



PRESENTAZIONE DEL VOLUME

(a cura dell'autore o del curatore)

Informazioni generali

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Informazioni sul volume

This book has a didactic purpose, for the students of the specialized courses of international protection of human rights; but also of consultation for scholars and practitioners in the field of international law and human rights. I have tried to provide a sufficiently complete and systematic overview of the subject, as I think is necessary for a textbook, even though the field of international human rights law has now taken on such a large dimension that it is difficult to deal with it in a small volume. The book seeks to give an account of the most relevant practice and case-law, but also to deal with theoretical issues. Hence its title, which deliberately recalls the work of an authoritative scholar of international law .

One might wonder what the reasons that led me to write a new book on human rights are, given the large number of manuals already published in recent decades, especially in English and French. There are, in summary, three reasons. The first consists in my desire to give a different approach and structure to this volume, trying to reconcile its didactic and scientific purposes. In fact, many of the existing textbooks, and in particular those of Anglo-American

doctrine, privileging the didactic and expositive purpose of the subject, focus on the description of the institutional part of the international protection of human rights (conventional systems, organs and procedures) or deal only with some human rights. In my opinion, this structural choice is not convincing. In fact, even if one wanted to place oneself in a predominantly didactic perspective, it must be considered that students do not need to receive much information and detailed descriptions, which they can easily find on the Internet and which they soon tend to forget, but rather to reflect on concepts, theories and systematic framings. Only these reflections are formative for young jurists and help to understand how the law works, including international human rights law. In other words, for me there is no conflict, but rather a necessary synergy, between the educational and scientific purpose of a textbook. Of course, this does not mean that my intention to combine theory, practice and a certain completeness of the subject in the book has really succeeded.

The second, even more important, reason derives from my conviction that international human rights law should not be studied (as occurs in almost all manuals) as a specific legal regime, separate and autonomous from the overall system of international law; but as a regime that is fully integrated into the international legal order, which follows the inspiring principles of the latter, and which has, in turn, had a strong impact on the structure and content of contemporary international law. This book has as its dominant theme the mutual relationship between international human rights law and general international law. Following this approach, I have chosen to devote little space to the institutional aspects (Part IV) and to deepen instead the themes of the impact of human rights on the entire international order (Part I), on the sources (Part II), on obligations (Part III), as well as the part of the book that deals with the content of “fundamental” human rights (Part V), without neglecting other rights (Part VI). I am aware that this choice may have had some negative effects on the homogeneity of the book, since it has led to a deeper study of some subjects and a more concise treatment of others.

Finally, the third motivation for this book is linked to my general conception of international law, from the point of view of the theory of law. The volume is the result of reflections I have been doing for a couple of decades on human rights; but which are linked to studies on more general themes of international law, which have led me to follow a *fil rouge* that has developed over time and which has come to be linked to a certain conception on the deontological foundation of law. This scientific path, influenced by my growing attention to human rights, has led me to a critical attitude towards the theory of formal positivism (while recognizing the rigor of its method) and to cultivate an interest in “anti-formalist” theories (e.g., the modern normative theory of law), which recover an openness to the ethical-political values of law. From this general approach also derived the idea that it is intellectually stimulating to study not

only the law of rules and “what the law is”, but also the law of principles and values and the direction towards which the law is moving ; and this especially in an area, such as international law, which has recently undergone strong processes of change. In fact, in my scientific path, I have proposed attempts to systematically relocate some classical institutions (breach of treaties, fault and due diligence, exhaustion of domestic remedies) and attempts to revisit, in a key that I believe is more modern, other general issues (theory of international obligations, State responsibility for violation of human rights, international subjectivity, new role of the individual, general principles of international law, international immunities, access to justice). Readers will note that many of these topics have inevitably ended up, albeit incidentally, in this book as well.