

## Introduction

As far back as 1966, Martin Luther King Jr, the charismatic leader of the American civil rights movement, affirmed that ‘of all the forms of inequality, injustice in health is the most shocking and inhuman’.<sup>1</sup> Although his statement referred to the imbalance that the American private insurance system generated at the domestic level, it can easily be applied to the situation that community outsiders, such as irregular migrants or people who are not affiliated with a health system, encounter today in many parts of the world.<sup>2</sup>

Health-, social- and immigration-related policies and rights are areas over which states exercise particularly strict sovereign control, and this has meant that irregular migrants and the right to health, whether considered individually or jointly, have struggled to receive consistent recognition in the international human rights project over the last seventy years. Indeed, an orthodox approach to the interpretation of international and European human rights obligations has long displaced both the declared all-embracing personal scope of application of these legal frameworks where the rights of migrants are

<sup>1</sup> Reference to M. L. King’s remarks, on 25 March 1966, at the press conference following the annual meeting of Medical Committee for Human Rights, in ‘Physicians for a National Health Program’ note <<http://pnhp.org/news/dr-martin-luther-king-on-health-care-injustice/>> accessed 1 March 2021.

<sup>2</sup> Regarding the situation in Europe see, for instance, Sarah Spencer and Vanessa Hughes ‘Outside and In: Legal Entitlements to Health Care and Education for Migrants with Irregular Status in Europe’ (2015) *Oxford Compas Report* <[www.compas.ox.ac.uk/2015/outside-and-in/](http://www.compas.ox.ac.uk/2015/outside-and-in/)>; Isabel Noret ‘Access to Health Care in 16 European Countries’, Legal Report of the European Network to Reduce Vulnerabilities in Health & Médecins du Monde (2017) <[https://mdmneuroblog.files.wordpress.com/2014/01/2017\\_final-legal-report-on-access-to-healthcare-in-16-european-countries.pdf](https://mdmneuroblog.files.wordpress.com/2014/01/2017_final-legal-report-on-access-to-healthcare-in-16-european-countries.pdf)> accessed 1 March 2021.

concerned<sup>3</sup> and the indivisibility or equal importance of all human rights, thereby reducing state accountability for failures to adequately implement social rights.<sup>4</sup> Thus, the adoption of selective approaches to human rights, where ‘not all [avoidable] suffering and ill-health’ are understood and addressed by social and legal communities,<sup>5</sup> is somewhat embraced and tolerated at different levels of governance. As such, the status and quality of the right to health of irregular or undocumented migrants remain contested within and across different legal frameworks. This anomaly is not only concerning from the point of view of human rights holders and advocates but also because it challenges the internal consistency and moral legitimacy of a legal framework based on dignity and equality that lawmakers and interpreters cannot overlook.

Migration and health are particularly urgent and interconnected areas of human rights enquiry in the twenty-first century for many reasons, which include those mentioned in the following non-exhaustive list. First, international migration rates have significantly increased over the last twenty years.<sup>6</sup> Second, economic inequalities within and across most countries have generally widened.<sup>7</sup> Third, the economic and health crises of the last two decades have exacerbated inequalities and social vulnerabilities affecting the worst off.<sup>8</sup> Fourth, human rights work has shifted from the drafting of binding standards to the context-sensitive implementation and clarification of the former.<sup>9</sup> Finally, important global actors, such as the European Union (EU), still insist on cracking down on irregular migration without opening

<sup>3</sup> Marie-Bénédicte Dembour and Tobias Kelly (eds) *Are Human Rights for Migrants? Critical Reflections on the Status of Irregular Migrants in Europe and the United States* (Routledge 2011) 1–22.

<sup>4</sup> Mashood Baderin and Robert McCorquodale (eds) *Economic, Social, and Cultural Rights in Action* (OUP 2007) 10–11.

<sup>5</sup> Alicia Ely Yamin, *Power, Suffering and the Struggle for Dignity: Human Rights Frameworks for Health and Why They Matter* (Penn Press 2016) 4–5.

<sup>6</sup> International Organization for Migration (IOM), ‘World Migration Report 2020’ (IOM 2020) 10, reports that international migrants were estimated to be 150 million in the year 2000 and 272 million in 2019.

<sup>7</sup> UN Department of Economic and Social Affairs, ‘World Social Report 2020 – Inequality in a Rapidly Changing World’ (UN Publishing 2020) 19.

<sup>8</sup> Aoife Nolan (ed) *Economic and Social Rights after the Global Financial Crisis* (CUP 2014) 2; European Committee of Social Rights (ECSR), ‘Statement on Covid-19 and Social Rights’ (24 March 2021) 4, 7, 14.

<sup>9</sup> Helen Keller and Geir Ulfstein (eds) *UN Human Rights Treaty Bodies – Law and Legitimacy* (CUP 2012) 1.

up avenues for regular migration, while the continent is still beset by various armed conflicts and widespread socioeconomic deprivation.<sup>10</sup>

Despite this challenging context, over the last three decades, gradual but significant developments in European and international human rights have reduced the conceptualisation and implementation gaps between classical liberal rights and socioeconomic rights (including the right to health), particularly where particularly vulnerable or disadvantaged people or communities are concerned.<sup>11</sup> Furthermore, the number of migration cases adjudicated on by European courts and tribunals and the migrant-focused standard setting, monitoring and quasi-judicial activities at international level have spiked in recent years.<sup>12</sup>

This book invites readers to reflect on a series of questions: Why is it so difficult to equalise the rights of irregular migrants with those of citizens and regular migrants in a genuine *human* rights law? How have human rights bodies who are entrusted with the interpretation of legal obligations navigated the divide between human and migrant rights? How is the right to health conceptualised across different legal systems? How does this relate to public health and the concept of vulnerability? Why should its implementation prioritise vulnerable people? Why should such a categorisation of disadvantage include irregular migrants? To what levels of health care should irregular migrants and subgroups of the same have access according to the currently fragmented status of human rights law? How can the right to the social determinants of health facilitate the realisation of human and social rights, which are relevant to health promotion, for irregular migrants? And what are the conceptual and operational barriers to the implementation of this right? How can vulnerability- and disability-related arguments within human rights practice be strategised to support a right to mental health and social support for people with mental health issues or disabilities?

These questions can be summarised in the following central research question: Are international and European human rights frameworks sufficiently equipped to interpret and develop the right to health of irregular migrants towards meaningful levels of holistic health care provision and health promotion? The analysis and systematisation of applicable human

<sup>10</sup> The EU approach towards irregular migration is focused on prevention and border control and well as return legislation, see European Commission, 'A European Agenda on Migration' (Communication) (13 May 2015) COM(2015) 240 final, 7–10; European Commission, 'New Pact on Migration and Asylum' (23 September 2020) COM(2020) 609 final, Section 2.5.

<sup>11</sup> See Sections 2.4 and 2.5.

<sup>12</sup> Regarding European Courts, see Moritz Baumgärtel, *Demanding Rights: Europe's Supranational Courts and the Dilemma of Migrant Vulnerability* (CUP 2019) 3–4.

rights law and jurisprudence (of a binding, authoritative, persuasive or recommendatory nature) I have conducted for this book has left me moderately confident in offering a positive answer. However, to avoid being naïve, it is worth clarifying the boundaries of the current analysis and positioning this research in relation to the existing literature by starting with some working definitions.

### 1.1 PRELIMINARY DEFINITIONS: IRREGULAR MIGRANTS AND THE RIGHT TO HEALTH

For the sake of academic integrity, it is important to be clear on the meaning of certain key terms employed in this book. In terms of personal scope, this study focuses on ‘undocumented’ or ‘irregular’ migrants; its material scope encompasses the ‘right to physical and mental health’ and its interconnections with other human rights in international and European human rights law.

This study refers interchangeably to ‘irregular’ and ‘undocumented’ migrants or people to refer to those foreign nationals who do not comply with immigration law requirements for entry or stay in a country and are, therefore, susceptible to deportation.<sup>13</sup> This wording is in line with the recommendations of various international bodies and the practice of specialised non-governmental organisations (NGOs), although there is no consensus on the correct term to use.<sup>14</sup>

In 1975, the United Nations General Assembly (UNGA) passed a resolution requiring the ‘United Nations organs and specialised agencies concerned to use in all official documents the term “non-documented or irregular migrant workers” to define those workers that illegally and/or surreptitiously enter another country to obtain work’.<sup>15</sup> The UN Committee on Migrant Workers (CMW Committee) recently declared that ‘the use of the term “illegal” to describe migrant workers in an irregular situation is inappropriate and should be avoided as it tends to stigmatise them by associating them with

<sup>13</sup> Elspeth Guild, ‘Who Is an Irregular Migrant?’ in Barbara Bogusz et al. (eds) *Irregular Migration and Human Rights: Theoretical, European and International Perspectives (Immigration and Asylum Law and Policy in Europe)* (Martinus Nijhoff Publishers 2004) 3.

<sup>14</sup> Magdalena Perkowska, ‘Illegal, Legal, Irregular or Regular – Who Is the Incoming Foreigner?’ (2016) *Studies in Logic, Grammar and Rhetoric* 45(58) 187. The Platform for International Cooperation on Undocumented Migrants (PICUM) <<https://picum.org/>> and Migrant Rights Centre Ireland (MCRI) <[www.mrci.ie/](http://www.mrci.ie/)> (accessed 1 March 2019) mainly employ ‘undocumented migrants’.

<sup>15</sup> UNGA Res 3449 ‘Measures to Ensure the Human Rights and Dignity of All Migrant Workers’ (9 December 1975).

criminality'.<sup>16</sup> The UN Committee on Economic, Social and Cultural Rights (CESCR) – the monitoring body of the UN International Covenant on Economic, Social and Cultural Rights (ICESCR) – has recently demonstrated a preference for the term 'undocumented migrants', whereas the International Organization for Migration prefers to employ the term 'irregular migrants'.<sup>17</sup> In the European context, the Parliamentary Assembly of the Council of Europe (PACE) has expressed a preference for 'irregular migrant' over 'illegal migrant' or 'migrant without papers', and other monitoring bodies employ similar terminology.<sup>18</sup> In addition, the European Court of Human Rights (ECtHR) seems to have finally accepted the terminology of 'irregularity' over 'illegality'.<sup>19</sup>

Furthermore, the word 'migrants' in conjunction with 'irregular' is employed not only to embrace people who are in the process of moving through an international border but also those people who have long settled in a country where they do not hold authorisation to stay or reside. Irregular migration is a 'multifaceted and dynamic' phenomenon, as individual circumstances, such as labour opportunities, age, protracted time spent living in a country and migratory background, may change a person's actual migratory status across the lifespan. Although doubts remain concerning the real number of irregular migrants in countries, regions and globally,<sup>20</sup> estimated figures are significant, and how states respond to this phenomenon gives rise to conceptual, legal and policy challenges at different levels of governance.<sup>21</sup>

<sup>16</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW Committee), 'General Comment No. 2: The Rights of Migrant Workers in an Irregular Situation and Members of Their Families' (23 August 2013) CMW/C/GC/2, para 4. Similarly, UNHRC, Statement of the Special Rapporteur on the Human Rights of Migrants, 'Mainstreaming a Human Rights-Based Approach to Migration within the High-Level Dialogue' UNGA Plenary Session – Criminalization of Migrants (2 October 2013).

<sup>17</sup> IOM Key Migration Terms <[www.iom.int/key-migration-terms](http://www.iom.int/key-migration-terms)> accessed 1 March 2021.

<sup>18</sup> Parliamentary Assembly of the Council of Europe (PACE) Res 1509 'Human Rights of Irregular Migrants' (2006). See also the European Commission against Racism and Intolerance of the Council of Europe (ECRI), 'General Policy Recommendation No.16: Safeguarding Irregularly Present Migrants from Discrimination' (16 March 2016).

<sup>19</sup> Cfr *Ponomaryov and Others v Bulgaria* App no 5335/05 (ECHR 2011) para 54 and *Chowdury and Others v Greece* App no 21884/15 (ECHR 2017) 95, 97.

<sup>20</sup> Irregularity of status means that it is impossible to have a census of irregular migrants, who by definition do not wish to be tracked by state authorities. Several studies estimate their number between 5 and 20 per cent of all migrant population, with significant differences across continents. See IOM's Global Migration Data Analysis Centre, 'Irregular Migration' in *Migration Data Portal* (last updated 9 June 2020) <<https://migrationdataportal.org/themes/irregular-migration>> accessed 10 May 2021.

<sup>21</sup> Sarah Spencer and Anna Triandafyllidou (eds) *Migrants with Irregular Status in Europe – Evolving Conceptual and Policy Challenges* (Springer 2020) 1–2.

In relation to health, the Constitution of the World Health Organization (WHO) defines the concept as a ‘state of complete physical, mental and social well-being and not merely the absence of disease or infirmity’.<sup>22</sup> International human rights law has reduced the corresponding legal standard to the ‘right to the highest attainable standard of physical and mental health’ because it was seen as impossible to impose on states a duty to guarantee a ‘state of complete [...] health’ for everyone.<sup>23</sup> Health is a public good and a human right,<sup>24</sup> and the enjoyment of good health, although not directly acknowledged or theorised in international conventions, is crucial for us to flourish as human beings.<sup>25</sup> Therefore, fair and equal access to services should be available to meet basic health needs and ensure equality of opportunity to function in society.<sup>26</sup>

This ‘highest attainable standard of health’, for individuals and communities, must be realised through intersectoral measures concerning both health care and other social determinants of health.<sup>27</sup> In 1978, discussions between health experts and world leaders led to the adoption of the Declaration of Alma-Ata on ‘primary health care’.<sup>28</sup> The approach of this milestone public health document, which was endorsed by the WHO and followed and consistently confirmed at other international fora,<sup>29</sup> has influenced the way in which the CESCR, *inter alia*, has framed the normative content of the right to health and its correlative general and core international obligations.<sup>30</sup> Therefore, states are urged, under international human rights

<sup>22</sup> Constitution of the World Health Organization (Adopted 22 July 1946, entry into force 7 April 1948) Off. Rec. WHO 2, 100, Preamble.

<sup>23</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entry into force 3 January 1976) (ICESCR) UNGA Res 2200A (XXI) Article 12. For further details, see Section 4, Ch 2.

<sup>24</sup> Francesco Francioni, ‘Sovranità Statale e Tutela della Salute come Bene Pubblico Globale’ in Laura Pineschi (ed) *La Tutela della Salute nel Diritto Internazionale ed Europeo tra Interessi Globali e Interessi Particolari* (Editoriale Scientifica 2017) 51–66.

<sup>25</sup> Amartya Sen, ‘Elements of a Theory of Human Rights’ (2004) *Philosophy and Public Affairs* 32 (4) 315, 332; Martha Nussbaum, *Creating Capabilities: The Human Development Approach* (Belknap Press 2011) 20–26.

<sup>26</sup> Norman Daniels, *Just Health: Meeting Health Needs Fairly* (CUP 2007) 20–21.

<sup>27</sup> Committee on Economic Social and Cultural Rights (CESCR) ‘General Comment No. 14: The Right to the Highest Attainable Standard of Health (article 12 of the International Covenant on Economic, Social and Cultural Rights)’ (11 August 2000) E/C.12/2000/4, paras 4, 11.

<sup>28</sup> Declaration of Alma-Ata – Health for All, International Conference on Primary Health Care (6–12 September 1978). For further details, see Chapter 2.

<sup>29</sup> Ottawa Charter for Health Promotion (21 November 1986); Programme of Action adopted at the International Conference on Population and Development, Cairo (5–13 September 1994).

<sup>30</sup> CESCR, GC14 (n 27) para 43.

law and global health law, to take measures to ‘address [...] the main health problems in the community, providing promotive, preventive, curative and rehabilitative services’ through the implementation of public health, medical and socioeconomic measures.<sup>31</sup> In doing so, under both public health and human rights law, state authorities should target health equity and embrace approaches of substantive equality to implement the right to health. This means targeting the elimination of ‘systematic disparities in health (or in the major social determinants of health) between groups with different levels of underlying social advantage/disadvantage’ to allow every population group ‘equal opportunities to be healthy’.<sup>32</sup>

By writing on the right to health of irregular migrants, I not only encourage the reader to critically question how health care–related human rights obligations are (somewhat inconsistently) interpreted and implemented but also – given the expansive scope of this right, which embraces the social determinants of health – attempt to shed light on overly restrictive treaty interpretations in the context of migrant rights and several intersectional forms of systemic oppression and rights violations that must be addressed to meet the minimum requirements of inclusiveness and coherence of the human rights project.

## 1.2 THE CONTOURS OF THIS HUMAN RIGHTS ANALYSIS: INTERNATIONAL LAW AND PUBLIC HEALTH

A number of dynamic and challenging issues exist at the intersection of migration, health and human rights, including how the experience of migration and holding a certain migration status can affect, either positively or negatively, the health and well-being of individuals and populations; how migration law and health policies can restrict access to necessary care and the enjoyment of human rights; and how the violations of a broad array of human rights norms can have detrimental consequences on individual health, as in the context of irregular employment and exploitative working conditions.<sup>33</sup>

This analysis is premised on the consideration that to approach these regulatory challenges, human rights law should give adequate weight to

<sup>31</sup> Declaration of Alma-Ata (n 28) para VII, 2–4, emphasis added.

<sup>32</sup> Paula Braveman and Sophia Gruskin, ‘Defining Equity in Health’ (2003) *Journal of Epidemiology and Community Health* 57 254, 257.

<sup>33</sup> These relations are partly modelled on the reflections of Jo Vearey, Charles Hui and Kolitha Wickramage, ‘Migration and Health: Current Issues, Governance and Knowledge Gaps’ in IOM (n 6) 209 and Johnathan Mann et al., ‘Health and Human Rights’ (1994) *Journal of Health and Human Rights* 1.

public health and social disability paradigms, as these can complement each other in working towards a human-centred, difference-sensitive and holistic regulation of health and well-being for irregular migrants, who constitute a multifaceted and marginalised group. Above domestic legal sources, human rights law is composed of a number of international and regional legal systems, but human rights is an intrinsically interdisciplinary subject.<sup>34</sup> Indeed, since the 1990s, health and human rights studies have significantly grown, and the new field of global health law, which incorporates human rights-based approaches, has emerged.<sup>35</sup> Furthermore, the social model of disabilities is embedded, with some adjustments, in the UN Convention on the Rights of Persons with Disabilities.<sup>36</sup> For both public health and disability scholars, the significance of human rights law derives, *inter alia*, from the fact that this is arguably the only source of law that legitimises international scrutiny of the standards of treatment of disadvantaged populations, such as irregular migrants with health issues or disabilities, and ensures a multilevel accountability for abusive law, policies and practices that fall within state jurisdictions and sovereign control.<sup>37</sup>

This work synergises a doctrinal analysis of the scope and content of the right to health for irregular migrants in international and European human rights law, including the root causes of inequality of standards and health determinants, with certain items of public health and disability literature to complement the definition and operationalisation of health standards. This entails regarding (human rights) ‘law as a means to an end’, which, in this case, is the realisation of the ‘highest attainable standards of physical and mental health’ for everyone.<sup>38</sup> This approach means analysing sources of human rights law and legal arguments<sup>39</sup> while also mitigating the criticism that a purely doctrinal approach to law would operate within a ‘socio, political,

<sup>34</sup> Michael Freeman, *Human Rights: An Interdisciplinary Approach* (2nd edn, Polity Press 2011).

<sup>35</sup> Lawrence O. Gostin and Benjamin Mason Meier (eds) *Foundations of Global Health and Human Rights* (OUP 2020).

<sup>36</sup> Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entry into force 3 May 2008) (CRPD) UNGA Res 61/106, Preamble.

<sup>37</sup> Lance Gable and Laurence Gostin, ‘Human Rights of Persons with Mental Disabilities: The European Convention of Human Rights’ in Lawrence Gostin et al. (eds) *Principles of Mental Health Law and Policy* (OUP 2010) 104, referencing to Louis Henkin, *The Age of Rights* (Columbia University Press 1990) 20–21.

<sup>38</sup> Brian Tamanaha, *Law as a Means to an End* (CUP 2006); Dabney Evans and Megan Price ‘Measure for Measure: Utilizing Legal Norms and Health Data in Measuring the Right to Health’ in Fons Coomans, Fred Grünfeld and Menno T. Kamminga (eds) *Methods of Human Rights Research* (Intersentia 2009) 111.

<sup>39</sup> Richard A. Posner, ‘Legal Scholarship Today’ (2002) *Harvard Law Review* 115 1314, 1316.



and economic vacuum'.<sup>40</sup> For instance, irregular migration is scrutinised as a subject of legal interpretation and a human experience characterised by actual health, social and institutional vulnerabilities, and health is analysed as a 'status' and an 'entitlement', in the light of hard and soft law and public health material, keeping in mind the rules of international (human rights) law and 'striking a balance between foolish utopianism and grim realism'.<sup>41</sup>

For the purposes of this research, 'international human rights law' refers to the UN machinery of human rights, particularly the nine UN human rights treaties and the special procedures of the Human Rights Council.<sup>42</sup> 'European human rights law' refers to the instruments adopted in the context of the Council of Europe but excludes the legal standards and case law that have developed in EU law.<sup>43</sup> The exclusion of EU law is based on the fact that although irregular migration is a shared competence of the EU and its member states, health remains an exclusive competence of member states, albeit one that is supported and complemented by various provisions of the Treaty on the Functioning of the EU. The right to health is stated in the Charter of Fundamental Rights of the EU but applies only within the scope of EU law. The net effect is that the Court of Justice of the EU has pronounced on the right to health of an irregular migrant only once and only in the context

<sup>40</sup> David Ibbetson, 'Historical Research in Law' in Mark Tushnet and Peter Cane (eds) *Oxford Handbook of Legal Studies* (OUP 2003) 863, 864.

<sup>41</sup> David J. Bederman, 'Appraising a Century of Scholarship in the American Journal of International Law' (2006) *American Journal of International Law* 100 20, 22.

<sup>42</sup> International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entry into force 4 January 1969) (ICERD) UNGA Res 2106 (XX); International Covenant on Civil and Political Rights (adopted 16 December 1966, entry into force 23 March 1976) (ICCPR) UNGA Res 2200A (XXI); ICESCR (n 23); Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entry into force 3 September 1981) (CEDAW) UNGA Res 34/180; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entry into force 26 June 1987) (CAT) UNGA Res 49/46; Convention on the Rights of the Child (adopted 20 November 1989, entry into force 2 September 1990) (CRC) UNGA Res 44/25; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entry into force 1 July 2003) (ICMW) UNGA Res 45/158; International Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 December 2006, entry into force 23 December 2010) (ICPED) UNGA Res 61/177; CRPD (n 36). For further details, including on the UN human rights bodies and their procedures, see <[www.ohchr.org/EN/pages/home.aspx](http://www.ohchr.org/EN/pages/home.aspx)> accessed 1 March 2019.

<sup>43</sup> This research is primarily focused on the law and jurisprudence that is developed in the context of the Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entry into force 3 September 1953) ETS 5 (ECHR); European Social Charter (adopted 18 October 1961, entry into force 26 February 1965), ETS 35; Revised European Social Charter (adopted 3 May 1996, entry into force 1 July 1999) ETS 163 (ESC).

of deportation-related inhuman or degrading treatment.<sup>44</sup> Accordingly, there is currently very little to be gleaned from EU law concerning the right to health of irregular migrants. Regarding the regional legal frameworks examined in this research, the choice to exclude from the analysis the instruments of the Organisation of American States and the African Union was made in the interest of avoiding excessively general statements and conclusions on migration and health situations in Africa and the Americas. However, it is worth noting that migration and socioeconomic rights in the American regional systems, which are briefly referred to in Chapter 1 and in the Conclusion, may become suitable subjects for further future research because of the rapid *pro homine* developments of these systems in the last few years.

As this examination is both expository and evaluative, the norms of human rights treaties are assessed in the light of relevant legal principles of interpretation, case law, jurisprudence, extra-legal sources and interdisciplinary scholarly analyses.<sup>45</sup> Although no hierarchical relation exists between international and regional legal frameworks, all chapters juxtapose and compare the standards developed within the European context – for instance by the binding judgments of the ECtHR – with those elaborated by prevalently non-binding procedures with regard to UN human rights treaties. Although the practices of UN human rights bodies differ in nature and legal value (e.g. case-specific views, state-specific findings on reporting procedures, general comments, reports of special rapporteurs), my position is that these instances of ‘soft law’ are not without legal importance. Indeed, human rights bodies are explicitly mandated to review state practices and perform interpretative activities, *inter alia*, by either a treaty or a resolution adopted by a state body. Furthermore, they have accumulated an impressive volume of human rights jurisprudence, which has contributed to elaborating broadly shaped human rights standards at the UN human rights level. These, when aligned with the criteria for interpretation of international (human rights) law, can be particularly authoritative.<sup>46</sup> Knowledge of this jurisprudence may prove particularly useful in the

<sup>44</sup> European Parliament and Council Directive 2008/115/EC of 16 December 2008 laying down common standards and procedures in Member States for returning illegally staying third-country nationals [2008] OJ L348/98; Case C-562/13 *Centre public d'action sociale d'Ottignies-Louvain-la-Neuve v Moussa Abdida* [2014] paras 62–64.

<sup>45</sup> Robert Cryer et al., *Research Methodologies in EU and International Law* (Hart Publishing 2011) 9.

<sup>46</sup> Helen Keller and Leena Grover ‘General Comments of the Human Rights Committee and their Legitimacy’ in Keller and Ulfstein (n 9) 193; Urfan Khaliq and Robin Churchill, ‘The Protection of Economic and Social Rights: A Particular Challenge?’ in Keller and Ulfstein (n 9) 205–208.