

# Introduction to International Human Rights Law

Pietro Pustorino

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# Foreword

In a relatively limited number of pages, this book offers a lot to the reader. In my view, the author is quite modest when he says in his preface that the volume provides a general introduction to international human rights law. In fact, there is more than that. In the following pages, the reader will find quite a complete, updated and critical picture of the *status* of the matter. This *fresco* is preceded by concise but extremely precise and well-documented elements and remarks on the historic evolution of human rights on the one hand and on their theoretical foundations and general characteristics on the other hand, two fundamental aspects for those willing to approach the topic of human rights not in a superficial way.

The scientific rigour of this work is not an obstacle to its invaluable merits as a didactic tool. I am quite well acquainted with the Italian version of this book, which is used by the students of the course on *International Protection of Human Rights (Tutela internazionale dei diritti umani)*, the responsibility of which I have the privilege to share with Prof. Pustorino at the Law School (*Facoltà di giurisprudenza*) of the Luiss University in Rome, and I can witness to which extent it helps those—a huge majority—who are successful at the exams. Professor Pustorino and I are quite happy about the enthusiasm of our students, which is sizeable. Maybe a part of it is due to our efforts during the lessons and other personal contacts with the students, but I have no doubt that a large part of the merit belongs to the attractiveness and the reliability of the textbook.

The contents of the book are extremely rich. All the relevant areas are explored: customary international law, including jus cogens, international treaties, mechanisms—binding and non-binding—for the protection of human rights both at the universal and the at the regional levels, the domestic level, with great attention paid to the jurisprudence of national courts, which is undoubtedly an added value of this work.

The rights are presented in an original and extremely effective way, i.e. somewhat independently from the various sources in which they are enshrined. This does not mean that the sources are not considered. On the contrary, they are precisely and rigorously described, but this methodological approach permits a transversal look which is extremely valuable.

In fact, this method permits to look at the extremely complex network of norms protecting human rights as an *ensemble* of communicating vessels. There can be no illusion—and Prof. Pustorino is extremely clear about that—that human rights could be the same for everybody in the world, but the fact all these norms aim at defending human dignity creates the premise for a mutual influence between norms and system which, at the end of the day, goes in the direction of a progressive better protection.

This is also valid when it comes to the relationship between the international and the national level, a dimension which is very much present throughout the book. Individual rights have been protected at a national level well before they become a concern for the international community, and an object of regulation by international law. There is obviously a risk that the national supervisory bodies, especially supreme and constitutional courts, see the international protection of human rights as a dangerous competitor and tend to oppose national solutions to the conclusions of international supervisory bodies. This is why when national supreme and constitutional courts show openness vis-à-vis the international law of human rights, this is to be saluted as a very happy development. I refer, in this connection, to an important judgement of the Italian Constitutional Court, judgment no. 388 of 1999. This is a very important decision. Before it, the case law of the Constitutional Court was firm in saying that the reference to fundamental rights contained in Article 2 of the Italian Constitution was confined to the rights already covered by the Constitution, i.e. a very nationalistic approach. In judgment no. 388, the Constitutional Court said, conversely, that the various international charters on human rights are relevant and that “the different formulas that express them integrate, complementing each other in their interpretation”, which paved the way for a new season of the Italian constitutional jurisprudence, which has now a definite open orientation.

My last point would be joining Prof. Pustorino in his firm opinion that when it comes to the relationship between human rights and international law, one cannot speak of fragmentation of international law. International law of human rights is an integral part, and a very vital one, of general international law. I refer to his preface, which describes in detail the impact of the first on the latter.

It comes into my mind, in these sad days which are seeing the evil of war back in Europe, that at the end of the day international law is an instrument of peace, and this is particularly evident for the international law of human rights. So, spreading the knowledge on human rights law, as this book masterfully does, is also spreading the word of the peace.

Rome, Italy  
July 2022

Guido Raimondi  
President of the Labour Section  
of the Italian Supreme Court  
of Cassation; Professor of International  
Protection of Human Rights, Luiss  
Guido Carli (Rome); Former Judge  
and President of the European Court  
of Human Rights (2010–2019)

# Preface

This book provides a compact but general introduction to international human rights law. It is aimed primarily at undergraduate students, not just in law but also in any other programmes where the topic of human rights may be studied, including but not limited to political science and social science courses. But it could also be useful for consultation by scholars and practitioners in the fields of international law and human rights.

The book aspires to provide a complete depiction of the most important and current issues of the international protection of human rights. The theoretical foundations of the subject are analysed rapidly (Chaps. 1 and 2), as always with a concrete approach in terms of application of human rights theories or the general features of the legal framework (as in the case of both the relationship between universalism and relativism and the opposing conceptions of culture: see Chap. 2, Sects. 2.4–2.5). Great attention is devoted to the practical and professional aspects concerning the application of human rights at both the universal (including the UN system: Chap. 5) and regional levels (Chaps. 3–4), and above all to the detailed analysis of the specific individual and collective human rights (Chaps. 6–12). The analysis of the specific human rights includes the rights which have recently arisen as a result of scientific advances in the field of biomedicine and biotechnology (medically assisted procreation, surrogacy, euthanasia, etc.), have been formed through a very extensive application of other fundamental rights (e.g. the right to hope: see Chap. 7, Sect. 7.3.1), or have arisen on the basis of the application of some rights to new pressing needs, as in the case of the application to climate change of the right to a healthy environment (Chap. 12, Sect. 12.4).

In regard to the concrete application of human rights, I considered it necessary to take into account not only the international law rules and case law but also some relevant national case law and non-binding decisions of human rights committees, especially in the UN context (including interesting cases in which national supreme courts applied non-binding decisions of these committees: see for instance Chap. 5, Sect. 5.2.6 with regard to a decision of the Committee on Enforced Disappearances). These decisions often integrate the international case law and sometimes even offer

new and courageous interpretations of fundamental human rights, with the aim of improving the general level of their protection.

A further objective of this book is to put the study of human rights in the more general context of international law. This is premised on the idea that international human rights law should not be considered as a legal environment autonomous from the broader system of international law. Rather, it is a regime that is fully integrated into the international legal order that, at the same time, has a very significant impact on it. This impact may be described as threefold. First, it concerns the structure of the international community: for instance, as regards the issue of international personality of natural persons (Chap. 13, Sect. 13.3) or the strong importance of minorities, indigenous peoples and multinational corporation in current international law (Chap. 13, Sects. 13.4–13.5). Second, it affects the content of many primary rules of contemporary international law, especially when human rights can collide with the principle of sovereignty of States: for instance, as regards the issues concerning the immunity of States and of state organs (Chap. 7, Sects. 7.6.1–7.6.2). Third, it has to do with the content of secondary rules of international law, thus in the context of the regime on the responsibility of States to which a specific part of the book is devoted (Chap. 14). Against this backdrop, the book frequently offers a comparison between what is provided by customary international law, what is established by special conventional regimes and what are the newest trends in international law.

I am deeply honoured that Prof. Guido Raimondi, former President of the European Court of Human Rights, has accepted to write the foreword of the book.

I would like to thank my colleagues Andrea Insolia, Manfredi Marciante and Pierfrancesco Rossi for their very useful suggestions on the structure and some contents of the book as well as for checking the case law references. Of course, I am solely responsible for any errors and omissions.

I also would like to thank Richard Boyce, who demonstrated great patience and competence in revising the English form of the book.

Rome, Italy  
July 2022

Pietro Pustorino

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| ACHR     | American Convention of Human Rights of 22 November 1969  |
| ACommHPR | African Commission on Human and Peoples' Rights  |
| ACtHPRA  | African Court on Human and Peoples' Rights   |
| ACtJHR   | African Court of Justice and Human Rights  |
| ArCHR    | Arab Charter on Human Rights of 22 May 2004  |
| ASEAN    | Association of South-East Asian Nations  |
| AU       | African Union  |
| CAT      | Committee against Torture  |
| CED      | Committee on Enforced Disappearances   |
| CESCR    | Committee on Economic, Social and Cultural Rights  |
| CFI      | Court of First Instance of the European Communities  |
| CFREU    | Charter of Fundamental Rights of the European Union  |
| CMCoE    | Committee of Ministers of the Council of Europe  |
| CoE      | Council of Europe  |
| CommEDAW | Committee on the Elimination of All Forms of Discrimination against Women                          |
| CommERD  | Committee on the Elimination of Racial Discrimination  |
| ECHR     | European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 |
| ECJ      | European Court of Justice  |
| ECommHR  | Commission on Human Rights   |
| ECOSOC   | Economic and Social Council  |
| ECSR     | European Committee of Social Rights  |
| ECtHR    | European Court of Human Rights   |
| ESC      | European Social Charter of 18 October 1961   |
| ESCrev   | European Social Charter revised of 3 May 1996  |
| EU       | European Union   |
| HRC      | Human Rights Committee   |
| HRCoun   | Human Rights Council   |
| IACommHR | Inter-American Commission on Human Rights  |

|            |  |
|------------|--|
| IACtHR     | Inter-American Court of Human Rights   |
| ICC        | International Criminal Court   |
| ICCPR      | International Covenant on Civil and Political Rights of 16 December 1966           |
| ICESCR     | International Covenant on Economic, Social and Cultural Rights of 16 December 1966 |
| ICJ        | International Court of Justice   |
| ICTR       | International Criminal Tribunal for Rwanda   |
| ICTY       | International Criminal Tribunal for the Former Yugoslavia                          |
| IHL        | International Humanitarian Law   |
| ILC        | International Law Commission   |
| ILO        | International Labour Organization  |
| ITLOS      | International Tribunal for the Law of the Sea                                      |
| NGOs       | Non-Governmental Organizations   |
| OAS        | Organization of American States  |
| OUA        | Organization of African Unity  |
| OECD       | Organization of Economic Co-operation and Development                              |
| OSCE       | Organization for Security and Co-operation in Europe                               |
| PCIJ       | Permanent Court of International Justice   |
| SCSL       | Special Court for Sierra Leone   |
| STL        | Special Tribunal for Lebanon   |
| TEU        | Treaty on European Union   |
| TFEU       | Treaty on the Functioning of the European Union                                    |
| UDHR       | Universal Declaration of Human Rights of 10 December 1948                          |
| UN         | United Nations   |
| UN Charter | Charter of the United Nations  |
| UNCommHR   | United Nations Commission on Human Rights  |
| UNESCO     | United Nations Educational, Scientific and Cultural Organization                   |
| UNGA       | General Assembly of the United Nations   |
| UNHCR      | Office of the United Nations High Commissioner for Refugees                        |
| UNSC       | Security Council of the United Nations   |
| UNSG       | United Nations Secretary-General   |
| UPR        | Universal Periodic Review  |
| VCLT       | Vienna Convention on the Law of Treaties of 23 May 1969                            |