Jayawickrama, Nihal. ***The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence.*** Cambridge: Cambridge University Press. 2002. Pp. cxxix + 965. ISBN 05178042X.

This volume is described as a 'definitive compendium' (cover blurb) or 'definitive text' (p. xi) and its stated intention is 'to encapsulate the judicial interpretation of human rights in one ambitious, comprehensive volume' (cover blurb). In order to arrive at this result the author 'covers the case law of 80 countries in North America, Europe, Africa, Asia, the Caribbean and the Pacific, as well as jurisprudence of the UN human rights monitoring bodies, the European Court of Human Rights, and of the Inter-American system'. The volume took more than 10 years to produce, yet it is very much up to date as of 2001. The author has had an extraordinary career including appointments as Attorney-General of Sri Lanka, an academic in Hong Kong, and Executive Director of the anti-corruption watchdog Transparency International from 1997 to 2000. But the book's provenance is in Jayawickrama's earlier work as an assistant to Paul Sieghart in the production of the path-breaking volume (not so modestly) entitled *The International Law of Human Rights*, which Oxford University Press published in 1983,[1] and which sold remarkably well but was never updated. The author indicates that his aim is to 'complement' that 'invaluable work', but in fact it seems to be to produce an up to date version which takes full account of the heterogeneous jurisprudence of human rights, most of which was only in its infancy when Sieghart's volume was published.

The volume contains a wealth of information and reflects an immense amount of work. The 156-page introduction itself is almost a book-length primer on human rights. A good part of it seems derivative, drawing especially on the extraordinarily insightful work of Hersch Lauterpacht and the rather more prosaic pleadings of John Humphrey. But there is also much that is innovative and refreshing. For example, in seeking to establish the deep religious and cultural antecedents of human rights, the author concentrates to good effect on the teachings of the Buddha. Despite the inclusion of this and other non-Western references the author exhibits no doubts as to whether international human rights norms are truly universal. Indeed his goal, as stated on the volume's dust jacket, is to analyse 'the judicial application of human rights law to demonstrate the universality of contemporary human rights norms'.

The strongest and most interesting part of the introduction is his historical review of the various human rights-related provisions that have been included in national bills of rights over the years. While he says little of the Francophone African constitutions which are of considerable relevance in this regard, his review of the (British) Commonwealth legacy

[1] Sieghart thanks Jayawickrama profusely on pp. xxii-xxiii, especially for his work on the European Convention jurisprudence and that of national courts.

is both impressive and illuminating. He recalls, for example, that the Constitution adopted by Tonga in 1875 contained a detailed Bill of Rights, a development alternatively attributed to the influence of prominent clergymen or to those who advised the government of the day that its recognition by the international community would be enhanced by such a step.

But the major achievement of the volume is that it brings together in a single work a selection of recent human rights case law emanating not only from the principal international bodies cited above but from national jurisdictions covering the spectrum from A (Antigua and Barbuda) to Z (Zimbabwe). In between, to choose almost at random from the 80 jurisdictions surveyed in the 90-page Table of Cases, we find references to two cases from Belarus, five from Botswana, four from Croatia, two from Greece, 43 different decisions of the Spanish Constitutional Court, three from the Turkish Constitutional Court, six from Singapore, two from the Solomon Islands, and 135 cases from the United States Supreme Court.

By the same token, this impressive smorgasbord of sources gives rise to the most interesting and perplexing question which such a volume provokes. It is to what extent is it valid to mix apples and oranges, or peas and cauliflowers, by combining, within the space of a single integrated volume, interpretations from a huge range of courts interpreting a diverse range of international instruments or national constitutional or other provisions without being able to situate or contextualize any of the interpretations. The dilemma is encapsulated in a brief section on general principles of interpretation where, instead of trying to distill complex but coherent principles from the very nature of human rights, the author comes up with seven different rules which are, at best, difficult to reconcile, and which come from the forays of a diverse range of national courts into widely varying issues. The list (pp. 162–166) thus derived includes: rules of statutory interpretation do not apply to human rights principles; 'the draftsman's intention is irrelevant' (a rule which raises the question as to why the principal sources upon which the author draws include 'the *travaux préparatoires*, particularly in respect of the International Covenant on Civil and Political Rights' (p. x); it is unclear why the *travaux* in respect of the other Covenant are less relevant); a 'broad, liberal, generous and benevolent construction' of human rights and cultural rights, including the right to work, provisions is appropriate; a purposive interpretation should be adopted; a contextual approach is better than an abstract one; a hierarchical approach to rights is to be avoided; and the effect of legislation, rather than its purpose or intent, is what counts. These principles are said to be drawn from judgments of the Supreme Courts of Canada, the United States, Zambia, Sri Lanka, Zimbabwe, Lesotho, and Nigeria as well as from the Privy Council.

Once the author moves into the jurisprudence of specific human rights provisions the advantages and shortcomings of this approach become more apparent. The norm of non-discrimination is accorded eight pages (pp. 174–181) of the volume's 1,100 pages (although 26 pages are subsequently devoted to the 'right to equality'). The sources relied upon to elucidate what is required in this domain by 'human rights law' range from a General Comment by the UN Human Rights Committee, through 1886 and 1977 U.S. Supreme Court cases and a 1993 Italian Constitutional Court case, to judgments of the European Court and Commission of Human Rights, the Inter-American Court of Human Rights, the Hong Kong Court of Appeal and the Supreme Court of India.

The treatment accorded to different rights varies dramatically from the one and a half pages given to the right to recognition as a person before the law, while the right to freedom from torture receives 57 pages. Economic, social and cultural rights work, social security, an adequate standard of living, health, education, and cultural life, taken together are the subject of 56 pages, or about 6% of the total of the book. In fairness to the author, that might be an accurate reflection of

the amount of specific jurisprudence generated to date on these issues.

There are a number of minor points which should have been corrected prior to publication. The International Court of Justice, the Security Council, the UN General Assembly, etc, are all referred to as 'non-treaty mechanisms' (p.136) when in fact they were all established by treaty (the UN Charter) and most of the procedures they use are specifically provided for in that treaty. The League of Nations minorities regime is said to have involved a complaints procedure 'enabling individuals to invoke personal rights in any international forum against the state of which they were nationals' (p.19) when in fact the only international fora to which they could complain were the League of Nations and its Committee of Three which worked in conjunction with the Minorities Section of the League's Secretariat.[2] A very few cases were also subsequently taken to the Permanent Court of International Justice.

At the end of the day the concern that too many incommensurate variables have been thrown into the same equation might be no more than an international lawyer's quibble which is ignored by a wider public anxious to get a consolidated or unified text explicating the basic principles of human rights law. While this is not a book to which specialists or practitioners would generally look, it will be useful for those who need to get a general indication of the approach adopted in some of the less frequently documented jurisdictions from which the author has so assiduously collected jurisprudence.

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[2] For a fascinating glimpse at the ways in which the procedure actually worked see Karen Knop, *Diversity and Self-Determination in International Law* (2002).