Summary of Contents

Preface xxxi Acknowledgments xxxv

Historical Introduction 1

Problem I The Expulsion of Asians from Uganda

Are States Bound by the Human Rights

Clauses of the UN Charter? 14

Problem II Fujii, Filartiga, and Beyond

Are States' Courts Bound by the Human

Rights Clauses of the UN Charter and the

Universal Declaration of Human

Rights? 90

Problem III Suriname, the United States, and the UN Covenant on Civil and Political Rights

What Obligations Have States Assumed

Under the UN Human Rights

Treaties? 178

Problem IV The "Soft" Law of Principles, Guidelines, and
Model Laws
How Does the UN Create New Human
Rights Norms Other Than by Treaty? 276

Problem V The Greek Case, Resolution 1503, and Other UN Mechanisms

When Does the UN Investigate Human

Rights Violations? 340

Problem VI The Problem of Fact-Finding and Evidence

How Does the UN Investigate Violations of

Human Rights Law? 408

Sanctions and Southern Africa Problem VII

How Effective in Causing Compliance with Human Rights Law Are Coercive Measures That Do Not Involve the Use of Armed Force? 486

Problem VIII Bangladesh

When May the UN or Its Member States Use Armed Force for Human Rights

Purposes? 600

The European Regime for the Protection of Problem IX

Human Rights

Can Regional Systems to Protect Human Rights Be More Effective Than UN

Mechanisms? 680

The Protection of Human Rights in the Problem X

Americas and Africa

Can Regional Systems to Protect Human Rights Be More Effective Than UN

Mechanisms? 780

Human Rights in Extremis Problem XI

How Can Human Rights Be Protected in Armed Conflict, Civil Strife, and States of

Emergency? 836

International Criminal Law and Procedure and Problem XII

the Domestic Enforcement of "Piecemeal"

Conventions

Can the Criminal Process Be Used to Help

Enforce Human Rights Law? 934

The Carter Administration's Human Rights Problem XIII

Initiatives and Its Legacy

How Relevant Are Human Rights Concerns

to the Foreign Policy Process? 1026

Table of Contents

Sum	mary of Contents	vii
Prefe	ace	xxxi
Ackı	nowledgments	xxxxv
Hist	Problem I The Expulsion of Asians from Uganda Are States Bound by the Human Rights Clauses of the UN Charter? I. Uganda: The "Pearl of Africa" Despoiled A. Background: From Stanley to Obote B. The Role of the Asians and the Rise of Amin C. The Expulsion of the Asians Statement by Idi Amin Relating to the Expulsion of Asians from Uganda The Declaration of Assets (Non-Citizen Asians) Decree, 1972 D. The Response of the World Community 1. Debates in Great Britain 2. Debates at the UN II. Human Rights Before the UN Charter P. Sieghart, The International Law of Human Rights Farer, Human Rights Before the Second World War	1
Pro	oblem I	14
The	Expulsion of Asians from Uganda	
\boldsymbol{A}	re States Bound by the Human Rights	
C	lauses of the UN Charter?	
I.	Uganda: The "Pearl of Africa" Despoiled	16
		16
		18
	C. The Expulsion of the Asians	19
	•	19
	· · · · · · · · · · · · · · · · · · ·	
	• • •	22
		26
		26
	— — — — — — — — — — — — — — — — — — —	28
11.		32
		33
		55
	-	34
III.		36
		<i>J</i> -
	_	36
	Eighteenth Report of the Commission to Study	3
		36

	J. Briefly, The Law of Nations	38
	Comments and Questions	39
	B. Content and Legal Status of the Human Rights	
	Clauses	41
	Schachter, The Charter and the Constitution: The	
	Human Rights Provisions in American Law	41
	Note: U.S. Recognition of the Legal Status of the	
	ruman Rights Clauses	46
	C. Invocation of the Human Rights Clauses on the In-	
	ternational Level	48
	Legal Consequences for States of the Continued	
	Presence of South Africa in Namibia (South	
	West Africa)	49
	Schwelb, The International Court of Justice and	
	the Human Rights Clauses of the Charter	49
	Comments and Questions	54
TV.	The Relevance of the Human Rights Clauses of the	
	UN Charter to the Expulsion of Asians from	
	Uganda	55
	Wooldridge and Sharma, International Law and	
	the Expulsion of Ugandan Asians	55
	Plender, The Ugandan Crisis and the Right of Ex-	
	pulsion Under International Law	59
	Chhangani, Expulsion of Uganda Asians and In-	_
	ternational Law	61
	Note: Applying the Human Rights Clauses of the	
	UN Charter and Other International Norms to	
	the Expulsion of Asians from Uganda	64
V.		
	Subsequent Human Rights Abuses in Uganda	66
	A. The Situation Worsens	66
	Uganda — A Lawless State	66
	Mohr, In Amin's Taciturn Uganda, Even Food Is	/-
	Unspeakable	67
	See No Evil	70
	B. UN Action (or Inaction)	71 72
	C. The U.S. Embargo	73
T 77	D. The Tanzanian Intervention	76
VI.	Concluding Thoughts and Observations	78
	Bilder, Rethinking International Human Rights:	79
	Some Basic Questions Comments and Questions	79 82
7 7 T	~ · · · · · · · · · · · · · · · · · · ·	94 93

Pr	obl	em II	90
Fu	jii, l	Filartiga, and Beyond	
1	4re	States' Courts Bound by the Human	
		ots Clauses of the UN Charter and the	
		ersal Declaration of Human Rights?	
I.	In	troduction: The Relationship Between Interna-	
	tio	nal and Domestic Legal Systems	92
II.		e Status of the Human Rights Clauses in Domes-	
	tic	Law	95
	A.	The Legal Background	95
		Schachter, The Charter and the Constitution: The	
	_	Human Rights Provisions in American Law	95
	В.	The Fujii Case	101
		Note: Mr. Sei Fujii and the California Alien Land	101
		Law	101
		Sei Fujii v. State (California District Court of	102
		Appeal)	102
		Hudson, Charter Provisions on Human Rights in American Law	104
		Wright, National Courts and Human Rights — The	104
		Fujii Case	108
		Note: An Unusual Occurrence in the Course of the	100
		Fujii Appeal	114
		Sei Fujii v. State (California Supreme Court)	115
		Comments and Questions	118
	C.	The Post-Fujii Scene: Regrets and Hopes	121
	•	1. The Present Status of the UN Charter's Human	
		Rights Clauses	121
		2. Flashforward: Are Other Human Rights Treaties	
		Self-Executing or Not?	121
III.	The	e Status of the Universal Declaration in Domestic	
	Lat		122
	A.	The Historical Perspective	122
		Kunz, The United Nations Declaration of Human	
		Rights	122
		Schwelb, The Influence of the Universal Declara-	
		tion of Human Rights on International and Na-	
		tional Law	127
		The Universal Declaration of Human Rights at 20	132
	В.	U.S. Case Law Developments	133
		Setting the Stage	133
		Filartiga v. Pena-Irala	137

		Fernandez v. Wilkinson	143
		Forti v. Suarez-Mason	148
		Comments and Questions	154
	C.	cry nights Nears DU	162
		of the United States §702	162
		Lillich, Remarks	162
		International Law Association, Committee on the Enforcement of Human Rights Law, Final Report on the Status of the Universal Declaration of Hu-	
		man Rights in National and International Law	166
IV.	Fin	al Comments and Questions	171
7 0	.L 1.	om III	178
Pro	M	em III	_,_
Sur	ina	me, the United States, and the UN	
		ant on Civil and Political Rights	
t k	bai e U	t Obligations Have States Assumed Under IN Human Rights Treaties?	
I.	Su	riname: Development, Independence, Repression	181
II.	Th	e UN Treaty Approach to Human Rights	183
	A.	UN Human Rights Treaties: An Overview	183
		Bilder, Rethinking International Human Rights:	
		Some Basic Questions	187
	B.	General Human Rights Treaties	189
		Note: Completing the International Bill of Rights Henkin, Introduction, in The International Bill of	189
		Rights	191
	C.	Specific Human Rights Treaties	193
	D.	The Human Rights "Generations"	194
		1. Introductory Note	194
		2. "Second Generation" Human Rights	195
		Prepared Statement of Hon. Roberts B. Owen,	
		Legal Adviser, Department of State	198
		3. "Third Generation" Human Rights	201
		Marks, Emerging Human Rights: A New Genera-	
		tion for the 1980s?	201
		A. Robertson, Human Rights in the World	202
		Bibliographical Note on the Right to Development	204
	E	Bibliographical Note on the Right to Development UN Human Rights Law-Making: The Need for "Oual-	204
	E.	Bibliographical Note on the Right to Development UN Human Rights Law-Making: The Need for "Quality Control"	204 206

Table of Contents xiii

	International League for Human Rights, Human	
	Rights at the United Nations: New Standard	
	Setting	208
III.	The Civil and Political Covenant	209
	A. Substantive Provisions	209
	B. Implementation Measures	210
	1. State Reporting	211
	Shelton, Compliance Mechanisms [Periodic Re-	
	ports]	212
	2. Individual Communications	214
	Lewis-Anthony, Treaty-Based Procedures for Mak-	
	ing Human Rights Complaints Within the UN	
	System	215
	Report of the Human Rights Committee	220
	3. Interstate Complaints	222
	Leckie, The Inter-State Complaint Procedure in	
	International Human Rights Law: Hopeful	
	Prospects or Wishful Thinking?	222
	4. General Comments	224
IV.	Suriname Revisited: More Repression in Violation	
	of the Civil and Political Covenant	224
	Baboeram Communications	228
	Note: The Aftermath	237
V.	United States Ratification of Human Rights Treaties	239
	A. The U.S. Ratification Record: An Overview	239
	1. Introductory Note	239
	2. The Carter Administration Initiatives	240
	Henkin, The Covenant on Civil and Political Rights	241
	Moore, Statement Before the Senate Committee	
	on Foreign Relations	244
	Note: Carter's Legacy	245
	3. Developments During the Reagan and Bush	
	Administrations	246
	B. U.S. Ratification of the Civil and Political Covenant	248
	1. The Covenant and the U.S. Constitution and	
	Laws	248
	Restatement (Third) of the Foreign Relations Law	
	of the United States §701	248
	2. The Reservations, Understandings, and Declara-	
	tions "Debate"	250
	International Covenant on Civil and Political	
	Rights: The Administration's Proposed Reserva-	
	tions, Understandings and Declarations	251
	International Human Rights Law Group, Ratifica-	
	tion of the International Covenant on Civil and	
	Political Rights by the United States	254

		Stewart, United States Ratification of the Covenant on Civil and Political Rights: The Significance of the Reservations, Understandings, and Declarations 3. Attitudes of the U.S. NGO Community Towards Ratification Conditioned upon Acceptance of the Bush Administration "Package" Letter from Lawyers Committee for Human Rights to Senator Claiborne Pell Letter from Human Rights Watch to Lawyers Committee for Human Rights Letter from Lawyers Committee for Human Rights	259 260 261 263
		to Human Rights Watch	266
	C.	U.S. Ratification of the Other Human Rights Treaties: The "Package" Redux	268
		Comments and Questions Concerning U.S. Ratifi-	270
VI.		cation of the Human Rights Treaties and Comments and Questions	273
Das	shle	em IV	276
			_, _
		oft" Law of Principles, Guidelines, and Laws	
		Does the UN Create New Human Rights is Other Than by Treaty?	
I.	The	Attica Uprising	278
	A.	Background and Aftermath	278
	В.	Current Attitudes Toward Treatment of Prisoners	281
	C.	International Norms Governing the Treatment of	202
		Prisoners	283
		Besharov and Mueller, The Demands of the	
		Inmates of Attica State Prison and the United Nations Standard Minimum Rules for the Treat-	
		ment of Prisoners: A Comparison	285
	D.	Status of the Standard Minimum Rules	296
	D.	The Standard Minimum Rules for the Treatment of	_•
		Prisoners in the Light of Recent Developments	
		in the Correctional Field	296
II.	App	lying the "Model Law" or "Soft Law" Approach	
**	to I	Related Areas	300
	A.	General Observations	300
		Toman, Quasi-Legal Standards and Guidelines for	300

		N. Rodley, The Treatment of Prisoners Under	
		International Law	301
		Heijder, Codes of Professional Ethics Against	
		Torture	302
	В.	•	304
		1. Treatment of Prisoners	305
		2. Juvenile Offenders	305
		3. Standards for the Administration of Justice	306
III.		plementation of the Standard Minimum Rules	
	an	d Other Criminal Justice Norms	306
		R. Clark, The United Nations Crime Prevention	
		and Criminal Justice Program	307
		Report of the Working Group on Arbitrary Deten-	
		tion	311
	Α.	Regional Standards: European Prison Rules	313
	В.	National Standards: United States Federal and State	216
	_	Laws and Regulations (and Their Enforcement)	314
	C.	Non-Governmental and Private Organization Stan-	217
		dards	317
	27-	Comments and Questions	318
ΓV.		w Rights for Vulnerable Groups	322
	A.	General Observations	322
	В.	Minorities	324
		Hannum, Contemporary Developments in the In-	226
		ternational Protection of the Rights of Minorities Human Rights Committee, General Comment No.	324
		23(50) (Art. 27)	327
		UN General Assembly Resolution 47/135	329
		Note: Implementation	330
		Note: European Initiatives	331
	C.		332
	D.	Self-Determination	334
	D.	Comments and Questions	336
17	Eir	nal Comments and Questions	337
r.	1.11	un comments una questions	337
Pro	oble	em V	340
The	e Gr	eek Case, Resolution 1503, and Other UN	-
		nisms	
		n Does the UN Investigate Human Rights	
V	iola	ations?	
I.		e Right to Petition as a Human Right	342
II.		e Situation in Greece: The Sub-Commission's First t Case	3 <i>44</i>

	A.	Resolution 1503: High Expectations	344
	В.	Historical Note	344
		Note: Greece: Justice in Blinkers	346
		Note: Human Rights Report on Greece	347
	C.	Communication Alleging Violation of Human Rights	
		in Greece	348
	D.	The Sub-Commission's Response to the Communi-	_
		cation	354
		Note: Disappointing Start to New U.N. Procedure	
		on Human Rights	354
	E.	The Reaction of the Greek Regime	357
		Letter from the Permanent Representative of	
		Greece to the United Nations	357
	F.	The Overthrow of the Greek Regime and the Sub-	
		Commission's Role Therein	361
		Note: The Overthrow of the Greek Regime	361
		Statement by Amnesty International and the Inter-	
		national Student Movement for the UN	362
III.	An	alyzing the Procedures and Problems of Resolu-	
		1503	363
	••••	Newman, The New U.N. Procedures for Human	
		Rights Complaints: Reform, Status Quo, or	
		Chamber of Horrors?	363
		H. Tolley, Jr., The U.N. Commission on Human	
		Rights	366
		Alston, The Commission on Human Rights	379
TV.	Oth	er UN Mechanisms for Investigating Alleged Hu-	• • •
<i>2 7.</i>	ma	n Rights Abuses	380
	A.	Petition Procedures	380
	В.	Non-Petition Procedures	382
	В.	J. Carey, UN Protection of Civil and Political Rights	383
		Alston, The Commission on Human Rights	385
		Commission on Human Rights, Torture and Other	505
		Cruel, Inhuman or Degrading Treatment or	
		Punishment	394
		Commission on Human Rights, Question of Arbi-	0 , -
		trary Detention	394
		Commission on Human Rights, Right to Freedom	J/ -
		of Opinion and Expression	395
		Report of the Working Group on Arbitrary Deten-	
		tion	396
		Commission on Human Rights, Human Rights and	370
		Thematic Procedures	396
	C.	Future Prospects	400
	€.	H. Tolley, Jr., The U.N. Commission on Human	200
		Rights	400

Tab	le of Contents	xvii
V.	Farer, The United Nations and Human Rights: More Than a Whimper, Less Than a Roar Final Comments and Questions	402 405
Pr	oblem VI	408
Th	e Problem of Fact-Finding and Evidence	
	How Does the UN Investigate Violations of	
	Tuman Rights Law?	
I.	The Challenge: To Find Out What Is Really Hap-	
ı.	pening	410
II.	Gathering the Facts	411
11.	A. Information Reported by States	411
	Bayefsky, Making the Human Rights Treaties Work	412
	B. Fact-Finding by the UN General Assembly	417
	Rules of Procedure of the Special Committee to	,
	Investigate Israeli Practices	419
	Report of the Special Committee to Investigate	**/
	Israeli Practices	421
	C. Fact-Finding by the UN Commission on Human Rights	422
	1. Country-Specific Rapporteurs	423
	Consideration of the Report of the Mission Which	12,
	Took Place in Cuba	424
	Jiminez, Report on the Question of Human Rights	121
	in Chile	427
	Galindo Pohl, Report on the Human Rights Situa-	42/
	tion in the Islamic Republic of Iran	430
	2. Thematic Mechanisms	431
	Wako, Report [on Summary or Arbitrary Execu-	7,1
	tions)	431
	Kooijmans, Report [on Torture and Other Cruel,	7)1
	Inhuman, or Degrading Treatment or Punish-	
	ment)	436
	Vidal d'Almerida Ribero, Report [on Intolerance	430
	and Discrimination Based on Religion or Belief]	439
	Report of the Working Group on Arbitrary Deten-	737
	tion	441
	Note: The Role of the UN Secretariat	444
	Brody, Improving UN Human Rights Structures	444
	Note: A Rapporteur from the Commission on	777
	Human Rights Visits Suriname	445
	Wako, Report [on Summary or Arbitrary Execu-	447
	tions]	445
		447

	A B	The Background The Prelude to Independence Unilateral Declaration of Independence	489 490 491	
H T	ow um bat	Effective in Causing Compliance with an Rights Law Are Coercive Measures Do Not Involve the Use of Armed Force? Shodesia: The Factual Context	489	
Problem VII Sanctions and Southern Africa				
Pro	shla	em VII	486	
IV.	Fin	al Comments and Questions	483	
		Fact-Finding by International Organizations	482	
		The Gangaram Panday Case Weissbrodt, Human Rights Implementation and	401	
		The Velásquez Rodríguez Case	481	
		Bleier v. Uruguay	479 480	
		Ramcharan, Evidence	476	
	В.	The Burden of Proof	475	
-	A.	Admissibility of Evidence	475	
III.	Eve	aluating the Facts	475	
		ing Human Rights in the Americas	472	
	-•	T. Buergenthal, R. Norris, and D. Shelton, Protect-	-	
	E	Fact-Finding by Judicial and Quasi-Judicial Bodies	469	
		man Rights Organizations	468	
		Hannum, Fact-Finding by Non-Governmental Hu-		
		Non-Governmental Organizations	465	
		H. Thoolen and B. Verstappen, Human Rights Missions: A Study of the Fact-Finding Practice of		
		Correspondence: Professor Glennon	401	
		Correspondence: Professor Moore	458 461	
		Non-Governmental Organizations	456	
		Missions: A Study of the Fact-Finding Practice of		
		H. Thoolen and B. Verstappen, Human Rights		
		of Human Rights Fact-Finding	452	
	E.	Orentlicher, Bearing Witness: The Art and Science	174	
	_	tional Human Rights Fact-Finding Missions Fact-Finding by Non-Governmental Organizations	452	
		Belgrade Minimal Rules of Procedure for Interna-	449	
		Fact-Finding by International Organizations	449	
		Note: Toward a Solution — The Belgrade Rules on		
	D.	International Organizations	448	
	D.	The Need for General Standards for Fact-Finding by		

Table of Contents xix

	D. Initial Attempts at Settlement	493
II.		493
	Legality Under the UN Charter	495
	Introductory Note	495
	McDougal and Reisman, Rhodesia and the	47)
	United Nations: The Lawfulness of Interna-	
	tional Concern	497
	Acheson, The Arrogance of International	47/
	Lawyers	504
III.		509
	A. International Sanctions	509
	B. Regional Sanctions	511
	C. Unilateral Sanctions	513
	D. Voluntary Sanctions	514
IV.	U.S. Implementation and Enforcement of UN	714
	Sanctions Against Rhodesia	515
	A. U.S. Implementation of Sanctions	515
	1. The Legal Framework	515
	Legislative Reference Service, Library of Con-	7-7
	gress, The United Nations Participation Act	
	Sections Relating to Economic and Military	
	Action	515
	2. Presidential Action: Executive Orders 11,322	J - J.
	and 11,419	517
	U.S. Extends Program Banning Trade with South-	
	ern Rhodesia	518
	Executive Order No. 11,419 (Relating to Trade	
	and Other Transactions Involving Southern	
	Rhodesia)	518
	3. The Overlooked (?) Loophole: Rhodesian	
	Sanctions Regulation 31 C.F.R. §530.307	
	(1969)	520
	B. U.S. Enforcement of Sanctions	522
	1. Introduction	522
	2. Congress Enacts the Byrd Amendment	524
	UN Sanctions Against Rhodesia — Chrome	524
	Hearings on S. 1404, UN Sanctions Against	
	Rhodesia — Chrome, Before the Senate Committee on Foreign Relations	
		524
	Note: The Byrd Amendment Becomes Law Irony in Chrome: The Byrd Amendment Two	531
	Years Later	£22
	3. Critics Challenge the Byrd Amendment: Diggs	532
	v. Shultz and the Eventual "Repeal" of the Byrd	
	Amendment	535
	4 MIN 1 MII 1 MI 1 MI 1 MI 1 MI 1 MI 1 MI	777

	Dioge v. Shulte	536
	Diggs v. Shultz	540
	The Significance of Diggs v. Shultz Note: Security Council Resolutions in United	
	States Courts	541
	Congress "Repeals" the Ryrd Amendment	542
	4 The Enforcement of IIN Sanctions Under U.S.	
	Law: At Best, Inconsistent; At Worst, Non-	
	Existent	543
	Carnegie Endowment for International Peace,	
	Business as Usual: Transactions Violating	
	Rhodesian Sanctions	544
	Lillich, Examining Mobil's Role as Sanctions-	
	Buster	546
	The Treasury Department Investigations	550
	Note: Sanctions-Breaking Around the World	554
**	Rhodesia: The Achievement of Majority Rule	561
V.		
	A. The Salisbury Agreement and the Emergence of Zimbabwe Rhodesia	561
	deha Creation	-
		562
	of Zimbabwe Davidow, Dealing with International Crises: Les-	-
		563
	sons from Zimbabwe	
VI.	Viewpoints on International Economic Sanctions:	565
	Rhodesia as a Case Study H. Strack, Sanctions: The Case of Rhodesia	565
	D. Losman, International Economic Sanctions	567
•	R. Renwick, Economic Sanctions	568
	Auglin, United Nations Sanctions Against South	
	Africa and Rhodesia	569
	M. Doxey, International Sanctions in Contempo-	
	W. Doxey, international Sanctions at Conserve	571
T 77.7	rary Perspective	573
VII.		573
	A. UN Mandatory Sanctions Security Council Resolution 418	574
	Note: Implementation and Enforcement of Reso-	
	lution 418	575
	Note: British and U.S. Vetoes Block Further Man-	
	datory Sanctions	576
	Statement of Mr. Herbert S. Okun, Acting U.S.	
	Representative to United Nations, February	
	20, 1987	577
	B. UN Voluntary Sanctions	578
	1. General Assembly Sanctions	578
	2. Security Council Sanctions	578
	3. The Intergovernmental Group to Monitor the	
	·	

Table of Contents xxi

	Supply and Shipping of Oil and Petroleum	
	Products to South Africa: A Case Study in Im-	
	plementing UN Voluntary Sanctions C. U.S. Sanctions	579
	1. Introduction	580
		580
	2. President Reagan's Executive Order: Too Late and Too Little	•00
		583
	Recent Developments, Economic Sanctions:	
	United States Sanctions Against South Africa 3. The Comprehensive Anti-Apartheid Act of	583
	3. The Comprehensive Anti-Apartheid Act of 1986	505
		585
	Note: The Passage of the Federal Anti-Apartheid	
	Act: The Culmination of Anti-Apartheid Efforts Within the United States	
	Implementation and Enforcement of the Act	585
	4. The Rangel Amendment Denies Foreign Tax	587
	Credits to U.S. Corporations Doing Business in	
	South Africa	
		588
	5. The End of Sanctions and an Evaluation of Their Effectiveness	
T 77 71	Then Enecuveness The Final Comments and Questions	589
7 222	, 1111111 301111111111111111111111111111	590
Pro	oblem VIII	600
Ban		
	gladesh	
W	gladesh Then May the UN or Its Member States Use rmed Force for Human Rights Purposes?	
W A1	Then May the UN or Its Member States Use rmed Force for Human Rights Purposes?	602
W	Then May the UN or Its Member States Use rmed Force for Human Rights Purposes? Introduction: The Bangladesh Problem	602
W A1	Then May the UN or Its Member States Use rmed Force for Human Rights Purposes? Introduction: The Bangladesh Problem International Commission of Jurists, The Events	
W A1	Then May the UN or Its Member States Use rmed Force for Human Rights Purposes? Introduction: The Bangladesh Problem International Commission of Jurists, The Events in East Pakistan, 1971	604
W A1	Then May the UN or Its Member States Use rmed Force for Human Rights Purposes? Introduction: The Bangladesh Problem International Commission of Jurists, The Events in East Pakistan, 1971 Humanitarian Intervention by States	604 613
W A1	Then May the UN or Its Member States Use rmed Force for Human Rights Purposes? Introduction: The Bangladesh Problem International Commission of Jurists, The Events in East Pakistan, 1971 Humanitarian Intervention by States A. Background and Legal Issues	604
W A1	Then May the UN or Its Member States Use rmed Force for Human Rights Purposes? Introduction: The Bangladesh Problem International Commission of Jurists, The Events in East Pakistan, 1971 Humanitarian Intervention by States A. Background and Legal Issues Fonteyne, The Customary International Law	604 613
W A1	Then May the UN or Its Member States Use remed Force for Human Rights Purposes? Introduction: The Bangladesh Problem International Commission of Jurists, The Events in East Pakistan, 1971 Humanitarian Intervention by States A. Background and Legal Issues Fonteyne, The Customary International Law Doctrine of Humanitarian Intervention: Its Cur-	604 613 613
W A1	Then May the UN or Its Member States Use rmed Force for Human Rights Purposes? Introduction: The Bangladesh Problem International Commission of Jurists, The Events in East Pakistan, 1971 Humanitarian Intervention by States A. Background and Legal Issues Fonteyne, The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity Under the U.N. Charter	604 613 613
W A1	Then May the UN or Its Member States Use rmed Force for Human Rights Purposes? Introduction: The Bangladesh Problem International Commission of Jurists, The Events in East Pakistan, 1971 Humanitarian Intervention by States A. Background and Legal Issues Fonteyne, The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity Under the U.N. Charter B. The Debate over Humanitarian Intervention	604 613 613 614 623
W A1	Then May the UN or Its Member States Use rmed Force for Human Rights Purposes? Introduction: The Bangladesh Problem International Commission of Jurists, The Events in East Pakistan, 1971 Humanitarian Intervention by States A. Background and Legal Issues Fonteyne, The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity Under the U.N. Charter B. The Debate over Humanitarian Intervention Brownlie, Humanitarian Intervention	604 613 613
W A1	Then May the UN or Its Member States Use rmed Force for Human Rights Purposes? Introduction: The Bangladesh Problem International Commission of Jurists, The Events in East Pakistan, 1971 Humanitarian Intervention by States A. Background and Legal Issues Fonteyne, The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity Under the U.N. Charter B. The Debate over Humanitarian Intervention Brownlie, Humanitarian Intervention Lillich, Humanitarian Intervention: A Reply to Ian	604 613 613 614 623
W A1	Then May the UN or Its Member States Use remed Force for Human Rights Purposes? Introduction: The Bangladesh Problem International Commission of Jurists, The Events in East Pakistan, 1971 Humanitarian Intervention by States A. Background and Legal Issues Fonteyne, The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity Under the U.N. Charter B. The Debate over Humanitarian Intervention Brownlie, Humanitarian Intervention Lillich, Humanitarian Intervention: A Reply to Ian Brownlie and a Plea for Constructive Alterna-	604 613 613 614 623 624
W A1	Then May the UN or Its Member States Use rmed Force for Human Rights Purposes? Introduction: The Bangladesh Problem International Commission of Jurists, The Events in East Pakistan, 1971 Humanitarian Intervention by States A. Background and Legal Issues Fonteyne, The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity Under the U.N. Charter B. The Debate over Humanitarian Intervention Brownlie, Humanitarian Intervention Lillich, Humanitarian Intervention: A Reply to Ian	604 613 613 614 623

	C.	The Aftermath of a Crisis: Bangladesh Since 1971	641
	D.	Other Claims of Unilateral Humanitalian interven-	
		tion Since the Bangladesh Crisis	643
	E.	Nicaragua v. United States: Delpnic Dicta from the	
		International Court of Justice	646
		Nicaragua v. United States, Merits	646
		Rodley, Human Rights and Humanitarian Inter-	
		vention: The Case Law of the World Court	647
		F. Teson, Humanitarian Intervention: An Inquiry	
		into Law and Morality	647
		Comments and Questions on the Court's Dicta	649
III.	IΙΛ	Humanitarian Intervention	651
111.	011	Lillich, Humanitarian Intervention Through the	
		United Nations: Towards the Development of	
		Criteria	652
		Security Council Resolution 940 on Haiti	659
		Note: The Significance of Resolution 940	662
		Bibliography (UN Humanitarian Intervention)	663
T(7	Eos	cible Protection of Nationals	664
1 V.	A.	Contrasting Views Regarding Forcible Protection of	
	A.	Nationals	665
		Letters to the Editor of the New York Times	665
	ъ		667
	В.	Reading Lillich, Forcible Protection of Nationals Abroad:	
		The Liberian "Incident" of 1990	667
	_	Forcible Protection of Nationals Abroad: Post-	
	C.		672
	***	Entebbe Case Studies	675
V.	Fin	al Comments and Questions	0,5
	L1a	TV	680
		m IX	
The	Eur	opean Regime for the Protection of	
Hun	กสก	Rights	
Hun		- i-nal Sustams to Protect Human	
Ci	ın K	regional Systems to Protect Human	
R_1	igbt:	s Be More Effective Than UN	
M	ech	anisms?	
		The Late of the House of Blokes	600
I.	The	Regional Approach to Human Rights	682
		Weston, Lukes, and Hnatt, Regional Human Rights	600
		Regimes: A Comparison and Appraisal	682
II.	The	Council of Europe	684
	A.	The European Convention for the Protection of	(0.
		Human Rights and Fundamental Freedoms	684

Table of Contents	xxiii
-------------------	-------

	Council of Europe, Protocol No. 11 to the Conven-	
	tion for the Protection of Human Rights and	
	Fundamental Freedoms and Explanatory Report	687
	Note: Interstate Complaints	692
	Ireland v. United Kingdom	693
	Note: "Degrading Treatment or Punishment" vs.	
	"Cruel and Unusual Punishment"	715
	Letters to the Editor	716
	Not Sparing the Rod; How Cruel, How Unusual?	721
	Soering v. United Kingdom	724
	Note: The "Death Row Phenomenon"	760
	B. The European Social Charter	760
	C. The European Convention for the Prevention of	
	Torture and Inhuman or Degrading Treatment or	
	Punishment	762
	Evans and Morgan, The European Convention for	
	the Prevention of Torture: Operational Practice	762
	Comments and Questions	765
III.	The Organization on Security and Cooperation in	
	Europe	769
	Commission on Security and Cooperation in Eu-	
	rope, Beyond Process: The CSCE's Institutional	
	Development, 1990-92	769
	Helsinki Document 1992, The Challenges of	,0,
	Change	772
IV.	The European Community	775
	Boyle, Europe: The Council of Europe, the CSCE,	
	and the European Community	775
	Comments and Questions	777
	•	,,,
Pro	oblem X	780
		/ 60
The	Protection of Human Rights in the Americas	
and	Africa	
Ca	an Regional Systems to Protect Human Rights	
	e More Effective Than UN Mechanisms?	
I.	Introduction	782
II.	The Inter-American System	782
	A. The Inter-American Commission and Court	782
	Medina, The Inter-American Commission on Hu-	
	man Rights and the Inter-American Court of	
	Human Rights: Reflections on a Joint Venture	782

1. Country-Specific Reports Inter-American Commission on Human Rights,	787
Report on the Situation of Human Rights in	788
Haiti	793
 Individual Complaints Association of the Bar of the City of New York, Committee on International Human Rights, The Inter-American Commission: A Promise 	123
	793
Unfulfilled	799
Note: The Role of the Court Note: The Velásquez Rodríguez Case	799
Note: The United States Before the Inter-Ameri-	.,,,
can Commission Inter-American Commission on Human Rights	802
Resolution 3/87, Case 9647 (United States)	803
Resolution 5/8/, Case 901/ Control States	804
3. Advisory Opinions of the Court Compulsory Membership in an Association Pre-	
scribed by Law for the Practice of Journalism Note: The U.S. Position on Ratification of the	805
American Convention on Human Rights	820
Message to the President Transmitting Four Trea-	-
ties Pertaining to Human Rights	820
B. Other Initiatives	826
III. The African Charter on Human and Peoples'	
Dialeta	826
Welch, The African Commission on Human and Peoples' Rights: A Five-Year Report and Assess-	
mont	826
International Commission of Jurists, Background	
Paper	830
IV. Final Comments and Questions	832
Problem XI	836
	
Human Rights in Extremis	
How Can Human Rights Be Protected in	
Armed Conflict, Civil Strife, and States of	
Emergency?	
I. Human Rights in International Armed Conflict: The Traditional Law of War	839
c.t.p Momlet South Vietnam	0,59
A. An Eventral Day in My Lai Haillet, South Vietnam, March 1968	839

Table of Contents xxv

	B.	The Development of the Law of War	844
		Note: Historical Roots of the Concern for Human	
		Rights in the Law of War	844
		Draper, Human Rights and the Law of War	844
		Note: The Law Protecting Civilians in Time of	
		War — International and Domestic	848
	C.	Where Does Responsibility Lie for Violations of the	
		Law of War?	853
		In re Yamashita	855
		Note: The Treatment of Command Responsibility	
		in U.S. Domestic Law	858
	D.	Prosecuting Those Persons Responsible for My Lai	859
	ν.	1. The Legal Framework and the Dramatis Per-	
		sonae	859
		2. The Calley Court-Martial	861
		Extracts from the Original Transcript of the	
		Court-Martial of Lieutenant William Calley	862
		3. Lieutenant Calley's Conviction and the Public's	
		Response	872
		4. The Subsequent Fate of Lieutenant Calley	873
		5. The Courts-Martial of Captain Medina and the	_, •
		Other My Lai Defendants	874
		6. "Orders" from Above: The Experience of Lieu-	0, -
		tenant James Duffy	875
		Lieutenant Duffy's Statement	876
		Note: The Gulf War	879
	E.	Recent Developments in the Law of War	879
	Ľ.	Baxter, Modernizing the Law of War	880
		Note: Relevant Articles of Protocol I	884
		Roberts, The New Rules for Waging War:	001
		The Case Against Ratification of Additional Pro-	
		tocol I	888
		Aldrich, Progressive Development of the Laws of	000
		War: A Reply to Criticisms of the 1977 Geneva	
		Protocol I	891
		Message from the President Transmitting Proto-	0)1
		col II Additional to the 1949 Geneva Conven-	
		tions	894
		Comments and Questions	896
77	Uara	nan Rights in Internal Armed Conflict: The	0,0
II.		eloping Norms	900
		Background	900
	A. B.	Common Article 3: Its Status and Content	901
	D.	Smith, New Protections for Victims of Interna-	701
		tional Armed Conflicts	901
		HORAL ATHICU COIMICES	701

Wall Drawn

	Case Concerning Military and Paramilitary Activi-	
	ties in and Against Nicaragua (Nicaragua v.	
	United States)	903
	C Protocol II: Its Scope and Content	904
	Smith, New Protections for Victims of Interna-	
	tional Armed Conflicts	904
	Note: The Content of Protocol II	905
	Junod, Additional Protocol II: History and Scope	906
	IIS Position on Protocol II	908
	D. Invoking Common Article 3 and Protocol II in Inter-	
	nal Armed Conflicts	908
	Weissbrodt. The Role of International Organiza-	
	tions in the Implementation of Human Rights	
	and Humanitarian Law in Situations of Armed	
	Conflict	909
	Comments and Questions	912
III.	Human Rights in Civil Strife and States of Emer-	
	gencv	914
	I. Fitzpatrick, Human Rights in Crisis, The Interna-	
	tional System for Protecting Rights During	
	States of Emergency	915
	Note: Humanitarian Law as a Limitation on the	
	Right of Derogation: Internal Armed Conflict	
	and Civil Strife Contrasted	922
	Note: Monitoring States of Emergency	924
	Habeas Corpus in Emergency	
	Situations	927
	Note: Limitation Clauses	928
IV.	Final Comments and Questions	929
	oblem XII	934
Inte	ernational Criminal Law and Procedure and	
the	Domestic Enforcement of "Piecemeal"	
	nventions	
C	an the Criminal Process Be Used to Help	
E	nforce Human Rights Law?	
r	Past Efforts to Bring the Criminal Process to Bear	
I.	upon Human Rights Violators	936
	A. Introduction	936
	B. Background and Legal Issues	938

Table of Contents xxvii

		Bridge, The Case for an International Court of	
		Criminal Justice and the Formulation of Inter-	
		national Criminal Law	938
		Wise, Codification: Perspectives and Approaches	952
	C.	The International Criminalization of Human Rights	
	_	Violations	954
		M. Bassiouni, International Criminal Law: A Draft	//-
		International Criminal Code	954
		Bassiouni, The Proscribing Function of Interna-	7,7-
		tional Criminal Law in the Processes of Interna-	
		tional Protection of Human Rights	954
		Mueller, Four Decades After Nuremberg: The	7)4
		Prospect of an International Criminal Code	057
**	Cu	rrent Efforts to Draft a Code of Crimes Against	957
II.	tha	Peace and Security of Mankind	050
		Introductory Note	959
	A.	Readings on the ILC's Draft Code of Crimes Against	959
	В.	the Peace and Security of Mankind	~
		The Peace and Security of Manking	961
		Ferencz, An International Criminal Code and	
		Court: Where They Stand and Where They're	
		Going	961
		Bassiouni, "Crimes Against Humanity": The Need	
		for a Specialized Convention	963
		Note: The ILC's Draft Code: A Prognosis	965
		Note: NGO Efforts to Draft an International Crim-	
		inal Code	966
III.	Tot	vard an International Criminal Court	968
	A.	An Iraqi War Crimes Tribunal: Proposed But Re-	
		jected	968
		Moore, War Crimes and the Rule of Law in the	
		Gulf Crisis	968
		O'Brien, The Nuremberg Precedent and the Gulf	
		War	973
	В.	The Yugoslav War Crimes Tribunal: The Security	
		Council Establishes an Ad Hoc International Crimi-	
		nal Court	978
		Orentlicher, Yugoslavia War Crimes Tribunal	978
		Zagaris, Introductory Note: International Tribunal	
		for the Prosecution of Persons Responsible for	
		Serious Violations of International Humanitar-	
		ian Law Committed in the Territory of the For-	
		mer Yugoslavia Since 1991: Rules of Procedure	
		and Evidence	985
		Comments and Questions	989
	C.	The ILC Draft Statute for an International Criminal	
	₩.	Court	993

	D.	NGO Efforts to Draft a Statute for an International	
		Criminal Court	1001
	E.	U.S. Attitudes Toward an International Criminal	
		Court	1002
IV.	Tb	e Progressive Development of International	
	Cr	iminal Law The "Piecemeal" Convention Ap-	
	pre	oach Coupled with Domestic Enforcement	1005
	A.	Transpational Terrorism	1005
		Gross, International Terrorism and International	
		Criminal Jurisdiction	1005
		Murphy Woetzel, and Lador-Lederer, Correspon-	
		dence [About Professor Gross's Comments]	1006
	В.	Apartheid Torture, Hostage-Taking	1011
V.	Ot	her Suggested Uses of the International Criminal	
		ocess	1013
		Mueller, Two Enforcement Models for Interna-	
		tional Criminal Justice	1013
		J. Carey, UN Protection of Civil and Political Rights	1018
VI.	Fir	nal Comments and Questions	1022
		rter Administration's Human Rights	
Init	iati	ves and Its Legacy	
H	ow	Relevant Are Human Rights Concerns to	
		oreign Policy Process?	
	-	oreign I ducy I roccoo.	
I.	Hu	man Rights Factors in the Foreign Policy	
	Pre	ocess: A Brief Overview from a Pre-Carter	
		spective	1029
	A.	Lawyers, Human Rights, and the Foreign Policy	
	550	Process	1029
	B.	Human Rights and U.S. Foreign Policy	1030
		Bilder, Human Rights and U.S. Foreign Policy:	
		Short-Term Prospects	1031
II.	The	e Carter Administration's Attitude Toward Hu-	
	ma	in Rights Concerns in the Foreign Policy Process	1039
	A.	The Congressional Backdrop: Giving Credit Where	
		Credit Is Due	1039
		Lillich, U.S. Foreign Policy, Human Rights, and	
		Foreign Trade and Investment	1039
	В.	Defining the Carter Administration's Human Rights	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,
		Policy	1041
		Introduction	1041

Table of Contents xxix

	Vance, Human Rights and Foreign Policy	1041
	Conton Livenage Director In ruleign i one)	1047
	C. Criticism of the Carter Administration's Human	
	Rights Policy and Its Response	1048
	1 Criticism	1048
	Panel, Human Rights: A New Policy by a New	
	Administration	1048
	Hoffman, The Hell of Good Intentions	1052
	Kissinger, Continuity and Change in American	_
	Rissinger, Community and Grange in Section	1053
	Foreign Policy	1059
	2. Response Derian, Human Rights in American Foreign Policy	1059
		10))
		1064
	a Case Study: Part I de Onis, U.S. Denial of Loan Angers Argentines	1065
	Evans and Novak, Human-Rights Zeal That Costs	100)
		1066
	U.S. Jobs Reagan, Argentina's View on Human Rights	1068
	DeYoung and Krause, Our Mixed Signals on Hu-	1000
	De Young and Mause, Our Mixed Signals on Tid-	1069
	man Rights in Argentina Letters to the Editor, When Morality Interferes	1007
		1075
777	with Exports-as-Usual The Reagan Administration's Attitude Toward Hu-	10/)
III.	man Rights Concerns in the Foreign Policy Process	1077
	and the statement of th	10//
	A. The Initial Reagan Reaction to the Carter Administra- tion's Rights Policy	1077
	1. David Rockefeller: Advance Man in Latin	10//
	America	1077
	Schumacher, Latins Welcome Word on Reagan by	10//
	Rockefeller	1077
	Lewis, On Lending Comfort to Evil in Argentina	1077
	2. President-Elect Reagan Adopts the Totalitarian/	10/2
	Authoritarian Distinction	1081
	Rosenblum, Reagan and Human Rights: Beyond	1001
	Classic Examples	1081
	Buchwald, Moderate Repression	1083
	3. Downgrading Human Rights: The Reagan Ad-	1005
	ministration Takes Office	1084
	International Commission of Jurists, Human Rights	1001
	and U.S. Foreign Policy	1084
	Baker, A Meddling Muddle	1087
	4. Human Rights and U.S. Foreign Policy: Argentina	100/
	as a Case Study: Part II	1088
	de Onis, U.S. Acts to Improve Its Ties with Rightist	1000
	Latin Governments	1088
	Editorial, Doing Favors for Argentina	1089

		Lewis, U.S. and Argentina: Question of the Soul	1090
		Editorial Semantics and Human Rights	1093
	В.	The Reagan Administration's Human Rights Policy	
	ъ.	Falls into Place	1095
		International Commission of Jurists, Human Rights	
		and U.S. Foreign Policy	1095
		U.S. Department of State, Country Reports on Hu-	
		man Rights Practices for 1982	1097
		U.S. Department of State, Country Reports on Hu-	
		man Rights Practices for 1983	1101
		Note: Two Key Differences in the Reagan Adminis-	
		tration's Human Rights Policy	1103
	_	Criticism of the Reagan Administration's Human	-403
	C.	Rights Policy and Its Response	1105
		Shestack, An Unsteady Focus: The Vulnerabilities	,
		of the Reagan Administration's Human Rights	
			1106
		Policy	1107
		El Salvador: "The Certification Joke"	1108
		Editorial, The Certification Joke	1110
		Response	1110
		Abrams, Latin America in the Time of Reagan	1110
		Schifter, Building Firm Foundations: The Institu-	
		tionalization of United States Human Rights Pol-	1113
		icy in the Reagan Years	1115
		Human Rights and U.S. Foreign Policy: Argentina	1119
		as a Case Study: Part III	1120
		Editorial, A Toast to Argentina	1120
		Lewis, Lessons from Argentina	1120
		Schell, Carter on Rights — a Re-Evaluation	1122
TV.	The	Bush Administration's Attitude Toward Human	1124
	Rigi	hts Concerns in the Foreign Policy Process	1124
V.	The	Clinton Administration's Attitude Toward Hu-	1120
	ma	n Rights Concerns in the Foreign Policy Process	1126
		A Vision for Democracy (Remarks by Governor	1125
		Bill Clinton)	1127
		Statement of the Honorable Timothy E. Wirth,	1120
		Counselor, U.S. Department of State	1128
		Shattuck, Human Rights and Democracy in Asia	1131
		President's News Conference (May 26, 1994)	1135
		McGrory, Human Rights Retreat	1139
		Editorial, Speak Louder on Rights in China	1141
VI.	Fine	al Comments and Questions	1143
, 2.			