

Contents

<i>Foreword by Françoise Tulkens</i>	<i>page xi</i>
<i>Acknowledgements</i>	xv
<i>Table of Cases</i>	xix
<i>List of Abbreviations</i>	xxvii
1 Introduction	1
1.1 Context and Principal Argument	1
1.2 Rationale	7
1.3 Structure	11
1.4 Limits and Possible Critiques	14
2 Understanding the Council of Europe System and Territorial ‘Grey Zones’	20
2.1 Structure and Institutions of the Council of Europe	21
2.1.1 Council of Europe System	23
2.1.2 <i>Modus operandi</i> : Standards, Monitoring and Cooperation	29
2.1.3 The Importance of Soft Law	33
2.1.4 Ripeness for Refining Our Understanding of the ‘CoE System’	35
2.2 Terminology	37
2.3 Outcome Characteristics	39
2.4 Current Cases and Overview of Engagement	41
2.4.1 Abkhazia	42
2.4.2 South Ossetia	45
2.4.3 Nagorno-Karabakh	46
2.4.4 Northern Cyprus	49

2.4.5	Transnistria	51
2.4.6	Occupied Territories in Ukraine	53
2.4.7	Kosovo	56
2.5	The Question of Diminished Responsibility	56
2.6	Conclusion	59
3	Collective Responsibility for European Public Order	62
3.1	Effectiveness as the Overarching Consideration	65
3.1.1	European Convention on Human Rights: A Universalist Framework	68
3.2	Object and Purpose of the ECHR: A Question of Standards over Status	73
3.3	<i>Ordre public</i> (Public Order) Imperative in Respect of 'Grey Zones'	78
3.4	Understanding the Collective Responsibility of Member States	86
3.4.1	What Shared (or Collective) Responsibility Amounts To	87
3.4.2	Shared Responsibility under the Interlaken Process	90
3.5	Conclusion	93
4	Jurisdiction and the Applicability of the European Convention on Human Rights	95
4.1	Jurisdiction and the Right to Individual Petition	97
4.2	Territorial/Spatial Jurisdiction and Exceptions	97
4.2.1	Emergence of the Effective Control Threshold	101
4.2.2	<i>Banković</i> : Delimiting and Disregarding the <i>espace juridique</i>	104
4.3	Personal Model of Jurisdiction	110
4.4	Other Relevant Jurisdictional Developments	113
4.4.1	De facto Authorities as Limited Duty-Bearers	113
4.4.2	From Jurisdiction Rebutted to Jurisdiction Shared	114
4.4.3	Rejecting Arguments of Diminished Responsibility	121
4.4.4	Clarifying the Obvious, for the Removal of Doubt	125
4.4.5	Towards the Legitimation of a Legal Vacuum	128
4.4.6	'Effective Control' Giving Rise to Ineffective Implementation?	130
4.5	A Flavour of Jurisdictional Discussions to Date	136
4.6	Conclusion	140

5	Council of Europe and Kosovo: A Model of Functional Engagement?	143
5.1	1998/1999 Kosovo Conflict in Context	144
5.2	Jurisdiction Disputed	146
5.3	Jurisdiction under the European Convention on Human Rights	150
5.3.1	Embedding the ECHR in Kosovo's Domestic Legal Order	155
5.3.2	Developing the Post-conflict Legal Framework (1999–2008)	157
5.3.3	The Post-2008 Legal Framework	161
5.4	Engagement by Council of Europe Monitoring and Advisory Mechanisms	165
5.4.1	Developing a New <i>modus operandi</i> in Kosovo	165
5.4.2	Engagement on the Basis of 'Functional Capacity'	169
5.4.3	Engagement by Other Non-judicial CoE Mechanisms	170
5.4.4	Monitoring-Substitution and Other Forms of Cooperation	173
5.5	Engagement by United Nations Human Rights Mechanisms	175
5.5.1	UNMIK Human Rights Advisory Panel	178
5.6	Strategic Cooperation between the Council of Europe and European Union	180
5.7	Conclusion	182
6	Towards a Judicious Rapprochement	185
6.1	Importance of Realism and Political Will	185
6.2	The Case for a Judicious Rapprochement	188
6.2.1	Rapprochement Based on Standards Rather than Status	194
6.3	Principles Underpinning Rapprochement	199
6.4	Components of Judicious Rapprochement	203
6.4.1	Reconciling the Public Order Imperative with Political Considerations	204
6.4.2	Realising the 'Normative Will' of the Secretary General	206
6.4.3	Special Representative of the Secretary General for Unresolved Conflicts	209
6.4.4	Extending Engagement on the Basis of 'Functional Capacity'	211

6.4.5 Acknowledging the Contribution of Non-state Actors in Ensuring Effectiveness of the ECHR	213
6.4.6 Monitoring Activism and Purposeful Substitution	218
6.4.7 The Question of Status	223
6.5 Conclusion	228
7 Conclusion	229
<i>Select Bibliography</i>	235
<i>Index</i>	247