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The Legal Nature of International Human Rights

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The Legal Nature of International Human Rights

International Studies in Human Rights

Volume 104



For

Kwame and Rose

in appreciation

Preface

The richness of international human rights is reflected in its diversity across disciplines including politics, philosophy, anthropology and law. This ostensibly valuable character can also be a source of acute frustration when as a student of human rights, it becomes necessary for one reason or another to focus specifically on one of these distinct dimensions. This is particularly true of the legal practitioner preparing client advice or a Law School academic preparing a course in international human rights law, in both of which contexts, although the political or other non-law dimension may be interesting, it is usually not the key component of a legal approach.

Today, international human rights law is no longer at the periphery of law, or a sideline of politics, while both the international and national jurisdictions have come to recognise it as a part of the legal mainstream. International human rights law has a distinct and a fairly settled narrative in which the roles of its actors, including individual litigants, national governments, inter-governmental organisations, non-governmental organisations etc., are well defined. Furthermore, the legal aspects of international human rights have become an important feature in government policy-making as much as the political perspectives have been in the past. This changing character and role of the law of human rights justifies the need to investigate its nature and scope.

Concentrating on the legal nature of international human rights is not to deny the importance of other non-law dimensions or the shadows they cast over the legal approach. Such an overlap is not only enriching but may well be unavoidable. Nevertheless, a clear appreciation of the legal dimension is useful for a better insight into the significance of the non-law perspectives themselves. The importance of this reflective knowledge is even more acute for the potential benefits of clarity it may give to the diverse dimensions of international human rights.

The proven significance of a multidisciplinary or inter-disciplinary representation of international human rights must make every scholar who seeks to focus on one perspective alone seriously apprehensive of how the outcome will be received. Critical comment is probably inevitable but there is enough

reassuring evidence of the value of a legal assessment, especially for reasons already indicated. The legal approach to international human rights may be seen as a niche contribution alongside the other approaches to the subject. This may be so, but it is one for which there is need for scholarly investigation.

The subject matter of the legal nature of international human rights is vast and in certain cases not entirely clear or settled. This is in the nature of law generally and especially of the law in the international context. This book therefore does not aim to undertake an exhaustive study of the subject. Rather, it stands as a broad analytical assessment of the legal nature of international human rights upon which more focused research may be based.

Acknowledgements

This book is the product of a few years of rather slow research which was fuelled by the benefit of a year's research leave. I am grateful to the Law School at the University of Exeter, and particularly to the former Head of School, the late Professor John Usher who supported the application for leave.

The unquestionable support from my wife, Sue, for whom all my many shortcomings – made even worse by having to concentrate on preparing this book – seem insignificant, has been the basis of personal stability and moral strength to press on the project to completion. Words are inadequate to express my gratitude and appreciation. I have not been unaware that our three children, Samaa, Afi and Addo-Kwabena have had to adjust to a different relationship partly brought about by having to work on the book. For this, I apologise and at the same time grateful for their forbearance. I am also grateful to other members of family (especially Afia) whose continuing interest in the project has been an immense help.

Friends have been a source of strength in the dark and isolated moments of preparing this book. All have remained loyal despite unreturned phone calls, unanswered emails and overlooked appointments. Dr Nathalie Prouvez deserves specific mention for her most exemplary personal loyalty and professional support. So also should Fred von Krusenstiern and other friends whose friendships have been challenged by this project.

In my work, I have been fortunate to come across some very accomplished scholars some of whom have helped shape the ideas in this book while others agreed to look at some draft material for this book. Professor Philip Payne has been a fountain of such immense wisdom. It is a great shame not to be able to reflect all his wonderful ideas. Professors Matthew Craven, Mark Janis and Rachel Murray agreed to comment upon selected chapters, while others including my longstanding mentor, Professor Malcolm Shaw, alongside Professors Malcolm Evans, Eibe Riedel, Sigrun Skogly and Harry Post undertook to look through more than one chapter of the draft manuscript. The generosity with their time in the face of pressures of their own commitments is deeply appreciated. As one would expect, some of their comments have been reassuring while others have been critical and challenging

especially when they have disagreed with my perspective. I have endeavoured to take account and incorporate some (and by no means all) of these insightful comments and so it is necessary to reiterate the standard caveat that any errors and shortcomings that remain in the book are entirely my own.

Finally, I wish to acknowledge the support and assistance of many other professionals. In the Dominic Lasok Library at Exeter, a debt of gratitude is owed to Jim Jackson, the late Joy Hooper and Patrick Overy for whom no inquiry or request for material, no matter how obscure, is too much. Jenny Brooks of the Inter-Library Loans department was a consummate professional in this respect. Hannah May is a freelance copy-editor who carefully revised the punctuation, grammar and syntax of a rather 'technical' manuscript without sacrificing the core message. It has been truly rewarding to work with Hannah.

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Michael K. Addo
Exeter, November 2009

Abbreviations

AC	Law Reports, Appeal Cases
ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention On Human Rights
AfCHPR	African Commission on Human and Peoples' Rights
AfCtHPR	African Court on Human and Peoples' Rights
AU	African Union
CAT	Convention Against Torture and Other Inhuman and Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Committee on the Elimination of Discrimination
CUP	Cambridge University Press
DRC	Democratic republic of Congo
ECHR	European Convention on Human Rights
ECOSOC	Economic and Social Council
ECt.HR	European Court of Human Rights
EEC	European Economic Community
EHRR	European Human Rights Reports
EU	European Union
FGM	Female Genital Mutilation
GAOR	General Assembly Official Records
HIV	Human Immunodeficiency Virus
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Cultural Rights
ICERD	International Convention on the Elimination of All Forms of Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTR	International Criminal for the Former Yugoslavia
ICTY	International Criminal Court for Rwanda
ILO	International Labour Organisation

Inter-Am.C.HR	Inter-American Commission of Human Rights
Inter-Am.Ct.HR	Inter-American Court of Human Rights
OAS	Organisation of American States
OAU	Organisation of African Unity
OHCHR	Office of the High Commissioner for Human Rights
OP-CAT	Optional Protocol to the Convention Against Torture and Other Inhuman and Degrading Treatment or Punishment
OP-CEDAW	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women
OUP	Oxford University Press
PCIJ	Permanent Court of International Justice
Q.B.	Law Reports, Queen's Bench Division
RdC	Recueil des Cours (of the Hague Academy)
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UKHL	United Kingdom House of Lords
UN	United Nations
UN Doc.	United Nations Document
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Council
UNICEF	United Nations Children's Fund
UNSC	United Nations Security Council
USA	United States of America
USSR	Union of Soviet Socialist Republics
W.L.R.	Weekly Law Reports
WHO	World Health Organisation

Table of Treaties and Other International Instruments

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Charter of the OAS (1945)
Charter of the Organisation of African Union (1963)
Charter of the United Nations (1945)
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Declaration on the Elimination of All forms of Intolerance and Discrimination Based on Religion or Beliefs (1981)
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European Social Charter (1961)
Final Act of the Congress of Vienna (1815)

- First Optional Protocol to the International Covenant on Civil and Political Rights (1966)
- General Act of the Congress of Berlin (1885)
- Geneva Convention for the Amelioration of the Condition of the Wounded and Sick of Armed Forces in the Field (1864)
- Geneva Convention I on the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field (1949)
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- ILO Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries (1989)
- ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation (1975)
- ILO Convention No. 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (1975)
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- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
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- Proclamation of the International Conference on Human Rights, Tehran (1968)
- Protocol on the Abolition of the Death Penalty (OAS) (1990)
- Protocol to the Slavery Convention (1953)
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- St Petersburg Declaration Renouncing the Use in Time of War of Explosive Projectiles under 400 Grammes Weight (1868)
- Statute of the Council of Europe (1950)
- Statute of the Inter-American Court of Human Rights (1979)
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Universal Declaration on Human Rights (1948)
Vienna Declaration and Programme of Action of the World Conference on
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United Kingdom

Children's Act (1989)
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