Human Rights presents human rights in action, focusing on their effectiveness as legal tools designed to benefit human beings. By combining conceptual analysis with an emphasis on procedures and mechanisms of implementation, this volume provides a multidimensional overview of human rights. After examining briefly the history of human rights, the author analyses the intellectual framework that forms the basis of their legitimacy. In particular, he covers the concept of universality and the widely used model that classifies human rights into clusters of different ‘generations’.

The volume then moves on to analyse the activities of the political institutions of the United Nations, the expert bodies established by the relevant treaties, and the international tribunals specifically entrusted at the regional level with protecting human rights. The author explains how and why in recent years, the classical array of politically inspired informal devices has been enriched by the addition of international criminal procedures and by endeavours to introduce civil suits against alleged individual violators of human rights. Finally, the volume is rounded off by a consideration of the importance of humanitarian law as an instrument for the protection of human life and dignity.

Human Rights
Between Idealism and Realism

Christian Tomuschat

Contents

Table of Cases xiv
Table of Legislation xxii
Abbreviations xliv

1. Introduction 1

2. History of Human Rights 6
   I Human Rights and the Rise of the State in Europe 6
   II International Protection of Human Rights: a Latecomer in History 7
   III From the Sixteenth Century to 1776 9
       Protection of Human Beings by Denial of Human Rights 9
       Protection of Human Beings by Grant of Human Rights 11
   IV From 1776 to 1914 12
       Human Rights in National Constitutional Texts 12
       Abolition of the Slave Trade 13
       Humanitarian Law 14
       No General Guarantees of Human Rights 15
   V Between the Two World Wars 16
       Mandate System of the League of Nations 16
       International Protection of Minorities 17
       Objectives of the International Labour Organization 20
       Legal Doctrine 20
   VI The Great Leap Forward: 1945 22
3. The Different ‘Generations’ of Human Rights: From Human Rights to Good Governance

I Terminology
II Development of First Generation and Second Generation Rights at National Level
   First Generation Rights
   Second Generation Rights
III Development of the Current System of International Protection of Human Rights
   Universal Declaration of Human Rights
   European Convention on Human Rights and the European Social Charter
   The Two UN Covenants on Human Rights
   American Convention on Human Rights
   African Charter of Human and Peoples’ Rights
   No Regional Instrument in Asia
   Customary Law
   Soft Law
IV Contents of the International Bill of Human Rights
   Substantive Provisions
   Rights and Obligations Under Human Rights Treaties
   Equality and Non-discrimination
   Background
   Legal Instruments Banning Discrimination
   The Unity, and the Difference in Character, of First Generation and Second Generation Rights
V Third Generation Rights
   The Three Rights
   Right to Development
   Right to Peace
   Right to a Clean Environment
   Uncertainties Surrounding Third Generation Rights
   Holders of the Rights
   Duty Bearers
   Contents
VI Democracy
VII Good Governance
VIII Human Security
IX Conclusion

4. Universality of Human Rights
I Introductory Considerations
II The Legal Dimension
   UDHR
   The Two International Covenants
   Other Treaties
   Vienna World Conference on Human Rights
   Regional Instruments
III The Value Dimension
   Western Values
   Latin America
   Islamic Countries
   East Asia
IV The Empirical Dimension
V Conclusion

5. Implementation at National Level
I Duty Bearers
   States
   International Organizations
   European Communities
   United Nations
6. The Work of Political Bodies of International Organizations

I United Nations
   Norm-setting
   Monitoring
   The General Assembly and the Human Rights Council
   The Security Council

II European Union

III Conclusion

7. The Work of Expert Bodies: Examination of State Reports

I Introductory Considerations

II Reporting Systems at Regional Level
   European Convention on Human Rights
   African Charter on Human and Peoples’ Rights

III Reporting Systems at UN Level
   Monitoring Bodies
   Examining State Reports in Practice
   The Early Stages
   Later Developments: The Current Situation
   Contribution on NGOs
   Delayed Reports
   Consequences
   Follow-up
   Effects of Concluding Observations
   General Comments and General Recommendations

8. The Work of Expert Bodies: Complaint Procedures and Fact-finding

I Complaint Procedures
   Stocktaking
   Universal Level
   Interstate Complaint Procedures
   Individual Communication Procedures
   Regional Level
   Interstate Complaint Procedures
   Individual Complaint Procedures
   Reservations
   General Features of Individual Communication Procedures
   Persons Entitled to File Communications
   Rights that Can Be Asserted
   Standing
   Exhaustion of Local Remedies
   Other International Procedures of Settlement
   Unsubstantiated Communications
   Absence of Oral Hearings
   Interim Relief
### III Prohibition of Specific Weapons

#### IV Law Making

- Necessity of Humanitarian Law? 248
- Legal Sources 249
- Treaties 249
- Custom 249

#### V Main Issues

- War and Armed Conflict 251
- Internal Armed conflict 251
- Distinction Between Combatants and Civilians 255
- Distinction Between Military and Civilian Targets 256
- Protection of the Environment, Protection of Human Habitat 258
- Threshold of Armed Conflict 258
- Applicability of Common Article 3 259
- Declaration on Minimum Humanitarian Standards 260
- Lacunae in the Legal Regime of Internal Armed Conflict 260

#### VI Ensuring Observance of, and Respect for, Humanitarian Law

- A Culture of Compliance 262
- Monitoring 262
- Countermeasures 264
- State Responsibility 265

### 12. Criminal Prosecution of Human Rights Violations

#### I General Considerations

#### II National Prosecution

- Territorial Jurisdiction 270
- Extraterritorial Jurisdiction 273

#### III International Prosecution

- International Military Tribunal at Nürnberg 281
- Ad hoc Tribunals Established by the Security Council 282
- International Criminal Court 283
- Hybrid Criminal Tribunals 285

#### IV A Summary Balance Sheet of the Two Ad Hoc Tribunals

- Authority of the Security Council 286
- Customary Nature of International Criminal Law 287
- Non-international Armed Conflicts 287
- Amnesties 288
- Pre-trial Detention 289
- Reparation for Persons Erroneously Prosecuted 289
- Statistics 290

#### V Conclusions

### 13. Civil Suits Against Human Rights Violators

#### I General Considerations

#### II Redress Afforded by the International Community

#### III The Gaps in Existing International Systems

#### IV A Cause of Action under International Law

- Reparation Under Human Rights Treaties 297
- International Covenant on Civil and Political Rights 297
- European Convention on Human Rights 299
- American Convention on Human Rights 300
- Conclusion 301

- Reparation Under European Community Law 302
- Reparation Under the Convention Against Torture 303
- Reparation Within the Framework of Criminal Prosecution 303

#### V Legal Connotation of Individual Claims Under International Law

- General Framework 305
- Competent Forum 307

#### VI Procedures Under Domestic Law

- Immunity 312
14 Time for Hope, or Time for Despair?

Index