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ABBREVIATIONS

AALR	<i>Anglo-American Law Review</i>
ACHR	American Convention on Human Rights
ADHR	American Declaration of the Rights and Duties of Man
AFCHPR	African Charter on Human and Peoples' Rights
AJIL	<i>American Journal of International Law</i>
ALJ	<i>Australian Law Journal</i>
APJEL	<i>Asia Pacific Journal of Environmental Law</i>
AUJILP	<i>American University Journal of International Law and Policy</i>
AYBIL	<i>Australian Yearbook of International Law</i>
Buff LR	<i>Buffalo Law Review</i>
BYIL	<i>British Year Book of International Law</i>
Cal.WestILJ	<i>California Western International Law Journal</i>
CEDAW	Committee on the Elimination of All Forms of Discrimination against Women
CERD	Committee on the Elimination of All Forms of Racial Discrimination
CHRLR	<i>Columbia Human Rights Law Review</i>
CLF	<i>Criminal Law Forum</i>
CLJ	<i>Cambridge Law Journal</i>
CLP	<i>Current Legal Problems</i>
COE	Council of Europe
Col.JTL	<i>Columbia Journal of Transnational Law</i>
CSW	Commission on the Status of Women
CYBIL	<i>Canadian Year Book of International Law</i>
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECOSOC	Economic and Social Council
EHRLR	<i>European Human Rights Law Review</i>
EHRR	<i>European Human Rights Reports</i>
EJIL	<i>European Journal of International Law</i>
ESC	European Social Charter
E.T.S	European Treaty Series
EU	European Union
GA.JICL	<i>Georgia Journal of International and Comparative Law</i>

GAOR	General Assembly Official Records
GYBIL	<i>German Year Book of International Law</i>
Harvard.I.L.J	<i>Harvard International Law Journal</i>
HRCIP	Human Rights Commission of Pakistan
HRLJ	<i>Human Rights Law Journal</i>
HRQ	<i>Human Rights Quarterly</i>
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICLQ	<i>International and Comparative Law Quarterly</i>
IHRR	<i>International Human Rights Reports</i>
IJIL	<i>Indian Journal of International Law</i>
IJLF	<i>International Journal of Law and Family</i>
IJMGR	<i>International Journal on Minority and Group Rights</i>
IJRL	<i>International Journal of Refugee Law</i>
I.L.M.	International Legal Materials
ILO	International Labour Organisation
ILR	International Law Reports
<i>Iowa LR</i>	<i>Iowa Law Reports</i>
<i>Israel L.R.</i>	<i>Israel Law Reports</i>
<i>IYHR</i>	<i>Israel Year Book on Human Rights</i>
JAL	<i>Journal of African Law</i>
JILP	<i>Journal of International Law and Policy</i>
JOLS	<i>Journal of Law and Society</i>
LQR	<i>Law Quarterly Review</i>
McGill LR	<i>McGill Law Review</i>
MLR	<i>Modern Law Review</i>
MIRG	Minority Rights Group
NILR	<i>Netherlands International Law Review</i>
NJHR	<i>Nordic Journal on Human Rights</i>
NQHR	<i>Netherlands Quarterly of Human Rights</i>
NYIL	<i>Netherlands Year Book of International Law</i>
NYUJILP	<i>New York University Journal of International Law and Politics</i>
O.A.S.	Organisation of American States
O.A.S.T.S.	Organisation of American States Treaty Series
ODIHR	The Office for Democratic Institutions of Human Rights
OP	Optional Protocol
OSCE	The Organisation for Security and Cooperation in Europe
OAU	Organisation of African Unity
PASIL	<i>Proceedings of the American Society of International Law</i>
PCIJ	Permanent Court of International Justice

Race Convention	International Convention on the Elimination of All Forms of Racial Discrimination
Rec. des Cours	<i>Recueil des Cours de l'Académie de Droit International</i>
TEu	Treaty of European Union
<i>Tex.ILJ</i>	<i>Texas International Law Journal</i>
UDHR	Universal Declaration of Human Rights
U.K.T.S	United Kingdom Treaty Series
UN	United Nations
U.N.T.S	United Nations Treaty Series
UNYBH	United Nations Year Book on Human Rights
<i>Va.JIL</i>	<i>Virginia Journal of International Law</i>
<i>Vand.JTL</i>	<i>Vanderbilt Journal of Transnational Law</i>
VCLT	Vienna Convention on the Law of Treaties
<i>Yale LJ</i>	<i>Yale Law Journal</i>
YBILC	<i>Year Book of the International Law Commission</i>
YBUN	Year Book of the United Nations
YEL	<i>Year Book of European Law</i>
<i>YJIL</i>	<i>Yale Journal of International Law</i>

OVERVIEW OF INTERNATIONAL HUMAN RIGHTS LAW: THEORY AND PRACTICE

HUMAN RIGHTS OF THE INDIVIDUAL IN INTERNATIONAL LAW¹

The emergence of human rights law in the international sphere is one of the most significant developments to have taken place since the end of the Second World War.² International human rights law has challenged and jettisoned the traditional rules relating to State sovereignty. These traditional rules perceived international law as a law primarily related to sovereign States in which non-State actors, in particular individuals, had a tiny role to play. A key aspect of the traditional legal order was the reliance of States upon non-interference in their domestic affairs, which meant that violations of human rights were not a matter of international concern.³

¹ See A. Cassese, *Human Rights in a Changing World* (Philadelphia: Temple University Press) 1990; K.E. Mahoney and P. Mahoney (eds), *Human Rights in the Twenty-First Century, A global challenge* (Dordrecht: Martinus Nijhoff Publishers) 1993; A.H. Robertson and J.G. Merrills, *Human Rights in the World: An Introduction to the Study of International Protection of Human Rights*, 4th edn (Manchester: Manchester University Press) 1996; T. Meron (ed.), *Human Rights in International Law: Legal and Policy Issues* (Oxford: Clarendon Press) 1984; L. Henkin (ed.), *The International Bill of Rights: The Covenant on Civil and Political Rights* (New York: Columbia University Press) 1981; M.S. McDougal, H.D. Lasswell, L.-C. Chen, *Human Rights and World Public Order: The Basic Policies of an International Law of Human Dignity* (New Haven, Conn.: Yale University Press) 1980; D.J. Harris, *Cases and Materials on International Law*, 5th edn (London: Sweet and Maxwell) 1998, pp. 624-764.

² H. Lauterpacht, *International Law and Human Rights* (New York: F. A. Praeger) 1950; S. Oda, 'The Individual in International Law' in M. Sorensen (ed.), *Manual of Public International Law* (London: Macmillan) 1968, pp. 469-530; Robertson and Merrills, above n. 1; these developments are considered in detail in subsequent chapters of this book.

³ See R.B. Bilder, 'An Overview of International Human Rights Law' in H. Hannum (ed.), *Guide to International Human Rights Practice* (New York: Transnational Publishers) 1999, 3-18 at p. 4.

The rights of the individual, with the limited exceptions of treatment of aliens and arguably that of humanitarian intervention, was a subject that was not addressed by international law.⁴ Even in relation to the aforementioned exceptions, international legal order represented the dominance of States without according individuals any specific rights. Thus in the absence of an independent legal personality for the individual, if his rights were violated by a foreign State, it was the State of which the victim was a citizen which was authorised to bring a claim for violation of his rights. In the case of humanitarian intervention, while military force was sometimes used to intervene to protect (primarily religious) minorities such actions were often accompanied (if not dictated) by selfish motives, e.g. territorial gains.⁵ Individuals themselves were unable to claim the right of humanitarian intervention nor was there a wholesale recognition of any such right at the global level.⁶

The growth and expansion of human rights law has brought about a radical change in the ideological bases of international law. Such a change is first evident in the universal acknowledgement that gross violations of individual and collective rights cannot be justified on grounds of sovereignty or domestic jurisdiction.⁷ These are concerns for the international community as a whole, with the growing recognition that protection of fundamental human rights is an obligation *erga omnes*.⁸ Secondly, as we shall consider

⁴ D. McGoldrick, *Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights* (Oxford: Clarendon Press) 1991, p. 3.

⁵ For a survey of the literature on the subject see F.R. Teson, *Humanitarian Intervention: An Inquiry into Law and Morality* (Irvington-on-Hudson, NY: Transnational Publishers) 1997; N. Ronzitti, *Rescuing Nationals Abroad through Military Coercion and Intervention on Grounds of Humanity* (Dordrecht: Martinus Nijhoff Publishers) 1985; T.M. Franck and N.S. Rodley, 'After Bangladesh: The Law of Humanitarian Intervention by Military Force' 67 *AJIL* (1973) 275; R.B. Lillich (ed.), *Humanitarian Intervention and the United Nations* (Charlottesville: University Press of Virginia) 1973; R.B. Lillich, 'Intervention to Protect Human Rights' 15 *McGill LR* (1965) 205; E. Behanuik, 'The Law of Unilateral Humanitarian Intervention by Armed Force: A Legal Survey' 79 *Military Law Review* 1978) 157; J.-P.L. Fonteyne, 'The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity under the UN Charter' 4 *Cal. West LJ* (1974) 203.

⁶ Since the ending of the cold war, the Security Council under Chapter VII of the United Nations (UN) has on occasions authorised collective armed intervention in response to gross violations of human rights. See S. Cheserman, *Just War or Just Peace: Humanitarian Intervention and International Law* (Oxford: Clarendon Press) 2001; P. Alston, 'The Security Council and Human Rights: Lessons to be Learned from the Iraq-Kuwait Crisis and its Aftermath' 13 *AYBIL* (1990-91) 107; H. Adelman, 'Humanitarian Intervention: The Case of Kurds' 4 *IJRL* (1992) 4; P. Malanezuk, 'The Kurdish Crises and Allied Intervention in the Aftermath of the Second Gulf War' 2 *EJIL* (1991) 114.

⁷ P. Sands and P. Klein, *Bowett's Law of International Institutions*, 5th edn (London: Sweet and Maxwell) 2001, p. 24.

⁸ See *Barcelona Traction, Light and Power Company, Limited Case (Belgium v. Spain)*, Judgment 5 February 1970, (1970) ICJ Reports 3, 32; R. Jennings and A. Watts, *Oppenheim's International Law*, 9th edn (Harlow: Longman) 1992, Vol. 1, p. 5.

in this book, the last quarter of the twentieth century saw a mushrooming of international human rights instruments. Specific treaties dealing with the prohibition of racial discrimination and torture, and those defining and promoting children and women's rights have been adopted. Thirdly, the setting up of various mechanisms to publicise, promote and protect human rights has heightened human rights awareness to impact significantly on other areas of international law such as international economic law, business law and environmental law. Fourthly, the procedural advancement of international human rights law has meant that individuals are more directly involved in challenging violations of their rights in international courts, committees and tribunals.

Notwithstanding these advances, in practice human rights law continues to be constrained and limited. Subsequent chapters establish that not only are there substantive weaknesses in existing rights, the application of these rights is impaired by the absences, weaknesses, and limitations of implementation mechanisms and procedures. Our analysis elaborates upon many of these weaknesses and limitations. The lack of enforcement machinery impinges upon all areas of international law, although its impact is felt most vividly in human rights law.

STRUCTURE OF THE BOOK

This book has been divided into five parts and consists of sixteen substantive chapters. These introductory comments are followed by a brief consideration of a number of themes and concepts which consistently recur in this book; a proper understanding of these forms an essential prerequisite to a comprehensive understanding of the subject. Part I of the book, which is entitled international legal system and human rights, provides an overview of the nature of modern international law, the United Nations System and its relationship with modern human rights law. In the light of the *sui generis* character of international law and in recognition of the fact that international human rights is a branch of international law such an analysis appears necessary; an exercise conducted in Chapter 1 of Part I. Chapter 2 (also contained in Part I) deals with the United Nations system and its relationship with the modern human rights regime. This chapter gives consideration to the principal organs of the United Nations with particular reference to their role in protecting human rights. Part II is entitled the International Bill of Rights. It consists of three chapters and considers in depth the Universal Declaration of Human Rights (UDHR),⁹ the International Covenant on Civil and Political Rights

⁹ 10 December, 1948, UN GA Res. 217 A (III). UN Doc. A/810 at 71 (1948).

(ICCPR)¹⁰ and the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹¹ Part III of the book analyses the regional protection of human rights. The oldest and by far the most advanced regional human rights system is the Council of Europe's European Convention on Human Rights (ECHR).¹² Chapter 6 considers the substantive rights and the implementation mechanisms of ECHR. The work of the Council of Europe in the context of protecting social and economic rights is examined in Chapter 7. Chapter 7 also considers the role of two other regional organisations, the European Union (EU) and Organisation for Security and Cooperation in Europe (OSCE). Both these inter-governmental organisations are increasingly involved in promoting various strands of human rights. Chapter 8 analyses the interesting though complex protection afforded to the Americas by the Inter-American System of Human Rights. The final chapter of Part III, Chapter 9, considers the African Charter on Human and Peoples' Rights (AFCHPR).¹³ The AFCHPR is the latest and potentially the most innovative of all regional human rights treaties. A detailed study of this Charter reveals a number of interesting features, which also represent a distinctly African character of human rights protection. Part IV of the book considers the position of individuals belonging to various groups. Although distinctions based on group rights are not simplistic, these chapters focus on racial and religious discrimination, on minorities, indigenous peoples, women and children. The final part, Part V, deals with specific crimes against the dignity of humankind. Chapter 15 analyses the abhorrent (though widely practised) crime of torture against individuals. This chapter presents a detailed survey of efforts on the part of the international community to condemn torture, and cruel, inhuman and degrading treatment or punishment. Chapter 16, the concluding chapter, considers the subject of terrorism and its role in violating fundamental human rights. The evil of terrorism has been confronted by a number of States, in some cases for very long and sustained periods. As we shall consider, although several instruments have been adopted to combat terrorism, recent political events have highlighted the inadequacies of the existing regime to protect human rights from international and national terrorism.

¹⁰ Adopted at New York, 16 December, 1966. Entered into force 23 March 1976. GA Res. 2200A (XXI) UN Doc. A/6316 (1966) 999 U.N.T.S. 171; 6 I.L.M. (1967) 368.

¹¹ Adopted at New York, 16 December, 1966. Entered into force 3 January 1976. GA Res. 2200A (XXI) UN Doc. A/6316 (1966) 993 U.N.T.S. 3; 6 I.L.M. (1967) 360.

¹² Signed in Rome, 4 November 1950. Entered into force 3 September 1953. 213 U.N.T.S. 221; E.T.S. 5.

¹³ Adopted on 27 June 1981. Entered into force 21 October, 1986. OAU Doc. CAB/LEG/67/3 Rev. 5, 21 I.L.M (1982) 58.

SOME RECURRENT THEMES

Universalism and regionalism¹⁴

There has been a long-standing philosophical debate over the nature, categorisation and prioritisation of rights. There is also a debate about the universality of human rights norms. Is the content and scope of rights variable according to regional, religious and political backgrounds or is there a single set of human rights applicable to every individual? The debate upon the issue of universality has been a divisive one with challenges being presented on the basis of regional, cultural and religious distinctions.¹⁵ Proponents of regionalism, for example those purporting Asian or African regionalism, have advocated the establishment of distinct systems.¹⁶ The Islamic States, which form a significant block, have advanced their standards of human rights. The Islamic States claim that primacy should be accorded to the *Sharia*, even if it were to be in conflict with modern norms of human rights law.¹⁷

The consideration of this debate, its reasoning and outcome is not purely academic but has contributed to varying sets of standards. This book considers these standards and their effectiveness is analysed in the context of international and regional mechanisms for the protection of human rights. At the international level, views differ on such fundamental issues as the rights of

¹⁴ See E. Brems, *Human Rights: Universality and Diversity* (The Hague: Kluwer Law International) 2001; A.D. Renteln, *International Human Rights: Universalism versus Relativism* (Newbury Park: Sage Publications) 1990; A.D. Renteln, 'The Unanswered Challenge of Relativism and Consequences of Human Rights' 7 *HRQ* (1985) 514; H. Gros Espiell, 'The Evolving Concept of Human Rights: Western, Socialist and Third World Approaches' in 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: Martinus Nijhoff Publishers) 1979, pp. 41-65; D. Donoho, 'Relativism Versus Universalism in Human Rights: The Search for Meaningful Standards' 27 *Stanford Law Journal* (1991) 345; A. Eide, 'Making Human Rights Universal: Unfinished Business' 6 *NJHR* (1988) 51; J. Donnelly, 'Cultural Relativism and Universal Human Rights' 6 *HRQ* (1984) 400.

¹⁵ See D.E. Arzt, 'The Application of International Human Rights Law in Islamic States' 12 *HRQ* (1990) 202; D.J. Sullivan, 'Advancing the Freedom of Religion or Belief through the UN Declaration on the Elimination of Religious Intolerance and Discrimination' 82 *AJIL* (1988) 487; A.A. An-Na'im, 'Religious Minorities under Islamic Law and the Limits of Cultural Relativism' 9 *HRQ* (1987) 1.

¹⁶ See I. Nguema, 'Human Rights Perspective in Africa' 11 *HRLJ* (1990) 261; B. Ibhawoh, 'Cultural Relativism and Human Rights: Reconsidering the Africanist Discourse' 19 *NQHR* (2001) 43; S.P. Subedi, 'Are the Principles of Human Rights "Western" Ideas? An Analysis of the Claim of the "Asian" Concept of Human Rights from the Perspectives of Hinduism' 30 *Cal.WestLLJ* (1999) 45.

¹⁷ See Report on the Human Rights Situation in the Islamic Republic of Iran by the Special Representatives of the Commission, UN Doc.E/CN.4/1987/23 (1987). Also see the Reservations made by Islamic States to the Convention on the Elimination of All Forms of Discrimination Against Women (1979) and the Convention on the Rights of the Child (1989). Discussed below Chapters 13 and 14. W.A. Schabas, 'Reservations to the Convention on the Rights of the Child' 18 *HRQ* (1996) 472.

women, children and religious minorities. Another lively though inconclusive debate centres around criminal process and the compatibility of certain punishments with modern human rights values. In some instances (e.g. minority rights) the significant differences have led to failure in formulating comprehensive legally binding instruments. In some others (e.g. the rights of women and children) the strength of international consensus has been diluted due to large-scale reservations placed by States that are parties to the relevant treaties. Subsequent chapters will consider the controversies that exist among States on such issues as the prohibition of capital and corporal punishments.¹⁸

The existing variations regarding human rights (both in terms of substantive rights and implementation mechanisms) are considered through a study of the European, American and African systems. In addition to the aforementioned regional systems, there are other human rights systems, such as those established under the auspices of the Arab League and the South Asian Association of Regional Cooperation, which adopt a relativist approach.¹⁹ It is equally important to note that in recent years, with the rise of the pan-Islamic movement, Islamic States have propagated a distinct human rights code.²⁰ There is no single, simple answer to this complex subject. This book recommends that while legitimate variations exist between diverse views of human rights, there is a central core of all human rights values. This central core represents the most fundamental of human rights from which no derogations are permissible.

Interdependence of human rights²¹

The varied perceptions of human rights have also led to claims that there are 'three generations' of human rights. The so-called 'first generation' of human rights is represented by civil and political rights and can be found in treaties such as the ICCPR and ECHR. These rights have traditionally been associated with and have been given priority by western States. The social, economic and cultural rights are equated with the 'second generation' of human rights.

¹⁸ See in particular below Chapters 4, 6, 9 and 15.

¹⁹ A. Ahsan, *SAARC: A Perspective* (Dhaka: Dhaka University Press) 1991; A.A. An-Na'im, 'Human Rights in the Arab World: A Regional Perspective' 23 *HRQ* (2001) 701.

²⁰ See the Islamic Universal Declaration of Human Rights (1981). For further analysis see A.E. Mayer, *Islam and Human Rights: Tradition and Politics* (Boulder, Col.: Westview Press) 1999; J. Rehman, 'Accommodating Religious Identities in an Islamic State: International Law, Freedom of Religion and the Rights of Religious Minorities' 7 *IJMG* (2000) 139.

²¹ See below Chapters 5 and 7. H.J. Steiner and P. Alston (eds), *International Human Rights in Context: Law, Politics, Morals: Text and Materials*, 2nd edn (Oxford: Clarendon Press) 2000, pp. 237-320; C. Scott, 'Reaching Beyond (without Abandoning) the Category of "Economic, Social and Cultural Rights"' 21 *HRQ* (1999) 633; S. Leckie, 'Another Step Towards Indivisibility: Identifying the Key Features of Violations of Economic, Social and Cultural Rights' 20 *HRQ* (1998) 81.

These rights have been canvassed very strongly by the socialist countries and by the developing world. Views on the value and application of the two generations of rights differ markedly. The first generation of rights has often been given priority over second-generation rights. It is generally viewed that civil and political rights could be implemented immediately, whereas economic, social and cultural rights can be introduced only progressively. It is also argued that the application of civil and political rights is less costly (as the State is required to abstain from certain activities, e.g. not to engage in torture), and that civil and political rights are justiciable whereas economic, social and cultural rights are not.

In the last quarter of the twentieth century another generation of human rights, the 'third generation' of rights, emerged. The idea of the third generation of rights has been supported largely by the developing world. This set of rights includes collective group rights and such rights as the right to development, the right to self-determination and the right to environment. In our analysis of the subject, while appreciating the various viewpoints on the nature and scope of human rights, it is important to adopt a holistic approach. This approach follows the principles established by UDHR, which affords recognition to all three generations of rights. This book argues that it is important to accord equal protection importance to all three sets of rights and to acknowledge, 'all human rights are universal, indivisible and interdependent and interrelated'.²²

The scope of human rights law – individual and minority rights²³

For much of the period since 1945, the focus of modern international human rights law has been upon the rights of the individual. The issue of minority rights has remained peripheral to human rights, notwithstanding the fact that often individuals are victimised or discriminated against because they belong to a particular ethnic, racial, religious, social or political group. It is therefore not surprising to note that only a limited discussion of the subject of minority rights can be found in classical international human rights textbooks. The events of the last two decades have, alongside significant changes in global political geography, brought a shift in the approach of international community. The tragedies of Rwanda and the former Yugoslavia prompted the United Nations to establish ad hoc tribunals to try and punish those involved

²² United Nations World Conference on Human Rights, *Vienna Declaration and Programme of Action*, (New York: United Nations Department of Public Information) 1993 para 5 (pt 1). Adopted 25 June 1993.

²³ See below Chapters 10–12; see P. Thornberry, *International Law and the Rights of Minorities* (Oxford: Clarendon Press) 1991; J. Rehman, *The Weaknesses in the International Protection of Minority Rights* (The Hague: Kluwer Law International) 2000.

in, *inter alia*, crimes against humanity and genocide.²⁴ In 1998, the Statute of the International Criminal Court²⁵ was adopted. Once operative, the International Criminal Court would have the jurisdiction to try individuals for serious violations of human rights, including genocide and crimes against humanity. Having attained the required sixty ratifications on 11 April 2002, the Statute shall enter into force on 1 July 2002.

International and regional organisations have also been active in further standard setting for promoting minorities and indigenous peoples. In 1989 the International Labour Organisation (ILO) adopted the Convention Concerning Indigenous and Tribal Peoples in Independent Countries, ILO No. 169²⁶ and in December 1992 the United Nations General Assembly approved a resolution on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities.²⁷ The Council of Europe, and other regional organisations have also adopted a number of instruments which aim to protect minorities. In the changing global environment, claims from minority groups are having a substantial impact on the theory and practice of human rights law. Minorities differ in their approaches, some claiming constitutional autonomy, while others, more radical in their demands, may resort to violence, destruction and terrorism. In specifically addressing the position of minorities and indigenous peoples, it is submitted that this book is taking an approach appropriate to the legal and political realities of the twenty-first century.

The public/private divide in human rights law²⁸

The progression of human rights law has generally been in the direction of according protection to individuals against their States, with the 'anti-State' stance flowing 'from the assumption that individual persons must be protected from the abuse of power of parliaments, governments and public authorities'.²⁹ As this book will consider in detail, human rights instruments in targeting the State direct their attention towards governments and other public bodies. There is no particular focus on the violations conducted by non-State actors. Does this mean that violations of human rights conducted

²⁴ See below Chapters 11 and 12.

²⁵ Statute of the International Criminal Court, Rome, July 17 1998, A/CONE.183/9.

²⁶ ILO No. 169, 27 June 1989, 28 I.L.M. (1989) 1382.

²⁷ 18 December 1992, UN Doc. A/Res/47/135; 32 I.L.M. (1993) 911.

²⁸ See A. Clapham, *Human Rights in the Private Sphere* (Oxford: Clarendon Press) 1993; M. Forde, 'Non-Governmental Interferences with Human Rights' 56 *BYIL* (1985) 253. These issues are of particular relevance to the protection of such groups as women and children; see below Chapters 13 and 14.

²⁹ F. Von Prondzynski, *Freedom of Association and Industrial Relations: A Comparative Study* (London: Mansell Publishing Limited) 1987, p. 1.

by private individuals against each other cannot be the subject of scrutiny of international human rights mechanisms?

It is noticeable that many of the violations of individual and group rights are regularly conducted by private individuals themselves against vulnerable groups such as women and children.³⁰ It would clearly be absurd if these non-State actors were under no obligation to protect human rights in the same way as governments and public officials are. As we shall consider shortly, States are principal subjects of international law and have developed a large network of human rights laws by entering into a range of agreements. While these agreements bind States either in treaty or in customary law, the undertakings are broad; they represent an obligation not only not to violate human rights themselves, but also to undertake to 'ensure'³¹ or 'secure'³² the rights of individuals. The process, by which human rights are to be protected from violations conducted by private individuals, sometimes referred to as the horizontal application of law, has been approved and applied by human rights courts and tribunals. This horizontal application of law aims to provide a comprehensive protection of human rights.³³ States must undertake positive steps to ensure protection from a significant number of violations that take place in the confines of family and private life.

³⁰ See the terminology of the ECHR. ECHR jurisprudence confirms that States can be accountable for acts conducted by private individuals against each other, see *A v. UK*, Judgment of 23 September 1998, 1998-VI RJD 2692; *X and Y v. The Netherlands*, Judgment of 26 March 1985, Series A, No. 91.

³¹ See ICCPR Article 2(1); ACHR Article 1.

³² See ECHR Article 1; according to Article 1 ACHR the 'undertaking is to give effect to [the rights]'.

³³ See the Inter-American Court of Human Rights in the *Velasquez Rodriguez Case*, Judgment of July 29 1988, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988), para 170.