool.

Editorial Offices

121 Chanlon Rd., New Providence, NJ 07974 (908) 464-6800

201 Mission St., San Francisco, CA 94105-1831 (415) 908-3200

www.lexisnexis.com

MATTHEW  BENDER

Table of Contents

Chapter 1	INTRODUCTION TO INTERNATIONAL HUMAN RIGHTS	1
A.	BRIEF HISTORICAL INTRODUCTION	3
1.	Early Developments	3
2.	World War I and the League of Nations	6
3.	The Inter-War Years	8
4.	World War II and the Beginning of the Modern Human Rights Movement	8
a.	Criminal Accountability: From the Middle Ages to the Nuremberg and Tokyo Tribunals, and Control Council Law No. 10	11
b.	The Creation of the United Nations: Dumbarton Oaks and San Francisco	11
5.	The United Nations and Multilateral Protection of Human Rights	12
a.	Codification	13
b.	Development of Human Rights Law within the U.N. Structure; Charter-based human rights bodies	14
c.	Development of Human Rights Law through Treaty-based Human Rights Committees	22
6.	Regional Organizations and Law-Making	23
a.	European System	23
b.	Inter-American System	24
c.	African Union	25
B.	WHY DO STATES AGREE TO AND OFTEN OBEY INTERNATIONAL HUMAN RIGHTS?	26
1.	Realism	26
2.	Institutionalism	28
3.	Constructivism	29
4.	Liberalism	29
C.	HUMAN RIGHTS IN INTERNATIONAL LAW	31
1.	Customary International Law	31
2.	The U.N. and International Human Rights Law	32
a.	Human Rights under the U.N. Charter	33
b.	International Bill of Human Rights	33
c.	Other U.N. Treaties	34
d.	Related U.N. Instruments	36
3.	Other Worldwide Treaties and Instruments	36
4.	International Humanitarian Law	37
5.	International Criminal Law	39
6.	Domestic Implementation of Human Rights	41
D.	CONCLUSION	44

Table of Contents

Chapter 2	AN EXERCISE IN DRAFTING INTERNATIONAL HUMAN RIGHTS STANDARDS: BUSINESS AND HUMAN RIGHTS	49
<hr/>		
A.	INTRODUCTION	49
B.	NON-TREATY STANDARDS IN PREPARATION FOR BINDING TREATIES	52
1.	The Need for Human Rights Responsibilities for Businesses	53
2.	Previous Efforts to Establish Non-Treaty Human Rights Standards for Business and Human Rights	55
	Notes and Questions	56
3.	Existing Human Rights Instruments Relating to Business	57
	<i>Universal Declaration on Human Rights</i>	58
	<i>International Covenant on Economic, Social and Cultural Rights</i>	58
	<i>International Covenant on Civil and Political Rights</i>	59
	<i>International Convention on the Elimination of All Forms of Racial Discrimination</i>	60
	<i>Committee on the Elimination of Racial Discrimination, General Recommendation XX</i>	60
	<i>Convention on the Elimination of All Forms of Discrimination Against Women</i>	60
	<i>Committee on the Elimination of Discrimination Against Women, General Recommendation 19, Violence Against Women</i>	61
	<i>Rome Statute of the International Criminal Court</i>	62
	<i>The Global Compact's Ten Principles</i>	62
	<i>The Global Sullivan Principles</i>	63
	<i>The MacBride Principles</i>	64
	<i>International Labour Organization, Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy</i>	65
	<i>Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights</i>	66
C.	THE PROCESS OF DRAFTING INTERNATIONAL HUMAN RIGHTS STANDARDS	69
1.	Aspirational Standards versus the Lowest Common Denominator	69
2.	Credibility-Enhancing Mechanisms	70
	Andrew T. Guzman, <i>The Design of International Agreements</i>	71
3.	Decision-Making	72
	Notes and Questions	73
D.	PARTICIPANTS IN THE DRAFTING PROCESS: WHO CAN PLAY?	74
1.	Government Representatives	74
	<i>Permanent Mission of Belgium to the United Nations and Specialized Institutions in Geneva</i>	74
	<i>Permanent Mission of Canada to the United Nations and Specialized Institutions in Geneva</i>	75

Table of Contents

2.	Nongovernmental Organizations	77
	<i>International Chamber of Commerce & International Organization of Employers, Joint Views of the IOE and ICC on the Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights</i>	77
	John Ruggie, <i>Interim Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises</i>	79
	<i>Letter From Joint NGO's to John Ruggie, Special Representative to the U.N. Secretary-General on Business and Human Rights, Joint NGO Position on the Interim Report from the Special Representative of the U.N. Secretary General on Business and Human Rights</i>	81
	Note	83
	John Ruggie, <i>Protect, Respect and Remedy: A Framework for Business and Human Rights, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises</i>	83
	Note	88
3.	Scholars	88
	David Weissbrodt, <i>Business and Human Rights</i>	88
	Notes and Questions	91
Chapter 3	RATIFICATION AND IMPLEMENTATION OF TREATIES: THE COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS	95
<hr/>		
A.	INTRODUCTION	96
B.	QUESTIONS	96
C.	THE COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS	97
1.	What Are Economic, Social and Cultural Rights?	97
2.	Interpreting States' Obligations under the Covenant on Economic, Social and Cultural Rights	100
	<i>South Africa v. Grootboom</i>	105
	Notes and Questions	114
D.	IMPLEMENTATION AND ENFORCEMENT	117
	<i>Committee on Economic, Social and Cultural Rights</i>	117
	<i>Committee on Economic, Social and Cultural Rights, Report on The Eighteenth and Nineteenth Sessions</i>	117
	Notes and Questions	120
E.	RATIFICATION OF TREATIES	124
1.	How Do Governments Become Bound?	124
	<i>Vienna Convention on the Law of Treaties</i>	124
	<i>Note on Processes for Becoming Bound by Treaty Obligations</i>	125

Table of Contents

	Anne M. Williams, <i>United States Treaty Law</i>	126
	Notes and Questions	127
2.	Reservations	128
	<i>Vienna Convention on the Law of Treaties</i>	128
	Dinah Shelton, <i>International Law</i>	129
	Notes and Questions	131
3.	U.S. Ratification of Human Rights Treaties	132
	Nigel S. Rodley, <i>On the Necessity of United States Ratification of the</i> <i>International Human Rights-Conventions</i>	134
	Notes	136
a.	Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention)	139
b.	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Treaty against Torture)	140
c.	Covenant on Civil and Political Rights	141
d.	Convention on the Elimination of All Forms of Racial Discrimination (Racial Convention)	143
e.	Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Convention)	144
f.	Optional Protocols to the Convention on the Rights of the Child	145
g.	American Convention on Human Rights (American Convention)	145
	Notes and Questions	146
4.	Should the U.S. Ratify the Covenant on Economic, Social and Cultural Rights?	151
	Philip Alston, <i>U.S. Ratification of the Covenant on Economic, Social and</i> <i>Cultural Rights: The Need for an Entirely New Strategy</i>	151
	Notes and Questions	157
5.	Ratification — With or Without Qualifications?	160
	<i>Four Treaties Pertaining to Human Rights: Message from the</i> <i>President of the United States</i>	160
	Notes and Questions	162
	Burns Weston, <i>U.S. Ratification of the International Covenant on</i> <i>Economic, Social and Cultural Rights: With or Without</i> <i>Qualifications</i>	162
	Notes and Questions	166
F.	TREATY RATIFICATION IN THE CONTEXT OF GLOBALIZATION	166
	Notes	169
Chapter 4	STATE REPORTING UNDER INTERNATIONAL HUMAN RIGHTS TREATIES; CULTURAL RELATIVISM	171
<hr/>		
A.	INTRODUCTION	172
B.	QUESTIONS	173

Table of Contents

C.	REPORTING PROCEDURES	175
1.	The Civil and Political Covenant’s Human Rights Committee	175
2.	Reporting and Consideration Procedures	175
a.	The Initial Report	175
b.	Periodic Reports	178
c.	Supplementary Reports	180
d.	Emergency Reports	181
3.	Problems with the Reporting Structure	181
4.	Distribution of Committee Reports and Comments	184
	Notes and Questions	184
D.	THE SITUATION IN IRAN	188
1.	Creation of the Islamic Republic of Iran	188
	Nadar Entessar, <i>Criminal Law and the Legal System in the</i> <i>Revolutionary Iran</i>	189
	Amnesty International, <i>Iran, New Government Fails to Address Dire</i> <i>Human Rights Situation</i>	190
2.	Human Rights Committee	191
	Human Rights Committee, <i>Consideration of Reports Submitted by</i> <i>States Parties under Article 40 of the Covenant: Initial Reports of</i> <i>States Parties Due in 1977</i>	191
	<i>Report of the Human Rights Committee</i>	193
	<i>Report of the Human Rights Committee, General Comments on</i> <i>Article 7 of the Covenant</i>	194
	Human Rights Committee, <i>Consideration of Reports Submitted by States</i> <i>Parties under Article 40 of the Covenant: Second Periodic Reports of</i> <i>States Parties Due in 1983. Addendum, Islamic Republic of Iran</i>	195
	Human Rights Committee, <i>Summary Record of the</i> <i>1194th Meeting</i>	196
	Human Rights Committee, <i>Summary Record of the</i> <i>1196th Meeting</i>	196
	Human Rights Committee, <i>Summary Record of the</i> <i>1230th Meeting</i>	197
	Notes and Questions	198
3.	Country Rapporteur Process of the U.N. Commission on Human Rights/ Human Rights Council	198
	<i>Preliminary Report by the Special Representative of the Commission</i> <i>on Human Rights on the Human Rights Situation in the Islamic</i> <i>Republic of Iran</i>	200
	Notes and Questions	202
4.	Iranian Violations of International Law	204
E.	THE INTERNATIONAL LAW PROHIBITION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT	206
1.	International Documents Limiting the use of Torture and Other Cruel,	

Table of Contents

	Inhuman, Degrading Treatment or Punishment	206
	<i>Standard Minimum Rules for the Treatment of Prisoners</i>	206
	Notes	206
	<i>Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</i>	207
	<i>Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</i>	207
	Notes	208
	<i>Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment</i>	210
2.	Human Rights Committee Consideration of Communications Under the First Optional Protocol Interpreting Torture and Ill-Treatment	210
	Manfred Nowak, <i>U.N. Covenant on Civil and Political Rights: CCPR Commentary</i>	210
	<i>Views of the Human Rights Committee under Article 5, Paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (Seventy-Seventh Session) Concerning Communication No. 887/1999</i>	212
	Notes and Questions	214
3.	European System	215
	<i>Ireland v. United Kingdom</i>	216
	<i>Ireland v. United Kingdom</i>	217
	<i>Tyrer Case</i>	218
	Notes and Questions	221
	<i>Selmouni v. France</i>	222
	<i>Geneva Conventions for the Protection of Victims of Armed Conflict</i>	224
	Note	225
	<i>Restatement (Third) of the Foreign Relations Law of the United States (1987)</i>	225
	Notes and Questions	225
4.	U.N. Response to Amputations in Other Contexts	228
F.	THEORETICAL FOUNDATIONS OF HUMAN RIGHTS: NATURAL LAW POSITIVISM, CRITICAL LEGAL STUDIES, FEMINIST LEGAL THEORY, CRITICAL RACE THEORY, AND ISLAMIC PRINCIPLES	229
	David Weissbrodt and Jovana Davidovic, <i>Theoretical Foundations of Human Rights</i>	229
	<i>Islamic Approach: Mahmoud Fadlallah, Islam and Human Rights</i>	238
G.	CULTURAL RELATIVISM AND INTERNATIONAL HUMAN RIGHTS LAW	245
	<i>Summary Record of the 65th Meeting of the Third Committee, General Assembly</i>	245

Table of Contents

	Notes and Questions	246
	Jack Donnelly, <i>Cultural Relativism and Universal Human Rights</i>	247
	Notes and Questions	249
Chapter 5	WOMEN’S HUMAN RIGHTS — INDIVIDUAL COMPLAINT PROCEDURES UNDER INTERNATIONAL HUMAN RIGHTS TREATIES	251
A.	INTRODUCTION	251
B.	QUESTIONS	253
C.	INDIVIDUAL COMPLAINT PROCEDURES	256
1.	The Civil and Political Covenant Human Rights Committee: Consideration of Communications Under the First Optional Protocol . .	256
a.	Committee Procedures	256
	<i>Report of the Human Rights Committee</i>	257
	<i>Report of the Human Rights Committee</i>	259
	Manfred Nowak, <i>U.N. Covenant on Civil and Political Rights: CCPR Commentary</i>	262
b.	Committee Jurisprudence	263
	<i>Views of the Human Rights Committee under Article 5, Paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (Eighty-Fifth Session) Concerning Communication No. 1153/2003</i>	263
	Notes and Questions	268
2.	Committee on the Elimination of Discrimination against Women: Consideration of Communications Under the First Optional Protocol . .	270
a.	Committee Procedures	270
b.	Committee Jurisprudence	271
	<i>A.T. v. Hungary</i>	271
	Notes and Questions	276
D.	THE SITUATION IN NORWAY	279
1.	The Social and Legal Context in Norway	279
	Eva-Maria Svensson, <i>Contemporary Challenges in Nordic Gender Equality Policies and Law</i>	279
	Note	281
	Hege Skjeie & Mari Teigen, <i>Political Constructions of Gender Equality: Travelling Towards . . . A Gender Balanced Society?</i> . .	281
	<i>The Norwegian Gender Equality Act</i>	283
	<i>Committee on the Elimination of all Forms of Discrimination Against Women, Consideration of Reports Submitted by State Parties under Article 18 of the Convention of all Forms of Discrimination Against Women, Sixth Periodic Report of States Parties, Norway</i>	284
	Notes and Questions	288
2.	Equality — A Perspective from the United States	289

Table of Contents

	<i>Grutter v. Bollinger</i>	289
	Notes and Questions	294
E.	PUBLIC PARTICIPATION FOR WOMEN: INTERNATIONAL STANDARDS AND COMPARATIVE APPROACHES	296
1.	Equality between Men and Women in International Legal Contexts . . .	296
	<i>Gender Equality Architecture and UN Reforms</i>	296
	<i>Committee on Economic, Social and Cultural Rights</i>	298
	Notes	300
2.	International Treaty and “Soft Law” Standards	301
	<i>International Covenant on Civil and Political Rights</i>	301
	Note	301
	<i>Convention on the Elimination of all Forms of Discrimination Against Women</i>	302
	<i>European Convention for the Protection of Human Rights and Fundamental Freedoms</i>	303
	<i>Convention on the Political Rights of Women</i>	303
	<i>General Assembly Resolution on Women and Political Participation</i>	304
	<i>Inter-American Convention on the Granting of Political Rights of Women</i>	305
	<i>Beijing Platform for Action, Fourth World Conference on Women</i> . .	305
	Notes	307
3.	Quotas — In Theory and Practice	308
	Drude Dahlerup, <i>Comparative Studies of Electoral Gender Quotas</i> .	308
	Gretchen Bauer, <i>The Hand that Stirs the Pot can also Run the Country: Electing Women to Parliament in Namibia</i>	311
F.	WOMEN’S RIGHTS ARE HUMAN RIGHTS	313
	Hilary Charlesworth, Christine Chinkin & Shelley Wright, <i>Feminist Approaches to International Law</i>	313
G.	CONCLUSION	317
Chapter 6	WHAT U.N. CHARTER-BASED PROCEDURES ARE AVAILABLE FOR VIOLATIONS OF HUMAN RIGHTS?	319

A.	INTRODUCTION	320
B.	QUESTIONS	321
C.	BACKGROUND ON BURMA (MYANMAR)	324
	<i>Burma: Country In Crisis</i>	324
	Human Rights Watch, <i>Crackdown: Repression of the 2007 Popular Protests in Burma</i>	326
	Amnesty Int’l, <i>Myanmar Briefing Paper: No Return to “Normal”</i> . . .	327
	Notes	328
D.	U.N. PROCEDURES FOR RESPONDING TO VIOLATIONS	329

Table of Contents

1.	Development of Major U.N. Procedures	330
a.	<i>ECOSOC Resolution 728F</i> (Early Communications Procedures) . . .	330
	<i>Economic and Social Council Resolution 728F (XXVIII)</i>	330
b.	<i>ECOSOC Resolution 1235</i> (Agenda for Public Discussion)	332
	<i>Economic and Social Council</i>	
	<i>Resolution 1235 (XLII)</i>	332
c.	<i>ECOSOC Resolution 1503</i> (Confidential	
	Communication Procedure)	333
	<i>Economic and Social Council Resolution 1503 (XLVIII)</i>	334
d.	<i>GA Resolution 60/251</i> (The Human Rights Council)	337
	G.A. RES. 60/251	337
e.	<i>Human Rights Council Resolution 5/1</i> (Periodic Review and	
	Complaints)	338
2.	Overview of Complaints (Former 1503) Procedure in Practice	338
a.	<i>Mechanics of the Complaints Procedure</i>	338
b.	<i>Deadline for and Length of Submissions</i>	343
c.	<i>Admissibility Requirements</i>	343
d.	<i>Confidentiality of the Complaints (1503) Procedure</i>	344
e.	<i>What Constitutes a Consistent Pattern of Gross and Reliably Attested</i>	
	<i>Violations?</i>	345
3.	Thematic Procedures	346
a.	<i>Identification and Use of Special Procedures</i>	348
	Camille Giffard & Meagan Hrlle, <i>The United Nations Charter-Based</i>	
	<i>Mechanisms</i>	348
b.	<i>Selected Reports of Special Rapporteurs and Working Groups</i>	
	<i>Regarding the Situation in Myanmar</i>	356
	<i>Promotion and Protection of all Human Rights, Civil, Political,</i>	
	<i>Economic, Social and Cultural Rights, Including the Right to</i>	
	<i>Development, Report of the Working Group on Enforced or</i>	
	<i>Involuntary Disappearances</i>	357
	<i>Report by the Special Rapporteur on the Right to Food, Mr. Jean</i>	
	<i>Ziegler, Submitted in Accordance with Commission on Human Rights</i>	
	<i>Resolution 2004/19</i>	358
	<i>Adverse Effects of the Illicit Movement and Dumping of Toxic and</i>	
	<i>Dangerous Products and Wastes on the Enjoyment of Human Rights,</i>	
	<i>Report Submitted by the Special Rapporteur Mrs. Fatma-Zohra</i>	
	<i>Ouhachi-Vesely</i>	358
	<i>Civil and Political Rights, Including Religious Intolerance, Report</i>	
	<i>Submitted by Ms. Asma Jhangir, Special Rapporteur on Freedom</i>	
	<i>of Religion or Belief</i>	359
	<i>Report of the Special Rapporteur on the Promotion and Protection of</i>	
	<i>the Right to Freedom of Opinion and Expression, Mr. Ambeyi Ligabo,</i>	
	<i>Submitted in Accordance with Commission Resolution 2002/48</i> . .	360
	<i>Report of the Special Rapporteur on the Independence of Judges and</i>	

Table of Contents

Lawyers, Dato’ Param Cumaraswamy, Submitted in Accordance with Commission Resolution 2000/42 361

Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council” 361

Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Ms. Yakin Ertürk 362

Human Rights Situations that Require the Council’s Attention, Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, Paulo Sérgio Pinheiro, Mandated by Resolution S-51 adopted by the Human Rights Council at its 5th Special Session . 363

Notes 366

4. Human Rights in Transition: the Human Rights Council 368

 a. *Review of Mandates* 372

 b. *Universal Periodic Review* 372

 c. *Special Sessions* 374

5. Further Remarks on Public Discussion (1235), the 1503-Based Complaint Procedure, Country Rapporteurs, Thematic Procedures, and the Security Council 375

 Marc Bossuyt, *The Development of Special Procedures of the United Nations Commission on Human Rights* 378

 Sandra Coliver, *United Nations Mechanisms on Women’s Rights: How Might they Better Help Women Whose Rights are Being Violated?* . 381

 Notes 381

6. Role of the Secretary-General 382

Question of the Violation of Human Rights and Fundamental Freedoms in any Part of the World, Report of the Secretary-General, the Situation of Human Rights in Myanmar 382

 Notes and Questions 384

Chapter 7 HUMANITARIAN INTERVENTION: INTERNATIONAL LAW AND PROCEDURES TO PREVENT AND HALT MASSIVE HUMAN RIGHTS VIOLATIONS 387

A. INTRODUCTION 387

B. QUESTIONS 388

C. BACKGROUND ON DARFUR 390

 Human Rights Watch, *Targeting the Fur: Mass Killings in Darfur* . . . 390

 Amnesty Int’l, *Sudan: Who Will Answer for the Crimes?* 391

 Physicians For Human Rights, *Darfur: Assault on Survival: A Call for Security, Justice, and Restitution* 392

 Human Rights Watch, *Empty Promises? Continuing Abuses in Darfur* 394

Table of Contents

	Amnesty Int'l, <i>Chad/Sudan: Sowing the Seeds of Darfur: Ethnic Targeting in Chad by Janjawid Militias</i>	395
	References	395
D.	IS THE GOVERNMENT OF SUDAN COMMITTING ACTS OF GENOCIDE?	396
	<i>Convention on the Prevention and Punishment of the Crime of Genocide</i>	396
	Dr. Gregory H. Stanton, <i>Genocide Watch, the Eight Stages of Genocide</i>	397
	Notes and Questions	399
	<i>International Commission of Inquiry on Darfur, Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General</i>	400
	<i>The Current Situation in Sudan and the Prospects For Peace: Testimony Before the Senate Foreign Relations Committee</i>	405
	Notes and Questions	406
E.	WHAT CAN THE INTERNATIONAL COMMUNITY DO TO ADDRESS MASSIVE HUMAN RIGHTS VIOLATIONS? U.N. MISSIONS TO MAINTAIN OR RESTORE PEACE AND SECURITY	409
1.	Standards for Humanitarian Intervention	409
	<i>Charter of the United Nations</i>	409
	J.L. Holzgrefe, <i>The Humanitarian Intervention Debate</i>	412
	Notes and Questions	415
2.	The Role of the United Nations	416
	United Nations, <i>Basic Facts about the United Nations</i>	416
	<i>An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-Keeping</i>	417
	Notes and Questions	417
	Ian Martin, <i>International Human Rights Field Presence: Past Experience, Current Methodology, Future Prospects</i>	418
	Notes and Questions	420
	<i>Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations</i>	425
	<i>2005 World Summit Outcome, G.A. Res. 60/1</i>	426
	Notes and Questions	427
	U.N. Secretary-General Kofi Annan, <i>Address to the Opening Meeting of the United Nations General Assembly</i>	430
	Notes and Questions	432
F.	REGIONAL MULTILATERAL INTERVENTION	434
1.	ECOWAS's Interventions in Liberia and Sierra Leone	435
	David Wippman, <i>The Nine Lives of Article 2(4)</i>	435
	Notes and Questions	436
2.	The Role of the African Union in Darfur	440
	U.N. Secretary-General Kofi Annan, <i>Report of the Secretary-General</i>	

Table of Contents

	<i>Pursuant to Paragraphs 6 and 13 to 16 of Security Council Resolution 1556</i>	440
	<i>Amnesty Int'l, Sudan: Protecting Civilians in Darfur: A Briefing for Effective Peacekeeping</i>	441
	Notes and Questions	442
G.	UNILATERAL ACTION	444
	Richard B. Lillich, <i>A United States Policy of Humanitarian Intervention and Intercessionin</i>	444
	Notes and Questions	445
	Abraham D. Sofaer, <i>International Law and the Use of Force</i>	447
	Tom J. Farer & Christopher C. Joyner, <i>The United States and the Use of Force: Looking Back to See Ahead</i>	447
	Jules Lobel, <i>Benign Hegemony? — Kosovo and Article 2(4) of the U.N. Charter</i>	451
	Notes and Questions	453
H.	STRENGTHENING HUMANITARIAN INTERVENTION FOR THE FUTURE	455
	United States Institute of Peace, United States of America, <i>American Interests and UN Reform: Report of the Task Force on the United Nations</i>	455
	Alex J. Bellamy, <i>Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention After Iraq</i>	458
	References	464
	Notes and Questions	464
I.	RESPONSIBILITY TO PROTECT IN ACTION?: THE INTERNATIONAL RESPONSE TO DARFUR	465
	S.C. Res. 1769, U.N. Doc. S/Res/1769	465
	U.N. Secretary-General Ban Ki-Moon, <i>Report of the Secretary-General on the Deployment of the African Union-United Nations Hybrid Operation in Darfur</i>	467
	Notes and Questions	469
Chapter 8		
	HOW CAN HUMAN RIGHTS VIOLATORS BE HELD ACCOUNTABLE?	483
A.	INTRODUCTION	484
B.	QUESTIONS	485
C.	RESPONDING TO PAST HUMAN RIGHTS VIOLATIONS	490
	Diane F. Orentlicher, <i>Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime</i>	490
	Notes	494
	José Zalaquett, <i>Balancing Ethical Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations</i>	495

Table of Contents

	Ruti G. Teitel, <i>Transitional Justice Genealogy</i>	496
	<i>Truth and Reconciliation Commissions</i>	497
	David Weissbrodt & Paul W. Fraser, <i>Book Review</i>	499
	John Dugard, <i>Reconciliation and Justice: The South African Experience</i>	503
	Notes and Questions	508
D.	THE NUREMBERG PRINCIPLES	516
1.	The Absence of a Tribunal for Armenia	516
	Vahakn N. Dadrian, <i>Genocide as a Problem of National and International Law: The World War I Armenian Case and its Contemporary Legal Ramifications</i>	516
2.	The Nuremberg and Tokyo Tribunals	518
3.	Control Council Law No. 10 and “Minor” Tribunals	519
	Notes and Questions	520
E.	AD HOC INTERNATIONAL TRIBUNALS FOR THE FORMER YUGOSLAVIA AND RWANDA	522
1.	The International Criminal Tribunal for the former Yugoslavia (ICTY)	523
	Diane F. Orentlicher, <i>American Society of International Law Newsletter, Yugoslavia War Crimes Tribunal</i>	526
2.	The International Criminal Tribunal for Rwanda (ICTR)	528
	Notes and Questions	532
3.	Efficacy of the <i>ad hoc</i> Tribunals	533
	Human Rights Watch, <i>Justice At Risk: War Crimes Trials in Croatia, Bosnia and Herzegovina, and Serbia and Montenegro</i>	533
	Organization of African Unity, <i>The International Panel of Eminent Personalities to Investigate the 1994 Genocide in Rwanda and the Surrounding Events</i>	534
	Aryeh Neier, <i>Rethinking Truth Justice, and Guilt After Bosnia and Rwanda</i>	536
	Martti Koskeniemi, <i>Between Impunity and Show Trials</i>	538
	Notes and Questions	543
4.	Development of New Tribunals	553
	<i>The Special Court for Sierra Leone</i>	553
	Michael P. Scharf, <i>Self-Representation Versus Assignment of Defence Counsel Before International Criminal Tribunals</i>	555
	<i>The Cambodian Tribunal on the Khmer Rouge</i>	557
	<i>Timor-Leste</i>	558
	<i>Iraq</i>	560
	Notes and Questions	561
F.	A PERMANENT INTERNATIONAL CRIMINAL COURT (ICC)	562
	Jerry Fowler, <i>The Rome Treaty for an International Criminal Court: A Framework of International Justice for Future Generations</i>	563

Table of Contents

	John R. Bolton, <i>The Risks and Weaknesses of the International Criminal Court From America’s Perspective</i>	568
	Bartram S. Brown, <i>U.S. Objections of the Statute of the International Criminal Court: A Brief Response</i>	570
	President William Clinton, <i>Statement on Signature of the International Criminal Court Treaty</i>	573
	<i>The First Investigations and Indictments Issued by the ICC</i>	576
	Notes and Questions	578
G.	PROSECUTING HUMAN RIGHTS VIOLATORS IN FOREIGN NATIONAL COURTS	582
	<i>European Attempts to Prosecute Pinochet</i>	582
	Human Rights Watch, <i>The Pinochet Precedent: How Victims Can Pursue Human Rights Criminals Abroad</i>	583
	Menno Kamminga, <i>The Exercise of Universal Jurisdiction in Respect of Gross Human Rights Offences</i>	589
	<i>Democratic Republic of the Congo v. Belgium Universal Jurisdiction over Human Rights Abuses</i>	590
	Notes and Questions	592
Chapter 9	INTERNATIONAL HUMAN RIGHTS	
	FACT-FINDING	587
A.	INTRODUCTION	587
B.	QUESTIONS	588
C.	BACKGROUND: THE DEMOCRATIC REPUBLIC OF THE CONGO	593
1.	History of the DRC	593
2.	Fact-finding in the DRC	595
	Human Rights Watch, <i>Democratic Republic of the Congo: What Kabila is Hiding</i>	595
D.	FACT-FINDING PROCEDURES	598
1.	Preparation for an On-Site Investigation	599
	Notes and Questions	600
2.	Methods of On-Site Fact-Finding	602
	Notes and Questions	611
3.	Analysis, Verification, Follow-Up, and Reporting	615
	Notes and Questions	616
4.	David Weissbrodt & Sarah O’Brien, <i>Epidemiology as a Fact-Finding Tool</i>	617
	References	622
5.	U.S. State Department Country Reports as Fact-finding Exercises	623
	Department of State, <i>Country Reports on Human Rights Practices for 1999</i>	624
6.	Fact-Finding for United States Violations of Human Rights	625

Table of Contents

	Notes	626
E.	EXPERIENCE OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS	628
	Inter-American Commission On Human Rights (IACHR), <i>Third Report on the Human Rights Situation in Colombia</i>	628
	Thomas Buergenthal, Robert Norris, & Dinah Shelton, <i>Protecting Human Rights in the Americas: Selected Problems</i>	634
	Notes and Questions	636
	<i>Fact-Finding in the Context of Individual Petitions, Inter-American Commission on Human Rights, Case 9265</i>	636
	Notes	641
	Edmundo Vargas, <i>Visits on the Spot: The Experience of the Inter-American Commission on Human Rights</i>	641
F.	FACT-FINDING WITHOUT ON-SITE OBSERVATION	645
	<i>Asia Watch & Minnesota Lawyers International Human Rights Committee</i>	647
	Notes and Questions	652
G.	IMPACT OF FACT-FINDING INVESTIGATIONS	654
1.	The United Nations High Commissioner for Human Rights' Field Operation in Rwanda	654
	Todd Howland, <i>Mirage, Magic, or Mixed Bag? The United Nations High Commissioner for Human Rights' Field Operation in Rwanda</i>	654
	Note	658
2.	Assessing the Impact of Fact-Finding Investigations	659
	Sieglinde Gränzer, <i>Changing Discourse: Transnational Advocacy Networks in Tunisia and Morocco</i>	659
	Notes	664

Chapter 10 HOW DOES U.S. FOREIGN POLICY INFLUENCE HUMAN RIGHTS IN OTHER COUNTRIES? 667

A.	INTRODUCTION	668
B.	QUESTIONS	668
C.	INTERNATIONAL DUTIES	670
1.	U.S. Duties as a U.N. Member Nation	671
a.	The U.N. Charter	671
b.	International Human Rights Treaties	672
D.	INCORPORATING HUMAN RIGHTS GOALS INTO U.S. FOREIGN POLICY: FROM JIMMY CARTER TO BARACK OBAMA	672
1.	The Origins of Human Rights in U.S. Foreign Policy	672
2.	The Creation of General Legislation and the Helsinki Commission	673
3.	Implementing Human Rights Principles in Foreign Policy under the Carter Administration	674

Table of Contents

	Jimmy Carter, <i>Remarks Commemorating the 30th Anniversary of the Signing of the Universal Declaration of Human Rights</i>	674
	Notes and Questions	677
4.	A New Theme for Human Rights Foreign Policy: Promoting Democracy Abroad	679
	Ronald Reagan, <i>Speech to the House of Commons</i>	679
	Notes and Questions	681
5.	The End of the Cold War	684
	James Baker, Secretary of State, <i>Hearing of the Senate Foreign Relations Committee</i>	685
	Notes and Questions	686
6.	Harmonizing Human Rights With Democracy-Building and Economic Development	687
	Madeleine Albright, <i>Press Briefing on the Release of Country Reports on Human Rights Practices 1999</i>	687
	Notes and Questions	689
7.	Democracy, Human Rights, and Security	693
	PRESIDENT GEORGE W. BUSH, ADDRESS TO THE UNITED NATIONS GENERAL ASSEMBLY	694
	Notes and Questions	696
	President Barack Obama, <i>Inaugural Address</i>	700
	President Barack Obama, <i>Remarks to State Department Employees</i>	700
	Notes and Questions	701
E.	DEFINING AND IMPLEMENTING U.S. HUMAN RIGHTS FOREIGN POLICY	702
1.	The Role of the Administration	702
a.	Diplomatic Efforts and Efficacy	702
	David D. Newsom, <i>The Diplomacy of Human Rights: A Diplomat's View</i>	702
	Notes and Questions	705
2.	Legislation and the Congressional Role	706
a.	Country-Specific Legislation	706
b.	Legislation and the Presidential Role: Certification Requirements	707
c.	“Carrot” Legislation	708
d.	Legislation Creating Special Commissions	709
e.	Legislation Regarding Use of “Voice and Vote” in International Financial Institutions	710
f.	Other Congressional Tools	712
	Notes and Questions	712
3.	Economic Sanctions	714
	Stuart Eizenstat, <i>Under Secretary For Economic, Business and Agricultural Affairs</i>	715
	Notes and Questions	720

Table of Contents

Chapter 11	THE INTER-AMERICAN SYSTEM AND THE INTERPRETATION AND APPLICATION OF HUMAN RIGHTS INSTRUMENTS	729
<hr/>		
A.	INTRODUCTION	729
B.	QUESTIONS	730
C.	THE <i>MARTINEZ</i> CASE	731
	<i>Martinez v. Santa Clara Pueblo</i>	731
	Note	734
D.	LAW GOVERNING SELF-DETERMINATION AND DISCRIMINATION AGAINST WOMEN	735
1.	International Law	735
	<i>Charter of the Organization of American States</i>	735
	<i>American Declaration of the Rights and Duties of Man</i>	735
	<i>American Convention on Human Rights</i>	736
	<i>Inter-American Convention on Violence Against Women</i>	737
	<i>Draft American Declaration on the Rights of Indigenous Peoples</i>	738
	<i>United Nations Declaration on the Rights of Indigenous Peoples</i>	740
	<i>Convention Concerning Indigenous and Tribal Peoples in Independent Countries</i> (ILO No. 169)	742
	Notes	743
2.	U.S. Law	744
E.	PROCEDURES OF THE INTER-AMERICAN SYSTEM	745
1.	Advisory and Contentious Jurisdiction of the Inter-American Court of Human Rights	745
	Jo M. Pasqualucci, <i>The Practice and Procedure of the Inter-American Court of Human Rights</i>	745
	Thomas Buergenthal, <i>The Inter-American Court of Human Rights</i>	747
	Notes and Questions	748
	Jo M. Pasqualucci, <i>Advisory Practice of the Inter-American Court of Human Rights: Contributing to the Evolution of International Human Rights Law</i>	750
	Notes and Questions	752
2.	Procedures of the Inter-American Commission	753
	David Harris, <i>Regional Protection of Human Rights: The Inter-American Achievement</i>	753
	Inter-American Commission on Human Rights, <i>The Human Rights Situation of the Indigenous People in the Americas</i>	754
	Notes	758
F.	JURISPRUDENCE OF THE INTER-AMERICAN COMMISSION	760
1.	Does the American Declaration of the Rights and Duties of Man Apply to the U.S.?	760
	Notes	762
2.	Cases Involving Indigenous Rights	764

Table of Contents

	Notes and Questions	768
3.	Typical Cases in the Inter-American Commission	770
	<i>Case 11.654, Inter-Am. C.H.R.</i>	770
G.	THE INDIGENOUS EXPERIENCE IN THE UNITED STATES	774
1.	The Legal Status of Indigenous Peoples	774
	Kevin K. Washburn, <i>Federal Criminal Law and Tribal</i>	
	<i>Self-Determination</i>	774
2.	The Status of Indigenous Women	775
	Amnesty International, <i>Maze of Injustice the Failure to Protect</i>	
	<i>Indigenous Women From Sexual Violence in the USA</i>	775
3.	Balancing Rights: Indigenous Self-Determination and Equality	778
	Wendy Moss, <i>Indigenous Self-Government in Canada and Sexual</i>	
	<i>Equality under the Indian Act: Resolving Conflicts Between Collective</i>	
	<i>and Individual Rights</i>	778
H.	OTHER REGIONAL SYSTEMS	780
1.	The African Union	780
	References	782
2.	Other Regional Structures	783
	References	784
	Notes	785
Chapter 12 THE EUROPEAN HUMAN RIGHTS SYSTEM		787
A.	INTRODUCTION	787
B.	QUESTIONS	789
C.	THE EUROPEAN COURT OF HUMAN RIGHTS	792
1.	Derogation	792
	<i>Lawless v. Republic Of Ireland</i>	792
	<i>Brogan and Others v. The United Kingdom</i>	798
	<i>Sakik and Others v. Turkey</i>	803
	Notes and Questions	808
2.	The Right to Life	813
	<i>Mccann and Others v. United Kingdom</i>	813
	<i>Kaya v. Turkey</i>	823
	Notes and Questions	824
	<i>Jordan and Others v. United Kingdom</i>	826
	Notes and Questions	834
D.	REMEDIES IN THE EUROPEAN COURT OF HUMAN RIGHTS	835
1.	Bringing a Case	835
2.	Damage Awards	839
	<i>Lustig-Prean and Beckett v. United Kingdom (Article 41)</i>	841
	Notes and Questions	843
3.	Parallel Remedies Outside the European System	843
	Notes and Questions	847

Table of Contents

E. INTERSTATE HUMAN RIGHTS CASES IN THE EUROPEAN SYSTEM 847
 Notes and Questions 849

F. HUMAN RIGHTS LAW IN EUROPE APART FROM THE EUROPEAN CONVENTION 849

 1. European Union 849
 References 855

 2. Organization for Security and Cooperation in Europe 856
 Notes and Questions 858

Chapter 13 DOMESTIC REMEDIES FOR HUMAN RIGHTS VIOLATIONS WITHIN THE U.S. 861

A. INTRODUCTION 862

B. *HOFFMAN PLASTIC COMPOUNDS, INC. v. NATIONAL LABOR RELATIONS BOARD AND ITS AFTERMATH* 864

 1. *Hoffman Plastic Compounds, Inc. v. National Labor Relations Board* 864
 Hoffman Plastic Compounds, Inc. v. National Labor Relations Board 864

 2. Case Law Subsequent to *Hoffman Plastic Compounds* 869

 3. Questions 870

 4. U.S. Law 871
 42 U.S.C. § 2000e-2 (2000) 871

C. TREATY PROVISIONS CONCERNING DISCRIMINATION AGAINST IMMIGRANT WORKERS 872

 1. Treaties Ratified by the United States 872
 International Covenant on Civil and Political Rights 872
 International Convention on the Elimination of All Forms of Racial Discrimination 873
 Committee on the Elimination of Racial Discrimination, General Recommendation 30 874

 2. Non-Treaty Instruments 875
 Universal Declaration of Human Rights 875

D. A CUSTOMARY NORM OF INTERNATIONAL LAW PROHIBITING DISCRIMINATION AGAINST IMMIGRANT WORKERS 876

 1. Introduction 876

 2. Evidence of State Practice 876

 3. Evidence of *Opinio Juris* 877
 Notes 878

E. INTERNATIONAL REACTION TO THE *HOFFMAN PLASTIC DECISION* 880
 Juridical Condition and Rights of the Undocumented Migrants 880
 International Labor Organization, *Reports of the ILO Committee of*

Table of Contents

	<i>Freedom of Association</i>	884
	<i>Third Periodic Reports of States Parties Due in 2003</i>	888
	<i>List of Issues to be Taken Up in Connection with the Consideration of the Second and Third Periodic Reports of the United States of America</i>	889
	<i>Concluding Observations of the Human Rights Committee</i>	890
F.	APPROACHES TO THE APPLICATION OF INTERNATIONAL LAW IN U.S. COURTS	890
1.	Domestic Law	891
2.	International Law Incorporated into National Statute	891
3.	Customary International Law	892
4.	<i>Jus Cogens</i>	894
5.	Treaty Application in U.S. Courts	896
a.	Self-Executing Treaties	897
b.	Reservations	900
6.	Interpreting U.S. Law in Light of International Principles and Practice	902
	Ruth Bader Ginsburg, Associate Justice, Supreme Court of the United States, “ <i>A Decent Respect to the Opinions of [Human]Kind</i> ”: <i>The Value of a Comparative Perspective in Constitutional Adjudication</i>	907
	Notes	909
	Hans A. Linde, <i>Comments</i>	910
	Notes and Questions	913
Chapter 14	U.S. ADJUDICATIVE REMEDIES FOR VIOLATIONS UNDER THE ALIEN TORT STATUTE	933
A.	INTRODUCTION	933
B.	HYPOTHETICAL & QUESTIONS	934
C.	ALIEN TORT LITIGATION	940
1.	Jurisdiction	940
	<i>Filártiga v. Peña-Irala</i>	940
	Notes and Questions	944
	<i>Sosa v. Alvarez-Machain</i>	946
	Notes and Questions	953
2.	Corporate Liability Under the ATCA	969
	<i>Khulumani v. Barclay National Bank, Ltd.</i>	969
	Notes and Questions	978
D.	TORTURE VICTIM PROTECTION ACT LITIGATION	984
	Notes and Questions	985
E.	INTERNATIONAL RULES GOVERNING TORTURE AND FORCED LABOR	990
	<i>Covenant on Civil and Political Rights</i>	991
	<i>Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention of 1926 (Slavery Convention of 1926)</i>	992
	<i>Supplementary Convention on the Abolition of Slavery, The Slave Trade,</i>	

Table of Contents

	<i>and Institutions and Practices Similar to Slavery</i>	992
	<i>Geneva Conventions of 1949, Conventions I–IV</i>	993
	<i>Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)</i>	993
	<i>Control Council Law No. 10, Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity</i>	994
	<i>Convention Concerning Forced or Compulsory Labour (ILO No. 29)</i> .	994
	<i>Abolition of Forced Labour Convention (ILO No. 105)</i>	995
	<i>Commentary on the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights</i>	995
	<i>Voluntary Principles on Security and Human Rights, Fact Sheet Released by the Bureau of Democracy, Human Rights, and Labor, U.S. Department of State</i>	997
	<i>A. Yasmine Rassam, International Law and Contemporary Forms of Slavery: An Economic and Social Rights-Based Approach</i>	998
	Notes and Questions	999
F.	OBSTACLES TO ADJUDICATION UNDER THE ALIEN TORT STATUTE AND TORTURE VICTIMS PREVENTION ACT	1000
1.	Foreign Sovereign Immunities Act	1001
	Notes and Questions	1007
2.	Head of State and Diplomatic Immunity	1014
	References	1016
3.	The Act of State Doctrine	1016
	<i>Doe I v. Liu Qi</i>	1017
	Notes and Questions	1022
4.	Statute of Limitations, Damages, and Choice of Law	1023
	<i>Filártiga v. Peña-Irala</i>	1023
	Notes and Questions	1027
5.	Forum <i>Non Conveniens</i>	1029
Chapter 15	REFUGEE AND ASYLUM LAW; JURISPRUDENCE OF HUMAN RIGHTS; CULTURAL RELATIVISM REVISITED	1033
A.	INTRODUCTION	1034
B.	THE PROBLEM	1034
1.	Awata’s Case	1034
2.	Violence against women in Ghana	1035
3.	FGM in Ghana	1036
4.	Health Consequences of FGM	1038
	Questions	1038
C.	INTRODUCTION TO REFUGEE AND ASYLUM LAW	1040

Table of Contents

1.	International Definition of “Refugee”	1040
2.	U.S. Statutory Definition of “Refugee”	1040
3.	U.S. Interpretation of the Refugee Act of 1980	1044
a.	“Well-Founded Fear”	1044
	<i>UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status</i>	1045
b.	“Persecution”	1046
	<i>UNHCR Handbook</i>	1046
	Notes and Questions	1046
c.	“Political Opinion”	1047
	Notes and Questions	1048
d.	“Particular Social Group”	1049
	Notes and Questions	1055
e.	Bars to Asylum	1056
(1)	Internal Relocation	1056
	<i>Asylum Branch, Office of General Counsel, Immigration & Naturalization Serv., Basic Law Manual: Asylum Supplement</i>	1056
	<i>INS Regulations on Asylum Procedures</i>	1057
	Notes and Questions	1058
(2)	Persecutor	1059
	<i>UNHCR Handbook</i>	1059
4.	U.S. Procedures for Claiming Refugee or Asylum Status	1060
a.	Refugee Status	1060
	Deborah E. Anker, <i>Law of Asylum in the United States</i>	1060
b.	Asylum Status	1061
	Deborah E. Anker, <i>Law of Asylum in the United States</i>	1061
	Notes and Questions	1064
5.	Alternative Forms of Relief	1065
a.	CAT	1065
b.	Cancellation of Removal	1066
c.	Adjustment of Status	1067
d.	Voluntary Departure	1067
e.	Post-2001 Reforms	1067
D.	THE ROLE OF THE UNHCR	1068
1.	Purpose, Function, and Responsibility	1068
	<i>Statute of the Office of the United Nations High Commissioner for Refugees</i>	1068
	Lawyers Committee for Human Rights, <i>Refugee Protection at the Crossroads</i>	1069
	Notes and Questions	1069
2.	Participation in U.S. Asylum Proceedings	1072
E.	GENDER-BASED REFUGEE AND ASYLUM CLAIMS	1073
	<i>UNHCR Policy on Refugee Women and Guidelines on Their Protection:</i>	

Table of Contents

	<i>An Assessment of Ten Years of Implementation</i>	1076
1.	Claims Relating to Female Genital Mutilation	1077
	<i>In Re Fauziya Kasinga</i>	1077
	Notes and Questions	1082
2.	Claims Relating to Spousal Abuse	1089
	Notes	1090
F.	OBSTACLES TO FGM- AND SPOUSAL VIOLENCE-BASED ASYLUM CLAIMS	1093
1.	Cultural Relativism	1093
	Katherine Brennan, Note, <i>The Influence of Cultural Relativism on International Human Rights Law: Female Circumcision as a Case Study</i>	1093
	Radhika Coomaraswamy, <i>Identity Within: Cultural Relativism, Minority Rights and the Empowerment of Women</i>	1094
	Michel Rosenfeld, <i>Can Human Rights Bridge the Gap Between Universalism and Cultural Relativism? A Pluralist Assessment Based on the Rights of Minorities</i>	1096
	Notes and Questions	1096
2.	Some Theoretical Foundations of Gender and International Human Rights	1099
Chapter 16		1101
THE ILO AND CHILD LABOR		
A.	INTRODUCTORY COMMENT AND QUESTIONS	1101
B.	INTRODUCTION TO THE PROBLEM OF CHILD LABOR	1104
1.	Child Labor in the World	1104
	UNICEF, <i>Why Make A Special Case For The Children?</i>	1104
	ILO, <i>Facts on Child Labor</i>	1105
	ILO, <i>A Future Without Child Labour, Global Report Under the Follow- Up to the ILO Declaration on Fundamental Principles and Rights at Work</i>	1106
	UNICEF, <i>The State of the World's Children 1997</i>	1113
2.	Child Labor in India	1115
	Kavita Ratna, <i>India</i>	1115
	Human Rights Watch, <i>World Report 2003, Small Change: Bonded Labor in India's Silk Industry</i>	1117
	Child Labor: <i>Refuting the "Nimble Fingers" Argument</i>	1120
3.	Child Labor in the United States	1122
	Human Rights Watch, <i>World Report 2001</i>	1122
C.	THE ILO, CHILD LABOR, AND THE PROTECTION OF HUMAN RIGHTS	1123
1.	Foundation, Guiding Principles, and Basic Structure of the ILO	1123
	Minority Rights Group International and Anti-Slavery International, <i>The</i>	

Table of Contents

	<i>International Labour Organization: A Handbook for Minorities and Indigenous Peoples</i>	1123
2.	Human Rights and the Mandate of the ILO	1126
	Virginia Leary, <i>Human Rights at the ILO: Reflections on Making the ILO More “User Friendly”</i>	1126
3.	International Labor Conventions and ILO Monitoring Procedures	1127
	<i>Constitution of the ILO and Standing Orders of the International Labor Conference</i>	1127
	<i>Minority Rights Group International and Anti-Slavery International, the International Labour Organization: A Handbook for Minorities and Indigenous Peoples</i>	1128
	<i>ILO Declaration on Fundamental Principles and Rights at Work</i>	1135
	Notes and Questions	1136
	Note on ILO Activities Relevant to the U.S.	1136
4.	The International Legal Framework against Child Labor	1140
	<i>International Covenant on Civil and Political Rights, Art. 24</i>	1140
	<i>International Covenant on Economic, Social and Cultural Rights, Art. 10</i>	1140
	<i>Convention on the Rights of the Child, Art. 32</i>	1141
	<i>ILO, International Labor Standards Concerned with Labor Inspection: Main Provisions</i>	1141
	<i>[ILO] Convention No. 138, Minimum Age for Admission to Employment</i>	1141
	<i>Recommendation No. 146, Minimum Age for Admission to Employment</i>	1142
	<i>[ILO] Convention No. 29, Forced or Compulsory Labor</i>	1144
	<i>Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO No. 182)</i>	1145
	Note	1146
	<i>International Labor Conference, 87th Session, Report of the Committee on Child Labor</i>	1147
	<i>International Labor Conference, 87th Session, R190 Worst Forms of Child Labor Recommendation</i>	1148
	Virginia Leary, <i>Human Rights at the ILO: Reflections on Making the ILO More “User Friendly”</i>	1148
	<i>ILO, Individual Observation Concerning Convention No. 29, Forced Labour, 1930, India, Report of the Committee of Experts on the Application of Conventions and Recommendations</i>	1151
	<i>ILO, Report of the Committee on Child Labor, Committee Report: Proposed Conclusions</i>	1153
	<i>Committee on the Rights of the Child, Concluding Observations of the Committee on Rights of the Child on India</i>	1154

Table of Contents

D.	ILO'S PROGRAMMATIC EFFORTS AGAINST CHILD LABOR: INTERNATIONAL PROGRAMME ON THE ELIMINATION OF CHILD LABOR (IPEC)	1155
	<i>ILO, Ipec Action Against Child Labour 2004–2005: Progress and Future Priorities</i>	1155
	<i>ILO, IPEC Andhra Pradesh Project on Child Labour, Coming Together: From Confrontation to Collaboration: A Tale of Trade Unions Joining Hands Against Child Labour</i>	1157
	Note	1159
E.	CHILD LABOR AND TRADE	1159
	Frank J. Garcia and Soohyun Jun, <i>Trade-Based Strategies for Combating Child Labor</i>	1159
	Notes and Questions	1162
F.	FUTURE DEVELOPMENTS ON CHILD LABOR	1163
	<i>ILO, Building on Strengths and Common Interests: Sectoral Alliances Against Child Labour (1995–2005)</i>	1163
	Notes and Questions	1166
G.	NATIONAL PRACTICES AND LAWS AGAINST CHILD LABOR: THE EXAMPLE OF THE UNITED STATES	1167
	<i>The Apparel Industry and Codes of Conduct: A Solution to the International Child Labor Problem?</i>	1167
	Notes	1169

Chapter 17	WHAT SEEM TO BE THE CAUSES OF HUMAN RIGHTS VIOLATIONS AND HOW MIGHT KNOWLEDGE AS TO CAUSATION BE USED?	1177
-------------------	---	-------------

A.	INTRODUCTION	1178
B.	QUESTIONS	1178
C.	EPIDEMIOLOGY AND CAUSAL THEORY	1184
1.	From Fact-Finding to Causation	1185
2.	Why is Causation Important?	1186
D.	POLITICAL AND ECONOMIC FACTORS	1188
1.	Political and Economic Theories and Research	1188
	Neil J. Mitchell & James M. McCormick, <i>Economic and Political Explanations of Human Rights Violations</i>	1188
	Notes	1195
	Reinhard Heinisch, <i>Political Explanations of Basic Human Rights Performance</i>	1195
	Notes and Questions	1200
2.	Military Expansion and Conflict	1207
	Notes and Questions	1207
E.	SOCIOLOGICAL ASPECTS OF POWER	1209
	James C. Scott, <i>The Value and Cost of the Public Transcript</i>	1209

Table of Contents

	Notes and Questions	1213
	Notes and Questions	1216
F.	PSYCHOLOGICAL FACTORS	1218
	Robert Jay Lifton, <i>Socialization to Killing</i>	1220
	Notes and Questions	1225
G.	SOCIOCULTURAL FACTORS	1230
1.	Group Identity and Scapegoating	1230
	Philip Mayer, <i>Witches</i>	1231
	Robert Jay Lifton, <i>Genocide</i>	1234
	Notes and Questions	1234
2.	Change, Uncertainty, and Political Manipulation	1235
	J.R. Crawford, <i>Witchcraft and Sorcery in Rhodesia</i>	1235
	Joyce Bednarski, <i>The Salem Witch-Scare Viewed Sociologically</i>	1236
	A. Rebecca Cardozo, <i>A Modern American Witch-Craze</i>	1238
	Questions	1240
H.	INTERNATIONAL NORM DYNAMICS AND POLITICAL CHANGE	1240
	Martha Finnemore and Kathryn Sikkink, <i>International Norm Dynamics and Political Change</i>	1241
	Notes and Questions	1246
I.	ADDITIONAL READINGS	1248
1.	General Research on Human Rights Violations	1248
2.	Economic & Political Factors	1249
a.	Economic Development	1249
b.	Political Theories	1250
c.	Military Expansion & Conflict	1252
d.	U.S. Foreign Policy	1253
3.	Sociocultural & psychological factors	1254
a.	Ingrouping & Outgrouping	1254
b.	Group Conformity & Obedience to Authority	1254
c.	Sociological Aspects of Political Power	1255
d.	Socialization to Violence & War	1255
e.	Torture — Effects on Victims	1256
4.	Anthropology and Human Rights	1256
5.	Epidemiology and Human Rights	1258
6.	Violations of Human Rights in Latin America	1258
	Table of Cases	TC-1
	Index	I-1

Preface

This book provides an introduction to international human rights law, policy, and process. The book is written at a point of great human rights challenge as the events and experiences of September 11, 2001, in New York; March 11, 2004, in Madrid; and July 7, 2005, in London affect the manner in which states and international institutions recalibrate the legal relationship between human rights and security. Human Rights norms and institutions manifest an unusual combination of great strength and significant external stress in the contemporary moment.

In this context, students may ask why they should study international human rights? Moreover, readers who are familiar with our first three editions may inquire why a fourth edition was needed. This preface responds to those two questions and also charts the structure of the book in a way which we hope is helpful to both instructors and students.

The Importance of Studying Human Rights

This book operates from the premise that the study of human rights should be an integral component of a fully rounded legal education for every student. Human rights study also makes a valuable contribution to a variety of disciplines including anthropology, gender studies, sociology, political science, and medical fields generally defined.

First, knowledge of human rights principles, norms, and institutions is an indispensable aspect of understanding the inter-relationship between states, as well as between states and those persons within their territory and under their control.

Second, this book can help train human rights professionals and assist readers to be more effective human rights advocates and volunteers. Lawyers, law students, and others can help victims and benefit from international human rights law in many ways. They can assist clients affected by human rights abuses. They may also work as government officials, members of human rights organizations, judges, staff of national human rights institutions, participants in informal groups, and sometimes as individuals working alone. They litigate, prosecute, defend accused, advocate in non-adjudicative forums, negotiate, draft, write letters and emails, send text messages, post websites and blogs, give advice, and participate in investigations throughout the world. As individuals, they petition, protest, speak, and write. This book considers all those functions and evaluates their contribution to law and society.

Third, the subject of human rights deals with many concerns that also are the focus of national civil liberties and civil rights law. People whose liberties and rights are violated (or threatened) at the national level often can benefit from international legal assistance. Readers of this book should expect to learn about a system of laws, policies, and procedures that have been designed to protect people from torture, other inhuman treatment, arbitrary killing, unjustified discrimination, forced eviction, child labor, and countless other abuses — wherever they may occur. That knowledge has useful application to the domestic legal system within which the advocate or lawyer is working.

Fourth, lawyers and law students who expect to practice civil liberties or civil rights law should know that if they do not prevail in national fora — legislative, executive, or judicial — there may be international tribunals or other bodies to which they can take their case. Because previous editions of this book have been widely used in the United States, it is especially important to note for U.S. students that the Supreme Court is not

Preface

the last resort for advocates working to protect human rights. Advocates should also be aware that there are arguments based on international law that clearly can and should be raised in U.S. federal and state courts, as well as in legislatures, administrative agencies, and military commissions. For lawyers in many other countries there are even more opportunities to raise issues based on international human rights law. Civil liberties and civil rights attorneys arguably breach their professional responsibilities if they represent clients and remain ignorant of international laws and procedures. We stress the importance of understanding and using international legal principles and remedies to provide the most zealous and competent representation possible.

Fifth, as with any course about a legal system different from one's own, this book provides insights that often encourage a renewed understanding of one's own legal system. Accordingly, this book is written to be accessible to teachers and students in multiple jurisdictions, on the premise that the issues addressed are universal in their importance and transferable in learning content from one domestic legal system to another. Central to this task is understanding and learning about enforcement and remedies at both the international and domestic levels. International human rights law, like international law generally, is not very different from other kinds of law, such as torts and constitutional law. The main focus of human rights law is not, however, on appellate court opinions, as are many other courses. Instead, the course in international human rights law focuses on constitutive instruments such as the U.N. Charter, the International Bill of Human Rights, the Charter of the Organization of American States, and many related documents. The student will learn to apply these sources of law to various fact situations, much as in other law courses, and will learn how to advocate effectively for compliance with the human rights norms contained in those instruments.

In conclusion, a course in international human rights law covers one aspect of public international law and deals with several of the same issues: the nature of international law; drafting, ratification, adjudication, interpretation, and implementation of treaties; customary international law; intergovernmental and nongovernmental organizations; the protection of non-citizens; international fact-finding; etc. Therefore, this book will be useful to students and teachers seeking a preliminary introduction to international law. The first, introductory chapter discusses how international human rights law fits into the larger domain of international law.

Why a fourth edition?

This fourth edition reflects many significant developments that have occurred since publication of the first edition in 1990, the second edition in 1996, and the third edition in mid-2001:

Soon after the third edition of this book was published, the attacks of September 11, 2001, on New York, Washington, D.C., and Pennsylvania occurred. The attacks precipitated a series of state responses which have been characterized as the "war on terror." These events were followed by terrorist violence in London and Madrid, again precipitating counter-terrorism measures indicating a widespread and multi-jurisdictional context in which the "war on terror" was to be waged. From all these events followed the detention of thousands of suspected terrorists, a resurgence in the use of torture and ill-treatment, governmental kidnappings euphemistically labeled "extraordinary rendition," significant changes to domestic asylum policy in many countries, criminal prosecutions, military actions in Afghanistan and Iraq, and pervasive invasions of the privacy of electronic communications. It has taken several years to begin to understand and grapple with the legal, policy, and practical implications of these events which are reflected throughout the book, but particularly in chapters 1, 8, 12, and 13. This book comes at an

Preface

appropriate point to capture the human rights dilemmas posed by the events following September 11th, as well as to expose the tremendous violations of fundamental human rights norms that have taken place in their aftermath. The book also robustly defends the capacity of international human rights norms and institutions to respond to the challenges posed by terrorism and emphasizes the comparative and historical resources available to states in the contemporary moment.

The robustness of international human rights law is demonstrated in the emergence, since the end of the Cold War, of international criminal law as a response to war crimes, genocide, and other crimes against humanity. In 1993, the U.N. Security Council established the Tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. In November 1994 the Security Council authorized a similar Tribunal for the prosecution of persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighboring States, between 1 January and 31 December 1994. The International Criminal Tribunal for the former Yugoslavia began to issue indictments in 1994 and initiated its first trial in 1996. During 1995 the Rwanda Tribunal began indicting persons responsible for the April-June 1994 genocide in Rwanda and it initiated trials in 1997. The advent of two *ad hoc* criminal tribunals encouraged adoption in July 1998 of the Statute for the International Criminal Court. The Statute of the International Criminal Court (ICC) came into force 2002 and has been ratified by 108 nations. The ICC has begun to function with initial prosecutions arising from events in the Democratic Republic of the Congo, Sudan, and Uganda. In a parallel development General Augusto Pinochet was detained in London during October 1998 and the House of Lords authorized his extradition to Spain for trial in connection with torture committed during his rule in Chile (1973–1990). Eventually Pinochet was permitted for health reasons to return to Chile where he was subjected to criminal proceedings for his role in the killing or “disappearance” of political detainees. At the time of his death in December 2006 Pinochet faced several hundred criminal charges for human rights abuses perpetrated during his rule. The Pinochet case brought public attention to a number of trials — particularly in Europe and Latin America — against persons responsible for crimes against humanity and genocide in the former Yugoslavia, Rwanda, Argentina, and elsewhere. These developments, which are discussed more fully in chapter 8, *infra*, have inspired far greater attention to the possibility of criminal sanctions as a response to grave human rights abuses in many countries.

A related development tracked by this book has been increased attention to compensation, restitution, rehabilitation, and reparation, and other remedies for victims of violations of international human rights and humanitarian law. The Statute of the International Criminal Court not only provides for imposing prison sentences, but the ICC may also order a convicted person to make reparations to, or in respect of, victims, including compensation and restitution. In 1991 the U.N. Security Council established the U.N. Compensation Commission to process thousands of claims deriving from Iraq’s invasion of Kuwait and the Commission has distributed hundreds of millions of dollars to satisfy successful claims. Human rights courts, including the European Court of Human Rights and the Inter-American Court of Human Rights, have increasingly awarded damages and litigation costs to victims. National courts have also awarded damages or fostered settlements for victims of the Holocaust as well as survivors or families of victims of forced labor, torture, arbitrary killings, and other serious human rights abuses. Increasing attention has focused on the possible liability of corporations for such abuses.

Preface

These developments are discussed more fully in chapters 2, 8, 12, and 14, *infra*. The book also outlines the importance and growth of truth commissions and truth and reconciliation processes as part of a growing “victim centered” culture in domestic and international law. All these developments are dimensions of transitional justice discourse and mechanisms, aiming to address the long-term consequences of repressive regimes as well as the experiences of victims in post-conflict societies. These developments are signposted throughout this book, as they have a cross-cutting effect on a large number of issues.

Another significant expansion in the protection of human rights has been the emergence of the U.N. Security Council as a principal actor in the human rights field during the post Cold War era, not only in regard to the establishment of criminal tribunals, but also in authorizing military action and field operations to deal with emergency situations. In parallel, however, the NATO military action in Kosovo during 1999 was justified by grave humanitarian concerns, but did not seek U.N. Security Council authorization pursuant to the United Nations Charter. At the same time the Security Council has been unable to take effective international action against crimes against humanity and possibly genocide in the Darfur region of Sudan. The International Criminal Court issued an arrest warrant against Sudanese President Omar Al Bashir based on charges of war crimes and crimes against humanity in Darfur. These developments are discussed more fully in chapters 7, 8, and 10, *infra*. The broader context within which this assessment of the Security Council is located in the fundamental reform process which has been underway at the United Nations, most recently creating the United Nations Human Rights Council. This book pays considerable attention to the implications of these institutional developments, particularly in chapter 6.

An important advancement during the past decade has been a substantial increase in the acceptance of international human rights treaties. When the first edition of this book was published in 1990 only 93 nations had ratified the International Covenant on Economic, Social and Cultural Rights and 88 nations had ratified the International Covenant on Civil and Political Rights as compared with 160 members of the United Nations. By 2001 there were 189 member states of the United Nations of which a large number (145) had ratified the Covenant on Economic, Social and Cultural Rights and 147 nations had accepted the Civil and Political Rights Covenant. As of 2009 the two covenants have been ratified by 160 and 164 states respectively. The Convention on the Rights of the Child has now been ratified by 193 nations — more than the 192 current members of the United Nations. The United States has partially joined this movement toward universal adoption of human rights standards by ratifying the Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; and the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment. Those three ratifications were, however, limited by extensive reservations and the U.S. has not ratified the Convention on the Rights of the Child; the Covenant on Economic, Social and Cultural Rights nor the Convention on the Elimination of All Forms of Discrimination against Women. This edition keenly examines continuing concern over state adherence to human rights obligations. The codification and ratification of human rights treaties (as well as adherence) are discussed more fully in chapters 1, 2, 3, 4, and 5, *infra*.

Another continuing concern in this edition is the increased tension between the developed nations of the North and the less developed nations of the South. The North-South division has raised questions about the consequences of globalization and trade liberalization and has focused attention on the need to protect economic, social, and cultural rights. Some countries of the South have intensified their arguments that human

Preface

rights must be interpreted in the cultural context of each region and that Western European definitions of human rights should not be rigidly imposed. The South has also shown growing concern about the increased activity of the U.N. Security Council, the capacity of the United States to influence U.N. actions and to act unilaterally, and a decreased respect for national sovereignty. *See* chapters 2, 4, 5, 7, 10, 15, and 16, *infra*.

In recent years ethnic hatred, intercommunal strife, and strident nationalism in many parts of the Middle and Near East (Afghanistan, Iraq, Lebanon, and Israel/Palestine) as well as Central and Eastern Europe have increased in recent years. Parallel with this development has been the rising importance of peace agreements negotiated and/or supported by the international community, with varying degrees of success in many of these contexts. Transitional justice has become an important area of human rights practice, as states struggle with the political and legal transitions that follow the end of violent conflict or the establishment of successor regimes in previously repressive states. There has also been a disturbing increase in racism and xenophobia in Western Europe, North America, and elsewhere. During most of the post-World War II era, the Soviet Union suppressed the ethnic divisions in Central and Eastern Europe, which have now resurfaced most visibly in the territory of the former Yugoslavia (including Bosnia and Kosovo), Chechnya, Ngorno-Karabagh, Georgia, and the Baltic States. Those conflicts and tensions have led to an increase in the number of refugees and internally displaced persons, placing increased burdens on countries that had previously welcomed or at least accepted people fleeing from repression. In Germany, France, and elsewhere in Western Europe there is a general perception that foreigners are far less welcome and racist incidents have become more frequent. The United States has adopted new measures to restrict asylum seekers (such as detaining asylum seekers as they arrive in the country and requiring a waiting period before work authorization) and has seen a rise in xenophobia. *See* chapters 7, 8, 12, and 15, *infra*.

The book identifies areas of change and growth since the last edition. For example, the ongoing establishment of thousands of nongovernmental human rights organizations in many parts of the world where no popular forces for human rights had previously been able to operate remains a positive trend. With the convening of the World Conference on Human Rights in June 1993 and the World Conference against Racism in August-September 2001, it became evident that a worldwide human rights movement had become a transnational constituency for mutual support when abuses are threatened or perpetrated. *See* chapter 3, 6, 9, 13–14, and 17, *infra*.

Those major developments have required rewriting of many chapters and a rethinking of many key areas where human rights law, policy and institutions have dramatically changed or shifted in recent years. The challenges posed by the “war on terror” have made it necessary to focus specific attention on these areas of human rights that have experienced greatest challenge in the past six years. The book also has a cross-cutting approach to the issue of gender-based human rights violations, which integrates the experiences of women in every chapter of the book, but also contains a specific chapter examining the individual complaint system with a particular aspect of women’s human rights violations in chapter 5. Further, the fourth edition incorporates a few additional improvements in how the book presents international human rights. For example, chapter 2 focuses much more attention on drafting treaties and non-treaty instruments that have played such an important role in the codification of human rights law. To highlight the importance of this technical process chapters 2 and 14 focus attention on the human rights responsibilities of non-state actors, including particularly transnational corporations and other business enterprises.

Preface

How the book is organized?

This section provides a quick guide to instructors in planning their use of the book and gives an easy reference point on the management and relationship between various chapters.

The book is divided into seven parts: (A) this preface and an introduction (chapter 1), (B) human rights treaties (drafting and ratification — chapters 2–3), (C) procedures for monitoring compliance and responding to violations (chapters 4–10), (D) regional and national implementation procedures (chapters 11–14), (E) refugee and international labor law (chapters 15–16), (F) causes of human rights violations (chapter 17), and (G) a supplement with the principal human rights instruments and a research bibliography. Accordingly, the book begins with a brief introduction (chapter 1) to the history of international human rights law and how human rights fit within the domain of international law. The rest of the book is organized around several problems or factual situations that can inspire discussion and opportunities for role playing in the classroom.

Since chapter 1 points to the primary importance of treaties in codifying international human rights law. Chapter 2 provides a roleplaying exercise in drafting human rights treaties. Chapter 3 provides another opportunity for a roleplaying exercise in which students participate in a United States Senate hearing to consider ratification of a human rights treaty. Accordingly, chapter 3 focuses upon the acceptance of the principal sources of human rights law through the ratification of treaties. Chapter 4 introduces the main obligation that governments undertake in ratifying major human rights treaties, that is, periodic state reporting and review. Chapter 4 also uses the procedural context of state reporting and review to consider the jurisprudential sources of human rights law and cultural differences. Chapter 5 looks at another important treaty-based procedure available for individual complaints of violations with particular attention to women's human rights.

Having dealt with the principal treaty-based procedures, chapter 6 explains the mechanisms for responding to consistent patterns of gross violations under the U.N. Charter-based procedures of the U.N. Human Rights Council and its Advisory Committee as they have developed from their predecessor institutions — the Commission on Human Rights and its Sub-Commission. Chapters 7, 8, and 9 look at the ways the U.N. Security Council and General Assembly have handled human rights emergencies through humanitarian intervention and humanitarian law (chapter 7); criminal sanctions, civil remedies, and advisory services (chapter 8); and on-site observation (chapter 9). Chapter 10 examines the way individual governments can influence the human rights practices of other countries where gross violations are occurring.

Chapter 11 considers the contribution of the Inter-American human rights system and other regional mechanisms for protecting human rights — principally through adjudicative remedies. Chapter 12 describes the European human rights structure and how its extensive jurisprudence might be useful to lawyers and decisionmakers. This chapter highlights the response of the regional human rights systems to the challenges of terrorism, using the right to life as a case study. Chapter 13 considers how U.S. courts can provide relief for human rights violations inside the United States and/or by the U.S. government. Chapter 14 explores the use of courts inside the U.S. to influence violations of human rights and humanitarian law through the Alien Tort Statute.

Chapter 15 examines the use of refugee and asylum law to protect human rights; it also explores more fully the jurisprudential sources of human rights law and the issue of cultural relativism. Chapter 16 considers the role of the International Labor Organization in protecting labor rights and particularly in stopping child labor. Chapter 17 provides an

Preface

insight into the extremely difficult question of what causes human rights violations and how such an inquiry can assist in improving techniques for preventing or responding to violations.

The supplement contains *Selected International Human Rights Instruments* and the *Bibliography for Research on International Human Rights Law*. The *Selected International Human Rights Instruments* contains several major international human rights treaties and other instruments. Several new treaties and other instruments have been added since prior editions. Readers may also find the bibliography in the supplement useful — particularly if research papers are assigned as part of the course.

The problems presented draw on five different aspects of the study of international human rights to provide a representative sampling of the subject: (1) various procedural settings (2) diverse institutional settings, (3) a geographical spread of countries and forms of human rights violations, (4) the application of several substantive human rights norms to the problem at hand, and (5) a variety of approaches to learning.

The problems touch on each of the major procedural channels for implementing international human rights: state reporting to treaty bodies (chapters 3,4); individual complaints to treaty bodies (chapters 5, 11); individual complaints to regional human rights bodies (chapters 11, 12); thematic, public discourse, and other U.N. emergency procedures for dealing with gross violations (chapters 6, 7); humanitarian intervention for dealing with human rights emergencies (chapter 7); criminal prosecution and procedures for compensating victims (chapters 8, 12, 13, 14); on-site observation and fact-finding (chapters 9, 11); legislative hearings and diplomatic intervention (chapter 10); inter-state complaints (chapter 12); litigation in domestic courts (chapters 13,14); and the work of nongovernmental organizations (chapters 3, 5, 9, 17).

The problems are set in most of the major international institutions, and include procedures of the human rights treaty bodies — Committee on Economic, Social and Cultural Rights (chapter 3); Human Rights Committee (chapter 4); and Committee on the Elimination of Discrimination Against Women (chapter 5); the U.N. Human Rights Council and its Advisory Committee (chapter 6); the U.N. Security Council (chapter 7); international criminal tribunals (chapter 8); U.N. field operations authorized by the U.N. Security Council or under the authority of the U.N. High Commissioner for Human Rights (chapter 9); the Inter-American Commission on and Court of Human Rights (chapter 11); the European Court of Human Rights and other parts of the European human rights system (chapter 12); the UN High Commissioner for Refugees (chapter 15); and the International Labor Organization (chapter 16).

The chapters deal with human rights problems in diverse national contexts: abuses by transnational corporations and other businesses throughout the world (chapter 2), economic rights in the United States and other countries (chapter 3), Iran (chapter 4), Norway (chapter 5), Burma/Myanmar (chapter 6), Sudan (chapter 7), Cambodia and former Yugoslavia (chapter 8), the Democratic Republic of Congo (chapter 9), the United States (chapter 11, 12, 13), Europe (chapter 12), Sudan (chapter 14), Ghana (chapter 15), and India (chapter 16).

The chapters deal with diverse substantive human rights problems related to: abuses by businesses and other non-state actors (chapter 2); economic rights and the right to development (chapter 3); torture and other ill-treatment (chapter 4); discrimination, women's human rights, and the right of participation in public life (chapter 5); minority rights and the right to a free and fair elections (chapter 6); human rights in armed conflict (chapter 7); crimes against humanity and impunity (chapter 8); arbitrary killing (chapter 9), the relationship between foreign aid/foreign policy and human rights violations

Preface

(chapter 10); indigenous rights, minority rights, self-determination, and discrimination against women (chapter 11); the right to life and the protection of human rights in the context of the war on terror (chapter 12); labor rights for undocumented workers (chapter 13); arbitrary detention, torture, forced labor, and corporate responsibility for human rights abuses (chapter 14); spousal abuse, female genital mutilation, and the rights of refugees (chapter 15); child labor (chapter 16); and the causes of human rights violations (chapter 17).

The format also calls for diversity in teaching style. Some overview lectures will be appropriate. Other classes can involve advising a client, several role-playing exercises, the dialogue method, drafting, preparation of congressional testimony, and advocacy in litigation. A central goal had been to involve the student as fully as possible in the learning process and to encourage active participation in the learning process. We believe that this kind of teaching methodology encourages a life-long praxis between one's professional life and public service, including service in the human rights field.

All problems include assigned readings and questions that may serve as a basis for student preparation and class discussion. Each chapter begins with an introduction, to establish the setting and suggest major questions for discussion. The chapters also contain materials with information students will need to deal with the problems. Further questions are occasionally posed to indicate the material's relevance and to focus attention on particular issues.

The materials for the book were initially used for a two-hour weekly law school seminar meeting weekly for a semester. The book has also been used for courses meeting three hours per week during a semester. In any case, the chapters are generally designed so readers would expect to cover one chapter for each week of the course.

Some instructors may wish to assign chapters in an order different from their placement in the book. For example, teachers who have a civil rights and civil liberties orientation may want to start with chapters 13 and 14 on the use of U.S. courts to protect human rights outside and inside this country. Other teachers may find chapter 17 on the causes of human rights violations a challenging place to begin.

While the book was designed for use in law schools, prior editions have also been used in political science and international relations courses for undergraduate and graduate students. Indeed, chapter 17 particularly focuses on political science, epidemiology, and other social science perspectives on human rights.

In sum, the fourth edition has been designed to provide an innovative and stimulating textbook for thinking about and teaching human rights, and that its contemporary framework and ideas provoke valuable teaching and learning experiences.

Acknowledgments

This book was inspired and begun by Professor Frank Newman of the University of California at Berkeley, who died on February 18, 1996, just after he had completed editing the second edition. It was a privilege to be Frank's student, co-author, and colleague. The third edition benefited immeasurably from the insights, intelligence, and energetic engagement of Professor Joan Fitzpatrick of the University of Washington, whose untimely death occurred on May 16, 2003. We hope that the fourth edition will be a tribute to both Professors Newman and Fitzpatrick and to the generations of human rights teachers, scholars, and advocates they enthusiastically encouraged and supported.

We trace the origins of this book to the first seminar on international human rights offered at the University of California Law School, Berkeley, during the summer of 1968. Thomas Buergethal, Frank Newman, Egon Schwelb, and Karel Vasak co-taught the course. Several of the participants became law teachers — including Dinah Shelton, Jon van Dyke.

We are very grateful for the comments we received from teachers and scholars, who used the previous editions or who gave useful advice/encouragement, including William J. Aceves (California Western), Taner Akcam (Minnesota and Clark), Susan Akram (Boston), Christine Bell (Transitional Justice Institute), Brian Bix (Minnesota), Rachel Brett (Quakers United Nations Center), Don Bustion (Southern Arkansas), Michelle Caldera (Connecticut), Colm Campbell (Transitional Justice Institute), Bridgette Carr (Ave Maria), Douglas Cassel (Northwestern and Notre Dame), Roger Clark (Rutgers), Sandra Coliver (Center for Justice and Accountability and Open Society Institute), Karen Curtis (International Labor Organization), Alfred De Zayas (Office of the High Commissioner for Human Rights), Connie de la Vega (San Francisco), Robert Drinan (Georgetown), Michael Farrell (Dublin), Stephanie Farrow (Dickinson/Penn State and Vermont), Arvonne and Donald Fraser (Minnesota), Barbara Frey (Minnesota), Regina Germain (UNCHR), Robert Goldman (American), Mayra Gomez (COHRE), Elizabeth Griffin (UN University — Costa Rica), Claudio Grossman (American), Hurst Hannum (Fletcher), Lou Henkin (Columbia), Paddy Hillyard (Queen's University), Paul Hoffman (USC), Anat Horowitz, (Hebrew University), Sarah Joseph (Monash), Harold Koh (Yale), David Kretzmer (Transitional Justice Institute), Duane Krohnke (Minnesota), Judge LaJune Thomas Lange (Minneapolis), Virginia Leary (Geneva), Stephen Legomsky (Washington University St. Louis), Michelle Leighton (San Francisco), Lance Liebman (Columbia Law School), Stephen Livingston (in memoriam Queen's University Belfast), Bert Lockwood (Cincinnati), Laura Lundy (The Queen's University, Belfast), Martin Macpherson (Amnesty International), Rita Maran (Berkeley), Christopher McCrudden (Oxford and Michigan), Dominic McGoldrick (Liverpool University), Martin O'Brien (Belfast), Penny Parker (Nokia), Jo Pasqualucci (South Dakota), Jelena Pejic (ICRC Geneva), Sir Nigel Rodley (Essex), Carol Sanger (Columbia), Stephen J. Schnably (Miami), Dinah Shelton (Notre Dame and George Washington), David Sloss (St. Louis), Ronald Slye (Seattle), Henry Steiner (Harvard), Tanya Smith (Office of the High Commissioner for Human Rights), Beth Stephens (Rutgers), Lee Swepston (ILO), David P. Stewart (Georgetown), Ruti Teitel (New York), William Twining (University College London and Miami), Howard Vogel (Hamline), Burns Weston (Iowa), David Wippman (Minnesota), and others.

We are grateful to Marsha Freeman (Minnesota) for her remarkable assistance in reviewing the manuscript. We also wish to thank Peter Andersen, Juan Carlos Arjona Estévez, Kendall Bader, Francis J Barczykowski, Haifa Badreddine, Amy Bergquist,

Acknowledgments

Priya Bhandari, Gilbert Castro, Sean Copeland, Jen Cornell, Jovana Davidovic, Kieran Dwyer, Claudia Engelmann, Jonathan Eoloff, Mahmoud Fadlallah, Jill Hägglund, Alex Haley, Dori Handy, Sherilyn Holcombe, Alaa Kaoud, Martin Kifer, Mark Lazar, Eve Lotter, Heather J. McNeff, Sarah O'Brien, Kevin O'Riordan, Shaun Pettigrew, Rebecca Reinhart, Heather Ring, Michael Schafer, Dalindyebo Shabalala, Darren Sharp, Jared Shepherd, Korir Sing'Oei, Nathan G. Soderstrom, Nick Velde, Vanessa K. Wheeler, Colleen A. Windler, Lauren Wood, Alice Yi, and Dick Zonneveld as well as other students and staff at the University of Minnesota who assisted with this edition. In addition, we acknowledge research support provided by Catherine Turner and Adrienne Reilly, both research associates at the Transitional Justice Institute.

We wish also to thank Penny Bailey, Priya Bhandari, John P Boelter, Katherine Brennan, Deborah Ellingboe, Carlos Figueroa, Sharla Flora, Lee Friedman, Mark Gardner, Ruth Gaube, Cathy Gillman, David Grow, Clarinda P. Hipolito, Sherilyn Holcombe, Angie Hoeft, Elizabeth R Johnston, Andrea Kiehl, Hansem (Dawn) Kim, Zara Kivi Kinnunen, Natalie Woodward Kohner, Jordan Kolar, Rachel Lager, Cynthia Maas, Wendy Mahling, Heather J. McNeff, Peter-Christian Olivo, Jennifer Prestholdt, Ramona Price, Rebecca Ralieggh, Cynthia Reed, Sonia Rosen, Peter Schuman, Paula Schwartzbauer, Linda Sennholtz, Susan Snyder, Kim Sterner, Margaret Lane Taylor, Bret Thiele, Mark H. Thieroff, Maria Treby, Ann Marie Trost, Deepika Udagama, and Jamie Wilson who assisted in production of the previous editions of the book.

We are especially indebted to Professor Kathryn Sikkink (Minnesota) for her significant contribution to chapter 17 as well as Marci Hoffman, Lyonette Louis-Jacques, and Mary Rumsey for their very fine work on the bibliographical supplement and its predecessors. In addition, librarian Mary Rumsey did remarkable reference work to make this book possible.

Mary Thacker and Laurie Newbauer did excellent secretarial work on the book.

We are grateful for the institutional support we received from the Transitional Justice Institute, the University of Ulster, and the University of Minnesota Law School.

This book would not have been possible without the intellectual, emotional, and moral support of our respective spouses Professor Oren Gross and Patricia Schaffer, as well as our children and grandchild: Aaliyah, Aodhtan, Bronwen, James, Malachi, and Noa.

David Weissbrodt and Fionnuala Ní Aoláin
March 2009

CONTRIBUTIONS

The authors wish to express their thanks to copyright holders for graciously permitting us to include excerpts from their works (in alphabetical order by author):

Philip Alston, *U.S. Ratification of the Covenant on Economic, Social and Cultural Rights: The Need for an Entirely New Strategy*, 84 AM. J. INT'L L. 365 (1990). Reproduced with permission from 84 AJIL 365 (1990), © The American Society of International Law.

Amnesty International, *Chad/Sudan: Sowing the Seeds of Darfur: Ethnic Targeting in Chad by Janjawid Militias*, AI Index: AFR 20/006/2006 (2006). Reprinted by permission.

Amnesty International, *Iran, New Government Fails to Address Dire Human Rights Situation* AI Index: MDE 13/010/2006 (2006). Reprinted by permission.

Amnesty International, *Maze of Injustice The Failure to Protect Indigenous Women From Sexual Violence in the USA* (2007). Reprinted by permission.

Acknowledgments

Amnesty International, *Myanmar Briefing Paper: No Return to “Normal,”* AI Index: ASA 16/037/2007 (2007). Reprinted by permission.

Amnesty International, *Sudan: Protecting Civilians in Darfur: A Briefing for Effective Peacekeeping,* AI Index AFR 54/024/2006 (2006). Reprinted by permission.

Amnesty International, *Sudan: Who Will answer for the Crimes?* AI Index: AFR 54/006/2005 (2005). Reprinted by permission.

DEBORAH E. ANKER, ET AL., *THE LAW OF ASYLUM IN THE UNITED STATES: A GUIDE TO ADMINISTRATIVE PRACTICE AND CASE LAW* (3d. 1999). Copyright © 1999. Reprinted by permission.

ASIA WATCH & MINNESOTA LAWYERS INTERNATIONAL HUMAN RIGHTS COMMITTEE, *HUMAN RIGHTS IN THE DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA (NORTH KOREA)* (1988). Reprinted by permission.

Gretchen Bauer, *The Hand that Stirs the Pot Can Also Run the Country: Electing Women to Parliament in Namibia,* 42 *JOURNAL OF MODERN AFRICAN STUDIES* 479 (2004). Reprinted by permission.

Joyce Bednarski, *The Salem Witch-Scare Viewed Sociologically* *The Salem Witch-Scare Viewed Sociologically,* in *WITCHCRAFT AND SORCERY* 151 (Max Marwick ed., 1970). Abridged version of Joyce Bednarski, *The Salem Witch-Scare Viewed Sociologically,* 1968, original MS. Reprinted by permission.

Alex J. Bellamy, *Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention After Iraq,* 19 *ETHICS AND INTERNATIONAL AFFAIRS,* 31 (2005). Reprinted by permission.

John R. Bolton, *The Risks and Weaknesses of the International Criminal Court from America’s Perspective,* 64 *L. & CONT. PROB.* 167 (2001). Reprinted by permission.

Marc Bossuyt, *The Development of Special Procedures of the United Nations Commission on Human Rights,* 6 *H.R.L.J.* 179 (1985). Reprinted with permission of the Human Rights Law Journal, N.P. Engel, Publisher.

Katherine Brennan, Note, *The Influence of Cultural Relativism on International Human Rights Law: Female Circumcision as a Case Study,* 7 *LAW & INEQ. J.* 367 (1991). Reprinted by permission.

Bartram S. Brown, *U.S. Objections to the Statute of the International Criminal Court: A Brief Response,* 31 *N.Y.U. J. INT’L L. & POL.* 855 (1999). Reprinted by permission.

Thomas Buergenthal, *The Inter-American Court of Human Rights,* 76 *AM. J. INT’L L.* 231 (1982). Reproduced with permission from 76 *AJIL* 231 (1982), © The American Society of International Law.

THOMAS BUERGENTHAL, ROBERT NORRIS, & DINAH SHELTON, *PROTECTING HUMAN RIGHTS IN THE AMERICAS: SELECTED PROBLEMS* 179 (1986). Reprinted by permission.

Burma: Country in Crisis, <http://www.burmaproject.org/crisis/index.html>, by Thomas R. Lansner, Open Society Institute Burma Project. Reprinted by permission.

A. Rebecca Cardozo, *A Modern American Witch-Craze,* in *WITCHCRAFT AND SORCERY* 369 (Max Marwick ed., 1970). Reprinted by permission.

Hilary Charlesworth, Christine Chinkin & Shelley Wright, *Feminist Approaches to International Law,* 85 *AM. J. INT’L L.* 613 (1991). Reproduced with permission from 85 *AJIL* 613 (1991), © The American Society of International Law.

Child Labor: Refuting the “Nimble Fingers” Argument, *World of Work*

Acknowledgments

(September–October 1996). Reprinted by permission.

Sandra Coliver, *United Nations Machinery on Women's Rights: How Might They Better Help Women Whose Rights are Being Violated?* in *NEW DIRECTIONS IN HUMAN RIGHTS* 25 (Ellen Lutz, Hurst Hannum, & Kathryn Burke 1989). Reprinted by permission.

Radhika Coomaraswamy, *Identity Within: Cultural Relativism, Minority Rights And The Empowerment Of Women*, 34 *GEO. WASH. INT'L L. REV.* 483 (2002). Reprinted by permission.

J.R. CRAWFORD, *WITCHCRAFT AND SORCERY IN RHODESIA* (1967). Reprinted by kind permission of The International African Institute, London, UK.

Vahakn N. Dadrian, *Genocide as a Problem of National and International Law: The World War I Armenian Case and Its Contemporary Legal Ramifications*, 14 *YALE J. INT'L L.* 221 (Summer 1989). Reprinted by permission.

Drude Dahlerup, *Comparative Studies of Electoral Gender Quotas*, Paper presented at International Idea Workshop, Lima, Peru (23 February 2003). Reprinted by permission.

Jack Donnelly, *Cultural Relativism and Universal Human Rights*, 6 *HUM. RTS. Q.* 400 (1984). Reprinted by permission.

John Dugard, *Reconciliation and Justice: The South African Experience*, 8 *TRANSNAT'L L. & CONTEMP. PROBS.* (1998). © Johns Hopkins University Press. Reprinted by permission.

Nadar Entessar, *Criminal Law and the Legal System in the Revolutionary Iran*, 8 *B.C. THIRD WORLD L.J.* 91 (1988). Reprinted by permission.

Mahmoud Fadlallah, *Islam and Human Rights* (2008). Reprinted by permission.

Tom J. Farer & Christopher C. Joyner, *The United States and the Use of Force: Looking Back to See Ahead*, 1 *TRANSNAT'L L. & CONTEMP. PROB.* 15 (1991). Reprinted by permission.

Martha Finnemore and Kathryn Sikkink, *International Norm Dynamics and Political Change*, 52 *INT. ORG.* 887 (Autumn, 1998). © 1998 by the IO Foundation and the Massachusetts Institute of Technology. Reprinted by permission.

Jerry Fowler, *The Rome Treaty for an International Criminal Court: A Framework of International Justice for Future Generations*, 6 *HUM. RTS. BRIEF* 1 (Fall 1998). Reprinted by permission.

Frank J. Garcia and Soohyun Jun, *Trade-Based Strategies for Combating Child Labor*, Boston College Law School Faculty Papers, Paper 35 (2005), available at <http://lsr.nellco.org/bc/bclsfp/papers/35>. Reprinted by permission.

Camille Giffard & Meagan Hrlle, *The United Nations Charter-Based Mechanisms, in HUMAN RIGHTS PROTECTION FOR REFUGEES, ASYLUM-SEEKERS, AND INTERNALLY DISPLACED PERSONS : A GUIDE TO INTERNATIONAL MECHANISMS* (Joan Fitzpatrick ed., 2002). Reprinted by permission.

Ruth Bader Ginsburg, Associate Justice, Supreme Court of the United States, "A Decent Respect to the Opinions of [Human]kind": The Value of a Comparative Perspective in Constitutional Adjudication (Apr. 1, 2005). Reprinted by permission.

Sieglinde Gränzer, *Changing Discourse: Transnational Advocacy Networks in Tunisia and Morocco*, in *THE POWER OF HUMAN RIGHTS* 109 (Thomas Risse et al. eds., 1999). Reprinted with the permission of Cambridge University Press.

Acknowledgments

Andrew T. Guzman, *The Design of International Agreements*, 16 EUR. J. INT'L L. 579 (2005). Reprinted by permission.

David Harris, *Regional Protection of Human Rights: The Inter-American Achievement*, in THE INTER-AMERICAN SYSTEM OF HUMAN RIGHTS, 1 (David Harris & Stephen Livingstone eds., 1998). Reprinted by permission.

Reinhard Heinisch, *Political Explanations of Basic Human Rights Performance*, Paper Prepared for the Annual American Political Science Association Meeting, New York City (1994). Reprinted by permission.

J.L. Holzgrefe, *The Humanitarian Intervention Debate*, in HUMANITARIAN INTERVENTION: ETHICAL, LEGAL, AND POLITICAL DILEMMAS, 15 (J.L. Holzgrefe & Robert O. Keohane eds., 2003). Reprinted by permission.

Todd Howland, *Mirage, Magic, or Mixed Bag? The United Nations High Commissioner for Human Rights' Field Operation in Rwanda*, 21 HUM. RTS. Q. 1 (1999). © The Johns Hopkins University Press. Reprinted with permission of The Johns Hopkins University Press.

Human Rights Watch, *Crackdown: Repression of the 2007 Popular Protests in Burma* (2007). Reprinted by permission.

HUMAN RIGHTS WATCH, *DEMOCRATIC REPUBLIC OF CONGO: WHAT KABILA IS HIDING* 38 (1997). Reprinted by permission.

Human Rights Watch, *Empty Promises? Continuing Abuses in Darfur, Sudan* (2004). Reprinted by permission.

Human Rights Watch, *Justice at Risk: War Crimes Trials in Croatia, Bosnia and Herzegovina, and Serbia and Montenegro*, Oct. 14, 2004. Reprinted by permission.

Human Rights Watch, *Targeting the Fur: Mass Killings in Darfur* (2005). Reprinted by permission.

Human Rights Watch, *World Report 1998, The Children's Rights Project* (1998), available at http://www.hrw.org/worldreport/Back-03.htm#P378_84157. Reprinted by permission.

Human Rights Watch, *The Pinochet Precedent: How Victims Can Pursue Human Rights Criminals Abroad* (2000). Reprinted by permission.

Human Rights Watch, *World Report 2001*, available at <http://www.hrw.org/wr2k1/children/child5.html>. Reprinted by permission.

Human Rights Watch, *World Report 2003, Small Change: Bonded Labor in India's Silk Industry*, available at <http://www.hrw.org/reports/2003/india/india0103.pdf>. Reprinted by permission.

Menno Kamminga, *The Exercise of Universal Jurisdiction in Respect of Gross Human Rights Offences* (1998). Reprinted by permission.

Martti Koskeniemi, *Between Impunity and Show Trials*, 6 MAX PLANCK YEARBOOK OF U.N. LAW 1 (Jochen A. Frowein & Rüdiger Wolfrum, eds. 2002). Reprinted by permission.

Virginia Leary, *Human Rights at the ILO: Reflections on Making the ILO more "User Friendly,"* in THE MODERN WORLD OF HUMAN RIGHTS: ESSAYS IN HONOUR OF THOMAS BUERGENTHAL 379 (Pedro Nikken & Antonio A. Cancado Trindade eds. Inter-American Institute of Human Rights, Costa Rica 1996). Reprinted by permission.

LAWRENCE J. LEBLANC, THE CONVENTION ON THE RIGHTS OF THE CHILD: UNITED

Acknowledgments

NATIONS LAWMAKING ON HUMAN RIGHTS (1995). Reprinted by permission.

Hans A. Linde, *Comments*, 18 INT'L LAWYER 77 (1984). Reprinted by permission.

Robert Jay Lifton, *Socialization to Killing*, in THE NAZI DOCTORS: MEDICAL KILLING AND THE PSYCHOLOGY OF GENOCIDE 195 (1986). Reprinted by permission.

Richard B. Lillich, *A United States Policy of Humanitarian Intervention and Intercession*, from HUMAN RIGHTS AND AMERICAN FOREIGN POLICY, edited by Donald P. Kommers and Gilbert D. Loescher. © 1979 by University of Notre Dame Press. Reprinted by permission.

Jules Lobel, *Benign Hegemony? — Kosovo and Article 2(4) of the U.N. Charter*, 1 CHI. J. INT'L L. 19 (2000). Reprinted by permission.

Ian Martin, *International Human Rights Field Presence: Past Experience, Current Methodology, Future Prospects*, in THE UNIVERSAL PROTECTION OF HUMAN RIGHTS: TRANSLATING INTERNATIONAL COMMITMENT INTO NATIONAL ACTION 241 (1997). Reprinted by permission.

Philip Mayer, *Witches*, in WITCHCRAFT AND SORCERY 45 (Max Marwick ed., 1970). Originally published as Philip Mayer, *Witches*, Inaugural Lecture, Rhodes University, Grahamstown, South Africa, 1953. Reprinted by permission.

Neil J. Mitchell & James M. McCormick, *Economic and Political Explanations of Human Rights Violations*. WORLD POLITICS 476 (July 1988). © Center of International Studies, Princeton University. Reprinted by permission of the Johns Hopkins University Press.

Wendy Moss, *Indigenous Self-Government in Canada and Sexual Equality Under the Indian Act: Resolving Conflicts Between Collective and Individual Rights*, 15 QUEEN'S L.J. 279 (1990). Reprinted by permission.

Aryeh Neier, *Rethinking Truth Justice, and Guilt after Bosnia and Rwanda*, in HUMAN RIGHTS IN POLITICAL TRANSITIONS: GETTYSBURG TO BOSNIA, edited by Carla Hesse & Robert Post (New York: Zone Books, 1999). Copyright © 1999 Carla Hesse and Robert Post. Reprinted by permission.

David D. Newsom, From chapter 1, *Introduction. The Diplomacy of Human Rights: A Diplomat's View*, in THE DIPLOMACY OF HUMAN RIGHTS (David D. Newsom, ed., Washington: Institute for the Study of Diplomacy and University Press of America, 1986). Copyright © by the Institute for the Study of Diplomacy, Georgetown University. Reprinted by permission.

MANFRED NOWAK, U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS: CCPR COMMENTARY (2005) (2nd ed). Reprinted by permission.

Diane F. Orentlicher, *Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime*, 100 YALE L.J. 2537 (1991). Reprinted by permission of The Yale Law Journal Company and Fred B. Rothman & Company from The Yale Law Journal, Vol. 100, pp. 2539–53, 2562–69.

DIANE F. ORENTLICHER, AMERICAN SOCIETY OF INTERNATIONAL LAW NEWSLETTER, YUGOSLAVIA WAR CRIMES TRIBUNAL (ASIL Focus Special Insert to the June–August 1993 issue). Reprinted by permission.

Organization of African Unity, The International Panel of Eminent Personalities to Investigate the 1994 Genocide in Rwanda and the Surrounding Events, *Rwanda: The Preventable Genocide* (2000). Reprinted by permission.

Jo M. Pasqualucci, *Advisory Practice of the Inter-American Court of Human Rights*:

Acknowledgments

Contributing to the Evolution of International Human Rights Law, 38 STAN. J. INT'L L. 241 (2002). Reprinted by permission.

JO M. PASQUALUCCI, *THE PRACTICE AND PROCEDURE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS* (2003). Reprinted by permission.

Physicians for Human Rights, *Darfur: Assault on Survival: A Call for Security, Justice, and Restitution* (2006). Reprinted by permission.

A. Yasmine Rassam, *International Law and Contemporary Forms of Slavery: An Economic and Social Rights-Based Approach*, 23 PENN. ST. INT'L. L. REV. 809 (2005). Reprinted by permission.

Kavita Ratna, *India*, in ICJ, *Rights of the Child*, Report of a Training Programme in Asia 149 (1993). Reprinted by permission.

Nigel S. Rodley, *On the Necessity of United States Ratification of the International Human Rights-Conventions*, in U.S. RATIFICATION OF THE HUMAN RIGHTS TREATIES: WITH OR WITHOUT RESERVATIONS? 3 (Richard B. Lillich ed., 1981). Edited for the International Human Rights Law Group by R. Lillich. Reprinted by permission of the International Human Rights Law Group.

Michel Rosenfeld, *Can Human Rights Bridge The Gap Between Universalism And Cultural Relativism? A Pluralist Assessment Based On The Rights Of Minorities*, 30 COLUM. HUM. RTS. L. REV. 249 (Spring, 1999). Reprinted by permission.

Michael P. Scharf, *Self-Representation Versus Assignment of Defence Counsel Before International Criminal Tribunals*, 4 J. INT'L CRIM. JUST. 31 (Mar. 2006). Reprinted by permission.

JAMES SCOTT, *DOMINATION AND THE ARTS OF RESISTANCE: HIDDEN TRANSCRIPTS* (1990). Reprinted by permission of Yale University Press.

Dinah Shelton, *International Law*, in U.S. RATIFICATION OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS 27 (Hurst Hannum & Dana D. Fischer ed., 1993). Reproduced with permission, © The American Society of International Law.

Hege Skjeie & Mari Teigen, *Political Constructions of Gender Equality: Travelling Towards . . . a Gender Balanced Society?*, 13 NORDIC JOURNAL OF WOMEN'S STUDIES 187 (2005). Reprinted by permission.

Abraham D. Sofaer, *International Law and the Use of Force*, NAT'L INTEREST, Fall, 1988, at 54. Reprinted with permission, © *The National Interest*, No. 13, Fall 1988, Washington, D.C.

Eva-Maria Svensson, *Contemporary Challenges in Nordic Gender Equality Policies and Law* Working Paper (2006). Reprinted by permission.

Ruti G. Teitel, *Transitional Justice Genealogy*, 69 HARV. HUM. RTS. J. 69 (2003). Reprinted by permission.

UNICEF, *Why make a special case for the children?* Convention on the Rights of the Child, available at <http://www.unicef.org/crc./specialcase.htm>. Reprinted by permission.

UNICEF, *Why make a special case for the children?* Convention on the Rights of the Child (2005). Reprinted by permission.

UNICEF, *The State of the World's Children 1997* (1996). Reprinted by permission.

United States Institute of Peace, United States of America. American Interests and UN

Acknowledgments

Reform: Report of the Task Force on the United Nations (2005). Reprinted by permission.

Edmundo Vargas, *Visits on the Spot: The Experience of the Inter-American Commission on Human Rights*, in *INTERNATIONAL LAW AND FACT-FINDING IN THE FIELD OF HUMAN RIGHTS* 137 (Bertram Ramcharan ed., 1982). Reprinted by permission.

Kevin K. Washburn, *Federal Criminal Law and Tribal Self-Determination*, 84 *N.C. L. REV.* 779 (2006). Reprinted by permission.

David Weissbrodt, *Business and Human Rights*, 74 *U. CIN. L. REV.* 55 (2005). Reprinted by permission.

David Weissbrodt and Jovana Davidovic, *Theoretical Foundations of Human Rights* (2006). Reprinted by permission.

David Weissbrodt & Sarah O'Brien, *Epidemiology as a Fact-Finding Tool*. Reprinted by permission.

David Weissbrodt & Paul W. Fraser, *Book Review*, 14 *HUM. RTS. Q.* 601 (1992) (reviewing National Commission on Truth and Reconciliation, *Report of the Chilean National Commission on Truth and Reconciliation* (1991)). Copyright by Johns Hopkins University Press. Reprinted by permission.

Burns Weston, *U.S. Ratification of the International Covenant on Economic, Social and Cultural Rights: With or Without Qualifications*, in *U.S. RATIFICATION OF THE HUMAN RIGHTS TREATIES: WITH OR WITHOUT RESERVATIONS?* 27 (Richard B. Lillich ed., 1981). Edited for the International Human Rights Law Group by R. Lillich. Reprinted by permission of the International Human Rights Law Group.

Anne M. Williams, *United States Treaty Law*, in *U.S. RATIFICATION OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS* 35 (Hurst Hannum & Dana D. Fischer ed., 1993). Reproduced with permission, © The American Society of International Law.

David Wippman, *The Nine Lives of Article 2(4)*, 16 *MINN. J. INT'L L.* 387 (2007). Reprinted by permission.

José Zalaquett, *Balancing Ethical Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations*, 43 *HASTINGS L.J.* 1425 (1992). © 1992 by University of California, Hastings College of the Law. Reprinted from *HASTINGS LAW JOURNAL*, Vol. 43, No. 6, pp. 1425, 1429–32, by permission.