

# Summary of Contents

Acknowledgements

xxxi

## PART A: INTRODUCTORY NOTIONS AND BACKGROUND TO INTERNATIONAL HUMAN RIGHTS MOVEMENT

<b>1. Human Rights Concepts and Discourse</b>	3
A. Global Snapshots	3
B. The Global Framework for Contemporary Human Rights Discourse:	
Capital Punishment, Interactions among States, Exceptionalism	17
1. The Rapidly Changing Law on Capital Punishment	18
2. Should National Courts Look to Foreign Decisions and International Law about Human Rights Issues Even When Not Formally Bound?	42
3. Exceptionalism and Unilateralism: Recent US Approaches to International Law and Human Rights	46
<b>2. The Human Rights Movement: Background and Birth</b>	58
A. Laws of War and Customary International Law	61
B. State Responsibility, General Principles and Natural Law	85
C. Interwar Minorities Regime and the Role of Treaties	96
D. Judgment at Nuremberg	115
E. Birth of the Movement: The UN Charter and the UDHR	133

## PART B: NORMATIVE FOUNDATION OF INTERNATIONAL HUMAN RIGHTS

<b>3. Civil and Political Rights</b>	151
A. The International Covenant on Civil and Political Rights: Introduction	151
B. Significance for Human Rights Movement of Changing Character of Customary International Law and of 'Soft Law'	160
C. Women's Rights and CEDAW	175
1. Background to CEDAW: Socio-Economic Context, Discrimination and Abuse	176
2. CEDAW: Provisions and Committee	183
3. The Public/Private Divide: Discrimination and Violence by Nonstate Actors	213
D. Torture Revisited	224
<b>4. Economic and Social Rights</b>	263
A. Socio-Economic Context and Historical Background	263
B. Competing Perspectives on ESR	280

1. Comment on Governmental Ambivalence	280
2. Philosophical Perspectives	283
3. Religious Perspectives	293
C. The Problem of Resources	294
1. 'Available Resources'	295
2. The Fiscal Dimension of Determining 'Available Resources'	305
3. Is Poverty a Violation of Human Rights?	308
D. Giving Content to ESR: Justiciability	313
1. India: 'Directive Principles'	321
2. South Africa: A Model Social Rights Constitution?	327
3. The United States: Education Rights	347
4. Europe: Constitutional Social Justice	352
E. Giving Content to ESR: International Monitoring	358
1. General Comment: A Case Study of the Right to Water	358
2. A Complaints Procedure under the ICESCR?	362
3. Instruments Adopted by International Organizations Outside of the Human Rights Framework	366
4. Advocacy by Non-Governmental Organizations	368
F. The Relationship between the Two Sets of Rights	370
<b>5. National Security, Terrorism and Limitations on Human Rights</b>	<b>375</b>
A. Terrorism and Human Rights: Definitions and Relationships	375
B. 11 September 2001: A Turning Point	380
C. The Legal Framework: Public Emergencies, Derogations and the Laws of War	385
D. Regulating Detention	404
1. Case Study: Guantánamo Detainees — Process for Determining Status and Grounds for Detention	404
2. Case Study: Indefinite Detention in Europe	416
E. Guaranteeing Fair Trials	432
F. National Security and Economic and Social Rights	456

### PART C: RIGHTS, DUTIES AND DILEMMAS OF UNIVERSALISM

<b>6. Rights or Duties as Organizing Concepts</b>	<b>475</b>
A. Ideas about Rights and the Effects of Rights Rhetoric	476
B. Duty-Based Social Orders	496
<b>7. Conflict in Culture, Tradition and Practices:     Challenges to Universalism</b>	<b>517</b>
A. Universalism and Cultural Relativism	517
B. Dissonance and Conflict: Illustrations	540
1. Gender	541
2. Religion	569

a. Comparative Perspectives among States	570
b. International Law Perspectives	590
c. Proselytism	600
3. Dress and Symbols, Immigration, and Multiculturalism	616
4. Freedom of Speech	639
<b>PART D: INTERNATIONAL HUMAN RIGHTS ORGANIZATIONS</b>	
<b>8. Design and Functions of International Institutions, and Issues of Sovereignty</b>	669
A. Characteristics of IGOs within the Human Rights Movement	670
B. Sovereignty and Domestic Jurisdiction	689
C. Institutional Design: Building Global Structures to Influence States	709
<b>9. The United Nations Human Rights System</b>	735
A. The UN System: Charter-Based Institutions	737
B. Techniques for Responding to Violations	746
1. Fact-Finding	747
2. The 1503 Procedure: Pros and Cons of Confidentiality	754
3. The 1235 Procedure	759
C. The Thematic 'Special Procedures' of the Commission and Council	765
1. Annual Reports and the Development of Jurisprudence	769
2. Country Fact-Finding Missions	774
3. Sending Communications	782
D. The UN Human Rights Council	791
1. Background	791
2. Establishing the Human Rights Council	799
3. Universal Periodic Review	806
4. The Council's Response to Violations	811
E. The Role of the High Commissioner for Human Rights	824
F. The Security Council and the Responsibility to Protect	835
<b>10. Treaty Bodies: The ICCPR Human Rights Committee</b>	844
A. Powers, Functions and Performance of the ICCPR Committee	845
1. Introduction	845
2. State Reporting	850
3. General Comments	873
4. Individual Communications	891
B. Comment on the Overall UN Human Rights Treaty Body System	918
<b>11. Regional Arrangements</b>	925
A. Comparison of Universal and Regional Systems	925
B. The European Convention System	933
1. Introduction and Overview	933
2. The European Court and its Procedures	938
3. The Interstate Procedure: Article 33	946

4. The Court's Jurisdiction	951
5. The European Court in Action: Some Illustrative Cases	964
a. Issues of Sexuality	965
b. Democracy and Political Participation	980
6. The Convention and the Court at the National Level	1001
7. The Continuing Need for Reform	1007
8. The Broader European Institutional Context: The EU and the OSCE	1014
9. Other Human Rights Conventions Adopted by the Council of Europe	1018
C. The Inter-American System	1020
1. Background and Institutions	1020
2. The Standards to be Applied to Different States	1029
3. The Commission at Work: Complaints and State Reports	1033
4. The Court in Action	1042
D. The African System	1062

### PART E: STATES AS PROTECTORS AND ENFORCERS OF HUMAN RIGHTS

12. Vertical Interpenetration: International Human Rights Law within States' Legal and Political Orders	1087
A. Domestic Internalization of Human Rights Treaties	1087
B. Conditioning Consent: Ratification with Reservations	1124
13. Horizontal Interpenetration: Transnational Influence and Enforcement of Human Rights	1156
A. Universal Jurisdiction	1161
B. US Civil Litigation and Global Comparisons	1177
C. Sovereign and Official Immunity	1222

### PART F: CURRENT TOPICS

14. Massive Human Rights Tragedies: Prosecutions and Truth Commissions	1243
A. International Criminal Tribunals for the Former Yugoslavia and Rwanda	1244
B. The International Criminal Court	1291
C. Hybrid Tribunals: The Case of Sierra Leone	1310
D. Alternative Justice Systems: Rwanda's Gacaca Courts	1319
E. Peace Versus Justice?	1331
F. Truth Commissions	1344
15. Non-State Actors And Human Rights	1385
A. Transnational Corporations and Human Rights	1387
B. Armed Opposition Groups	1414
C. International Non-Governmental Organizations	1420

<b>16. Human Rights, Development and Climate Change</b>	<b>1433</b>
A. Human Rights and Development	1433
B. The Right to Development	1442
C. Environment, Development and Human Rights	1453
<i>Documents Supplement</i>	1463
<i>Annex on Citations to Human Rights Instruments</i>	1465
<i>Index of Topics</i>	1473
<i>Index of Names</i>	1489

สำหรับเพื่อการศึกษาและการอ้างอิงเท่านั้น  
 For educational use and reference only