

Review Article

International Human Rights in Context by H Steiner and P Alston (Clarendon Press, Oxford, Oxford University Press, 1996)

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International human rights is now a mainstream subject, but to date there has been no textbook that has extensively compiled primary and secondary material for the purpose of teaching. *International Human Rights in Context* is therefore both a timely and welcome addition to legal literature. The book is different from traditional cases and materials in that it develops its own critical themes — the relationship between human rights and the changing nature of sovereignty; the central place of cultural relativism in human rights; and the importance of confronting and resolving the public-private divide in international law. Critical analysis does not, however, dominate the book. The objective of the book is also to stimulate discussion and engage the reader “to reflect critically about international human rights as a whole” (at v). To achieve this each chapter has extensive extracts from theorists and commentators, a series of discussion questions together with relevant case studies. This is an international human rights case book which combines critical analysis, objectivity and an ability to engage the reader in the practice and theory of human rights.²

The text is an extensive work totalling 1245 pages and it is carefully planned with accessible material and commentary. The book is divided into six well defined parts and these have been divided into 16 chapters. Broadly the book has two main areas, the normative structure of human rights (Part B) and the institutions involved in human rights (Part C).

The book begins with a selection of newspaper reports documenting human rights abuses. The normative structure of international human rights is then closely examined including a chapter on international law and law making, and a chapter on the universal human rights system studying the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights* (ICCPR). The *International Covenant on Economic, Social and Cultural Rights* (ICESCR) is dealt with in a separate chapter. This does not indicate that the text is disproportionately concerned with civil and political issues. Indeed, throughout the text, a continual reference is made to second and third generation rights. For example, the right to

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² There are excellent works on human rights available but none are prepared primarily as a legal teaching text. See, for example, Cassese *A International Law in a Divided World* (Clarendon Press, New York, Oxford University Press, 1986); Claude R and Weston B (eds) *Human Rights in the World Community* (2nd ed, University of Pennsylvania Press, Philadelphia 1992); Meron T (ed) *Human Rights in International Law: Legal and Policy Issues* (Clarendon Press, Oxford 1984) 2 Vols; Robertson A and Merrills J *Human Rights in the World* (3rd ed, Manchester University Press, New York, 1989).

development and the right to self determination are used as major case studies in the last section of the text.

Part C explores the institutions and processes that are a part of promoting and protecting human rights. A recurring theme is that institutions such as the United Nations, The Human Rights Committee, regional human rights systems and non-governmental organisations have developed beyond the states and have become a separate part of international life (at 335). The state's role in implementing human rights is then explored, primarily from a United States perspective, this being the only section in the text which is dominated by examples from the United States.³

The last section has extended case studies on human rights problems such as women's rights, self determination, international crimes and international criminal tribunals and the right to development. The case studies are from a contemporary perspective — self determination, for example, covers not only the history of self determination and right to secession, but also concentrates on topical issues such as minority rights and indigenous rights including extracts from the United Nations Draft Declaration on the Rights of Indigenous Peoples.

A prominent theme of *International Human Rights in Context* is the changing nature of sovereignty in international law. Part B introduces this theme in the context of the debate over the nature of international law and international law making. This is a fundamental issue which needs to be confronted within international human rights and it is appropriate that the student is introduced to it in the first substantive chapter of the book. This chapter could be recommended as reading for any course requiring an introductory understanding of sources of international law. The reader is given an explanation of Article 38(1) of the *Statute of the International Court of Justice* and then taken through commentary on custom and treaties. Alston and Steiner examine these traditional source issues from a human rights perspective. They observe that a state party to a human rights treaty does not have the normal reciprocal incentives to act against a violator state, as the violation of a human rights treaty involves the states *own citizens* rather than obligations to other states.

These observations are built on in Part C and it is argued that the normative content of international human rights must rely on an alternative to the consensualism embodied in treaties and custom (at 335). International institutions are seen as a means of creating, monitoring and enforcing human rights. The institution, depending on its constitution and processes, may grow beyond the state and become a separate international actor. The chapter on the ICCPR Human Rights Committee considers a variety of state reports, general guidelines issued by the committee and a selection of the committee's decisions including *Toonen v Australia*.⁴ The issues and extracts are presented in an attempt to assess the Committee's success at moving beyond a law governed by state consent. In this sense, the whole section on

³ For an Australian perspective, see Charlesworth H "Human Rights" in Reicher H (ed) *Australian International Law: Cases and Materials* (Law Book Company, 1995) p 614.

⁴ *Toonen v Australia*, Communication no 488/1992, Human Rights Committee, Views of Committee, March 31, 1994. See also (1994) 1 *Int'l Hum Rts Reports* 97.

enforcement and institutions is an argument about the changing nature of sovereignty. The authors are aware, however, of the fragility of human rights and consider impediments to the creation of effective institutions such as the extensive reporting obligations imposed on states, the confidentiality of certain procedures and the development of restrictive attitudes to NGOs.

As the human rights movement challenges the meaning of sovereignty, the debate over cultural relativism takes on renewed intensity either to reassert old ideas of sovereignty or to genuinely take the opportunity to confront long standing differences over the nature and meaning of rights. Cultural relativism is dealt with in detail in Chapter Four but the topic is not isolated to this chapter. It is considered throughout the text, notably in the sections on social and economic rights, the right to development, rights of women and minority and indigenous rights. There is an examination of the history and theory of rights and duties with a useful commentary provided on the liberal political tradition. Universalism and cultural relativism are then explored from the perspective of anthropology, culture and religion. This section relies on a reproduction of secondary materials with authors including Weston, Sidorsky, Kamenka, Taylor, Klare, Pannikar and An-Na'im. Cultural relativism is also examined in its political context centring on differences between the West and certain Asian states with China, the United States and Singapore being used as case examples. At the conclusion of the chapter, a case study of female circumcision brings together theories of rights and highlights the different perspective that a human rights problem can raise.

International documents produced on human rights range from committee decisions, general assembly resolutions and reports of special rapporteurs to thematic reports. These documents have not always been readily available or, if available, not organised in an accessible manner. This book collates an extensive amount of primary material into a coherent framework. For example, the chapter on charter-based institutions has reproduced ECOSOC Resolution 1503,⁵ Sub-Commission Resolution 1,⁶ Report of the Secretary-General on Uruguay and ECOSOC Resolution 1235.⁷ Difficulty with international fact finding is illustrated by reproducing the Memorandum of Understanding with the Government of Chile.⁸ The function of a special rapporteur is described by studying reports prepared by the special rapporteurs on Cuba and Iran. Deserving special recognition is the selection of materials from the Working Group on Disappearances which includes Commission Resolutions establishing the Working Group and various reports from the Working Group (1988 to 1994). The Working Group is studied to illustrate the open-ended and self-developed mandate that a United Nations working group can create. The

5 ECOSOC Resolution 1503 (XLVIII) 1970.

6 Sub-Commission Resolution 1 (XXIV) 1971.

7 ECOSOC Resolution 1235 (XLII) 1967.

8 Memorandum of Understanding with the Government of Chile U.N. Doc A/33/331 (1978), Annex VII.

book also provides an annex of human rights documents so that the student does not have to purchase a separate collection.

A limitation of the text may be in its treatment of regional systems in Chapter Ten. This chapter concentrates on one aspect of each regional arrangement. The European system is considered in the light of its productive and effective court. The Inter-American system is considered in the light of the institutionalisation of the practices of democratic government and the African System is studied due to its emphasis on duties as well as rights (at 563). This analysis may create limitations for the teacher that wishes to go beyond these assumptions. Another observation, rather than criticism, is that in drawing from a wide variety of sharply edited theorists, the reader is presented, at times, with an extract but no context. An-Na'im, for example, is representative of a progressive rather than mainstream position on Shari'a although this is not evident from reading the extract. This problem is generally overcome by the careful editing. Allott, for example, has had one of his main themes, accountability in international law,⁹ reflected well in a brief one page extract. Koskenniemi is used throughout the text and has not only been carefully edited to provide a fair overview of his theory but the authors have also provided a helpful list of terms used by Koskenniemi to reflect the dichotomies he refers to in his work (at 50).

This text is not intended to be a reference text on human rights and deliberately raises more questions than it answers. In the discussion on the right to development, for example, there is an overview of the history of the right, then the indeterminacy of the right is examined by comparing an extract from Donnelly and Bedjaoui and lastly the spread of the market economy is considered as a possible impediment to human rights. The idea is to introduce students to the central issues in the topic and to stimulate an ongoing enquiry. Violence against women is another excellent case study succeeding in raising questions such as the public-private divide in international law, international law making and gender issues. However, the reader is not left with a formless set of unanswered questions. The authors envisage the human rights issues are to be resolved within creative and effective institutions which will develop as international society changes its perception of sovereignty.

The text is to be commended for the extensive task of collating commentary, theory, judgements, united nations documents, newspaper reports, NGO reports, and references in a systematic manner. The real achievement of the book, however, is in providing a genuine teaching text that engages the reader in a critical analysis of the human rights system in all its complexity and diversity.

⁹ Allott *Eunomia: New Order for a New World* (Oxford University Press, 1990).