

# *Contents*

<i>Acknowledgements</i> .....	v
<i>Table of Cases</i> .....	xi

Introduction .....	1
I. The Extraterritorial Question .....	3
II. The Strasbourg Approach .....	8
III. The Claims of the Book .....	10
IV. The Structure of the Book.....	12
1. Creating Human Rights ‘Jurisdiction’.....	15
I. Introduction .....	15
II. The Drafting of Article 1 .....	15
A. Territory.....	17
B. The Move Towards ‘Jurisdiction’ .....	18
C. Preliminary Comments .....	21
III. The Problem with ‘Jurisdiction’.....	23
IV. Creating Human Rights Jurisdiction .....	28
A. The Inevitability of the Mission .....	28
B. Giving Meaning to the Convention.....	30
V. Conclusion .....	32
2. Interpreting the European Convention on Human Rights.....	34
I. Introduction .....	34
II. The Convention’s Interpretive Parties .....	35
A. Primary Interpreters.....	36
B. Secondary Interpreters .....	39
III. The ‘Correct’ Process of Interpretation.....	41
IV. Interpretive Communities.....	44
A. Purposive Enterprise .....	45
B. Bounded Argument Space .....	47
V. Article 1’s Interpretive Communities.....	48
A. The Strasbourg Judicial Organs.....	49
B. Contracting Parties .....	52
C. National Courts .....	54
D. The Interaction of Interpretive Communities.....	59
VI. Conclusion .....	60

3.	Incremental Normalisation: The Strasbourg Approach 1953–2001 .....	61
	I. Introduction .....	61
	II. The Point of Departure.....	62
	A. Interpretive Moves .....	64
	III. Judicial Minimalism .....	65
	A. Incrementalism .....	66
	B. Retaining Flexibility.....	69
	C. Minimalism and the Purposive Enterprise.....	74
	IV. Enhanced Justification .....	76
	A. Spatial Jurisdiction .....	77
	B. Justifying Progression .....	81
	V. Consideration of Context .....	83
	VI. Conclusion .....	86
4.	Deconstruction and Reconstruction: The European Court of Human Rights 2001–10.....	88
	I. Introduction .....	88
	II. Judicial Deconstruction: <i>Banković v Belgium and Others</i> .....	89
	A. Defining Jurisdiction.....	90
	B. Interpretive Moves .....	93
	C. <i>Banković</i> and the Purposive Enterprise .....	98
	III. Judicial Reconstruction .....	101
	A. Legal Space.....	101
	B. The Role of Public International Law .....	104
	C. Dividing and Tailoring.....	105
	D. Cause and Effect .....	107
	E. Ongoing Moves .....	109
	IV. An Unsettled Community.....	111
5.	The Contracting Parties: Competing for Meaning.....	115
	I. Introduction .....	115
	II. Applying the ECHR to Iraq.....	117
	A. A Costly Gamble .....	118
	III. Three Categories of State Arguments .....	121
	A. Orthodox Legal Debate .....	122
	B. Orthodox Arguments in the Iraq Litigation .....	125
	C. Politico-legal Arguments .....	128
	D. Politico-legal Arguments in the Iraq Litigation.....	129
	E. Unacceptable Submissions.....	132
	F. Unacceptable Submissions Post-Iraq: Extraterritorial Derogations? .....	134
	G. Preliminary Comments .....	137
	IV. State Acceptance of the Convention’s Extraterritorial Application.....	137
	V. Conclusion .....	139

6. National Courts: The Systemisation of ‘Jurisdiction’ .....	141
I. Introduction .....	141
A. In the Shadow of <i>Banković</i> .....	142
II. The Five Bases of Jurisdiction .....	145
A. Quasi-territorial Jurisdiction .....	145
B. Unpacking Quasi-territorial Jurisdiction .....	146
C. Spatial Jurisdiction .....	153
D. Jurisdiction Over Soldiers .....	158
E. Jurisdiction Through Control .....	161
F. Domestic Decisions .....	162
III. Conclusion .....	163
7. The European Court of Human Rights: Strategic (Re-)alignment.....	165
I. Introduction .....	165
A. <i>Al-Skeini v UK</i> : Systematising Article 1 .....	166
II. Personal Jurisdiction: ‘State Agent Authority and Control’ .....	168
A. Public Powers .....	169
B. Jurisdiction Through Force .....	176
C. Diplomatic and Consular Agents .....	184
D. Soldiers .....	186
III. Spatial Jurisdiction .....	188
A. Effective Control of an Area .....	188
B. Convention ‘Legal Space’ .....	192
IV. Applying the Convention Abroad .....	193
V. Conclusion: Temporary Stability .....	198
8. A Return to the Drawing Board .....	200
I. Introduction .....	200
II. Guiding Principles .....	201
III. Conservative Options.....	203
IV. Progressive Options .....	204
V. A Proposal.....	206
A. Negative Obligations .....	207
B. Positive Obligations .....	209
VI. The Communities .....	211
A. Contracting Parties.....	211
B. National Courts .....	214
C. The Strasbourg Community.....	215
VII. Conclusion .....	217
Conclusion: Human Rights Imperialists .....	218
<i>Bibliography</i> .....	222
<i>Index</i> .....	233