‘Up, Down, Round and Round’

Interaction between International Human Rights Law and the European Legal Framework

Strasbourg, 5 April 2013

Professor Rhona Smith
European systems in context

International
- UN
- ILO
- ICCt
- WTO

Regional
- CofE
- EU
- OSCE

National
- Member States
- Member States
- Member States
Interaction opportunities

• ‘Looking up’
  – EU implementing International Law
  – European courts considering international law

• ‘Looking down’
  – International and regional human rights entities considering EU law

• ‘Going round and round’
  – Inter European organisations
  – Inconsistencies in practice
Approaches of EU - competencies

EU within its key competences:
- sovereignty

EU as a global player:
- one voice
- CFSP

EU as disparate state actors:
- convergence?
- WEOG?
EU – dualist approach

European law

International law

National laws
CJEU considering international law

• Traditional view: *Van Gend en Loos*; *Costa*; *Solange I*+*II*

• Cases C-402+415/05 *Kadi and Al Barakaat v Council* [2008]
  – No direct judicial review of international law – Art 105 UN Charter => review possible, rule of law
  – ‘the obligations imposed by an international agreement cannot have the effect of prejudicing the constitutional principles of the EC Treaty, which include the principle that all Community acts must respect fundamental rights’ (para 287)
UN’s view of EU

- UN
  - Member States
  - Observer States
  - Regional Security Entities
States are the primary obligees

• International human rights law is generally contained in treaties to which States are party.

• States are the primary obligees under international law
  • But note individuals, business (TNCs and MNEs), NGOs

• EU accepted the UN Convention on Rights of Persons with Disabilities (see Council decision 2010/48/EC on competencies)

• EU and European Convention on Human Rights
  – Treaty provisions, accession negotiations, MoU
  – Note also Copenhagen criteria for EU accession
Council of Europe and the European Union

- **ECtHR considering EU and human rights**
  - *Bosphorous Airways v Ireland* [2005]
  - *Matthews v UK* [1999]
  - *Ullens de Schooten and Rezabek v Belgium* [2011]
  - (cf *Saramati v France et al* [2007]; *Behrami v France* [2007])

- **CJEU considering ECHR and international human rights**
  - Case 11/70 *Internationale Handelsgesellschaft mbH* [1970]
  - Case 36/75 *Rutili v Minister for the Interior* [1975]
  - Case C-13/94 *P v S and Cornwall County Council* [1996]
  - (cf Case C-93/02 *Biret v Council of the EU* [2003])
‘Up, down, round and round’

- EU respects international law but chooses to implement it through EC legislation and appears to reserve the right to consider/review international law as it applies to EU
- EU provisions can be challenged before other bodies, assuming complaint admissible
- Evolving views of European courts on international law/human rights and the extent to which they accept each other’s approaches