

CONTENTS

<i>Foreword</i>	v
<i>List of Cases</i>	xi
<i>List of Contributors</i>	xxi
<i>Introduction to Human Rights Tectonics</i>	xxiii

PART I. PROMISES AND CHALLENGES OF AN INTEGRATED APPROACH TO HUMAN RIGHTS

The Formation of a Common Law of Human Rights

Olivier DE SCHUTTER	3
1. Introduction	3
2. International Human Rights Treaties as ‘Living Instruments’ and the Formation of a <i>Jus Commune</i>	4
3. Cross-Jurisdictional Dialogue: A Typology of Scenarios	9
4. Developing the Human Rights <i>Jus Commune</i>	18
5. The Problem of Consistency in the Formation of the Human Rights <i>Jus Commune</i>	24
6. From a Formalistic to a Dialogic Approach	35
7. Conclusion	36

UN Special Procedures: System Puppets or User’s Saviours?

Rhona KM SMITH	41
1. Introduction	41
2. The UN Special Procedures	42
3. System Puppets?	47
4. User’s Saviours?	51
5. Interactions with Regional Organisations	56
6. Interactions with Other UN Human Rights Monitoring Systems	58
7. Interactions with States Outside the Foregoing	59
8. Interactions between Themselves	62
9. Interactions with NGOs and Civil Society	63
10. Interactions with Individuals	64
11. Conclusions: Puppets or Saviours?	67

The African Court on Human and Peoples' Rights: A Uniquely Equipped Testbed for (the Limits of) Human Rights Integration?

Adamantia RACHOVITSA	69
1. Introduction	69
2. Human Rights Integration in the Drafting of the ACHPR and the Potential of the African Human Rights <i>Corpus Juris</i>	71
3. The Interpretative Use of Relevant International Instruments as a Means to Pursue Human Rights Integration	74
4. Conclusions	86

The Role of Non-Judicial Bodies in Human Rights Implementation

Lorenza VIOLINI	89
1. Introduction	89
2. Non-Judicial Rights Promotion and Judicial Protection as Essential Elements of a Fully Fledged Human Rights System	91
3. Non-Judicial Bodies: A Survey	93
4. Forms of Non-Judicial Action in the Field of Human Rights: An Insight into the Work of Regional Organisations	98
5. Convergence and Divergence on the Independence of Non-Judicial Rights Bodies	101
6. Conclusions	105

PART II. HUMAN RIGHTS TECTONICS THROUGH AN ISSUE-BASED APPROACH

Why a Global Approach to Non-Discrimination Law Matters: Struggling with the 'Conscience' of Companies

Emmanuelle BRIBOSIA and Isabelle RORIVE	111
1. Introduction	111
2. When Businesses Find Their Conscience	115
3. When Religious Symbols are in Conflict with a Company's Image	130
4. Conclusion	138

Sexual and Reproductive Rights at the Crossroads: Intersectionality and the UN Treaty Monitoring Bodies

Joanna BOURKE MARTIGNONI	141
1. Introduction	141
2. Theorising and Applying Intersectional Methods	142
3. Intersectionality Comes to International Human Rights Law	146

4.	Sexual and Reproductive Rights and Single-Axis Practice: <i>A.S. v Hungary</i>	148
5.	Intersectional Analysis of Sexual and Reproductive Rights.....	150
6.	Intersectionalities within Individual Complaints and Inquiries.....	153
7.	Intersectionality Taken Too Far? <i>Amanda Jane Mellet v Ireland</i>	157
8.	Conclusions	159

The Integration of Cultural and Economic Rights by Regional Human Rights Courts

	Valeska DAVID	163
1.	Introduction	163
2.	A Conceptual and Normative Exploration of Cultural and Socio-Economic Inequalities	166
3.	Integrating the Cultural Identity and Socio-Economic Interests of Roma and Travellers before the ECtHR.....	170
4.	Integrating the Cultural Identity and Socio-Economic Interests of Indigenous and Tribal Peoples before the IACtHR	178
5.	Opportunities and Legal Tools for Integration	187
6.	Conclusion	191

The Use of External Instruments by the European Court of Human Rights: (Missed) Opportunities for the Rights of Persons with Disabilities

	Dorothea STAES and Joseph DAMAMME.....	193
1.	Introduction	194
2.	The Court's Comprehensive Approach to External Instruments	197
3.	External Referencing from an Integrative Perspective: Missed Opportunities	200
4.	Conclusion	220

PART III. HUMAN RIGHTS DYNAMICS IN EUROPE

The European Union in the International System of Human Rights Protection: Solo Singer or Voice in the Choir?

	Bruno DE WITTE	225
1.	Introduction	225
2.	The Changing Relationship between the Two European Courts	226
3.	The CJEU and International Human Rights Treaties Other than the Convention	231
4.	Non-Judicial Interactions: The Role of International Human Rights in the External Relations of the EU.....	235
5.	Conclusion	240

Opinion 2/13 as a Game Changer in the Dialogue between the European Courts?

Jasper KROMMENDIJK	243
1. Introduction	243
2. The Legal Framework	246
3. A Post-Opinion 2/13 Typology of the Practice of Citing Strasbourg. . . .	250
4. Concluding Remarks: Opinion 2/13 as a Game Changer?	265

Sharing of the Burden of Proof in Cases on Racial Discrimination: Concepts, General Trends and Challenges before the ECtHR

Kristin HENRARD	271
1. Introduction	272
2. The Burden of Proof: Concepts and Practical Importance	275
3. A Trend Towards the Adoption of a Shared Burden of Proof in Cases on Discrimination?	278
4. The Special Allocation of the Burden of Proof: From Principle to Application (Criteria)	280
5. The ECtHR and the Burden of Proof in Racial Discrimination Cases: A Mixed Account.	292
6. Conclusion	301

Rethinking the Two Margins of Appreciation

Oddný Mjöll ARNARDÓTTIR	303
1. Introduction	303
2. Two Recent Conceptualisations of the Margin of Appreciation Doctrine and the Cause for a Rethink	306
3. The Rethought Two Margins of Appreciation: The Identification of Two Different Functions for the Margin of Appreciation Doctrine in the Case Law of the Court	312
4. Conclusions: Calling a Spade a Spade.	327

<i>About the Editors.</i>	331
---------------------------------	-----