Human Rights between Idealism and Realism presents human rights in action, focusing on their effectiveness as legal tools designed to benefit human beings. By combining conceptual analysis with an emphasis on procedures and mechanisms of implementation, this volume provides a multidimensional overview of human rights.

After examining briefly the history of human rights, the author analyzes the intellectual framework that forms the basis of their legitimacy. In particular, he covers the concept of universality and the widely used model that classifies human rights into clusters of different 'generations'.

The volume then moves on to analyze of the activities of the political institutions of the United Nations, the expert bodies established by the relevant treaties, and the international tribunals specifically entrusted at the regional level with protecting human rights. The author explains how and why the classical array of politically inspired informal devices has been enriched by the addition of international criminal procedures and by endeavors to introduce civil suits against alleged individual violators of human rights. Finally, the volume is rounded off by a consideration of the importance of humanitarian law as an instrument for the protection of human life and dignity and an exploration of the future of human rights.
Contents

Tables of Cases
Tables of Legislation
Abbreviations

1. Introduction

2. History of Human Rights
   I  Human Rights and the Rise of the State in Europe
   II  International Protection of Human Rights:
       A Latecomer in History
   III  From the Sixteenth Century to 1776
       Protection of Human Beings by Denial of Human Rights
       Protection of Human Beings by Recognition of Human Rights
   IV  From 1776 to 1914
       Human Rights in National Constitutional Texts
       Abolition of the Slave Trade
       Humanitarian Law
       No General Guarantees of Human Rights
   V   Between the Two World Wars
       Mandate System of the League of Nations
       International Protection of Minorities
       Objectives of the International Labour Organization
       Legal Doctrine
   VI  The Great Leap Forward: 1945

3. The Different ‘Generations’ of Human Rights: From
   Human Rights to Good Governance
   I  Terminology
   II Development of First Generation and Second Generation
      Rights at National Level
      First Generation Rights
      Second Generation Rights
   III Development of the Current System of International
      Protection of Human Rights
      Universal Declaration of Human Rights
      European Convention on Human Rights and the
      European Social Charter

xvii
xxvii
xlvii
1
7
7
8
10
10
12
13
13
14
15
16
17
17
18
20
21
22
25
25
26
26
28
29
30
31
Contents

The Two UN Covenants on Human Rights  32
The Legal Framework Established by the UN Specialized Agencies  34
American Convention on Human Rights  35
African Charter of Human and Peoples' Rights  35
No Regional Instrument in Asia  36
Customary Law  37
Soft Law  39

IV Contents of the International Bill of Human Rights  39
Substantive Provisions  39
Rights and Obligations under Human Rights Treaties  40
Equality and Non-discrimination  47
  Background  47
  Legal Instruments Banning Discrimination  49
The Unity, and the Difference in Character, of First Generation and Second Generation Rights  52

V Third Generation Rights  54
The Three Rights  55
  Right to Development  55
  Right to Peace  56
  Right to a Clean Environment  56
Uncertainties Surrounding Third Generation Rights  57
  Holders of the Rights  58
  Duty Bearers  58
  Contents  58

VI Democracy  60

VII Good Governance  62

VIII Human Security  63

IX Globalization  65

X The Shadow of Terrorism  66

XI Conclusion  68

4. Universality of Human Rights  69

I Introductory Considerations  69

II The Legal Dimension  73
  UDHR  73
  The Two International Covenants  75
  Other Treaties  76
  Vienna World Conference on Human Rights  78
  Regional Instruments  79

III The Value Dimension  81
  Western Values  82
  Latin America  85
Contents

Islamic Countries 86
India 88
East Asia 88
IV The Empirical Dimension 91
V Conclusion 94

5. Implementation at National Level 97

I Duty Bearers 97
States 97
International Organizations 98
European Union—European Communities 98
United Nations 101
World Trade Organization 106
Transnational Corporations 107

II Relationship between International Law and Domestic Law in the Field of Human Rights 109
Third Generation Rights 109
Second Generation Rights 109
First Generation Rights 110
European Convention on Human Rights 112
International Covenant on Civil and Political Rights 115

III Place of Human Rights Instruments in the Domestic Legal Order 120

IV Implementation of International Human Rights vis-à-vis the Individual 124

V Territorial Scope of Application of International Human Rights Instruments 126
European Convention on Human Rights 126
International Covenant on Civil and Political Rights 129

6. The Work of Political Bodies of International Organizations 133

I United Nations 133
Standard-setting 135
Monitoring 136
The General Assembly, the HRCion, and its successor, the HRC 136
The General Assembly 145
Special Procedures 146
Outcome 149
The High Commissioner for Human Rights 153
The Security Council 154

II European Union 157
## Contents

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Regime</td>
<td>157</td>
</tr>
<tr>
<td>Monitoring</td>
<td>159</td>
</tr>
<tr>
<td>III Council of Europe</td>
<td>163</td>
</tr>
<tr>
<td>IV Organization for Security and Co-operation in Europe</td>
<td>164</td>
</tr>
<tr>
<td>Standard-setting</td>
<td>164</td>
</tr>
<tr>
<td>Monitoring</td>
<td>165</td>
</tr>
<tr>
<td>V Conclusion</td>
<td>166</td>
</tr>
</tbody>
</table>

7. The Work of Expert Bodies: Examination of State Reports
   I Introductory Considerations                                         | 167  |
   II Reporting Systems at Regional Level                                | 169  |
      European Convention on Human Rights                                | 169  |
      African Charter of Human and Peoples’ Rights                       | 170  |
   III Reporting Systems at UN Level                                    | 171  |
      Monitoring Bodies                                                  | 171  |
      Examining State Reports in Practice                                 | 175  |
         The Early Stages                                                 | 175  |
         Later Developments: The Current Situation                        | 180  |
      Reform Proposals                                                   | 183  |
      Contribution of NGOs                                                | 184  |
      Delayed Reports                                                     | 185  |
      Consequences                                                        | 187  |
      Follow-up                                                           | 187  |
      Effects of Concluding Observations                                  | 188  |
      General Comments and General Recommendations                        | 189  |

8. The Work of Expert Bodies: Complaint Procedures and Fact-finding
   I Complaint Procedures                                                | 193  |
      Stocktaking                                                         | 193  |
         Universal Level                                                   | 193  |
            Interstate Complaint Procedures                                 | 193  |
            Individual Communication Procedures                             | 194  |
         Regional Level                                                    | 199  |
            Interstate Complaint Procedures                                 | 199  |
            Individual Complaint Procedures                                 | 199  |
         Reservations                                                       | 204  |
      General Features of Individual Communication Procedures            | 205  |
         Persons Entitled to File Communications                            | 205  |
         Rights that Can be Asserted                                       | 208  |
         Standing—The Victim Requirement                                    | 209  |
         Exhaustion of Local Remedies                                      | 211  |
         Other International Procedures of Settlement                      | 212  |
Contents

Unsubstantiated Communications 214
Absence of Oral Hearings 215
Interim Relief 216

Outcome 220
Non-binding Views 220
Follow-up 221
Publication of the Case Law 222
Quantitative Assessment 223
Qualitative Assessment 223

II Fact-finding 224
General Considerations 224
Existing Procedures 225
Fact-finding by the Inter-American Commission on Human Rights 225
Fact-finding by the African Commission on Human and Peoples’ Rights 225
Fact-finding by the Committee Against Torture 225
Fact-finding by the European Committee for the Prevention of Torture 227
Optional Protocol to the UN Convention Against Torture 228

III Conclusion 229

9. Supervision by International Tribunals 231
I Introductory Considerations 231
II Worldwide Level 231
Advisory Opinions of the ICJ 232
Judgments of the ICJ in Contentious Proceedings 236

III Regional Level 239
European Court of Human Rights 239
General Features 239
Interstate Applications 241
Individual Applications 244
Interim Relief 249
Reparation 252
Enforcement of Judgments 254

Inter-American Court of Human Rights 257
General Features 257
Quantitative Balance Sheet 258
Qualitative Balance Sheet 259
Interim Relief 259
Consequences Attaching to the Finding of a Violation 260

African Court on Human and Peoples’ Rights 261
Court of Justice of the European Communities 262
10. Enforcement by States and the Role of Non-Governmental Organizations
   I  General Considerations  265
   II  Action by States  266
       Diplomatic Protection  266
       Representations by Diplomatic Means  268
       Interstate Complaints  269
       Measures of Retorsion  269
       Countermeasures  271
   Treaty Clauses on Observance of Human Rights  275
   Military Intervention  276
   Human Rights Enforcement in Practice  280
   III  Action by Non-Governmental Organizations  281
       Definition of NGOs  281
       Legitimacy of NGOs  282
       Activities of NGOs  283
           The Domestic Field of Action  283
           The International Field of Action  285

11. Mitigating the Effects of Armed Conflict: Humanitarian Law  291
    I  General Considerations  291
       Jus ad Bellum, Jus in Bello  291
       Non-discrimination  293
    II  Brief Historical Survey  296
       Before World War I  296
       Between the Two World Wars  297
       After World War II  298
    III  Prohibition of Specific Weapons  299
    IV  Legal Sources  300
       Necessity of Humanitarian Law?  300
       Legal Sources  301
           Treaties  301
           Custom  302
    V  Main Issues  304
       War and Armed Conflict  304
       Non-international Armed Conflict  304
       Distinction between Combatants and Civilians  308
       Distinction between Military Targets and Civilian Objects  309
       Protection of the Environment, Protection of Human Habitat  311
       Threshold of Armed Conflict  312
12. Criminal Prosecution of Human Rights Violations

I General Considerations
II National Prosecution
   Territorial Jurisdiction
   Extraterritorial Jurisdiction
III International Prosecution
   International Military Tribunal at Nuremberg
   Ad Hoc Tribunals Established by the Security Council
   International Criminal Court
   Hybrid Criminal Tribunals
IV A Summary Balance Sheet of the Ad Hoc Tribunals
   Authority of the Security Council
   Customary Nature of International Criminal Law
   Non-international Armed Conflict
   Amnesties
   Pre-trial Detention
   Reparation for Persons Erroneously Prosecuted
   Statistics
V Conclusion

13. Reparation—Civil Claims against Human Rights Violators

I General Considerations
II Redress Afforded by the International Community
III A Cause of Action Under Specific International Regimes
   Reparation under Human Rights Treaties
      International Covenant on Civil and Political Rights
      European Convention on Human Rights
      American Convention on Human Rights
   Convention Against Torture
   Conclusion
<table>
<thead>
<tr>
<th>Contents</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reparation under European Community Law</td>
<td>364</td>
</tr>
<tr>
<td>Reparation within the Framework of Criminal Prosecution</td>
<td>365</td>
</tr>
<tr>
<td>Reparation under International Humanitarian Law</td>
<td>367</td>
</tr>
<tr>
<td>IV Individual Claims under General International Law</td>
<td>370</td>
</tr>
<tr>
<td>Substantive Law</td>
<td>370</td>
</tr>
<tr>
<td>Competent Forum</td>
<td>373</td>
</tr>
<tr>
<td>V Procedures Under Domestic Law</td>
<td>375</td>
</tr>
<tr>
<td>VI Immunity</td>
<td>379</td>
</tr>
</tbody>
</table>

14. Time for Hope, or Time for Despair? 387

Index 391