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International Human Rights

**Problems of Law, Policy,
and Practice**

Fifth Edition

Hurst Hannum

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Preface

This casebook is intended to introduce the student to the established and developing international law governing the protection of human rights. There is now a substantial body of this law, which encompasses substantive norms; procedural rules; and national, regional, and global institutions whose mandate it is to promote, monitor, and supervise international human rights. Human rights issues are a concern today of nearly every country's foreign ministry, whether a country's goal is to expand or constrain their impact on state (and increasingly non-state) behavior. Human rights law has become an integral part of international law *per se*, and no one with pretensions of being an international lawyer can ignore its content entirely.

At the same time, international human rights law—as it is generally understood—does not encompass every social good or even every international norm whose purpose is to improve the human condition. Among the issues that are extremely relevant to the lives of billions of people but that are not addressed in depth in this casebook are theories of economic development, broad issues of social equality, refugees, and migration. Other important concerns that are addressed only in terms of their particular relationship to international human rights law are trade, protection of the environment, international relations, globalization, and the financial crisis that has affected most of the world since 2008. And, of course, many moral, social, and philosophical issues appropriately lie beyond the reach of international law of any kind.

The materials in this book are generally organized around distinct problems, selected to illustrate the real issues that face human rights lawyers and to demonstrate how and why human rights law has developed in the way that it has. Most of the 13 chapters are organized around a specific factual situation, and each is accompanied by selected readings, comments, and questions designed to raise the most significant contemporary human rights issues. The situations presented are intended to serve as points of departure for the exploration of the relevant principles, procedures, and policies for protecting human rights through the international (and domestic) legal process. These situations are necessarily presented in a summary fashion and are not intended to provide a comprehensive survey of the subject; the goal is simply to concentrate the student's attention on how international law can be invoked to protect human rights in concrete cases. The casebook is thus a teaching tool, not an encyclopedia or bibliography. Whenever possible, the materials make use of primary sources, such as treaties, international and domestic jurisprudence, UN resolutions, and documents emanating from various human rights bodies and procedures.

The first five chapters consider broadly the substantive content of contemporary international human rights law. The first three chapters examine the historical development of human rights law and its gradual definition through treaties, customary law, and so-called “soft law” instruments. Chapter 4 introduces the student to the related norms of international humanitarian law (or, the law of war) in the context of the “war on terror” proclaimed in the aftermath of September 11, 2001. This chapter, in particular, has undergone extensive revision since the

fourth edition. Chapter 5 examines the scope of a state's obligations under international human rights law and also considers the obligations that might be imposed on other actors, including international organizations, transnational and national corporations, and even individuals.

The next section of six chapters deals with various aspects of the implementation of human rights norms. Chapter 6 considers the crucial element of domestic enforcement, focusing on developments in U.S. jurisprudence over the past 30 years. Chapters 7, 8, and 9 deal with supervisory mechanisms created by the United Nations and two of the three regional human rights regimes; the third regional system of protection (Africa) is considered by way of example in Chapter 5. Substantively, the European materials are focused on the issues of religion and privacy, while the inter-American materials consider the regional response to the phenomenon of disappearances in Argentina in the 1970s and 1980s. Chapters 10 and 11 examine the most extreme forms of enforcement: coercion against governments, through the imposition of sanctions and even the use of military force (taking the situation in Darfur, Sudan, as an example), and holding individuals accountable for human rights violations that also constitute international or domestic crimes.

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

This casebook is designed primarily for use in a one-semester, three-hour course or seminar at the law school or university level, although such an approach is increasingly difficult as the range of relevant human rights issues and institutions expands. With some omissions, the book also could be used in a shorter seminar, although balancing depth and breadth of coverage is always difficult. While a background in international law would certainly be helpful to both students and teachers, it is not required for an adequate understanding of most of the materials. Some of the particularly technical legal issues, such as domestic implementation, might be omitted if the book is used in a school or department of international relations, as opposed to a law school or faculty. Similarly, one might choose to exclude human-rights-related issues, such as the use of force or international criminal law, if pressed for time. While many of the materials focus on the United States, comparative analysis of other domestic jurisdictions is included where possible.

The problem-oriented nature of the materials is designed to engage the student in thinking about concrete issues and the application of human rights law to the "real world." Philosophical issues are addressed at various points in the book, but our primary purpose is to explore the practice of human rights in depth, rather than the theory. Many of the problems lend themselves to student role-playing, and the materials present different perspectives and positions on many of the more hotly contested issues in human rights. For all of its sophistication, human rights law—indeed, international law in general—is in constant movement, and many of the materials present the student with alternatives that are actively under discussion rather than offering the "correct" answer to every question. The materials do not attempt to provide a synopsis of human rights law for the casual reader; rather,

they are intended to focus attention on the theoretical and legal underpinnings of the international human rights regime, as well as on contemporary, cutting-edge issues that are still in dispute.

Finally, this book strives to present a picture of international human rights law as it is, not as we might wish it to be, while understanding that the substantive scope of human rights is constantly evolving. Human rights advocates can justifiably claim a great deal of success over the past 60 years, and the shield of sovereignty that protected states from external criticism over how they treated their own citizens is gone forever. At the same time, however, merely adopting new declarations or citing the progressive opinions of independent experts does not automatically create effective international law. International law is under increasing challenge today on a number of fronts, and human rights law is not immune from that challenge. “North-South” issues, the unilateral use of force by states, economic and political instability, and a near obsession with “terrorism” pose challenges to the structure and normative foundation of international law itself. Only with a full understanding of the constraints on international law can students (and activists) move forward in the most effective manner possible. There is no dichotomy between realism and idealism, because both are necessary; however, neither cynicism disguised as *realpolitik* nor willfully exaggerated claims for the power of law are useful.

The first edition of this book was published in 1979, when issues such as domestic enforcement of human rights norms, international criminal accountability, and the use of force against human rights violators were little more than theories. It is a tribute to the prescience of the authors of that first edition, Richard B. Lillich and Frank C. Newman, that the subjects addressed 30 years later and the general approach of the book have largely remained the same. Of course, those who have used previous editions will notice that substantial material in this edition is different from that in the fourth edition, as the still-new 21st century continues to bring significant changes and challenges to the field of human rights.

Hurst Hannum
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