

# *Contents*

|   |           |
|---|-----------|
| <i>Tables of Cases</i>  | xvii      |
| <i>Tables of Legislation</i>  | xxvii     |
| <i>Abbreviations</i>  | xlvii     |
|   |           |
| <b>1. Introduction</b>  | <b>1</b>  |
|   |           |
| <b>2. History of Human Rights</b>   | <b>7</b>  |
| I Human Rights and the Rise of the State in Europe  | 7         |
| II International Protection of Human Rights:<br>A Latecomer in History                          | 8         |
| III From the Sixteenth Century to 1776  | 10        |
| Protection of Human Beings by Denial of Human Rights  | 10        |
| Protection of Human Beings by Recognition of Human Rights                                       | 12        |
| IV From 1776 to 1914  | 13        |
| Human Rights in National Constitutional Texts   | 13        |
| Abolition of the Slave Trade  | 14        |
| Humanitarian Law  | 15        |
| No General Guarantees of Human Rights   | 16        |
| V Between the Two World Wars  | 17        |
| Mandate System of the League of Nations   | 17        |
| International Protection of Minorities  | 18        |
| Objectives of the International Labour Organization   | 20        |
| Legal Doctrine  | 21        |
| VI The Great Leap Forward: 1945   | 22        |
|   |           |
| <b>3. The Different ‘Generations’ of Human Rights: From<br/>Human Rights to Good Governance</b> | <b>25</b> |
| I Terminology   | 25        |
| II Development of First Generation and Second Generation<br>Rights at National Level            | 26        |
| First Generation Rights   | 26        |
| Second Generation Rights  | 28        |
| III Development of the Current System of International<br>Protection of Human Rights            | 29        |
| Universal Declaration of Human Rights   | 30        |
| European Convention on Human Rights and the<br>European Social Charter                          | 31        |



|      |   |    |
|------|---|----|
|      | 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<br>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 |
| <br> |   |    |
| 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 |



|  |         |
|--|---------|
| Islamic Countries  | 86      |
| India  | 88      |
| East Asia  | 88      |
| IV The Empirical Dimension   | 91      |
| V Conclusion   | 94      |
| <br>5. Implementation at National Level  | <br>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<br>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<br>Domestic Legal Order                       | 120     |
| IV Implementation of International Human Rights<br>vis-à-vis the Individual                | 124     |
| V Territorial Scope of Application of International<br>Human Rights Instruments            | 126     |
| European Convention on Human Rights  | 126     |
| International Covenant on Civil and Political Rights                                       | 129     |
| <br>6. The Work of Political Bodies of International Organizations                         | <br>133 |
| I United Nations   | 133     |
| Standard-setting   | 135     |
| Monitoring   | 136     |
| The General Assembly, the HRCion,<br>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     |



|   |         |
|---|---------|
| Legal Regime  | 157     |
| Monitoring  | 159     |
| III Council of Europe   | 163     |
| IV Organization for Security and Co-operation in Europe                 | 164     |
| Standard-setting  | 164     |
| Monitoring  | 165     |
| V Conclusion  | 166     |
| <br>7. The Work of Expert Bodies: Examination of State Reports          | <br>167 |
| 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     |
| <br>8. The Work of Expert Bodies: Complaint Procedures and Fact-finding | <br>193 |
| 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     |



|  |         |
|--|---------|
| 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     |
| <br>9. Supervision by International Tribunals                        | <br>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 | 265 |
| 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 |
| <i>Jus ad Bellum, Jus in Bello</i>                                       | 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 |



|  |         |
|--|---------|
| Applicability of Common Article 3                                  | 312     |
| Declaration on Minimum Humanitarian Standards                      | 313     |
| Lacunae in the Legal Regime of Non-International<br>Armed Conflict | 314     |
| VI Ensuring Observance of, and Respect for,<br>Humanitarian Law    | 315     |
| A Culture of Compliance  | 315     |
| Monitoring   | 316     |
| Countermeasures  | 317     |
| State Responsibility   | 318     |
| <br>12. Criminal Prosecution of Human Rights Violations            | <br>321 |
| I General Considerations   | 321     |
| II National Prosecution  | 324     |
| Territorial Jurisdiction   | 325     |
| Extraterritorial Jurisdiction                                      | 328     |
| III International Prosecution                                      | 336     |
| International Military Tribunal at Nuremberg                       | 336     |
| Ad Hoc Tribunals Established by the Security Council               | 337     |
| International Criminal Court                                       | 339     |
| Hybrid Criminal Tribunals  | 342     |
| IV A Summary Balance Sheet of the Ad Hoc Tribunals                 | 345     |
| Authority of the Security Council                                  | 345     |
| Customary Nature of International Criminal Law                     | 346     |
| Non-international Armed Conflict                                   | 347     |
| Amnesties  | 349     |
| Pre-trial Detention  | 350     |
| Reparation for Persons Erroneously Prosecuted                      | 351     |
| Statistics   | 351     |
| V Conclusion   | 353     |
| <br>13. Reparation—Civil Claims against Human Rights Violators     | <br>355 |
| I General Considerations   | 355     |
| II Redress Afforded by the International Community                 | 356     |
| III A Cause of Action Under Specific International Regimes         | 358     |
| Reparation under Human Rights Treaties                             | 358     |
| International Covenant on Civil and Political Rights               | 358     |
| European Convention on Human Rights                                | 360     |
| American Convention on Human Rights                                | 362     |
| Convention Against Torture   | 363     |
| Conclusion   | 364     |



|   |         |
|---|---------|
| Reparation under European Community Law                 | 364     |
| Reparation within the Framework of Criminal Prosecution | 365     |
| Reparation under International Humanitarian Law         | 367     |
| IV Individual Claims under General International Law    | 370     |
| Substantive Law   | 370     |
| Competent Forum   | 373     |
| V Procedures Under Domestic Law                         | 375     |
| VI Immunity   | 379     |
| <br>14. Time for Hope, or Time for Despair?             | <br>387 |
| <br><i>Index</i>  | <br>391 |