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Development of International Human Rights Law Before and After the UDHR

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Chapter 1
Development of International Human Rights Law Before and After the UDHR

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> [I]t is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.[1]

1. Introduction

The international legal protection of human rights has undergone dramatic growth and evolution since the end of the Second World War, the founding of the United Nations (UN) in 1945, and the subsequent adoption, by the UN General Assembly, of the Universal Declaration of Human Rights (UDHR)[2] on 10 December 1948.[3] Although the historical origins of the concept of human rights are often linked with the idea of natural rights[4] and there had been legal instruments adopted earlier in different states aimed at acknowledging and ensuring the protection of human rights by the rule of law,[5] the proclamation and adoption of the UDHR on 10 December 1948 marked the real beginning of the momentous international journey towards ensuring that human rights are protected universally by the rule of law.[6] Thus, the UDHR is considered today as the legal baseline for modern international human rights law, and 10 December 2008 marked the 60th anniversary of the setting of that legal baseline.

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1 Universal Declaration of Human Rights G.A. res. 217A (III), UN Doc. A/810 at 71 (1948), Preamble, para. 3.

2 *Ibid*.

3 On the history and evolution of human rights, see e.g. M.R. Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (Berkeley, CA: University of California Press, 2004); T. Buergenthal, 'The Evolving International Human Rights System', *American Journal of International Law*, 100(4) (2006), pp. 783–807; and M. Mutua, 'Standard Setting in Human Rights: Critique and Prognosis', *Human Rights Quarterly*, 29 (2007), pp. 547–630.

4 See e.g. J. Porter, 'From Natural Rights to Human Rights: Or, Why Rights Talk Matters', *Journal of Law and Religion*, 14 (1999), pp. 77–96.

5 E.g. Magna Carta Libertatum (1215), the French Declaration of the Rights of Citizens (1789), and the American Declaration of the Rights and Duties of Man (July 1948). In her speech at the UN General Assembly at the adoption of the UDHR, Eleanor Roosevelt, chairperson of the Human Rights Commission, stated, famously: 'We stand today at the threshold of a great event both in the life of the United Nations and in the life of mankind. This Declaration may well become the international Magna Carta for all men everywhere. We hope its proclamation by the General Assembly will be an event comparable to the proclamation in 1789 [the French Declaration of the Rights of Citizens], the adoption of the Bill of Rights by the people of the US, and the adoption of comparable declarations at different times in other countries'.

6 M.A. Glendon, 'The Rule of Law in the Universal Declaration of Human Rights', *Northwestern Journal of International Human Rights*, 2 (2004), p. 5 [online]. Available from: http://www.law.northwestern.edu/journals/JIHR/v2/5.

Although not intended as a legally binding instrument at the time of its adoption, the UDHR clearly acknowledged in its preamble, as quoted at the beginning of this chapter, the essential need to protect human rights through the rule of law. The UN General Assembly then proclaimed the Declaration to be

> a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.[7]

From that humble beginning in 1948, international human rights law has evolved tremendously in different perspectives over the last six decades. Commemorating the 60th anniversary of the UDHR in 2008, the former UN High Commissioner for Human Rights, Louise Arbour, observed that 'it is difficult to imagine today just what a fundamental shift the Universal Declaration of Human Rights represented when it was adopted 60 years ago'.[8] Over those years there have been substantive developments in the theoretical, normative and legal perspectives of international human rights law, including debates on several conceptual issues regarding the scope and content of human rights generally. There has also been significant growth in the jurisprudence of different bodies and tribunals responsible for the interpretation and implementation of human rights law, and the human rights role of non-state entities such as non-governmental organizations (NGOs) has increased tremendously. New perspectives have also evolved regarding responsibilities and remedies for human rights violations relating to individual criminal responsibility for serious human rights violations, among others. This tremendous evolution of international human rights law in the past six decades calls for in-depth reflective analyses on the subject. The chapters in this volume, contributed by established human rights scholars and experts from different parts of the world, provide this much needed reflective analyses of the developments in the different areas of international human rights law over the past six decades since the adoption of the UDHR. This chapter provides an introductory background to these chapters.

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7 UDHR, Preamble, para. 8. On the UDHR, see B.G. Ramcharan (ed.), *Human Rights*: *Thirty Years After the Universal Declaration.* Commemorative Volume on the Occasion of the Thirtieth Anniversary of the Universal Declaration of Human Rights (The Hague and Boston: Martinus Nijhoff, 1979); A. Eide *et al.* (eds), *The Universal Declaration of Human Rights: Commentary* (Oslo: Scandinavian University Press, 1992); United Nations, *The Universal Declaration of Human Rights* (New York: United Nations, 1998); B. van der Heijden and B. Tahzib-Lie (eds), *Reflections on the Universal Declaration of Human Rights*: *A Fiftieth Anniversary Anthology* (The Hague and London: Martinus Nijhoff, 1998); Y. Danieli, E. Stamatopoulou, and C.J. Dias (eds), *The Universal Declaration of Human Rights*: *Fifty Years and Beyond* (Amityville, NY: Baywood, 1999); G. Alfredsson and A. Eide (eds), *The Universal Declaration of Human Rights: A Common Standard of Achievement* (The Hague: Martinus Nijhoff, 1999); W. Korey, *NGOs and the Universal Declaration of Human Rights: A Curious Grapevine* (New York: Palgrave, 2001); and W. Sweet (ed), *Philosophical Theory and the Universal Declaration of Human Rights* (Ottawa, ON: University of Ottawa Press, 2003).

8 United Nations, *Universal Declaration of Human Rights: Dignity and Justice for All of Us.* 60th Anniversary Special Edition (United Nations Department of Public Information, 2009), p. v.

2. The UN Charter and the Development of International Human Rights Law

The UN has been the major international institution that has consistently promoted, within the context of its Charter, the protection of international human rights through the rule of law. The drafting and adoption of the UDHR was itself undertaken within the context of the UN Charter. Thus, the significance of the UDHR as the baseline for international human rights law would be better appreciated with a brief analysis of the UN Charter in relation to the background and development of international human rights law prior to the adoption of the UDHR.

Prior to the creation of the UN after the Second World War in 1945, earlier attempts at including specific human rights provisions in the Covenant of the League of Nations after the First World War in 1919 were unsuccessful. The only substantive human rights provision in the Covenant was on labour rights in its Article 23, stating that members of the League 'will endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend'[9] and 'undertake to secure just treatment of the native inhabitants of territories under their control'.[10] However, there emerged separate minority protection treaties and state declarations guaranteeing the protection of the rights of minorities, with the League of Nations performing a supervisory role over the obligations created, which were considered of international concern.[11]

Nevertheless, private endeavours continued both within and outside the League of Nations for the realization of an international human rights legal regime. In 1929, the Institute of International Law, a private body of distinguished authorities on international law in Europe, the Americas and Asia, adopted the Declaration of the Rights of Man,[12] in which it considered that it was the duty of every state to recognize, inter alia, the equal rights of every individual to life, liberty and property. The Institute also considered that every state had a duty to accord to everyone within its territory the full and entire protection of these rights without distinction as to nationality, sex, race, language or religion. Although the Declaration was not a legally binding document, it contributed to the popularization of the idea of an international human rights legal regime in the years immediately after its adoption. Commenting on the Declaration, Marshall Brown, writing in 1930, observed:

> This declaration … states in bold and unequivocal terms the rights of human beings, 'without distinction of nationality, sex, race, language and religion,' to the equal right to life, liberty and property, together with all the subsidiary rights essential to the enjoyment of these fundamental rights. It aims not merely to assure to individuals their *international* rights, but it aims also to impose on all nations a standard of conduct towards all men, *including their own nationals*. It thus repudiates the classic doctrine that states alone are subjects of international law. Such a revolutionary document, while open to criticism in terminology and to the objection that it has not juridical value, cannot fail, however, to exert an influence on the evolution of international law. It marks a new era which is more concerned with the interests and rights of sovereign individuals than with the rights of sovereign states.[13]

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9 Covenant of the League of Nations, Art. 23(a).

10 *Ibid.*, Art. 23(b).

11 See e.g. Article 12 of the Polish Minorities Treaty (1920). See also A. Cassese, *Human Rights in a Changing World* (Cambridge: Polity Press, 1990), pp. 17–21.

12 See G.A. Finch, 'The International Rights of Man', *American Journal of International Law*, 35 (1941), pp. 662–5.

13 P.M. Brown, 'The New York Session of the Institut De Droit International', *American Journal of International Law*, 24 (1930), pp. 126–8, at p. 127 (emphasis in original).

The atrocities committed during the Second World War further provoked significant humanitarian concerns and moved the world community to call for formal international measures aimed at ensuring the legal protection of human rights and achievement of world peace and security. Thus, the Allies determined even before the end of the war that an international commitment to the protection of human rights should be a part of the post-war settlement.[14] Consequently, in the preamble of the UN Charter that emerged after the war, the member states, after declaring their determination 'to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind',[15] also declared their determination 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small'.[16]

The Charter also provided substantively in its Article 1(3) that one of the purposes of the UN would be '(t)o achieve international co-operation in … promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion'. Futhermore, Article 55 provided that:

> With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote… [*inter alia*] universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

The UN member states then pledged themselves under Article 56 of the Charter 'to take joint and separate action in co-operation with the Organization for the achievement of the purpose stated in Article 55'.[17]

Although the Charter did not list the specific contents of the human rights and fundamental freedoms referred to, it signalled the dawn of the international human rights legal regime. To take the international human rights initiative forward, the Charter provided for the establishment of an Economic and Social Council (ECOSOC) whose functions included making 'recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all',[18] and the powers to 'set up commissions … for the promotion of human rights, and such other commissions as may be required for the performance of its functions'.[19] The basic objective of the (now disbanded) International Trusteeship System created under the Charter for the administration of the Trust Territories also included the requirement 'to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world'.[20]

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14 See e.g. the Atlantic Charter of 1941 [online]. Available from: http://avalon.law.yale.edu/wwii/atlantic.asp.

15 UN Charter, Preamble, para. 1.

16 *Ibid.*, par. 2.

17 In its opinion on 'the legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 260 (1970)', *ICJ Reports*, 58 (1971), para. 29, the ICJ stated: 'To establish instead, and to enforce distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin, which constitutes a denial of fundamental human rights, is a flagrant violation of the purposes and principles of the Charter'.

18 UN Charter, Art. 62(2).

19 *Ibid.*, Art. 68.

20 *Ibid.*, Art. 76(c).

By virtue of these Charter provisions, seen in the context of Article 103,[21] the UN member states are obliged to observe, promote and encourage universal respect for human rights. Today, the UN Charter is widely considered as the basis of an international 'constitutional order'[22] that imposes obligations on member states to uphold international co-operation in promoting and encouraging respect for human rights.[23] Louis Henkin has concisely described the development as follows:

> The UN charter ushered in a new international law of human rights. The new law buried the old dogma that the individual is not a 'subject' of international politics and law and that a government's behaviour toward its own nationals is a matter of domestic, not international concern… It gave the individual a part in international politics and rights in international law, independently of his government. It also gave the individual protectors other than his government, indeed protectors and remedies against his government.[24]

Thus did the UN Charter provide a binding legal basis for the development of international human rights law in 1945, a foundation upon which the UDHR was subsequently built in 1948.

As noted above, apart from the Charter's prohibition of discrimination as to race, sex, language, or religion, it did not clearly define what human rights states were obliged to promote and protect. Efforts by some countries and non-governmental organizations (NGOs) attending the San Francisco conference for the inclusion of an international bill of rights in the UN Charter failed mainly because they were opposed by the major powers.[25] Soon after the adoption of the UN Charter, ECOSOC, acting on its mandate and powers under the Charter, established a Commission on Human Rights in 1946 with the mandate to develop the framework for an international bill of rights that set out clearly the specific contents of the international human rights recognized under the Charter. The Commission, appointed a Drafting Committee chaired by Eleanor Roosevelt, which drafted the UDHR between January 1947 and December 1948 as the first part of the so-called international bill of rights.[26]

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21 Article 103 of the UN Charter states: 'In the event of a conflict between the obligations of the members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail'. For a discussion, see R. Liivoja, 'The Scope of the Supremacy Clause of the United Nations Charter', *International & Comparative Law Quarterly*, 57 (2008), pp. 583–612.

22 N. White, 'The United Nations System: Conference, Contract or Constitutional Order?', *Singapore Journal of International and Comparative Law*, 4 (2000), pp. 281–99, at p. 291. *See also* B. Fassbender, 'The United Nations Charter as Constitution of the International Community', *Columbia Journal of Transnational Law*, 36 (1997), pp. 529–619, at p. 594 (claiming that Art. 2(6) and Art. 103 of the Charter 'give a strong hint of its constitutional character'). But see B. Conforti, *The Law and Practice of the United Nations*, 2nd edn (The Hague, London and Boston: Kluwer Law International, 2000), p. 10, noting that '[t]he constitutional aspect of the UN should not be exaggerated. The Charter is and remains a treaty'.

23 See B. Simma (ed.), *The Charter of the United Nations: A Commentary*, 2nd edn, 2 vols (Oxford: Oxford University Press, 2002), vol. 1, at pp. 33–47; vol. 2, at pp. 917–44; Z. Stavrinides, 'Human Rights Obligations Under the United Nations Charter', *International Journal of Human Rights*, 3(2) (1999), pp. 38–48.

24 L. Henkin (ed.), *The International Bill of Rights: The Covenant on Civil and Political Rights* (New York: Columbia University Press, 1981), p. 6.

25 For a discussion, see T. Buergenthal, 'The Normative and Institutional Evolution of International Human Rights', *Human Rights Quarterly*, 19 (4) (1997), pp. 706–7, at p. 703.

26 The so-called International Bill of Rights consists of the UDHR, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights

3. The UDHR as a Common Standard of Achievement

The UDHR was the first UN instrument adopted that contained a list of internationally recognized human rights. It was adopted unanimously[27] as a simple resolution of the UN General Assembly on 10 December 1948, and it has served, since its adoption, as a framework for subsequent international human rights treaties as well as many regional human rights instruments and national constitutions.[28]

As a common standard of achievement, the rights covered by the UDHR are the following: right to life, liberty and security of person (Art. 3); prohibition of slavery or involuntary servitude (Art. 4); prohibition of torture or cruel, inhuman or degrading treatment or punishment (Art. 5); right to recognition as a person before the law (Art. 6); right to equality before the law, non-discrimination, and equal protection of the law (Art. 7); right to an effective legal remedy (Art. 8); right to freedom from arbitrary arrest, detention, or exile (Art. 9); right in full equality to a fair and public hearing by an independent and impartial tribunal (Art. 10); right to be presumed innocent until proved guilty according to law, right not to be held guilty for any act or omission which did not constitute an offence at the time committed, and right not to be punished with a heavier penalty than applicable at the time of committing an offence (Art. 11); right to freedom from arbitrary interference with privacy, family, home or correspondence and attacks on one's honour and reputation (Art. 12); right to freedom of movement and residence within state borders and right to leave any country and to return to one's own country (Art. 13); right to seek and enjoy asylum (Art. 14); right to nationality and right to change nationality (Art. 15); right to marry and found a family (Art. 16); right to property (Art. 17), right to freedom of thought, conscience and religion (Art. 18); right to freedom of opinion and expression (Art. 19); right to freedom of peaceful assembly and association (Art. 20); right to take part in the government of one's country, have access to public service, and take part in elections (Art. 21); right to social security (Art. 22); right to work, to equal pay for equal work, and to form and join trade unions (Art. 23); right to rest and leisure, limitation of working hours, and periodic holidays with pay (Art. 24); right to a standard of living adequate for health and well-being, including food, clothing, housing and medical care, and necessary social services, and right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond one's control (Art. 25); right to education (Art. 26); right to participate freely in cultural life and to enjoy the arts and share in scientific advancement, and right to protection of the moral and material interests resulting from any scientific, literary or artistic production of which one is the author (Art. 27); and right to a social and international order in which the rights and freedoms can be fully realized (Art. 28).

Significantly, as can be noted from the above list, the UDHR covered both civil and political rights, as well as economic, social and cultural rights (ESC) rights without distinction, and thus recognized indivisibility, interdependence and interrelatedness of all human rights from the

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(ICESCR). See notes 42–7 below. For documents and information on the history of the drafting of the UDHR, see e.g. http://www.un.org/Depts/dhl/udhr/ ; J. Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Philadelphia: University of Pennsylvania Press, 1999), Chapter 1; M.G. Johnson and J. Symonides, *The Universal Declaration of Human Rights*: *A History of Its Creation and Implementation, 1948–1998* (Paris: UNESCO Publishing, 1998); M.A. Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001).

27 With eight states out of the then 58 UN members states abstaining.

28 E.g. H. Hannum, 'The Status of the Universal Declaration of Human Rights in National and International Law', 25 *Georgia Journal of International and Comparative Law*, 25 (1 and 2) (1995–6), pp. 287–396.

beginning.[29] It also recognized that 'everyone has duties to the community in which alone the free and full development of his personality is possible'.[30]

Although the UDHR at the time of its adoption was not a legally binding instrument, over time it has evolved to the extent that some of its provisions now either constitute customary international law and general principles of law or represent elementary considerations of humanity.[31] As noted above, its greatest significance is that it provides an authoritative content, adopted by the UN General Assembly, to the interpretation of the UN Charter in respect of its human rights provisions. Its considerable practical importance, in that regard, has been demonstrated through its invocation by the International Court of Justice (ICJ),[32] the International Criminal Court (ICC),[33] regional and domestic courts as an aid to interpretation of relevant human rights treaties,[34] and national constitutional provisions protecting human rights.[35] The Declaration has also been referred to in a number of cases involving human rights issues.[36] At the regional level, Article 60 of the African Charter on Human and Peoples' Rights (African Charter or ACHPR), ratified by 53 African states, specifically requires the African Commission on Human and Peoples' Rights to draw inspiration, inter alia, from the UDHR when interpreting the African Charter.[37] Some national constitutions also accord the UDHR a special status by their reference to it, with some explicitly providing for the interpretation of the constitutions in conformity with the UDHR. For example, Article 102 of the Spanish Constitution of 1978 provides that 'The norms relative to basic rights and liberties which are recognized by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreement on those matters ratified by Spain'. Similarly, Article 75(22) of the Constitution of Argentina (as amended) confers constitutional rank on various human rights instruments, including the UDHR, by declaring that these instruments 'have a higher hierarchy than laws'.

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29 See, generally, M. Ssenyonjo, *Economic, Social and Cultural Rights in International Law* (Oxford: Hart Publishing, 2009).

30 UDHR, Art. 29(1).

31 I. Brownlie, *Principles of Public International Law*, 7th edn (Oxford: Oxford University Press, 2008), p. 559.

32 The ICJ invoked the UDHR in relation to the detention of hostages 'in conditions of hardship'. See *Case Concerning United States Diplomatic and Consular Staff in Tehran*, *ICJ Reports*, 3 (1980), para. 91, at p. 42.

33 See Pre-Trial Chamber I, Situation in Darfur, Sudan: in the Case of the *Prosecutor* v *Omar Hassan Ahmad Al Bashir*, No. ICC-02/05-01/09 (4 March 2009), para. 156.

34 See e.g. the European Court of Human Rights in the *Golder* case, ILR 57, 201 at pp. 216–17.

35 See e.g. Supreme Court of Uganda, *Attorney General* v *Susan Kigula and 417 Others*, Constitutional Appeal No. 03 of 2006, Judgment of 21 January 2009.

36 See M.N. Shaw, *International Law*, 6th edn (Cambridge: Cambridge University Press, 2008), p. 280, citing the following cases: *In re Flesche* 16 AD, 266, at 269; *The State (Duggan)* v *Tapley* 18 ILR, 336, at 342; *Robinson* v *Secretary-General of the UN* 19 ILR, 494, at 496; *Extradition of Greek National* case, 22 ILR 520 at 524; *Beth El Mission* v *Minister of Social Welfare* 47 ILR, 205 at 207; *Corfu Channel* case, *ICJ Reports*, 4 (1949), at p. 22; *Filartiga* v *Pena-Irala* 630 F.2d 876 (1980).

37 The African Charter on Human and Peoples' Rights, below note 41, Article 60 reads: 'The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the Charter of the United Nations, the Charter of the Organisation of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights as well as from the provisions of various instruments adopted within the Specialized Agencies of the United Nations of which the parties to the present Charter are members'.

This confirms the view that over the years the UDHR has indeed acquired a legal or normative character as envisaged by its designation as 'a common standard of achievement for all peoples and all nations' in its preamble when it was adopted in 1948.

4. International Human Rights Law: Six Decades After the UDHR

Since the adoption of the UDHR in 1948, a considerable number of rules of international law, both customary and treaty, have been developed at the international[38] and regional levels – in Europe,[39] the Americas[40] and Africa[41] – with the aim of protecting, promoting, further defining and expanding the content of human rights.[42]

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38 The principal UN international human rights instruments include the UDHR, note 1 above; ICCPR, note 44 below; ICESCR note 45 below 3; International Convention on the Elimination of All Forms of Racial Discrimination (CERD), 660 UNTS 195; Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), UN Doc. A/34/46; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), UN Doc. A/39/51 (1984); and the Convention on the Rights of the Child (CRC), UN Doc. A/44/49 (1989). See United Nations, *Human Rights: A Compilation of International Instruments*, UN Doc. ST/HR/1/Rev.6, UN Sales No. E.02.XIV.4 (New York: United Nations, 2002).

39 The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 1950; UKTS (1953), 213 UNTS 221. For a discussion, see Chapter 14 in this volume and, generally, C. Ovey and R. White, *Jacobs and White: The European Convention on Human Rights*, 5th edn (Oxford: Oxford University Press, 2006); M.W. Janis *et al*., *European Human Rights Law: Text and Materials*, 3rd edn (Oxford: Oxford University Press, 2010). See also the European Social Charter (ESC) 1961, UKTS 38 (1965), and the European Social Charter (revised), ETS No. 163. For a discussion, see D. Harris and J. Darcy, *European Social Charter*, 2nd edn (Ardsley, NY: Transnational Publishers, 2001). Another key human rights treaty at the European Union level is the Charter of Fundamental Rights of the European Union, 2000 O.J. (C 364) 1, entered into force 7 December 2000.

40 The American Convention on Human Rights 1969 (1970), 9 ILM 673. Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, 'Protocol of San Salvador', OAS Treaty Series No. 69 (1988). See Chapter 13 in this volume and, generally, D. Harris and S. Livingstone (eds), *The Inter-American System of Human Rights* (Oxford: Oxford University Press, 1998); T. Buergenthal and D. Shelton, *Protecting Human Rights in the Americas: Cases and Materials*, 4th edn (Kehl: N.P. Engel, 1995).

41 The African Charter on Human and Peoples' Rights (African Charter or ACHPR) 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 ILM 58 (1982); Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, OAU/LEG/MIN/AFCHPR/PROT.1 rev. 2 (1997); Protocol to the ACHPR on the Rights of Women in Africa, Maputo, 11 July 2003, African Commission on Human and Peoples' Rights [online]. Available from: at http://www.achpr.org/english/_info/women_en.html; African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990); OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1001 UNTS 45. For a discussion of human rights in Africa, see Chapter 12 in this volume and, generally, F. Viljoen, *International Human Rights Law in Africa* (Oxford: Oxford University Press, 2007); F. Ouguergouz, *The African Charter on Human and Peoples' Rights* (The Hague: Martinus Nijhoff, 2003); V. Nmehielle, *The African Human Rights System*: *Its Laws, Practice, and Institutions* (The Hague: Martinus Nijhoff, 2001).

42 For an overview of the action taken to protect international human rights, see, generally, H. Steiner and P. Alston, *International Human Rights in Context: Law, Politics, Morals – Text and Materials,* 3rd. edn (Oxford: Oxford University Press, 2008); M Nowak, *Introduction to the International Human Rights Regime* (Leiden: Martinus Nijhoff, 2003); M. Haas, *International Human Rights: A Comprehensive Introduction* (London: Routledge, 2008).

In continuance of its mandate of drafting the international bill of rights, the UN Commission on Human Rights commenced, in earnest after the adoption of the UDHR, the drafting of a legally binding international human rights treaty under the UN system. Eventually, two binding covenants were produced after nearly 20 years of drafting debates and disagreements regarding whether or not to combine civil and political rights and ESC rights in one single covenant.[43] The International Covenant on Civil and Political Rights (ICCPR)[44] and the International Covenant on Economic, Social and Cultural Rights (ICESCR)[45] were adopted in 1966 and both entered into force in 1976.[46] As noted above, the two covenants, together with the UDHR, constitute the so-called International Bill of Rights. The rights protected in the two covenants cover and enlarge most of the rights recognized under the UDHR and thereby protect nearly all the basic values cherished by all states and every human society.[47] In addition, many other ancillary international treaties and declarations on the rights of women, children, refugees, stateless persons, diplomatic agents, minorities, persons with disabilities, etc., have been adopted under the UN system. There are also specific international human rights treaties for the protection of a person against atrocities such as genocide, racial discrimination, apartheid, slavery, forced labour, torture, etc.[48] Today, every state in the world (despite a wide variety of historical, political, religious, social and cultural differences) has ratified at least one of these international human rights treaties,[49] indicating the increasing trend towards universal acceptance of human rights in the international legal system.[50] It is in this context that it is recognized that:

> While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.[51]

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43 See e.g. M. Baderin and R. McCorquodale, 'The International Covenant on Economic, Social and Cultural Rights: Forty Years of Development', in M. Baderin and R. McCorquodale (eds), *Economic, Social and Cultural Rights in Action* (Oxford: Oxford University Press, 2007), pp. 4–9, at p. 3.

44 999 UNTS 171.

45 993 UNTS 3.

46 For the drafting history and long-standing contentious debate on the nature of civil and political rights and economic social and cultural rights, see e.g. L.B. Sohn, 'A Short History of United Nations Documents on Human Rights', in *United Nations and Human Rights* (Dobbs Ferry, NY: Oceana, 1968); I. Szabo, 'Historical Foundations of Human Rights and Subsequent Developments', in K. Vasak (ed.), *The International Dimensions of Human Rights*, vol. 1 (Westport, CT: Greenwood Press, 1982).

47 See L. Chen, *An Introduction to Contemporary International Law* (New Haven, CT: Yale University Press, 1989), pp. 209–11.

48 See Office of UN High Commissioner for Human Rights at http://www2.ohchr.org/english/bodies/ratification/.

49 For example, as of 16 January 2010, the total states parties to the following treaties were as follows: ICESCR, 160; ICCPR, 165; ICERD, 173; CEDAW, 186; CAT, 146; CRC, 193. For the current state of ratification, see Office of UN High Commissioner for Human Rights at http://www2.ohchr.org/english/bodies/ratification/.

50 Although many states have ratified various human rights treaties with different reservations and/or interpretive declarations. See e.g. http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en.

51 See Vienna Declaration and Programme of Action, as adopted by the World Conference on Human Rights on 25 June 1993, UN Doc. A/CONF.157/23 9 (12 July 1993), para 5.

At the regional level, organizations such as the Council of Europe, the Organization of American States, the Organization of African Unity/African Union,[52] and the League of Arab States have also adopted different regional human rights treaties in recognition of the noble ideals of international human rights. The basic regional human rights treaties are the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950),[53] the European Social Charter (1961),[54] the American Convention on Human Rights (1969),[55] the African Charter on Human and Peoples' Rights (1981),[56] and the Arab Charter on Human Rights (1994).[57] Specific regional human rights treaties and declarations on the rights of women, children, refugees, and the prohibition of torture, etc., have also been adopted.[58] Although Arab and Asian states have not yet created a regional human rights system, as a result of several factors including vast differences in culture, political ideology and economic development,[59] there are emerging trends that present an opportunity to create a regional system in the Middle East. This is evident, for example, in the adoption of a revised Arab Charter on Human Rights by the League of Arab States in 2004, which, in its preamble, reaffirmed, inter alia, the principles of both the UN Charter and the UDHR.[60]

Over the last six decades since the adoption of the UDHR, human rights have progressively developed into a universal value system, and it is now generally accepted that 'the promotion and protection of all human rights is a legitimate concern of the international community,'[61] and it is against this that states are evaluated today. Evidently, the scope and limits of human rights have enormously transcended the initial rights guaranteed under the UDHR in 1948. While it is certainly impossible to attempt to address all the relevant issues, developments and failures in that regard in a single volume of this nature, this book has been carefully structured and issues carefully selected to cover the principal and most relevant aspects of the developments.

5. Thematic Structure of this Book

This book is structured thematically into five parts, namely: introduction, concepts and norms, mechanisms and implementation, responsibilities and remedies, and the concluding section entitled 'And Beyond'. This structure is aimed at covering relevant developments in the theory and practice of international human rights law as comprehensively and thematically as possible

52 The Organization of African Unity was replaced by the African Union (AU) in 2001. See Art. 28 of the Constitutive Act of the African Union, which came into force on 26 May 2001.

53 Adopted on 4 November 1950. E.T.S. No. 005.

54 Adopted on 18 October 1961. E.T.S. No. 035.

55 Adopted on 22 November 1969. O.A.S.T.S. No. 36 at 1.

56 Adopted on 27 June 1981. OAU Doc.CAB/LEG/67/3 rev. 5 (1982) 21 I.L.M. 58.

57 Adopted on 22 May 2004, reprinted in *International Human Rights Reports* 12 (2005), p. 893. Entered into force 15 March 2008. For an overview of the Arab Charter, see M. Rishmawi, 'The Arab Charter on Human Rights and the League of Arab States: An Update', *Human Rights Law Review*, 10(1) (2010), pp. 169–78.

58 See e.g. http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en.

59 See D. Shelton, 'The Promise of Regional Human Rights Systems', in Burns H. Weston and S.P. Marks (eds), *The Future of International Human Rights* (New York: Transnational Publishers, 1999), pp. 351–98, at p. 364.

60 See Preamble, para. 5, Arab Charter on Human Rights, adopted by the League of Arab States, 22 May 2004; reprinted in *International Human Rights Reports*, 12 (2005), p. 893. Entered into force 15 March 2008.

61 Vienna Declaration, note 48 above, para. 4.

in a single volume. A brief summary of the chapters contained in each of the four remaining parts is provided below.

5.1 Concepts and Norms

Part II of this book consists of nine chapters addressing different issues relating to the development of concepts and norms under international human rights law. Theoretically, the question of universality has remained at the heart of international human rights debates since the adoption of the UDHR. While the naming of the UDHR as a 'Universal Declaration' clearly indicated that the international human rights venture was meant to be a universal venture from the beginning, it also raised questions about the meaning and scope of the universality of human rights. For example, one of the earliest questions posed to the UN Commission on Human Rights, then drafting the UDHR, was the statement submitted to the Commission by the American Anthropological Association (AAA) on 24 June 1947 about the proposed universality of human rights and how that would be achieved.[62] Although the UDHR has, today, established itself as an instrument of significant moral and legal influence universally, that theoretical question about the meaning and scope of the universality of human rights has not been fully muted. Traditionally, the universality debate has been generally divided into the 'universalist' and 'cultural relativist' perspectives, and it has oscillated over the last six decades but has influenced, substantively, the conceptual understandings informing the implementation of international human rights law in different parts of the world today.

Part II opens with Jack Donnelly's Chapter 2 entitled 'International Human Rights: Universal, Relative or Relatively Universal?', which provides a refreshing insight into the conceptual debate on universalism and cultural relativism. Jack argues that while each side in the debate rests on important insights about the nature of human rights, the standard terms of the debate are, essentially, misformulated. He asserts that universality and relativity are multifaceted concepts that are not necessarily incompatible, and that human rights are indeed universal in some standard and important senses of that term but also relative in some relevant standard senses of that term. He states that the real issue is not *whether* human rights are universal or relative but *how* they are and are not universal, and also *how* they are and are not relative, and *how* these universalities and relativities interact, in theory and in practice. Jack then proceeds to identify and analyse three different senses in which human rights may be reasonably understood as being universal – that is, 'international legal universality', 'functional universality' and 'overlapping consensus universality' – and two senses, in which human rights are not essentially universal – that is, 'ontological universality' and 'historical (or anthropological) universality'. He also considers some standard relativist arguments before proposing that human rights must rather be seen as being 'relatively universal'. Essentially, the chapter endeavours to bridge the dichotomy between the traditional 'universalist' and 'cultural relativist' theoretical debate through a refreshing perspective of 'relative universality', which he sees as a powerful perspective that can be used to build more just and humane national and international societies through international human rights law. He concludes that there can be little doubt that human rights are both universal and relative and that any reasonable discussion of the

62 See American Anthropological Association (AAA), 'Statement on Human Rights', *American Anthropologist*, 49 (1947), pp. 539–43, at pp. 539 and 542–3. Cf. the 1999 AAA Declaration on Anthropology and Human Rights [online]. Available from: http://www.aaanet.org/stmts/humanrts.htm and K. Engle, 'From Scepticism to Embrace: Human Rights and the American Anthropological Association from 1947–1999' *Human Rights Quarterly*, 23(3) (2001), pp. 536–59, for an analysis of the two statements.

issue of universality today must start from this observation. This perspective can certainly provide a new dimension to the debate on the universality of human rights into the future.

Normatively, while the UDHR contains a mixture of civil and political rights and ESC rights, one of the main normative controversies that confronted the UN Commission on Human Rights in the drafting of an internationally binding human rights covenant, subsequent to the UDHR, was, as noted earlier, the question of whether or not civil and political rights and ESC rights should be combined together in one single legally binding covenant. The compromise in the end was to draft two separate covenants, namely the ICESCR and the ICCPR, both of which were adopted in 1966 and entered into force in 1976.[63] This created the initial division between the two set of rights. Consequently, ESC rights under the ICESCR and civil and political rights under the ICCPR have developed differently over the years. The development of ESC rights had, traditionally, been much slower than that of civil and political rights due to different reasons.[64]

Manisuli Ssenyonjo's Chapter 3, 'Economic, Social and Cultural Rights', provides a comprehensive analysis of the evolution of ESC rights since the adoption of the UDHR. He first shows that despite the fact that ESC rights have received increased positive attention in recent years, they are still very much marginalized and still considered as second class to civil and political rights. This marginalization of ESC rights, Manisuli argues, mostly affects the poor and disadvantaged groups and individuals, and also raises specific questions that the chapter seeks to address; namely, (i) what are the real human rights obligations of states parties to the ICESCR? (ii) are such obligations territorially limited or is there scope for extraterritorial obligations? (iii) are states permitted to derogate from ESC rights during emergencies despite the fact that the ICESCR does not contain a derogation clause either permitting or prohibiting derogations?, and (iv) was it really necessary to adopt, in 2008, an Optional Protocol to the ICESCR providing for the right of complaint by individuals and groups against violations of the rights protected by the ICESCR? In addressing these questions, Manisuli endeavours to demonstrate that the ICESCR lays down clear human rights legal obligations on states parties. He notes that the recent increase in domestic and regional case law on ESC rights and the adoption by the UN General Assembly on 10 December 2008, the 60th anniversary of the UDHR, of an Optional Protocol to the ICESCR, clearly indicates that violations of ESC rights are now clearly established as being justiciable both in theory and practice. The chapter also notes that the absence of a clause allowing derogation in times of public emergency in the ICESCR indicates that the covenant generally continues to apply in the time of armed conflict, war or other public emergencies, and, as a minimum, states cannot derogate from the minimum core obligations of ESC rights. Thus, the chapter analyses clearly that from the humble beginnings in Articles 22–27 of the UDHR in 1948, it has taken more than six long decades to bring ESC rights to the same level of enforcement accorded to civil and political rights under international human rights law, and envisages that, with the entry into force of the Optional Protocol, the enforcement of ESC rights should proceed more effectively than before.

Furthermore, Sarah Joseph's Chapter 4, 'Civil and Political Rights', provides a reflective insight into the development of civil and political rights under international human rights law by analysing their evolution since the adoption of the UDHR. She starts by observing that, while Articles 3 to 21 of the UDHR are concerned with the recognition that all people are entitled to the enjoyment and protection of their civil and political rights, these rights were only specified in greater detail in a legally binding treaty, the ICCPR, 16 years after the UDHR. Over the years, the interpretation

63 While both the ICESCR and ICCPR were adopted on 16 December 1966, the ICESCR entered into force on 3 January 1976 prior to the ICCPR, which entered into force on 23 March 1976.

64 See Baderin and McCorquodale, note 41 above, pp. 6–14.

of these rights has thrown more light on their scope and limits. In that regard, the chapter focuses particularly on the jurisprudence of the Human Rights Committee (HRC), the body established to monitor the implementation of the ICCPR. Sarah analyses the philosophical background of civil and political rights by linking its beginnings to the concept of natural rights but then notes that modern conceptions of civil and political rights have evolved far beyond their libertarian roots. She then goes on to analyse the different ways that civil and political rights may be categorized and also addresses other relevant issues such as civil and political rights versus ESC rights; individual and collective rights; cultural relativism; vertical and horizontal application of the ICCPR; and the various limitations on civil and political rights within the ICCPR such as clawback clauses, Article 20 restriction, and other implied restrictions. The analyses are well illustrated with relevant cases that have evolved over the years. The chapter concludes with an observation that civil and political rights have, over the years, become more complex than perhaps originally conceived under the UDHR, arguing that they are, today, conceived as being both negative and positive, capable of vertical and horizontal application, and do allow room for cultural differences, although breaches of minimum standards cannot be justified by cultural relativist arguments.

Since the adoption of the UDHR, ICCPR, and the ICESCR, some new concepts of rights that were not specifically understood in 1948 and were not provided for in the UDHR have been evolving normatively over time. The remaining chapters in this part of the book explore some of those evolving normative perceptions and developments in international human rights law.

Arjun Sengupta's Chapter 5, 'Simple Analytics of the Right to Development', examines the concept of the right to development in international human rights law. The debate on the right to development has been a very topical one, particularly between developed and developing countries, since the 1980s. One of the main arguments has been about the definition, content and scope of the right to development. Arjun's 'simple analytics' of the right to development provides an insight into the topic, addressing mainly the definitional and contextual issues. He begins by noting that the UDHR did not provide specifically for the right to development, and that a specific concept of the right to development under international human rights law postdates the UDHR. He observes that when the right to development was first recognized in 1986, in the UN Declaration on the Right to Development, it appeared to be a utopian right, but was later appreciated and adopted by academics, civil society leaders and policymakers from both the developed and developing countries. Arjun provides an analytic definition of right to development, identifying, in that regard, the need for an indicator of the realization of the right by combining its different elements or objectives, which in essence relate to defining the right to development in terms of all or some of the rights that have already been recognized in different international human rights instruments. In that way, Arjun argues, the obligations for realizing the right to development would essentially derive from the obligations of realizing all those recognized rights under international human rights law. The chapter then links this to the issue of development policy as a meta-right, positing that the international community must formulate, adopt and implement an appropriate development policy which is grounded in development cooperation as an international obligation. Arjun argues that the implementation of such a development policy, will move the international community steadily towards realizing the right to development. The chapter concludes with the observation that even though it was not specifically addressed in the UDHR, the right to development need no longer remain a utopia, and that if there is sufficient will for international cooperation in today's world, the right to development can genuinely be achieved within the context of the UDHR.

Another important, newly developing norm in international human rights law is the concept of the right to a healthy environment. This is examined in Chapter 6 by Jona Razzaque. The chapter begins with a truism that the right to a healthy environment is indispensable for leading a life in

human dignity, and Jona argues that it is a prerequisite for the realization of other human rights. Jona notes that while the UDHR, ICCPR and ICESCR do not specifically mention the right to a healthy environment, it can be argued that the spirit of the UDHR includes this right, and that expansive interpretations of the rights to life, health, property and privacy, among others, have been used to promote the concept of the right to a healthy environment in the jurisprudence of some national and regional institutions. The chapter then analyses how the specific concept of the right to a healthy environment has evolved within international human rights law, particularly since the Draft Declaration of Principles on Human Rights and the Environment proposed in the Ksentini report submitted to the UN Sub-Commission on Human Rights in 1994. Jona further analyses the existing theoretical debates and questions regarding the link between human rights and the environment at the national, regional and international levels of human rights discourse and jurisprudence. She also addresses issues of competing rights and the role of procedural rights in relation to the realization of the right to a healthy environment. Based on the analysis provided, the chapter argues that human rights law does acknowledge the existence of a right to a healthy environment, albeit indirectly, concluding that although the UDHR did not declare a specific right to a healthy environment, human rights law has, nevertheless, evolved over the years to meet the challenges of environmental degradation, and that the link between human rights and environmental protection is now firmly established at the national, regional and international levels of human rights discourse. Jona closes the chapter by stating that there is a need, in the sixth decade since the adoption of the UDHR, for a substantive right to a healthy environment with supporting procedural rights responsive to the challenges of climate change and the sustainable management of the ecosystem.

It is clear that conflict situations contribute significantly to human rights violations in various parts of the world today. This continues to engender debates on the need to recognize the right to a peaceful world order if human rights are to be maximally guaranteed globally. In Chapter 7, Nsongurua J. Udombana examines the evolving concept of the right to a peaceful world order within the context of the general development of international human rights law since the adoption of the UDHR. In doing so, he begins by interrogating 'peace' as a human right and finds that the concept of a universal right to peace appears to be supported by general international law and alluded to by judicial authorities and publicists on the basis of some underlying principles that he identifies and analyses in the first part of the chapter. He notes specifically that Article 28 of the UDHR implicitly guarantees the right to a peaceful world order, and that the UN General Assembly has adopted several resolutions bearing on global peace, particularly the Declaration on Right of Peoples to Peace, adopted in 1984. All these, Nsongurua argues, tend to provide the material evidence for the existence of the right to a peaceful world order under international human rights law. The second part of the chapter then traces the continued search for a peaceful world order and pinpoints some reasons why that goal has largely been elusive, while the third part analyses some factors that contribute to the continuing threats to a peaceful world order and provides suggestions on how to stem these. The chapter concludes with a forceful observation that a peaceful world order is not just an ideal but a foundational and fundamental human right, which the UN must work towards actualizing by promoting 'social progress and better standards of life in larger freedom', and the author proposes some ways that this could be achieved.

Tawhida Ahmed and Anastasia Vakulenko's Chapter 8, 'Minority Rights 60 Years After the UDHR: Limits on the Preservation of Identity?,' examines the question of minority rights in international human rights law. The chapter opens with an assertion that the international response to the question of what to do with 'minorities' has been far from static, oscillating between assimilationist and protectionist attitudes. In proving this assertion, Tawhida and Anastasia first

provide an overview of the evolution of minority rights protection since the adoption of the UDHR. They observe that the development of minority rights under international human rights law has been characterized by a move from an assimilationist policy, prevailing at the inception of the UDHR, to a preservation of identity policy from the 1960s onwards. Preservation of identity, they argue, is currently the prevalent policy on minority rights under international human rights law as evidenced by the adoption of specific minority rights provisions in international human rights law and minority-sensitive interpretations of general human rights provisions. They consider this as a welcome sensitization of international human rights law to minority issues and a more sustained commitment to equality. The chapter then proceeds to argue that this commendable policy of preservation of identity is, however, not always maintained in practice by international adjudicating bodies. They use the topical issue of restrictions on the Islamic headscarf as a case study to demonstrate how the preservation of identity policy is ignored in practice, illustrating their arguments with relevant case law and jurisprudence. They conclude that this is a shortcoming that not only weakens the prestige of international adjudicating bodies as protectors of human rights, but also undermines the much-pronounced commitment to the preservation of minority identities in international human rights law. It is noted that this shortcoming certainly indicates a troubling contradiction between rhetoric and reality and should be addressed seriously if, six decades after the UDHR, minority rights are to be given any real content.

While intellectual property rights and the right to health are both recognized under the UDHR, there is concern, particularly in the face of HIV/AIDS pandemic in many parts of the developing world, about the threat posed by intellectual property rights to access to essential medicines in developing countries. Robert Ostergard and Shawna Sweeney's Chapter 9, 'Intellectual Property Rights, the Right to Health, and the UDHR: Is Reconciliation Possible?,' examines this apparent conflict of rights and their possible reconciliation. They note that while there has been growing support in many circles to make health care a universal human right and a 'global public good', since all societies benefit immensely from a healthy population, the present system of intellectual property rights has a detrimental impact on the right to health, as it reduces the availability of pharmaceuticals, especially for individuals suffering from curable diseases in developing countries, hence pitting the needs of the poor who require medicine to live against the profit-maximizing goals of pharmaceutical firms. The chapter discusses the numerous practical impediments to balancing the two values – the right of a creator to protect intellectual property and the right of everyone to enjoy the highest attainable standard of health care. Robert and Shawna argue that to strike a balance between these important values, all countries must work to develop policies that take into account the basic health and developmental interests of developing countries, and also that important changes must be made to the current system, especially with respect to the production and pricing of basic goods and services needed to achieve health subsistence rights. These changes, they argue, must include allowing developing countries access to essential medicines that support the realization of basic health, welfare, and economic development. The chapter concludes with a proposition that the current dominant state-centric paradigm that views the right to health care in strictly nationalistic terms must be replaced with a more cosmopolitan paradigm that reflects the true nature of the relationship between intellectual property rights and human rights as a 'global public good'. Anything short of that goal, they conclude, would leave the universal right to health care unrealized for a significant segment of the world's population.

Part II closes with Paul O'Connell's Chapter 10, 'Brave New World? Human Rights in the Era of Globalization', wherein he engages with the challenges posed by globalization to international human rights law. Paul notes that, like most other social phenomena, human rights have not escaped the gravitational pull of 'globalization speak' even though human rights scholars and practitioners

were late entrants to the debate. He identifies, however, that literature on globalization and human rights has since burgeoned, generating a variety of perspectives, both optimistic and pessimistic, about the relationship between globalization and human rights. The chapter provides a critical analysis of the concept of globalization, examining alternative approaches to its definition, the actual impact which globalization has had on human rights to date, the potential long-term implications of globalization for human rights, and the opportunities and obstacles that globalization presents in the realization of the UDHR promise. Paul argues, *inter alia*, that a clear understanding of what globalization is really about reveals that conditions for the violation of human rights are structurally embedded within the global status quo, as evidenced by the fact that neoliberal globalization has, to date, had serious adverse consequences for the protection of the entire catalogue of rights protected by the UDHR, with the effect that six decades after the adoption of the UDHR the promise of human flourishing contained therein remains unfulfilled. He concludes, *inter alia*, that if the next decade of globalization is to see any improvement in the global protection of human rights, it is essential that the ideals of the UDHR be joined with other emancipatory discourses, and be central to the opposition to neoliberal globalization and instrumental in the construction of a genuine alternative. The guiding principle in that regard, he argues, will be the pursuit of a social and international order in which the rights and freedoms set out in the UDHR can be fully realized.

5.2 Mechanisms and Implementation

Part III of this book covers issues relating to human rights mechanisms and implementation. Without relevant mechanisms and specific means of implementation, human rights theory and norms could remain mere rhetoric on paper. Effective mechanisms and means of implementation lead to the practical realization of human rights in the lives of human beings. It is often argued in that regard that the hurdles to implementation are much higher than those of norms and standard setting under international human rights law. While the UDHR did not provide for any specific mechanism of implementation for the rights guaranteed under it, the UN Charter before it and many human rights instruments after it provide for specific mechanisms and means of implementation aimed at ensuring the practical realization of human rights norms and provisions globally. This section thus consists of 10 chapters relating to systems, mechanisms and implementations of international human rights law, ranging from the UN global human rights system, the different regional human rights systems, and the role of National Human Rights Institutions (NHRIs) and non-governmental organizations (NGOs), as well as other relevant factors relating to the practical realization of human rights.

This part opens with Rhona Smith's Chapter 11, 'The United Nations Human Rights System', wherein she examines a complex system described as 'a multitude of entities which vary greatly in their range, remit and composition'. Rhona critically analyses the different mechanisms and means of implementation within the UN human rights system, which she identifies as falling into two main divisions. The first division consists of the UN Charter-based bodies such as the UN Security Council, the UN General Assembly, ECOSOC, the ICJ, and the UN Secretary-General. She examines the processes and procedures of each of these and other sub-bodies in this division. The second division consists of the UN treaty-based bodies created under the respective international human rights treaties. The chapter also examines other UN bodies such as the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Labour Organization (ILO), the World Health Organization (WHO), the Food and Agricultural Organization (FAO) and United Nations Children's Fund (UNICEF), analysing how their mandates impact on the realization of international human rights globally. Following the overall critical analysis of the system, Rhona

concludes that while there is no doubt that, six decades after the UDHR, human rights are now well ingrained in international and national society, transforming the rhetoric of the UDHR into a reality for some 6.7 billion people globally is still a challenge facing everyone and all parts of the UN system into the future.

While the UN system represents the major institutional framework for the universal implementation of international human rights law, the role of the different regional systems in achieving that goal cannot be overemphasized. Thus, the three existing regional human rights systems are also examined.

The African regional human rights system is examined in Chapter 12 by Olufemi Amao. The African system is the youngest of the three existing regional human rights systems and has often been castigated for its relative ineffectiveness over the years. Olufemi notes, however, that despite the grim picture often painted about the system, a potentially viable regional human rights system is emerging in Africa that is progressively making the human rights promises of the UDHR a reality to the people of Africa. The chapter gives a background of the emergence of the system, followed by a critical analysis of the relationship between the African human rights system and the UDHR, the unique features of the African Commission on Human and Peoples' Rights (ACHPR), the expansion of the rights protected under the African system, and the different mechanisms and means of implementation under the system such as the ACHPR, the African Court of Human and Peoples' Rights (ACtHPR), and the newly created African Court of Justice and Human Rights that would replace the ACtHPR in due course, as well as other relevant mechanisms. Olufemi also discusses the influence of the African Charter on domestic courts in Africa, using Nigeria as a case study in that regard. The chapter concludes with the observation that the African human rights system has, from inception, taken a very expansive approach to protection of rights by combining civil and political rights, ESC rights, and group rights. It is also noted that the African Commission has, through its jurisprudence, further widened the scope of rights protected under the African system, and the author hopes that this will further improve with the introduction of the African Court of Justice and Human Rights.

This chapter is followed by Jo Pasqualucci's Chapter 13, 'The Inter-American Human Rights System'. Jo starts with the observation that, prior to the UN General Assembly's adoption of the UDHR in December 1948, the General Assembly of the Organization of American States (OAS) had adopted the American Declaration of the Rights and Duties of Man more than 6 months earlier in April 1948, and that, since then, the OAS has adopted numerous other human rights treaties and declarations. She notes, however, that progress in the actual protection of human rights has not always been evident across the region. The chapter critically examines the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights (ACHR), and the various implementing organs such as the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights (IACtHR), and their processes. Apart from the American Declaration of the Rights and Duties of Man and the ACHR, the chapter also examines other Inter-American human rights instruments and the impediments to the optimal functioning of the Inter-American system. The chapter concludes, *inter alia*, that since the adoption of both the UDHR and the American Declaration of the Rights and Duties of Man in 1948, the OAS has developed a functioning regional system of human rights protection, with all Latin American states being parties to the ACHR and accepting the jurisdiction of the IACtHR. While recognizing the need to strengthen the system, Jo asserts that the Inter-American human rights system is yet serving as a model for human rights protection in other parts of the world, especially as the first system to function in an underdeveloped region.

The third regional system is examined in Alastair Mowbray's Chapter 14 on the European Convention on Human Rights (ECHR). The chapter starts with an analysis of the relationship between the UDHR and ECHR, detailing how the UDHR was a significant component in the formulation of the ECHR and how over the years the member states have gradually widened, via additional protocols, the substantive rights and freedoms guaranteed by the ECHR to cover almost all the rights in the UDHR. He notes, however, that the Committee of Ministers, the dominant institution in the reform process, has retained the fundamental philosophy of the ECHR to ensure that the additional protocols should concentrate upon civil and political – and not ESC – rights. Alastair also analyses the mechanisms and means of implementation under the ECHR, observing that, while the UDHR did not provide any system to enforce its provisions, a major achievement of the ECHR was the provision of organs of implementation for the European regional system, originally in the form of an European Commission of Human Rights and a part-time European Court of Human Rights, which were later merged into the current, single, full-time European Court of Human Rights (ECtHR) under the Protocol 11 reforms in 1994. The chapter analyses the processes of the ECtHR and the role of the Committee of Ministers in supervising the execution of the court's judgements, as well as the issue of the work load crisis of the court and the various proposals to address that problem, which consequently led to the adoption of Protocol 14bis by the Committee of Ministers in May 2009, which is now in force. The judicial expansion of the provisions of the ECHR by the decisions of the ECtHR is also illustrated with relevant case law. The chapter concludes, *inter alia*, that, whatever their problems, the ECHR and the ECtHR are a major achievement for the entire world in relation to the development of international human rights law.

As the main judicial organ of the UN, the role of the ICJ in enhancing the promotion of human rights is well recognized, even though it does not have a specific human rights mandate, and individuals have no *locus standi* to bring cases of human rights violations before it. In Chapter 15, 'Human Rights in the International Court of Justice', Gentian Zyberi examines the ICJ's role. The chapter examines this role through analyses of relevant ICJ case law relating to the UDHR and the court's contribution to the development of human rights generally. Gentian observes that the jurisprudence of the ICJ in the field of international human rights law encompasses many important issues such as the internationalization of human rights, the coining of certain fundamental principles of international human rights law, the characterization of the right of peoples to self-determination as a right *erga omnes*; the interpretation of the prohibition of genocide as including an obligation to prevent genocide, the clarifications on the right to asylum, diplomatic and consular protection, the protection of human rights rapporteurs in order for them to be able to fulfil their duty when in the service of the UN, the applicability of international human rights instruments in situations of armed conflict, clarifications on the issue of individual criminal responsibility for internationally recognized crimes, and some important pronouncements on environmental issues. The chapter concludes with the observation that, although the ICJ does not represent a forum where individuals can claim their human rights, it is, nevertheless, a judicial organ that has contributed and can still contribute to furthering international human rights law in two principal ways. First, it can continue to interpret and thus develop international human rights rules and principles, and, second, by keeping the fabric of international law together, it can ensure a better interaction between the different branches of international law in order to achieve an optimum protection of human rights within the framework of international law. The chapter also provides an annex of a list of cases submitted to the ICJ relating to human rights since 1991.

The role of national human rights institutions (NHRIs) is examined by Rachel Murray in Chapter 16. Rachel begins with the observation that, while states were the main actors on the international human rights stage when the UDHR was adopted, with other players getting only brief mention

in the preamble, today the important role of national institutions in the promotion and protection of human rights and the need for states to establish them are well recognized and acknowledged. She notes, however, that with this recognition comes an understanding of the unique and powerful position that these types of bodies hold and the need to consider more their accountability and separate status from governments and civil society. Rachel argues that, while the position of NHRIs as important actors in the field of human rights appears to have been clearly established, there are still many unanswered questions about who exactly should be permitted to be involved and whether the checks and balances in place at present are sufficient to monitor and regulate them. The chapter also examines three important issues in relation to the future role of NHRIs, namely, accreditation, the range of bodies, and their role in monitoring and implementation of international treaties. The chapter concludes, *inter alia*, that NHRIs have come a long way since the adoption of the UDHR, and the human rights field has also changed dramatically in terms of the actors who play a role in the creation, monitoring and implementation of human rights standards. While they are a potential force to be reckoned with, they also need to be considered meticulously and objectively.

This is followed by Dianne Otto's Chapter 17, 'Institutional Partnership or Critical Seepages?: The Role of Human Rights NGOs in the United Nations', wherein she examines the role of NGOs as important non-state actors in the promotion and protection of international human rights. The chapter starts by stating that international human rights NGOs were made possible by the UN Charter's introduction of the term 'non-governmental organizations' in its Article 71 and also by the UDHR, which laid the groundwork for the normative and institutional developments that were to follow. Dianne observes that, today, six decades after the UDHR, there are manifold and diverse accounts of the role of human rights NGOs in the promotion and protection of international human rights. She presents a critical analysis of this role under three main themes, namely, the expanding institutional and normative participation of human rights NGOs, the challenges of such increased institutionalization, and the issue of whether NGOs are institutional partners or critical seepages. The chapter concludes with the observation, *inter alia*, that the UDHR itself recognizes that the realization of its vision cannot be left in the hands of states or intergovernmental institutions when it calls upon 'every individual', as well as 'every organ of society', to strive for the effective recognition and observance of universal human rights and fundamental freedoms. In that regard, Dianne asserts that the primary role of human rights NGOs is to challenge the privileged knowledge and systems of hierarchy that international institutions support, and that, to do this, NGOs need to act dangerously in their engagement with intergovernmental institutions; preserve their autonomy; defend their use of oppositional and confrontational strategies; maintain their character as diverse, creative and often locally based; and take advantage of all manner of seepage to keep emancipatory visions of human rights free from institutional capture.

In Chapter 18, Mashood Baderin examines the impact of Islamic law on the implementation of international human rights law, particularly in Muslim states, using the ICCPR as a case study. He begins with the observation that the relevance and prospective impact of Islamic law on international human rights law had been manifested from the beginning of the UN's human rights venture during the early debates on the draft provisions of the UDHR, when objections were raised on grounds of Islamic law, particularly by Saudi Arabia, regarding the scope of certain provisions of the UDHR. Although the objections were defeated at the drafting stage, Saudi Arabia consequently abstained in the voting for the UDHR at the UN General Assembly in December 1948. While most Muslim states, including Saudi Arabia, have, today, ratified various international human rights treaties, some of them have done so with reservations and/or interpretative declarations on grounds of Islamic law, with others making reference to Islamic law in their periodic reports concerning relevant international human rights treaties. Mashood analyses the importance of domestic law in

facilitating the implementation of international human rights law in respective states, highlighting the role of Islamic law in that regard in respect of Muslim states that apply Islamic law as part of their domestic laws. He then examines the nature of Islamic law, distinguishing between its historical and evolutional perceptions, and argues that the adoption of an evolutional perception of Islamic law by Muslim states can help to harmonize apparent areas of contradiction between Islamic law and international human rights law. The chapter then analyses the impact of Islamic law on the implementation of the ICCPR, referring to other relevant human rights treaties in that regard. After engaging with relevant materials in that regard, the chapter notes that international human rights law has, conversely, also affected the development of Islamic law and has led to some relevant reforms to Islamic law in certain Muslim states. The chapter concludes, *inter alia*, that while Islamic law will continue to impact, one way or another, on the implementation of international human rights law in many Muslim states, such impact should not necessarily be negative, and that, through the right political will, Islamic law could be constructively utilized for the positive implementation of international human rights law in Muslim states.

While human rights courts have been created within all the existing three regional human rights systems, no international human rights court currently exists under the UN international human rights system. Gerd Oberleitner examines the need for such a court in Chapter 19, 'Towards an International Court of Human Rights? '. He notes that, while a remarkable global human rights infrastructure has been put in place since the adoption of the UDHR, the one institution conspicuously absent in the assemblage of human rights bodies is a World Court with the mandate to adjudicate human rights on a global scale. Gerd argues that, while the idea of an international human rights court is often dismissed as utopian, regional human rights courts are praised as the crown jewels of human rights protection. The chapter asserts that the time has come to begin a debate on an international court of human rights, especially with recent important steps taken within the UN system such as the replacement of the Commission on Human Rights by the Human Rights Council in 2006 and the creation of the International Criminal Court (ICC) since the Rome Statute came into force in July 2002. Gerd analyses the advantages and disadvantages of creating such a court, weighing all the different propositions in that regard. He concludes that while there is no doubt that the difficulty in setting up an international human rights court is considerable, it seems inconsistent, if not hypocritical, to push for the right to an effective remedy as a core human right on the national level while at the same time negating this right in the UN human rights system and thereby excluding a great number of persons from access to an international court in cases of human rights violations not addressed at national or regional levels. The creation of such a court or, to begin with, the engaged debate over its establishment, he argues, would open a new chapter for the UN and the development of international human rights law generally.

Part III on mechanisms and implementation closes with Todd Howland's Chapter 20, 'Multi-State Responsibility for Extraterritorial Violations of Economic, Social and Cultural Rights'. Todd notes that, six decades after the UDHR, there is still debate on the precise nature and content of extraterritorial human rights obligations, especially when the acts or omissions of states or non-state actors, whether as a result of foreign military intervention, war on terrorism, globalization or otherwise, affect the human rights of individuals in another state. Todd argues that multiple states can and do hold legal responsibility to protect and promote ESC rights beyond their borders. He notes that the idea that multiple states have human rights obligations to the same individual is derived, in part, from his own experience as a UN representative working in 'failed states' and as part of multilateral efforts to bring peace, respect for human rights, and stability to war-torn and dysfunctional states. He notes that these violations can be direct or indirect. The chapter uses Haiti and the Democratic Republic of Congo as reference points, and explores several existing

theoretical frameworks that will help situate the idea of multi-state accountability in human rights in current scholarship. He further explores different theories of tort and contract law that can help incorporate the multi-state approach into human rights law and practice, and he also outlines the existing hurdles in the international legal system that the proposal will have to overcome. In conclusion, Todd asserts that defining the extent of states' human rights obligations when intervening in other states will help to improve transparency, accountability and effectiveness in the international protection of human rights. He notes that once there is a growing understanding of this responsibility, the result will be the realization of this obligation whenever states and their agents, such as the UN and the World Bank, operate in another state.

5.3 Responsibilities and Remedies

Part IV of this book contains seven chapters addressing relevant issues relating to human rights responsibilities and remedies. The UDHR acknowledges that the full realization of human rights entails some responsibilities on the part of states, individuals, and every organ of society,[65] as well as the right of victims of human rights violations to an effective remedy.[66]

Since states have the major responsibility for securing human rights, this section opens with Danwood Chirwa's Chapter 21, 'State Responsibility for Human Rights'. In this chapter, Danwood critically analyses the ways in which international human rights law, spearheaded by the UDHR, has fundamentally altered the traditional doctrine of state responsibility in international law. He notes that international human rights law has expanded the conceptual framework of the idea of state responsibility beyond what was initially imagined by international jurists. He explores relevant questions such as the following. Who can invoke the doctrine of state responsibility? Whose rights give rise to state responsibility? Can non-state action give rise to state responsibility? The last question then leads to a discussion of the implications of the doctrine of state responsibility for the position of non-state actors in relation to international human rights law. Danwood observes that international human rights law has altered the traditional conceptions of state responsibility in two fundamental ways. The first is in relation to the status of the individual in international law and the second relates to the range of states which can enforce rights in international law. He argues that for human rights to be secured, non-interference by the state is as critical as protective measures by it, and that failure by the state to take protective measures will lead to its responsibility in international law not necessarily because of the mere occurrence of the violations themselves but because of the state's inaction or failure to prevent the violation. He concludes, inter alia, that, international human rights law has painstakingly developed to extend the scope for holding states responsible for violations of human rights and has also emboldened the status of individuals in international law by arming them with the power to enforce their rights not only against foreign states but also against their own state. A state, he argues, can be held responsible even if not directly connected to the actual violation, and it can be held responsible even for those violations that it fails to exercise due diligence to prevent', investigate, punish the perpetrators, and provide redress to the victims.

This is followed by the specific examination of the question of state compliance in Frans Viljoen's Chapter 22, 'State Compliance with the Recommendations of the African Commission on Human and Peoples' Rights'. This chapter begins by noting that recent years have seen the increased engagement of international human rights law practice and scholarship with issues

65 See Preamble, UDHR.

66 See Art. 8, UDHR.

of implementation and compliance, and argues that this can certainly be reconciled with the vision of the drafters of the UDHR. Frans states that, by examining state compliance with the recommendations of the African Commission, which is a regional treaty body with a quasi-judicial status similar to that of the UN human rights treaty bodies, some light can be shed on the progress made to achieve effective recognition and observance of human rights standards as envisaged under the UDHR. After a brief exploration of the concept of compliance and an introduction to the African Commission's recommendatory mandate, four types of recommendations issued by the Commission are identified and discussed with the aim of placing the literature and available data in an analytical framework and pointing to avenues for further research and gaps that may need to be filled. In that regard, two major questions are explored, namely: do states comply with their formal treaty obligations, and do individuals benefit from the ratification of treaties? The chapter concludes that the overall picture that emerges is that of very limited state compliance in Africa, and it recommends ways that state compliance can be improved to ensure concrete benefits and real improvements in the lives of human beings as envisaged under the UDHR. Compliance with the recommendations of a regional body such as the African Commission, Frans argues, is a small but important part of realizing the UDHR promise.

The question of individual responsibility is examined by Ilias Bantekas in Chapter 23, 'Individual Responsibility and the Evolving Legal Status of the Physical Person in International Human Rights Law'. He notes that, since the adoption of the UDHR, it has become clear over the years that state responsibility for human rights violations ought to be complemented by perpetrators' individual responsibility under criminal and civil law. This chapter focuses on the concept of individual responsibility, according to which the natural corollary of a human rights violation is the criminal liability of the perpetrator under international law. Ilias examines to what degree this concept is applicable to all violations of human rights. He argues that the concept of individual responsibility is inextricably linked to the evolving nature of the status of the physical person in international law and that international human rights law has played a prominent role in this regard, particularly through the establishment of individual complaint mechanisms and the granting of *locus standi* to aggrieved persons. He also examines the employment of extra territorial jurisdiction to give meaning to the existence of criminal liability under international law. He traces the Nuremberg legacy and how this has evolved into individual responsibility in contemporary international human rights law. He concludes, *inter alia*, that the big test for human rights and international criminal law is to sustain prosecutorial activism in more states and to enhance state cooperation in the exercise of universal jurisdiction. This latter type of jurisdiction must not become anathema or the battleground for only a handful of states, but must develop into a real threat against perpetrators of international crimes that also often amount to human rights violations.

In Chapter 24, 'The International Criminal Court and Individual Responsibility of Senior State Officials for International Crimes', Manisuli Ssenyonjo examines the role of the ICC in relation to such criminal responsibility. Manisuli starts with the observation that effective protection of human rights requires that those who commit serious crimes such as genocide, crimes against humanity and war crimes, which amount to serious human rights violations, must be held individually responsible for those crimes without any distinction based on official capacity. This, he argues, will help to end impunity and deter future commission of international crimes that constitute serious violations of human rights. He notes that the ICC was established, 50 years after the UDHR, to operate beyond national courts, which tend to refrain from prosecuting state officials enjoying immunity from prosecution under national law and private individuals suspected of having committed international crimes that national authorities implicitly instigate, or at least tolerate. He makes the important observation that since the ICC became operational, all its active investigations by the end of 2009

have been in Africa, with the Sudanese President Al Bashir's case constituting its highest profile case so far. After a thorough examination of the relevant issues, the chapter concludes, *inter alia*, that the establishment of the ICC is a major step forward in the struggle against impunity and that since there is currently no international court of human rights, the ICC can play an essential role by holding individuals responsible for international crimes within its jurisdiction without any distinction based on official capacity. He argues that, as a permanent judicial institution that aspires to be global in scope and universal in acceptance, the ICC needs to demonstrate that it is not a neo-colonial institution investigating crimes in a few weak states, but should widen its scope of investigation and possible prosecution of crimes committed by the nationals of the most powerful states falling within its jurisdiction, while at the same time acting independently in deciding cases before it.

The right to an effective remedy is addressed by Sonja Starr in Chapter 25, 'The Right to an Effective Remedy: Balancing Realism and Aspiration'. Sonja notes that, of all the rights guaranteed under the UDHR, few have been so transformed over the last six decades as Article 8's right to an effective remedy. While the provision on effective remedy appears to have been an afterthought during the drafting of the UDHR, and the content of the remedy had been little developed for decades thereafter, Sonja identifies that the situation has now changed and that the international human rights community has successfully pushed for the creation of international remedial mechanisms, with international case law and instruments establishing the principles governing reparations. The chapter reviews the developments in that regard and assesses the current state of the law of remedies for human rights violations. Sonja traces the evolution of the individual right to an effective remedy, identifying the major types of remedies granted by international courts in human rights cases. She also discusses the corrective, expressive, structural, and deterrent purposes of remedies and the effectiveness of current remedial practice in accomplishing them. She argues that human rights law, committed in theory to the full remedy ideal but in practice often unable to realize it, is in need of a coherent set of principles governing the permissibility of remedial shortfall and the choice among second-best remedies in situations involving strong competing interests. In conclusion, she observes that six decades after its articulation in the UDHR, the right to an effective remedy remains a rapidly evolving component of human rights law, but its specific content has not been clearly defined. This is illustrated by the differences in remedial approach between the European and Inter-American Courts, two regional human rights courts with similar treaty mandates. Even wider variation is found among the multitude of other domestic and international courts and other remedial institutions. Every new institution with authority to grant reparations, such as the ICC and the African Court, offers the prospect of taking remedial doctrine in new and unexpected directions.

Generally, human rights become more vulnerable during emergency situations and so do human rights responsibilities and remedies. Vernor Muñoz Villalobos examines the respect for human rights in emergency situations in Chapter 26, 'Protecting Human Rights in Emergency Situations: The Example of the Right to Education'. This chapter focuses on the protection of human rights in emergency situations with particular reference to the right to education, since education is not only a human right in itself but also an indispensable means of realizing other human rights. Vernor notes that protecting the right to education in emergency situations can reinforce the protection of other human rights by creating a more favourable environment for the realization of human rights generally – for example, by empowering women, safeguarding children from exploitation, promoting human rights and democracy, and protecting the environment. He observes that six decades after the UDHR the commitment to realizing the human right to education has been a signal failure, especially in situations of emergency and for the vulnerable. He asserts that there

remains an urgent need to redouble efforts to safeguard the right to education for the vulnerable – especially children, adolescents and youths – who are denied any possibility of attending school or attaining an education as the result, direct or indirect, of an emergency situation impacting their community. The chapter defines what constitutes emergency situations and stresses the importance of education in such situations. It also analyses the international legal and political framework for the protection of education in emergencies, and the role of donors and education providers, and notes that there is currently no single agency to which states requiring educational assistance can turn in an emergency. He concludes that the tolerance of the international community of the violation of the right to education in times of emergency is under challenge, and that it is our collective responsibility to rise to this challenge and ensure that the principle of an education for all, enshrined in the UDHR, is fully protected in emergency situations.

Part IV closes with by John Ruggie's Chapter 27, 'Protect, Respect, and Remedy: The UN Framework for Business and Human Rights', in which he examines the human rights responsibilities of corporate bodies. John observes that the international community is still in the early stages of adapting the current human rights regime to provide more effective protection to individuals and communities against corporate-related human rights harm. The chapter presents a principles-based conceptual and policy framework intended to help achieve that aim. The framework comprises three core principles; namely, the state duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for more effective access to remedies. John indicates that the three principles form a complementary whole in that each supports the others in achieving sustainable progress. After comprehensive analyses of each of the three principles, he concludes, *inter alia*, that while many countries, including in the developing world, have been able to take advantage of the new economic landscape to increase prosperity and reduce poverty, the rapid market expansion has also created governance gaps in numerous policy domains; the area of business and human rights is one such domain. While there have been a variety of measures, albeit gingerly introduced to date, to promote a corporate culture respectful of human rights, the fundamental problem is that there are too few of them, with none reaching a scale commensurate with the challenges at hand. That, John asserts, is what needs fixing, and that is what the framework of 'protect, respect and remedy' is intended to help achieve.

5.4 'And Beyond'

Part V, which forms the conclusion of this book, is entitled 'And Beyond', a phrase culled from the main title of the book. It aims to project a future for international human rights law beyond the six decades since the adoption of the UDHR. This part consists of Robert McCorquodale's Chapter 28, entitled appropriately, 'A Future for Human Rights Law'. With reference to the final words of the preamble of the UDHR, which indicates that 'every individual and every organ of society' is to promote respect for human rights and that they are to secure the universal and effective recognition and observance of human rights, Robert explores the possibilities that may arise in the future for human rights protections if international human rights law were to be inspired by the UDHR to extend legal obligations to individuals and other organs of society, that is, to non-state actors, and the impact that this could have on the universal and effective protection of international human rights. In that regard, the chapter examines non-state actors and human rights, including corporations, international organizations, opposition groups, social organizations, and the application of human rights to poverty. Robert concludes, *inter alia*, that the UDHR was a remarkable document when it was adopted just as the Cold War began, and, six decades later, it remains a remarkable document. He notes that human rights are only fully effective when they are lived in reality and that the

mission of the UDHR was not aimed solely at states, or designed to create an international human rights law in which only states have legal obligations. Rather, its intention was to ensure that 'every individual and every organ of society' have responsibilities to promote respect for human rights and 'secure [the] universal and effective recognition and observance' of human rights. This was an appeal beyond states, and it is in this spirit that human rights law must be carried forward into the future.

6. Conclusion

It is certainly not possible to examine all the ways in which international human rights have developed theoretically and practically over the past six decades since the adoption of the UDHR, and beyond, in just one volume. Nevertheless, this book has endeavoured to capture as far as possible, through these chapters contributed by highly qualified publicists from various states and experts in different fields of international human rights law, the most relevant and significant issues in the development of international human rights law over the past six decades, issues that will certainly continue to influence its development for many decades into the future.

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