

HUMAN RIGHTS IN THE WORLD COMMUNITY

*Issues
and
Action*

*Edited by
Richard Pierre Claude
and
Burns H. Weston*

SECOND EDITION



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HUMAN RIGHTS IN THE WORLD COMMUNITY

*To Monique Weston Clague
& Gregor Pierre Claude*

Preface

From southern Africa to the Soviet Union to Latin America and elsewhere, a global sea change has left political autocracies discarded and isolated like seafarers at low tide. Since 1989, when the first edition of this volume was published, a large array of states in every hemisphere and on every continent have undertaken reform, moved into the categories of emerging and re-emerging democracies, and proclaimed support for international human rights with evident sincerity. For example, in 1989, the Helsinki Committee in Poland announced that "issues of ideology, removed from the school curricula, would be replaced by the values of the Universal Declaration of Human Rights."¹ Among regimes newly engaged in institution-building and the construction of democracies, many have gone on record calling for human rights education as an antidote to national recidivism and as a preventive measure against the recurrence of human rights abuses. The thirty-five countries that signed the Helsinki Accords in 1975², for instance, expressed their intent for the last decade of the twentieth century to "encourage schools and other educational institutions" to find ways in the classroom to consider "the promotion and protection of human rights and fundamental freedoms."³ Ancillary to this objective and consistent with rapidly changing global circumstances, this second edition incorporates a substantially new collection of readings and is specifically designed for use in human rights education for the 1990s.

The United Nations Educational, Scientific and Cultural Organization (UNESCO) spon-

1. Helsinki Committee in Poland, *Human Rights in Poland, 1989* (Warsaw: International Helsinki Federation for Human Rights, Report No. 8, 1990): 2.

2. Adopted by the Conference on Security and Co-operation in Europe at Helsinki, Aug. 1, 1975. Department of State Publication No. 8826 (GEN'L FOR. SERV. 298), reprinted in *Basic Documents in International Law and World Order*, 2d ed., ed. Burns H. Weston, Richard A. Falk, and Anthony D'Amato (St. Paul, MN: West Publishing Co., 1990), 114 (hereinafter *Basic Documents*).

3. Concluding Document of the Vienna Follow-Up Meeting of the Conference on Security and Cooperation in Europe, Ch. 1, paras. 13.4–13.6. See *Basic Documents*, 121. Other endorsements of human rights education have been registered by the Council of Europe, "Recommendation No. R (85)7 of the Committee of Ministers to Member States on Teaching and Learning About Human Rights in Schools" (Strasbourg: Council of Europe, 14 May 1985). See also Human Rights Research and Education Centre, *Human Rights Training for Commonwealth Public Officials Manual* (Ottawa: Human Rights Unit, Commonwealth Secretariat, 1990). More quiescent has been U.S. policy on the teaching of human rights. Nevertheless, in 1989, Representative Augustus Hawkins introduced H.R. 3077 to the 101st Congress, 1st Session, "The Human Rights Education Act of 1989." It targets the year 2000 for the development of a locally-based program of human rights teaching and the appointment of a "Human Rights Education Advisor" to assist the U.S. Department of Education in promoting nationwide teaching in the field. The bill was not reported out of the Committee on Education and Labor. The teaching of human rights is constitutionally required in The Republic of the Philippines. See Richard P. Claude, "Human Rights Education: The Case of the Philippines," *Human Rights Quarterly* 13, no. 4 (November 1991): 453–524.

sored an international congress on "Teaching Human Rights" in 1978. Persons attending the Vienna Congress from all over the world adopted the view that the United Nations objective of promoting human rights internationally could be achieved, in significant part, through education and the development of appropriate texts and teaching materials.⁴ This book seeks to bring such materials together in one place for use in political science, international relations, and international law classes. We hope it will be of interest to the general reader as well.

The volume aims to facilitate effective human rights education in several ways. It relies on a broad distinction between *issues* associated with international human rights problems and *action* that seeks to implement human rights standards at the international, national, and individual levels. Each of six chapters, which contain essays by leading scholars, is preceded by an editors' introduction designed to orient the reader and to survey the larger context within which the excerpted readings fit. Numbered footnotes are of the original authors' making; lettered footnotes are of the editors. Each reading is followed by "Questions for Reflection and Discussion," which we hope will be helpful in critically analyzing the readings, in prodding new thinking, and in stimulating fresh research beyond the scope of the existing literature.

At the end of each of the chapters is an annotated bibliography, emphasizing more recent publications as well as selected "classics."⁵ On the theory that human rights is made tangible by eyewitness experience, an appropriate annotated filmography also is set out after each of the chapters.⁶ Films are an important teaching device in our television age when, by way of international satellite hook-ups, TV brings into our homes broadcasts of "Live Aid" in response to hunger in Africa, superpower officials empaneling the Middle East peace conference in Madrid, Spain, and top performers (for instance, "U2" from Great Britain and the "Jazz Group" from Czechoslovakia) rallying support for international human rights. One way or another, we all have become eyewitnesses to human rights problems. Because the promotion and protection of human rights depends on everyone, the reader should familiarize herself or himself with the many groups that serve human rights causes.⁷ They are easy to join and need new members' help.

Human rights is not an abstract field of study. It is a field of work. It requires everyone's work, support, and commitment. Thankfully, as individuals, we do not have to begin from scratch. The United Nations took the first step in 1948 toward committing all governments to human rights by formulating internationally defined norms. These standards form the grounding in which the study of human rights should be rooted. Hence, this volume concludes with an appendix of the leading documents that specify the rules upon which the world seeks to build a community respectful of human dignity.

4. UNESCO, *The Teaching of Human Rights* (Paris, 1980).

5. For additional bibliography see UNESCO, *Human Rights Documentation, Data Bases and Bibliographies* (Paris, 1987); Julian R. Friedman and Marc I. Sherman, eds., *Human Rights: An International Comparative Law Bibliography* (Westport, CT: Greenwood Press, 1985); and Center for the Study of Human Rights of Columbia University, *Human Rights: A Topical Bibliography* (Boulder, CO: Westview Press, 1983).

6. Persons interested in using such films should consult college or local libraries or video film outlets to secure the mailing addresses of nonprint media distributors. This information is also available in Anne Gelman and Milos Stehik, *The Human Rights Film Guide*, from Facets Multimedia, Inc., 1517 West Fullerton, Chicago, IL 60614.

7. The *Human Rights Internet Reporter*, published four times a year, details the work of thousands of nongovernmental organizations and supplies mailing addresses as well. Such groups are profiled in the regional directories published by the Human Rights Internet, c/o Human Rights Centre, University of Ottawa, 57 Louis Pasteur, Ottawa, Ontario, K1N 6N5 Canada; fax (613) 564-4054.

Whether the world is up to the task of building a global community respectful of human dignity remains to be seen. That it should try to do so is imperative. A credible case for this view can be made by those who have seen its opposite. An Argentine judge who served on the court that convicted the military rulers in his country for human rights violations between 1976 and 1983 argues that it is time to view human rights from a global perspective. According to Justice Judge Antonio Bacqué:

It has become obvious that technological idiocy, unbridled fanaticism and Realpolitik have pushed humanity, for the first time in its history, to the brink of a precipice where the mode and conditions of life are at risk. This danger may be averted only by paying unconditional respect to human dignity.⁸

8. Supreme Court of Argentina, Buenos Aires, Judgment of 22 June 1987 (*Causa No. 547 incoada en virtue del Decreto NO. 280/84 del Poder Ejecutivo Nacional*). Constitutionality of the Law of "Due Obedience," Justice Jorge Antonio Bacqué, dissenting. The full opinion is published in English in "Supreme Court of Argentina, Buenos Aires," *Human Rights Law Journal* 8 (1987): 430–71.

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Contents

Preface xi

Acknowledgments xv

CHAPTER 1 INTERNATIONAL HUMAN RIGHTS: OVERVIEWS 1

1. BURNS H. WESTON, *Human Rights* 14
Questions for Reflection and Discussion 30
 2. RICHARD A. FALK, *Theoretical Foundations of Human Rights* 31
Questions for Reflection and Discussion 41
 3. FERNANDO R. TESÓN, *International Human Rights and Cultural Relativism* 42
Questions for Reflection and Discussion 51
- SELECT BIBLIOGRAPHY 52
SELECT FILMOGRAPHY 54

I S S U E S

CHAPTER 2 BASIC DECENCIES AND PARTICIPATORY RIGHTS 57

4. LEO KUPER, *The Sovereign Territorial State: The Right to Genocide* 69
Questions for Reflection and Discussion 78
5. AMNESTY INTERNATIONAL, *Torture as Policy* 79
Questions for Reflection and Discussion 88
6. RICHARD B. LILICH, *Civil Rights* 90
Questions for Reflection and Discussion 100
7. JACK GREENBERG, *Race, Sex, and Religious Discrimination in International Law* 101
Questions for Reflection and Discussion 111
8. W. R. SMYSER, *Refugees: A Never-Ending Story* 114
Questions for Reflection and Discussion 122

9. CHRISTIAN BAY, *Human Rights on the Periphery: No Room in the Ark for the Yanomami?* 124
Questions for Reflection and Discussion 131
SELECT BIBLIOGRAPHY 132
SELECT FILMOGRAPHY 134

CHAPTER 3 BASIC HUMAN NEEDS, SECURITY RIGHTS, AND
HUMANE GOVERNANCE 137

10. ADAMANTIA POLLIS, *Human Rights in Liberal, Socialist, and Third World Perspective* 146
Questions for Reflection and Discussion 156
11. ASBJØRN EIDE, *Realization of Social and Economic Rights and the Minimum Threshold Approach* 158
Questions for Reflection and Discussion 166
12. HÉCTOR GROS ESPIELL, *The Right of Development as a Human Right* 167
Questions for Reflection and Discussion 174
13. HURST HANNUM, *Self-Determination as a Human Right* 175
Questions for Reflection and Discussion 184
14. EDITH BROWN WEISS, *Planetary Rights* 187
Questions for Reflection and Discussion 197
15. PHILIP ALSTON, *Peace as a Human Right* 198
Questions for Reflection and Discussion 207
SELECT BIBLIOGRAPHY 209
SELECT FILMOGRAPHY 210

A C T I O N

CHAPTER 4 INTERNATIONAL APPROACHES TO IMPLEMENTATION 215

16. TOM J. FARER, *The United Nations and Human Rights: More Than a Whimper, Less Than a Roar* 227
Questions for Reflection and Discussion 241
17. BURNS H. WESTON, ROBIN ANN LUKES, AND KELLY M. HNATT *Regional Human Rights Regimes: A Comparison and Appraisal* 244
Questions for Reflection and Discussion 255
18. THOMAS BUERGENTHAL, *The Helsinki Process: Birth of a Human Rights System* 256
Questions for Reflection and Discussion 268

19. B. G. RAMCHARAN, *Strategies for the International Protection of Human Rights in the 1990s* 271
 Questions for Reflection and Discussion 280
SELECT BIBLIOGRAPHY 281
SELECT FILMOGRAPHY 283

CHAPTER 5 **NATIONAL APPROACHES TO IMPLEMENTATION** 285

20. EVAN LUARD, *Human Rights and Foreign Policy* 296
 Questions for Reflection and Discussion 306
 21. JACK DONNELLY *Humanitarian Intervention and American Foreign Policy: Law, Morality, and Politics* 307
 Questions for Reflection and Discussion 319
 22. DAVID P. FORSYTHE, *Congress and Human Rights in U.S. Foreign Policy: The Fate of General Legislation* 320
 Questions for Reflection and Discussion 328
 23. RICHARD P. CLAUDE, *The Case of Joelito Filártiga in the Courts* 328
 Questions for Reflection and Discussion 337
 24. DIANE F. ORENTLICHER, *The United States Commitment to International Human Rights* 340
 Questions for Reflection and Discussion 353
SELECT BIBLIOGRAPHY 354
SELECT FILMOGRAPHY 356

CHAPTER 6 **NONGOVERNMENTAL ORGANIZATION, CORPORATE, AND INDIVIDUAL APPROACHES TO IMPLEMENTATION** 359

25. LAURIE S. WISEBERG, *Human Rights Nongovernmental Organizations* 372
 Questions for Reflection and Discussion 382
 26. CLYDE COLLINS SNOW, ERIC STOVER, AND KARI HANNIBAL, *Scientists as Detectives: Investigating Human Rights* 384
 Questions for Reflection and Discussion 390
 27. MATTHEW LIPPMAN, *Multinational Corporations and Human Rights* 392
 Questions for Reflection and Discussion 399
 28. WINSTON P. NAGAN, *"Looking and Thinking" About Human Rights and Revolution* 401
 Questions for Reflection and Discussion 406
SELECT BIBLIOGRAPHY 409
SELECT FILMOGRAPHY 411

APPENDIX: SELECTED DOCUMENTS 413

United Nations Charter 413

Universal Declaration of Human Rights 419

International Covenant on Economic, Social and Cultural Rights 424

International Covenant on Civil and Political Rights 432

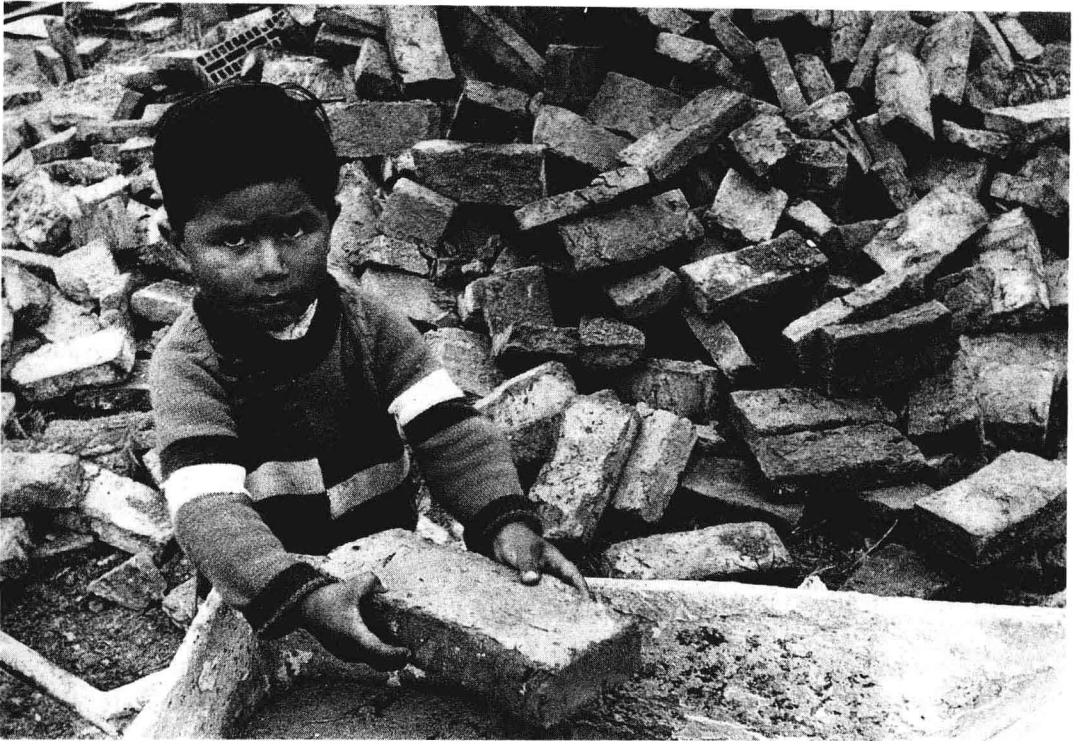
Optional Protocol to the International Covenant on Civil and Political Rights 446

Contributors 449

Index 451

Chapter One

International Human Rights: Overviews



IAF self-help housing project outside Buenos Aires, Argentina, 1983. The International Covenant on Economic, Social and Cultural Rights says that by virtue of the right of self-determination, all peoples “freely pursue their economic, social and cultural development.” Photo: Horacio Villalobos, InterAmerican Foundation.

THE idea of human rights has wings. It has found its way around the globe, and we are reminded often of its importance. On any given day we may be confronted by one or more news stories about individual heroics on behalf of human rights: unarmed Moscovites confronting military tanks menacing the Russian Parliament; Tibetan monks demonstrating against Chinese meddling with cherished customs; Guatemalan peasants anguished over government sponsored “disappearances” of their loved ones; Kurdish victims of Iraqi chemical bombing presenting medical evidence of civilian injuries to the Physicians for Human Rights in the United States; and so forth. The fact that we increasingly classify such problems as human rights problems not only makes moral philosophers of us all but supports also the hunch that we are moving toward a twenty-first century in which the idea of human rights will shape the aspirations of people around the globe.

Even if human rights are on people’s minds, however, the full realization of human rights worldwide is a distant dream. A truly just world order is not easily or quickly achieved. But the drive for social justice on a global scale, spurred by the experience of Nazi atrocity and ever more revealed in internationally defined human rights norms and procedures, persists nonetheless. As Adolfo Pérez Esquivel put it on the occasion of receiving the Nobel Peace Prize in 1980, “The last few decades have seen a more extended and internationalized conscience in respect of human rights, such that we are confronted with and increasingly forced toward a deeper understanding of what the struggle for human rights means.”¹

In this introductory chapter, we seek to provide a “deeper understanding of what the struggle for human rights means” by looking at the topic from three broad vantage points. First, we look at human rights in the context of changing historical concepts and international law. Burns H. Weston shows in his essay (Reading 1) that internationally defined human rights and the systems established for their implementation, have come to occupy a central position in contemporary world affairs in general, and in the field of international law in particular. Here we are concerned mainly with the promise of human rights. Second, turning from law to politics, we focus on performance. Richard A. Falk assesses the prospects for achieving human rights, both domestically and internationally, in the context of diverse “normative logics” or controlling perspectives that are simultaneously arenas of struggle and foundations of authority for the realization of human rights in the contemporary world. “In essence,” he contends, “the protection of human rights is an outcome of struggle between opposed social forces and cannot be understood primarily as an exercise in law-creation or rational persuasion.” Finally, we look to the argument that no amount of difference among contending logics or cultures can be allowed to obscure the essential universality of human rights. Fernando Tesón asserts that cultural relativism, a theory that permits national derogations from certain human rights to be free of international criticism, cannot be reconciled with the international law of at least civil and political rights. All three of these readings are intended to provoke rather than soothe. The reader is urged to reflect, discuss, and debate after studying these essays critically and carefully, taking into account the questions posed at the end of each reading.

1. Adolfo Pérez Esquivel, “Afterword,” in *The International Bill of Rights*, ed. Paul Williams (Glen Ellen, CA: Entwistle Books, 1981), 105.

To deepen our understanding of the struggle for global justice, it is important to appreciate, at the outset, that international human rights bespeak, at bottom, a multidimensional program of legal and political struggle that takes human suffering seriously. Far from defining a static or monolithic state of affairs, the term “international human rights” is code language for a number of different—ever expanding, ever accelerating—initiatives: (a) an attack on the concept of state sovereignty as traditionally conceived; (b) a goal-setting agenda for global policy; (c) a standard for assessing national behavior and therefore for judging political legitimacy; and (d) a spirited movement of concerned private individuals and groups that transcends political boundaries (an increasingly significant factor in international relations). Let us take an exploratory look at some aspects of these four meanings of international human rights.

HUMAN RIGHTS AS A CHALLENGE TO STATE SOVEREIGNTY

International law, a complex process of authoritative and controlling decision operating across national and equivalent frontiers, exists, at a minimum, to maintain world order. To this end, by way of an interpenetrating medley of command and enforcement structures both internal and external to nation-states, classical international law has come to rely on a variety of doctrines, principles, and rules to minimize interstate conflict and otherwise guarantee a world order system of separate territorial states.

Many, if not most, of these doctrines, principles, and rules—and the institutions and procedures that apply them—have been altered in meaning, challenged in usage, and otherwise thrown into question by the field of international human rights. Consider, for example, the classical international law doctrine of state sovereignty and its corollary of nonintervention, the central props of our inherited state-centric system of world order. The values associated with this doctrine (a legal license to “do your own thing”) and corollary (an injunction to “mind your own business”) rest in uneasy balance with human rights concerns (which seem to tell us that “you are your brother’s and sister’s keeper”). The problem typically arises in the context of the question: Is it inappropriate interference for one state to criticize the human rights performance of another?

During the 1970s and 1980s, South African diplomats from Pretoria protested when the case of Nelson Mandela (a political leader long imprisoned because of his opposition to that country’s practice of racial apartheid and discrimination) was publicized at the United Nations. Visiting the United Nations in 1992, Chinese Prime Minister Li Peng likewise insisted that outsiders should not be concerned with his government’s harsh crackdown on China’s democracy movement at Tiananmen Square. Thus, South African and Chinese leaders pointed to Article 2(7) of the UN Charter, which says that the United Nations may not intervene “in matters which are essentially within the domestic jurisdiction of any state.”² Many countries use this ploy. The governments of Iran, Burma (Myanmar), Guatemala, Kenya, and others routinely call on the doctrine of state sovereignty and the principle of non-intervention, particularly when they are on the defensive about their international human rights obligations. Those governments that abuse human rights typically plead for restraint,

2. See the Appendix.

asking outsiders to refrain from interfering, directly or indirectly, individually or collectively, with their internal or external affairs.

The tension between the claims of those who criticize human rights violations and those who protest such interference was the topic of extended analysis by the late Sir Hersch Lauterpacht of the United Kingdom. A dominant trend of the last half of the twentieth century, he observed, is one that involves the sovereign state yielding to the “sovereignty of humankind.” In Lauterpacht’s words:

In so far as the denial of fundamental human rights has been associated with the nation-state asserting the claim to ultimate reality and utterly subordinating the individual to a mystic and absolute personality of its own, the recognition of these rights is a brake upon exclusive and aggressive nationalism, which is the obstacle, both conscious and involuntary, to the idea of a world community under the rule of law.³

The claim made by Lauterpacht is readily understood when we note some of the major historical trends on which Lauterpacht relied.

With the inception of the modern state system in the mid-seventeenth century, the relation of citizen (“subject”) to government was seen to fall within the exclusive jurisdiction of the territorial state, although absolute sovereignty was by no means an historical accident. Religious jealousies and rivalry between kingdoms made the 1600s a century fraught with war, including one of the most destructive civil and international wars in the annals of human history, the Thirty Years War (1618–48). This calamity led princes and potentates to decide that the cycle of violence had to be broken; the territorial integrity of kingdoms had to be insulated from interference from without.

The sixteenth-century French social and political philosopher Jean Bodin (1530?–1596) is best remembered for giving the notion of state sovereignty its classic formulation: The sovereign prince exercises power simply and absolutely and cannot be subject to the commands of another, for it is the sovereign prince who makes the law for the subject. Thus it is only by voluntary agreement that the sovereign can incur an obligation from abroad.

So conceived, the late-seventeenth-century world of nation-states would provide each kingdom with a defense of absolute power to overcome the centrifugal forces of jealousy and threat from without. Of course, though this new safety barrier between nations was motivated in part by humanitarian concerns and though it served the cause of human rights by reducing arbitrary killings based on religious and political rivalries, it also was an arrangement that suited well the interests of royal absolutism of European monarchs who sought to expand their power often at the expense—indeed the abuse—of their subjects.

Yet, just as the pre-seventeenth-century forces of political centrifugalism provided the counterpoint of sovereign absolutism, so also did the unchecked and commonly abusive displays of sovereign absolutism provoke their own counterpoint. As Weston points out in his essay (Reading 1), the philosophy of natural rights associated with John Locke and others began to take hold in much of Enlightenment Europe and America even before the eighteenth century began. Against unlimited claims of power in the guise of “the divine right of kings,” philosophers began to speak of natural rights. In this spirit, Thomas Jefferson wrote from Paris to James Madison: “A bill of rights is what the people are entitled to against every government on earth.”⁴ Jefferson’s Lockean turn of mind made him realize that natural rights were of

3. Hersch Lauterpacht, *International Law and Human Rights* (New York: Garland, 1973), 47.

4. P. L. Ford, ed., *Writings of Thomas Jefferson*, 10 vols. (New York: G. P. Putnam, 1892–1899), 4:477. See generally Richard P. Claude, “The Classical Model of Human Rights Development,” in *Comparative Human Rights*, ed. Richard P. Claude (Baltimore: Johns Hopkins University Press, 1976), ch. 1.