

Human Rights in International Law

Legal and Policy Issues

Volume I

Edited by Theodor Meron



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Edited by
THEODOR MERON
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Preface

The object of this book—which has been funded by a major grant from the Rockefeller Foundation, by financial aid provided by the New York University School of Law Research Program, and by Mr. Harold Robbins—is to provide teachers and students not only with a textbook covering the principal human rights areas, but also with pedagogical suggestions, syllabi, bibliographies, and case studies. The volume offers teachers an opportunity to choose topics either for an entire course on international human rights or for a few hours devoted to the subject within a course on constitutional law, international relations, political science, international organizations, etc. The work is equally suitable for use as a reference book by persons engaged in research or practice. A detailed introduction to the volume is contained in *Teaching Human Rights: An Overview* (chapter 1).

I wish to record my gratitude to the Rockefeller Foundation, both for its grant and for enabling me to work on the book as scholar-in-residence in the Foundation's Villa Serbelloni, to my research assistants, Martha Schweitz, Anna M. Pappas, Linda L. Hazou, and, in particular, James J. Busuttil, and to my secretary, Madelon Blavatnik.

Theodor Meron

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Part I: The Setting

Chapter 1

Teaching Human Rights: An Overview*

Theodor Meron

A. Teaching Human Rights: State of the Art

1. REASONS FOR TEACHING HUMAN RIGHTS

The reasons for teaching and learning human rights were described as early as 1948 in the Universal Declaration of Human Rights (Universal Declaration),¹ the basic statement of human rights which continues to be the inspiration of all other human rights instruments and activities. Article 26(2) of the Universal Declaration provides that education should be directed to the 'strengthening of respect for human rights and fundamental freedoms'. Education should promote understanding, tolerance, and friendship among all nations and racial or religious groups, and further the maintenance of peace. Article 26(2) thus contains the essential reasons which continue to guide the teaching of human rights today.

The 1978 UNESCO International Congress on Teaching of Human Rights, which convened in Vienna, further developed the reasons for teaching human rights.² The Final Act of the Vienna Congress recognized that '[w]hile education should make the individual aware of his or her own rights, it should at the same time instill respect for the rights of others'.³ Human rights must, moreover, 'be seen as an aspect of professional, ethical and social responsibility in all fields of research, study, teaching and work'.⁴ The International Congress also recognized that the teaching of human rights should have among its goals securing the observance of human rights in cases of armed conflict and that therefore it should include the teaching of international humanitarian law.⁵ Indeed, the dissemination of the applicable rules of humanitarian law to the armed forces constitutes a legal duty of the parties to the instruments governing the conduct of armed conflicts.⁶ Unless soldiers know the human rights applicable in

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¹ G.A. Res. 217A, U.N. Doc. A/810, at 71 (1948).

² See Part I(3), Final Document of the International Congress on the Teaching of Human Rights, contained in The Teaching of Human Rights Proceedings of the International Congress on the Teaching of Human Rights 40 (UNESCO 1980) [hereinafter cited as Vienna Final Document].

³ *Id.* Part I(4).

⁴ *Id.* Part I(6).

⁵ *Id.* Preamble, *in fine* at 39.

⁶ See, e.g., art. 1. [Hague] Convention No. IV Respecting the Laws and Customs of War on

time of armed conflict, their compliance with those binding rules cannot realistically be expected. This is particularly important with the emergence of many newly independent states which do not have armed forces with established military traditions and military manuals.⁷

Knowledge and awareness of human rights is equally important in time of peace. There has been progress in the observance of human rights because of the pressure of public opinion exerted by peoples on their own governments and on the governments of other countries. Only peoples educated about and aware of their human rights can demand that their governments observe those rights. Human rights education, which is essential for the formation of public opinion and the generation of public pressure for compliance with human rights, is thus a *sine qua non* for the observance and the advancement of human rights.⁸ Most importantly, knowledge of human rights is essential as a tool for the observance and the promotion of human rights and for the creation of a climate of public opinion in which gross violations of human rights are unacceptable. In the past, massive violations of human rights brought about an atmosphere which was conducive to war. While education alone cannot prevent the occurrence of gross violations of human rights, it can create moral and mental inhibitions and a sense of shame on the part of diplomats, leaders, and the military and can thus contribute to the prevention of war. The importance of the creation of a sense of shame on the part of violators or potential violators of human rights, long recognized and employed with effective leverage by the International Labour Organization (ILO), should be recognized as potentially a major factor which could contribute to the observance of human rights in areas outside the concern of the ILO.⁹

Given the multiplicity of available procedures and substantive rights and the potential for their domestic implementation, protection of human rights is now a subject to be taught not only as an academic or intellectual exercise, but, increasingly, as a skill for practitioners. It may be unethical, indeed, to practice law without having some

Land, 36 Stat. 2277, T.S. No. 539; art. 144, [Geneva] Convention Relative to the Protection of Civilian Persons in Time of War, 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287; art. 83, Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), U.N. Doc. A/32/144 (1977).

⁷ See remarks by Dinstein, in Meron, *A Report on the N.Y.U. Conference on Teaching International Protection of Human Rights*, 13 N.Y.U. J. Int'l L. & Pol. 881, 918-19 (1981) [hereinafter cited as Meron Report].

⁸ See remarks by Dinstein, *id.* at 888.

⁹ See remarks by Wolf on the 'mobilization of shame' by the ILO on a tripartite basis, *id.* at 932.