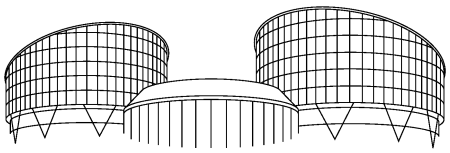

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Guide on Article 1 of the European Convention on Human Rights

Obligation to respect human rights – Concepts of "jurisdiction" and imputability

Updated on 30 April 2019

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Publishers or organisations wishing to translate and/or reproduce all or part of this report in the form of a printed or electronic publication are invited to contact publishing@echr.coe.int for information on the authorisation procedure.

If you wish to know which translations of the Case-Law Guides are currently under way, please see *Pending translations*.

This Guide has been prepared by the Directorate of the Jurisconsult and does not bind the Court. The text was finalised on 31 January 2017; it may be subject to editorial revision.

This Guide was originally drafted in French. The text was finalised in February 2017. It will be updated regularly. This update was finalised on 30 April 2019.

The Case-Law Guides are available for downloading at *www.echr.coe.int* (Case-law – Case-law analysis – Case-law guides). For publication updates please follow the Court's Twitter account at *https:/twitter.com/echrpublication*.

© Council of Europe/European Court of Human Rights, 2019

Table of contents

Note to readers 4

Introduction 5

I. The territoriality principle and the exceptions thereto 7

A. The territoriality principle and its scope 7
1. The territoriality principle in the traditional sense of the term 7
2. The relationship between Articles 1 and 56 of the Convention 8
3. The jurisdictional link created by the commencement of civil or criminal proceedings 10

B. Exceptions to the territoriality principle 11
1. Power exercised over the person of the applicant 12
a. Acts of diplomatic or consular agents 12
b. Acts committed on board a ship or aircraft 12
c. Exercise of another State's sovereign authority with its agreement 12
d. Use of force by a State's agents operating outside its territory 14
2. Power exercised in a specific territory 15
a. Jurisdiction of the "active" State on the grounds of its military action outside its territory 16
i. "Traditional" military occupation 17
ii. Creation of a separatist entity unrecognised by the International community 20
b. Jurisdiction of a State undergoing foreign military (or separatist) action within its territory 23

II. Delegation of State powers or joint exercise of the latter with other States 26

A. Imputability to the European Union of an alleged violation: the Bosphorus presumption or the principle of equivalent protection 26

B. Imputability to the UN of alleged violations 27
1. International military operations 27
2. International sanctions ordered by the UN Security Council 28

C. Imputability of the alleged violation to other international organisations 29

List of cited cases 30

Note to readers

This Guide is part of the series of Case-Law Guides published by the European Court of Human Rights (hereafter "the Court", "the European Court" or "the Strasbourg Court") to inform legal practitioners about the fundamental judgments and decisions delivered by the Strasbourg Court. This particular Guide analyses and sums up the case-law under Article 1 of the European Convention on Human Rights (hereafter "the Convention" or "the European Convention") until 30 April 2019. Readers will find herein the key principles in this area and the relevant precedents.

The case-law cited has been selected among the leading, major, and/or recent judgments and decisions.*

The Court's judgments and decisions serve not only to decide those cases brought before it but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (*Ireland v. the United Kingdom*, § 154, 18 January 1978, Series A no. 25, and, more recently, *Jeronovičs v. Latvia* [GC], no. 44898/10, § 109, ECHR 2016).

The mission of the system set up by the Convention is thus to determine issues of public policy in the general interest, thereby raising the standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], § 89, no. 30078/06, ECHR 2012). Indeed, the Court has emphasised the Convention's role as a "constitutional instrument of European public order" in the field of human rights (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 156, ECHR 2005-VI).

This Guide contains references to keywords for each cited Article of the Convention and its Additional Protocols. The legal issues dealt with in each case are summarised in a *List of keywords*, chosen from a thesaurus of terms taken (in most cases) directly from the text of the Convention and its Protocols.

The *HUDOC database* of the Court's case-law enables searches to be made by keyword. Searching with these keywords enables a group of documents with similar legal content to be found (the Court's reasoning and conclusions in each case are summarised through the keywords). Keywords for individual cases can be found by clicking on the Case Details tag in HUDOC. For further information about the HUDOC database and the keywords, please see the *HUDOC user manual*.

* The case-law cited may be in either or both of the official languages (English and French) of the Court and the European Commission of Human Rights. Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber. Chamber judgments that were not final when this update was published are marked with an asterisk (*).

Introduction

Article 1 of the Convention – Obligation to respect human rights

"The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."

HUDOC keywords

High Contracting Party (1) – Responsibility of States (1) – Jurisdiction of States (1)

1. As provided by Article 1, the engagement undertaken by a Contracting States is confined to "securing" ("*reconnaître*" in the French text) the listed rights and freedoms to persons within its own "jurisdiction". "Jurisdiction" within the meaning of Article 1 is a *sine qua non* in this framework. The exercise of jurisdiction is a necessary condition for a Contracting State to be able to be held responsible for acts or omissions imputable to it which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention (*Catan and Others v. the Republic of Moldova and Russia* [GC], § 103, and the case-law therein).

2. Historically, the text drawn up by the Committee on Legal and Administrative Affairs of the Consultative Assembly of the Council of Europe laid down, in what was to become Article 1 of the Convention, that "member States [should] undertake to secure to everyone residing in their territories the rights ...". The Committee of Intergovernmental Experts which examined the Consultative Assembly's draft decided to replace the words "residing in their territories" with "within their jurisdiction". The reasons for that amendment are described in the following extract from the *Collected Edition of the* Travaux Préparatoires *of the European Convention on Human Rights*:

> "The Assembly draft had extended the benefits of the Convention to 'all persons residing within the territories of the signatory States'. It seemed to the Committee that the term 'residing' might be considered too restrictive. It was felt that there were good grounds for extending the benefits of the Convention to all persons in the territories of the signatory States, even those who could not be considered as residing there in the legal sense of the word. The Committee therefore replaced the term 'residing' by the words 'within their jurisdiction' which are also contained in Article 2 of the Draft Covenant of the United Nations Commission." (Vol. III, p. 260)

3. The adoption of Article 1 of the Convention was also preceded by a comment made by the Belgian representative, who, on 25 August 1950 during the plenary sitting of the Consultative Assembly, said that:

> "... henceforth the right of protection by our States, by virtue of a formal clause of the Convention, may be exercised with full force, and without any differentiation or distinction, in favour of individuals of whatever nationality, who on the territory of any one of our States, may have had reason to complain that [their] rights have been violated."

4. The *travaux préparatoires* go on to note that the wording of Article 1 including "within their jurisdiction", did not give rise to any further discussion and the text as it was (and is now) was adopted by the Consultative Assembly on 25 August 1950 without further amendment (*Collected Edition*, vol. VI, p. 132) (*Banković and Others v. Belgium and Others* (dec.) [GC], §§ 19-20).

5. The questions whether the acts which form the basis of the applicant's complaints fall within the *jurisdiction* of the respondent State and whether that State is in fact *responsible* for those acts under the Convention are very different, the latter question falling to be determined by the Court rather at the merits phase (*Loizidou v. Turkey* (preliminary objections), §§ 61 and 64). A distinction must also be drawn between the issue of *jurisdiction*, within the meaning of Article 1 of the Convention, and

that of the *imputability* of the alleged violation to the actions or omissions of the respondent State, the latter issue being examined from the angle of the application's compatibility *ratione personae* with the provisions of the Convention (*Loizidou v. Turkey* (merits), § 52). The Court usually considers the notions of imputability and responsibility as going together, the State only engaging its responsibility under the Convention if the alleged violation could be imputed to it. In some specific cases, however, the Court is careful to distinguish between the two notions and to examine them separately (*Assanidze v. Georgia* [GC], § 144).

6. Furthermore, the Court considered that it could raise the issue of the imputability of alleged violations to the respondent State of its own motion, even where the Government of that State failed to raise an objection as to inadmissibility (*Stephens v. Malta (no. 1)*, § 45; *Vasiliciuc v. the Republic of Moldova*, § 22).

7. The Court has established a number of clear principles in its case-law on Article 1. In any case brought before it, for the purposes of establishing jurisdiction under the Convention, the Court takes account of the particular factual context and relevant rules of international law (*Jaloud v. the Netherlands* [GC], § 141). It must concentrate on the issues raised in present case before it, without, however, losing sight of the general context (*Loizidou v. Turkey* (merits), § 53).

8. The acquiescence or connivance of the authorities of a Contracting State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction may engage the State's responsibility under the Convention (*Ilaşcu and Others v. Moldova and Russia* [GC], § 318; *Solomou and Others v. Turkey*, § 46).

9. It should also be remembered that, for the purposes of the Convention, the sole issue of relevance is the State's international responsibility, irrespective of the national authority to which the breach of the Convention in the domestic system is imputable. Even though it is not inconceivable that States will encounter difficulties in securing compliance with the rights guaranteed by the Convention in all parts of their territory, each State Party to the Convention nonetheless remains responsible for events occurring anywhere within its national territory. Further, the Convention does not merely oblige the higher authorities of the Contracting States themselves to respect the rights and freedoms it embodies; it also has the consequence that, in order to secure the enjoyment of those rights and freedoms, those authorities must prevent or remedy any breach at subordinate levels. The higher authorities of the State are under a duty to require their subordinates to comply with the Convention and cannot shelter behind their inability to ensure that it is respected. The general duty imposed on the State by Article 1 of the Convention entails and requires the implementation of a national system capable of securing compliance with the Convention throughout the territory of the State for everyone. That is confirmed by the fact that, firstly, Article 1 does not exclude any part of the member States' "jurisdiction" from the scope of the Convention and, secondly, it is with respect to their "jurisdiction" as a whole that member States are called on to show compliance with the Convention. (*Assanidze v. Georgia* [GC], §§ 146-147). In short, it is only the responsibility of the Georgian State itself – not that of a domestic authority or organ - that is in issue before the Court. It is not the Court's role to deal with a multiplicity of national authorities or courts or to examine disputes between institutions or over internal politics (*ibid.*, § 149).

10. Generally speaking, a State may be held responsible even where its agents are acting *ultra vires* or contrary to instructions. Under the Convention, a State's authorities are strictly liable for the conduct of their subordinates; they are under a duty to impose their will and cannot shelter behind their inability to ensure that it is respected (*Ilaşcu and Others v. Moldova and Russia* [GC], § 319).

I. The territoriality principle and the exceptions thereto

A. The territoriality principle and its scope

1. The territoriality principle in the traditional sense of the term

11. A State's jurisdiction within the meaning of Article 1 is *primarily territorial*. Article 1 of the Convention must be considered to reflect this ordinary and essentially territorial notion of jurisdiction, other bases of jurisdiction being exceptional and requiring special justification in the particular circumstances of each case (*Banković and Others v. Belgium and Others* (dec.) [GC], §§ 61, 67, 71, as well as *Catan and Others v. République de Moldova and Russia* [GC], § 104, and the references therein.

12. The fact that the applicant currently lives in a Contracting State does not suffice to confer territorial jurisdiction on that State, and therefore responsible under Article 1 of the Convention. It is the subject-matter of the applicant's complaints alone that is relevant in this regard (*Chagos Islanders v. the United Kingdom* (dec.), § 63).

13. In the case of *Banković and Others v. Belgium and Others* (dec.) [GC], the applicants complained about the deaths of members of their families (and the injuries sustained by one of the applicants who had survived) resulting from the bombing of the Serb radio and television premises in Belgrade by NATO armed forces, even though the Federal Republic of Yugoslavia was not a Contracting State. The Court rejected the applicants' argument that any person suffering the negative effects of an act attributable to a Contracting State came *ipso facto*, wherever the act was committed or wherever its consequences were felt, "under the jurisdiction" of that State for the purposes of Article 1 of the Convention. It reiterated that the Convention was a multilateral treaty operating, subject to Article 56 of the Convention, in an essentially regional context and notably in the legal space (*espace juridique*) of the Contracting States, to which the Federal Republic of Yugoslavia did not belong. The Convention was not therefore designed to be applied throughout the world, even in respect of the conduct of Contracting States. The Court was not persuaded, in the instant case, that there was any jurisdictional link between the respondent States and the applicants, who had not demonstrated that they and their deceased relatives were capable of coming within the jurisdiction of the respondent States on account of the extra-territorial act in question (see also *Marković and Others v. Italy* (dec.)).

14. A State's jurisdiction is deemed to be exercised normally throughout its territory (*Assanidze v. Georgia* [GC], § 139). It is immaterial whether the respondent State is unitary or federal. Unlike the American Convention on Human Rights of 22 November 1969 (Article 28), the European Convention does not contain a "federal clause" limiting the obligations of the federal State for events occurring on the territory of the States forming part of the federation. Besides, even if an implied federal clause similar in content to that of Article 28 of the American Convention were found to exist in the European Convention (which is impossible in practice), it could not be construed as releasing the federal State from all responsibility, since it requires the latter to "immediately take suitable measures, in accordance with its constitution ..., to the end that the [states forming part of the federation] may adopt appropriate provisions for the fulfilment of [the] Convention". Indeed, for reasons of legal policy – the need to maintain equality between the States Parties and to ensure the effectiveness of the Convention – it could not be otherwise. But for the presumption, the applicability of the Convention could be selectively restricted to only parts of the territory of certain States Parties, thus rendering the notion of effective human rights protection underpinning the entire Convention meaningless while, at the same time, allowing discrimination between the States Parties, that is to say between those which accepted the application of the Convention over the whole of their territory and those which did not (*ibid.*, §§ 141-142). Moreover, the authorities of a

territorial entity of the State are public-law institutions which perform the functions assigned to them by the Constitution and the law (*ibid.*, § 148).

15. The European Commission of Human Rights ("the Commission") affirmed the principle of territoriality in the framework of two applications from a single person directed against the United Kingdom and Ireland, respectively. The applicant in those cases, a British national living in Northern Ireland, alleged a violation by both those States of the positive obligations stemming from Article 2 of the Convention on account of her husband's murder committed in the territory of the Republic of Ireland, and her brother's murder committed in Northern Ireland (and therefore in the United Kingdom). In the first application, against the United Kingdom, the applicant submitted that that State had also been responsible under the Convention for her husband's murder in the Republic of Ireland because the British authorities had not done all in their power to combat the overall phenomenon of IRA terrorism. The Commission recorded its disagreement. It noted that when he had died, the direct victim – the applicant's husband – had not been within the "jurisdiction" of the United Kingdom for the purposes of Article 1 of the Convention. The Commission also considered whether any action of the United Kingdom authorities could have played a part in the applicant's husband's murder in the Republic of Ireland, but found that the applicant herself had at no point alleged any such action on the part of the British authorities. Consequently, inasmuch as her complaint concerned the United Kingdom and related to her husband's murder, it was incompatible *ratione loci* with the Convention. On the other hand, her brother's murder in the United Kingdom had bestowed "jurisdiction" on that State, such that the corresponding complaint was indeed compatible *ratione loci* (*W. v. the United Kingdom*, Commission decision). In the second case, against Ireland, the Commission reached diametrically opposed conclusions, to the effect that the applicant's husband had been within the jurisdiction of the respondent State, but not her brother. In particular, as regards the brother, the Commission added that the constitutional claim to the territories of Northern Ireland set out in Articles 2 and 3 of the Irish Constitution were not recognised by the international community as constituting the basis of jurisdiction over Northern Ireland (*W. v. Ireland*, Commission decision).

16. Furthermore, the Court has recently specified that three refusals by Lithuanian border officials to accept asylum applications from a Chechen family at the border with Belarus constituted actions imputable to Lithuania, thereby falling within that country's jurisdiction under Article 1 of the Convention (*M.A. and Others v. Lithuania*, § 70).

2. The relationship between Articles 1 and 56 of the Convention

17. Article 56 of the Convention, which is titled "Territorial application" (Article 63 before the entry into force of Protocol No. 11 in 1998), reads as follows:

> "1. Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.
>
> 2. The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.
>
> 3. The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.
>
> 4. Any State which has made a declaration in accordance with paragraph 1 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention."

18. The principles of extraterritorial application of the Convention as formulated by the Court in its constant case-law under Article 1 (see, in particular, *Al-Skeini and Others v. the United Kingdom*

[GC]), do not replace the system of declarations which the Contracting States decided, when drafting the Convention, to apply to territories overseas for whose international relations they were responsible. In other words, in the absence of a declaration made in conformity with Article 56, an applicant cannot legitimately rely on Article 1 to extend the application of the Convention to a territory located outside its legal space (*Quark Fishing Ltd v. the United Kingdom* (dec.); *Chagos Islanders v. the United Kingdom* (dec.), §§ 67-75).

19. In the case of *Quark Fishing Ltd v. the United Kingdom* (dec.), a fishing company, complained about the refusal by the authorities of the South Georgia and the South Sandwich Islands ("SGSSI") to grant it a licence to catch a particular species of fish. The applicant company applied to the British High Court and secured the quashing of the instruction in question; nevertheless, his claim for damages was dismissed by the court on the grounds that the application of Protocol No. 1 to the Convention (right to the peaceful enjoyment of property) had not been extended to the SGSSI. The Court found that according to the decisions of the British courts, the SGSSI were under the responsibility of the United Kingdom for the purposes of Article 56 of the Convention, but that the United Kingdom had not made a declaration extending the scope of Protocol No. 1 to that territory. The Court then rejected the applicant's plea relying on the "effective control" principle for the purposes of Article 1; that principle did not replace the system of declarations provided for in Article 56. The applicant company submitted that the declarations system, which was tailored to the colonial systems in the aftermath of the Second World War, was now outdated. While agreeing that the situation had changed considerably since the early days of the Convention, the Court pointed out that only the Contracting States could bring the declarations system to an end by means of the usual procedure of signature and ratification. The fact that the United Kingdom had extended the Convention itself to the territory gave no grounds for finding that Protocol No. 1 had also to apply or for the Court to require the United Kingdom somehow to justify its failure to extend that Protocol. There was no obligation under the Convention for any Contracting State to ratify any particular Protocol or to give reasons for their decisions in that regard concerning their national jurisdictions.

20. In the case of *Chagos Islanders v. the United Kingdom* (dec.), the applicants were 1,786 former inhabitants or descendants of former inhabitants of the Chagos Islands, now known as the British Indian Ocean Territory, or BIOT). The Chagos Islanders had been expelled *de facto* from their homeland, or been prohibited from returning there, by the British Government between 1967 and 1973, in order to allow for the construction of US defence facilities on one of the islands. No force was used, but the inhabitants of the islands found themselves destitute after having been uprooted and lost their homes and means of subsistence. The proceedings in the British courts ended in 1982 in a settlement involving renunciation by the islanders of their rights to return to their homeland. Adjudicating on the applicability *ratione loci* of the Convention, the Court noted that the United Kingdom had never made a notification under Article 56 extending the right of individual petition to the population of the BIOT. The Court also dismissed the applicants' contention that any possible basis of jurisdiction under Article 1 (see in particular *Al-Skeini and Others v. the United Kingdom* [GC]) had to take precedence over Article 56 on the grounds that it should be set aside as an objectionable colonial relic and in order to prevent a vacuum in the protection offered by the Convention. Article 56 remained in force, its meaning was unambiguous, and the Court could not revoke it at will in order to achieve any allegedly desirable outcome or to provide redress for wrongs committed. Nor did the fact that the final decision went to politicians or civil servants in the United Kingdom constitute sufficient grounds to bring within the jurisdiction of that State a region located outside the legal space of the Convention. Finally, inasmuch as the applicants had complained under Article 6 about the decisions of the British courts, the Court's assessment had to be confined to the procedural rights secured under that provision.

3. The jurisdictional link created by the commencement of civil or criminal proceedings

21. Even if the events at the origin of a court case occurred outside the territory of the respondent State, where a person brings a civil action concerning those events before the courts of that State there is an undeniable "jurisdictional link" for the purposes of Article 1 of the Convention, to the extent that the rights secured under Article 6 § 1 are at stake – obviously without prejudice to the outcome of proceedings (*Marković and Others v. Italy* [GC], § 54; see also *Chagos Islanders v. the United Kingdom* (dec.), § 66). Indeed, if the domestic law recognises a right to bring an action and if the right claimed is one which prima facie possesses the characteristics required by Article 6 of the Convention, the Court sees no reason why such domestic proceedings should not be subjected to the same level of scrutiny as any other proceedings brought at the national level. Even though the extraterritorial nature of the events alleged to have been at the origin of an action may have an effect on the applicability of Article 6 and the final outcome of the proceedings, it cannot under any circumstances affect the jurisdiction *ratione loci* and *ratione personae* of the State concerned. If civil proceedings are brought in the domestic courts, the State is required by Article 1 of the Convention to secure in those proceedings respect for the rights protected by Article 6 (*Marković and Others v. Italy* [GC], §§ 53-54). In this case, the Court had examined the objection as to incompatibility *ratione loci* raised by the respondent Government, to the effect that the civil action brought by the applicants before the Italian courts had concerned events of an extraterritorial nature (and air strike by NATO forces in the Federal Republic of Yugoslavia).

22. Similarly, if the investigative or judicial authorities of a Contracting State institute their own criminal investigation or proceedings concerning a death which has occurred outside the jurisdiction of that State, by virtue of their domestic law (e.g. under provisions on universal jurisdiction or on the basis of the active or passive personality principle), the institution of that investigation or those proceedings is sufficient to establish a jurisdictional link for the purposes of Article 1 between that State and the victim's relatives who later bring proceedings before the Court (*Güzelyurtlu and Others v. Cyprus and Turkey* [GC], § 188). This approach is also in line with the nature of the procedural obligation to carry out an effective investigation under Article 2, which has evolved into a separate and autonomous obligation, albeit triggered by acts in relation to the substantive aspects of that provision. In this sense it can be considered to be a detachable obligation arising out of Article 2 and capable of binding the State even when the death occurred outside its jurisdiction (*ibid.*, § 189, and the references therein).

23. On the other hand, where no investigation or proceedings have been instituted in a Contracting State, according to its domestic law, in respect of a death which has occurred outside its jurisdiction, the Court will have to determine whether a jurisdictional link can, in any event, be established for the procedural obligation imposed by Article 2 to come into effect in respect of that State. Although the procedural obligation under Article 2 will in principle only be triggered for the Contracting State under whose jurisdiction the deceased was to be found at the time of death, "special features" in a given case will justify departure from this approach, according to the principles developed in *Rantsev v. Cyprus and Russia*, §§ 243-44. However, the Court does not consider that it has to define in abstracto which "special features" trigger the existence of a jurisdictional link in relation to the procedural obligation to investigate under Article 2, since these features will necessarily depend on the particular circumstances of each case and may vary considerably from one case to the other (*Güzelyurtlu and Others v. Cyprus and Turkey* [GC], § 190).

24. Thus in the case of *Rantsev v. Cyprus and Russia*, § 243-244) concerning the conduct of the Cypriot and Russian investigative authorities following the apparently violent death of a Russian national in Cyprus, the Court rejected the objection raised by Russia that the facts mentioned in the application fell outside its jurisdiction and therefore did not incur its responsibility. Since the alleged trafficking in human beings had begun in Russia, the Court was competent to examine the extent to

which Russia could have taken steps within the limits of its own territorial sovereignty to protect the victim from trafficking, to investigate allegations of trafficking and to investigate the circumstances leading to her death, in particular by questioning witnesses living in Russia (§§ 206-208). Furthermore, assessing the merits of the complaint under the procedural head of Article 2 of the Convention, the Court concluded that Article 2 did not require member States' criminal laws to provide for universal jurisdiction in cases involving the death of one of their nationals outside their territory. Therefore, there was no free-standing obligation incumbent on the Russian authorities to investigate the victim's death in Cyprus, even if she was a Russian national – although Russia was indeed under an obligation to provide legal assistance as the State in whose territory the relevant evidence was to be found (§§ 243-245).

25. In the case of *Aliyeva and Aliyev v. Azerbaijan*, the Court had before it an application from the parents of an Azerbaijani national who had been killed in Ukraine under circumstances implicating two other Azerbaijani nationals. Pursuant to a legal mutual assistance agreement between Ukraine and Azerbaijan, the case had been transmitted to Azerbaijan, but in the absence of evidence the Azerbaijani authorities had discontinued the proceedings against the suspects. The Court raised *ex officio* the issue of its jurisdiction *ratione loci*, considering that insofar as Azerbaijan had accepted the obligation to conduct an investigation under the 1993 Minsk Convention to continue the criminal investigation commenced by the Ukrainian authorities, it was bound to conduct such an investigation in compliance with the procedural obligation under Article 2 and had undertaken to continue the criminal investigation commenced by the Ukrainian authorities, it was bound to conduct such an investigation in compliance with the procedural obligation under Article 2, regardless of where the death had occurred. Therefore, the jurisdiction of Azerbaijan within the meaning of Article 1 came into play only to the extent that the Azerbaijani authorities had decided to take of the proceedings previously opened by Ukraine, under the applicable international treaty and domestic law (§§ 55-57).

26. In the case of *Güzelyurtlu and Others v. Cyprus and Turkey* [GC], concerning the murders of several former residents of the "Turkish Republic of Northern Cyprus" ("TRNC") in the territory of the Republic of Cyprus, the TRNC authorities had initiated their own investigation into those murders, thus creating a "jurisdictional link" between the applicants and Turkey, which incurred the latter's responsibility *vis-à-vis* the acts and omissions of the "TRNC" authorities. Moreover, there were "special features" related to the situation in Cyprus. First of all, the international community regards Turkey as being in occupation of the northern part of Cyprus, and does not recognise the "TRNC" as a State under international law. Northern Cyprus is under the effective control of Turkey for the purposes of the Convention. Secondly, the murder suspects had fled to the "TRNC" and as a consequence, the Republic of Cyprus had been prevented from pursuing its own criminal investigation in respect of those suspects and thus from fulfilling its Convention obligations. Having regard to those two special features, which on their own were sufficient to find the existence of a jurisdictional link, the Court considered that Turkey's jurisdiction under Article 1 of the Convention was established in the instant case (*ibid*., §§ 191-197).

B. Exceptions to the territoriality principle

27. To date, the Court has recognised a number of exceptional circumstances capable of giving rise to the exercise of jurisdiction by a Contracting State outside its own territorial boundaries. In each case, the question whether exceptional circumstances exist which require and justify a finding by the Court that the State was exercising jurisdiction extraterritorially must be determined with reference to the particular facts (*ibid*., § 105; *Al-Skeini and Others v. the United Kingdom* [GC], § 132).

28. As an exception to the principle of territoriality, a Contracting State's jurisdiction under Article 1 may extend to acts of its authorities which produce effects outside its own territory (*Al-Skeini and*

Others v. the United Kingdom [GC], § 133, and the references therein). A State's jurisdiction outside its own border can primarily be established in one of the following two ways:

a. on the basis of the power (or control) actually exercised over the *person* of the applicant (*ratione personae*);

b. on the basis of control actually exercised over the foreign *territory* in question (*ratione loci*).

1. Power exercised over the person of the applicant

a. Acts of diplomatic or consular agents

29. A State's jurisdiction may arise from the activities of its diplomatic or consular agents abroad in accordance with the rules of international law where those agents exercise authority and control over other persons or their property (*Banković and Others v. Belgium and Others* (dec.) [GC], § 73). In some respects, the nationals of a Contracting State fall within the latter's jurisdiction even where they live or reside abroad; in particular, diplomatic and consular representatives exercise a series of functions the fulfilment of which may incur their country's responsibility under the Convention (*X. v. Germany*, Commission decision). Even if the applicant is physically in his own State, the acts and omissions of that State's diplomatic and consular agents which occur abroad but directly concern the said applicant place him under its jurisdiction (*X. v. the United Kingdom*, Commission decision).

30. The Commission therefore found that the applicants were within the jurisdiction of the respondent State in the following cases:

- a series of acts allegedly committed by German consular agents in Morocco against the applicant (a German national who did not consider himself as such because he was a member of the *Südetendeutsch* community) and his wife, damaging their reputation and finally, according to the applicant, triggering his expulsion from Moroccan territory (*X. v. Germany*, Commission decision);
- the alleged inaction of the British consul in Amman (Jordan) to whom the applicant, a British national, had asked for assistance in restoring custody of her child, who had been taken to Jordan by the father (*X. v. the United Kingdom*, Commission decision);
- the fact that the Danish Ambassador to the German Democratic Republic (GDR) had called the police of that State to remove a group of Germans who had taken refuge in the Danish Embassy (*M. v. Denmark*, Commission decision).

b. Acts committed on board a ship or aircraft

31. In addition to acts performed by diplomatic and consular agents, other recognised instances of the extraterritorial exercise of jurisdiction by a State include cases involving the activities of its diplomatic or consular agents abroad and on board aircraft and ships registered in, or flying the flag of, that State. In these specific situations, customary international law and treaty provisions have clearly recognised and defined the extraterritorial exercise of jurisdiction by the relevant State (*Cyprus v. Turkey*, Commission decision; *Banković and Others v. Belgium and Others* (dec.) [GC], § 73; *Medvedyev and Others v. France* [GC], § 65); *Bakanova v. Lithuania*, § 63; *Hirsi Jamaa and Others v. Italy* [GC], § 75).

c. Exercise of another State's sovereign authority with its agreement

32. The Court has recognised the exercise of extra-territorial jurisdiction by a Contracting State which, through the consent, invitation or acquiescence of the local Government, exercises all or some of the public powers normally to be exercised by that Government (*Banković and Others*

v. Belgium and Others (dec.) [GC], § 71). Consequently, where, in accordance with custom, treaty or other agreement, authorities of the Contracting State carry out executive or judicial functions on the territory of another State, the Contracting State may be responsible for breaches of the Convention thereby incurred, as long as the acts in question are attributable to it rather than to the territorial State (*Al-Skeini and Others v. the United Kingdom* [GC], § 135).

33. As regards extradition, when a State issues a European arrest warrant or and international arrest warrant issued by Interpol for the purposes of enforcing the detention of a person located in another State and the latter executes the warrant pursuant to its international obligations, the requesting State is responsible under the Convention for such detention, even if it was executed by the other State (*Vasiliciuc v. the Republic of Moldova*, §§ 23-24; *Stephens v. Malta (no. 1)*, §§ 51-54). Where the arrest warrant comprises a technical irregularity which the authorities of the requested State could not have detected, the requesting State should be ascribed responsibility under the Convention for the unlawful arrest warrant issued by its authorities pursuant to its domestic law and executed by the other State in compliance with its international obligations (*ibid.*, § 52).

34. The Commission dealt with a situation of that type in the case of *X. and Y. v. Switzerland* (Commission decision). In that case a German national complained about a prohibition on entry imposed on him by the Swiss Federal authorities, with effect both in Swiss territory and in Liechtenstein (which, at the time, had not yet ratified the Convention and therefore lay outside the scope of the latter). The decisive point for the Commission was that under an agreement between Switzerland and Liechtenstein, the latter was debarred from excluding the effects of an entry ban imposed by the Swiss authorities, whereby only the latter authorities were entitled to exclude Liechtenstein from the territorial scope of such a measure. In those conditions, Switzerland should be deemed responsible not only for the legal procedure and consequences of the prohibition on entry into its own territory, but also for the effects produced by that prohibition in Liechtenstein. Indeed, in conformity with the specific relationship between those two countries, in acting on behalf of Liechtenstein the Swiss authorities were actually acting in accordance with their national jurisdiction. According to the agreement in question, they were acting exclusively in pursuance of Swiss law, and it was merely the effect of their actions which extended to Liechtenstein territory. In other words, the prohibition had been imposed under Swiss jurisdiction, which had been extended to Liechtenstein. The Commission found that the measures implemented by the Swiss authorities which took effect in Liechtenstein placed all persons to whom they were applicable – including the applicants – under Swiss jurisdiction for the purposes of Article 1 of the Convention.

35. The Court addressed a fairly similar issue in *Drozd and Janousek v. France and Spain*, concerning the unique relationship between the Principality of Andorra and France and Spain, especially before the 1993 reform of the Constitution (at the material time Andorra had not yet signed or ratified the Convention). The applicants had been convicted of armed robbery by the competent Andorran court (*Tribunal des Corts*), which is made up of three members: a judge (French or Spanish, appointed in turn by each of the Co-Princes of Andorra, that is to say the President of the French Republic and the Bishop of Urgell), an episcopal *veguer* (appointed by the Bishop of Urgell), and a French judge delegated by the French *veguer* (in turn appointed by the French Co-Prince). After the conviction, pursuant to Andorran law, the applicants had the option of serving their sentence in France or in Spain; they opted for France. Before the Court they complained, in particular, that they had not benefited from a fair trial; they alleged that France and Spain were responsible, at the international level, for the conduct of the Andorran authorities. The Court disagreed. It noted that while judges from France or Spain sat in the Andorran courts, they did not do so in their capacity as French or Spanish judges. Those courts discharged their duties autonomously, and their judgments and decisions were not subject to supervision by the French or Spanish authorities. Moreover, there was nothing to suggest that the respondent States had attempted to interfere with the applicants' trial in Andorra. Consequently, insofar as they complained about the proceedings before the Andorran court, the applicants were under neither French nor Spanish jurisdiction (§ 96).

36. Another example of a Court finding that the respondent State lacks "jurisdiction" was in the case of *Gentilhomme, Schaff-Benhadji and Zerouki v. France*. The applicants were three French women who were married to Algerian men and lived in Algeria. Pursuant to an agreement concluded by France and Algeria in 1962, French children – including those with dual Franco-Algerian nationality under French law – could attend French public schools in Algeria managed by the French Academic and Cultural Office for Algeria ("OUCFA"). In 1988, however, the Algerian Government sent the French Embassy in Algiers a *note verbale* informing it that Algerian children could no longer be enrolled or re-enrolled in French schools; that included the applicants' children, since dual nationality was not recognised under Algerian law. The applicants lodged applications with the Court against France, alleging, *inter alia*, a breach of Article 2 of Protocol No. 1 and Articles 8 and 14 of the Convention. The Court noted that the impugned situation had stemmed directly from a unilateral decision by Algeria. Whether or not that decision had been in conformity with public international law, it basically amounted to a refusal on the part of Algeria to comply with the 1962 agreement. The French authorities, whose exercise of "jurisdiction" in Algerian territory in the present case had been based solely on that agreement, could only note the consequences of the Algerian decision for the education of children in the same situation as those of the applicants. In short, the facts complained of had been caused by a decision imputable to Algeria, which had thus taken a discretionary decision within its own territory, outside the scope of any French scrutiny. In other words, in the specific circumstances of the case, those facts could not be imputed to France (§ 20).

d. Use of force by a State's agents operating outside its territory

37. In some cases, the use of force by a State's agents operating outside its territory – whether lawfully or unlawfully – may bring the individual thereby brought under the control of the State's authorities into the State's Article 1 jurisdiction (*Al-Skeini and Others v. the United Kingdom* [GC], § 136). A typical example of such a case is where an individual has been handed over to a State's agents outside its territory. The State's accountability in such situations stems from the fact that Article 1 of the Convention cannot be interpreted so as to allow a State party to perpetrate violations of the Convention on the territory of another State, which it could not perpetrate on its own territory (*Issa and Others v. Turkey*, § 71).

38. The Court thus acknowledged that the applicants were under the "jurisdiction" of the relevant respondent States in the following situations:

- the applicant, the leader of the PKK (the Kurdistan Workers' Party), who had been arrested by Turkish security agents in the international zone of Nairobi airport (Kenya) and flown back to Turkey. The Court noted – and the Turkish Government did not dispute – that, directly after being handed over to the Turkish officials by the Kenyan officials, the applicant was effectively under Turkish authority and therefore within the "jurisdiction" of that State, even though in this instance Turkey exercised its authority outside its territory. It is true that the applicant was physically forced to return to Turkey by Turkish officials and was under their authority and control following his arrest and return to Turkey (*Öcalan v. Turkey* [GC], § 91);
- the applicants, two Iraqis who had been charged with involvement in the murder of two British soldiers shortly after the invasion of Iraq in 2003, been held in a British detention facility near Baghdad, and had complained that their imminent handover to the Iraqi authorities would expose them to a real risk of execution by hanging. The Court held that inasmuch as the control exercised by the United Kingdom over its military detention facilities in Iraq and the individuals held there had been absolute and exclusive *de facto and de jure*, the applicants should be deemed to have been within the respondent State's jurisdiction (*Al-Saadoon and Mufdhi v. the United Kingdom* (dec.), §§ 86-89);
- the applicants, crew members of a cargo ship registered in Cambodia and intercepted off the Cape Verde islands by the French navy under suspicion of transporting large quantities

of drugs, were confined to their quarters under military guard until the ship's arrival in Brest. The Court found that as France had exercised full and exclusive control over the Winner and its crew, at least *de facto*, from the time of its interception, in a continuous and uninterrupted manner until they were tried in France, the applicants had been effectively within France's jurisdiction for the purposes of Article 1 of the Convention (*Medvedyev and Others v. France* [GC], § 67).

- The applicants, a group of Somali and Eritrean nationals, who had been attempting to reach the Italian coast on board three vessels, were intercepted at sea by Italian Revenue Police and Coastguard ships, transferred on to Italian military ships and taken back to Libya, from whence they had departed. Reiterating the principle of international law stating that a vessel sailing on the high seas is subject to the exclusive jurisdiction of the State of the flag it is flying, the Court rejected the designation "rescue on the high seas" used by the Government to describe the events, and attached no importance to the allegedly low level of control exercised over the applicants by the agents of the Italian State. Indeed, the whole series of events had occurred on board Italian military ships, with crews made up exclusively of national servicemen. From the time of their arrival on board those ships until their handover to the Libyan authorities the applicants had been under the continuous and exclusive *de jure* and *de facto* control of the Italian authorities (*Hirsi Jamaa and Others v. Italy* [GC], §§ 76-82).

39. Whenever the State, through its agents, exercises control and authority, and thus jurisdiction, over an individual, the State is under an obligation under Article 1 to secure to that individual the rights and freedoms under Section I of the Convention that are relevant to the situation of that individual. In this sense, therefore, the Convention rights can be "divided and tailored" (*Al-Skeini and Others v. the United Kingdom* [GC], § 137); *Hirsi Jamaa and Others v. Italy* [GC], § 74).

2. Power exercised in a specific territory

40. As regards the "effective control" principle of jurisdiction over a specific territory, it should be noted from the outset that that principle does not replace the system of declarations under Article 56 of the Convention (formerly Article 63) which the States decided, when drafting the Convention, to apply to territories overseas for whose international relations they were responsible. Article 56 § 1 provides a mechanism whereby any State may decide to extend the application of the Convention, "with due regard ... to local requirements", to all or any of the territories for whose international relations it is responsible. The existence of this mechanism, which was included in the Convention for historical reasons, cannot be interpreted in present conditions as limiting the scope of the term "jurisdiction" in Article 1. The situations covered by the "effective control" principle are clearly separate and distinct from circumstances where a Contracting State has not, through a declaration under Article 56, extended the Convention or any of its Protocols to an overseas territory for whose international relations it is responsible (*Al-Skeini and Others v. the United Kingdom* [GC], § 140; *Cyprus v. Turkey*, Commission decision).

41. The Convention is a constitutional instrument of European public order. It does not govern the actions of States not Parties to it, nor does it purport to be a means of requiring the Contracting States to impose Convention standards on other States (*Al-Skeini and Others v. the United Kingdom* [GC], § 141). Clearly, therefore, in the two cases mentioned above, the Court's jurisdiction *ratione personae* can only extend to one State Party to the Convention. Indeed, where the territory of one Convention State is occupied by the armed forces of another, the occupying State should in principle be held accountable under the Convention for breaches of human rights within the occupied territory, because to hold otherwise would be to deprive the population of that territory of the rights and freedoms hitherto enjoyed and would result in a "vacuum" of protection within the "legal space of the Convention". However, the importance of establishing the occupying State's jurisdiction in such cases does not imply, *a contrario*, that jurisdiction under Article 1 of the Convention can

never exist outside the territory covered by the Council of Europe member States. The Court has not in its case-law applied any such restriction (*ibid.*, § 142, and the references therein).

42. All the cases which the Court has hitherto considered from this angle concerned the control of the territory of a Contracting State by another Contracting State in the context of an armed conflict (whether during the said conflict or after cessation of hostilities). In such situations, the issue of "jurisdiction" arises where a State loses effective control of all or part of its internationally recognised territory. The issue of a State's jurisdiction and responsibility may arise in two different manners in such cases. Where a State attacks the territorial and political integrity of another State, the complaints brought before the Court may be directed against:

1. the "active" Contracting Party, which is exercising its authority outside its own territory; this may take three different forms:
   a. complete or partial military occupation of another State;
   b. support for an insurrection or a civil war in another State;
   c. installation (or assistance with installation), on the territory of another State, of a separatist regime in the form of an entity which is not recognised as a sovereign State by the international community;
2. the "passive" Contracting Party, which is undergoing any of the above actions.

43. As shall be seen below, in each of the two cases the responsibility of the respondent State follows a different logic.

a. Jurisdiction of the "active" State on the grounds of its military action outside its territory

44. As regards the "active" State, the Court must first of all establish whether the alleged facts actually fall within its "jurisdiction" for the purposes of Article 1 of the Convention.

45. One exception to the principle that jurisdiction under Article 1 is limited to a State's own territory occurs when, as a consequence of lawful or unlawful military action, a Contracting State exercises effective control of an area outside that national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention, derives from the fact of such control, whether it be exercised directly, through the Contracting State's own armed forces, or through a subordinate local administration (*Catan and Others v. the Republic of Moldova and Russia* [GC], § 106, and the references therein).

46. Where the fact of such domination over the territory is established, it is not necessary to determine whether the Contracting State exercises detailed control over the policies and actions of the subordinate local administration. The fact that the local administration survives as a result of the Contracting State's military and other support entails that State's responsibility for its policies and actions. The controlling State has the responsibility under Article 1 to secure, within the area under its control, the entire range of substantive rights set out in the Convention and those additional Protocols which it has ratified. It will be liable for any violations of those rights (*Cyprus v. Turkey* [GC], §§ 76-77; *Al-Skeini and Others v. the United Kingdom* [GC], § 138; *Catan and Others v. the Republic of Moldova and Russia* [GC], § 106). Furthermore, where a Contracting State exercises overall control over an area outside its national territory, its responsibility is not confined to the acts of its soldiers or officials in that area but also extends to acts of the local administration which survives there by virtue of its military and other support (*Cyprus v. Turkey* [GC], § 77; *Ilaşcu and Others v. Moldova and Russia* [GC], § 316).

47. The question whether a Contracting State is genuinely exercising effective control over a territory outside its borders is one of fact. In seeking to answer that question the Court primarily has regard to the following two criteria:

- the number of soldiers deployed by the State in the territory in question; this is the criterion to which the Court had hitherto attached the greatest importance (*Loizidou v. Turkey* (merits), §§ 16 and 56; *Ilaşcu and Others v. Moldova and Russia* [GC], § 387);
- the extent to which the State's military, economic and political support for the local subordinate administration provides it with influence and control over the region (*ibid*., §§ 388-394; *Al-Skeini and Others v. the United Kingdom* [GC], § 139).

48. Where the Court establishes that the facts of the case are within the respondent State's "jurisdiction", the latter has two main obligations:

- a negative obligation to refrain from actions incompatible with the Convention (*Ilaşcu and Others v. Moldova and Russia* [GC], §§ 320-321);
- a positive obligation to guarantee respect for the rights and freedoms secured under the Convention – at least as set out in the Court's general case-law (*ibid*., § 322).

49. The cases considered by the Court in the light of the above-mentioned principles may be broken down into two sub-categories:

a. cases concerning military "occupation" in the traditional sense as defined in Article 42 of the Hague Convention respecting the Laws and Customs of War on Land, which reads as follows: "territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised";

b. cases concerning the creation, within the territory of a Contracting State, of an entity which is not recognised by the international community as a sovereign State, with the military, economic and political support of another Contracting State.

i. "Traditional" military occupation

50. The question of the occupying power's responsibility in the framework of "traditional" military occupation arose in a number of cases concerning *Iraq*. On 20 March 2003 the armed forces of the United States, the United Kingdom and their allies entered Iraq with a view to overthrowing the Ba'athist regime in power at the time. On 1 May 2003 the allies declared that the primary combat operations were completed, and the United States and the United Kingdom became the occupying powers. They set up the Coalition Provisional Authority to "exercise powers of government temporarily", including restoring security in Iraq. The security role taken on by the occupying powers was recognised in Resolution 1483 of the United Nations Security Council, adopted on 22 May 2003, which called on the Authority "to promote the welfare of the Iraqi people through the effective administration of the territory, including in particular working towards the restoration of conditions of security and stability ...". The occupation ended on 28 June 2004 with the dissolution of the Coalition Provisional Authority and the transfer of authority to the interim Iraqi government. During the period of occupation, the United Kingdom had been in command of the Multinational Division (South-East) (*Al-Skeini and Others v. the United Kingdom* [GC], §§ 9-23).

51. The case of *Al-Skeini and Others v. the United Kingdom* [GC] concerned the deaths of six of the applicants' relatives in Basra in 2003, when the United Kingdom had held occupying power status there. Three of them had been killed or fatally wounded by gunfire from British soldiers; another victim had been fatally injured during an exchange of fire between a British patrol and unidentified gunmen; another had been shot by British soldiers and then forced to jump into a river, where he had drowned; and 93 wounds had been found on the body of the last victim, who had died in a British military base. The Court noted that following the removal from power of the Ba'ath regime and until the accession of the interim Iraqi government, the United Kingdom (together with the United States of America) had assumed in Iraq the exercise of some of the public powers normally to be exercised by a sovereign government. In particular, the United Kingdom had assumed power and

responsibility for maintaining security in the south-west of the country. In these exceptional circumstances, there was a jurisdictional link, for the purposes of Article 1 of the Convention, between the United Kingdom and the persons killed during security operations conducted by British troops between May 2003 and June 2004. In the light of that conclusion, the Court considered it unnecessary to assess whether the United Kingdom's jurisdiction was also established because that State had exercised effective military control over South-East Iraq during that period (§§ 143-150). That having been said, as the Court subsequently pointed out, the statement of facts in *Al-Skeini and Others* had included material which tended to demonstrate that the United Kingdom was far from being in effective control of the south-eastern area which it occupied, and this had also been the finding of the Court of Appeal, which had heard evidence on this question in the domestic proceedings (*Hassan v. the United Kingdom* [GC], § 75, referring to *Al-Skeini and Others v. the United Kingdom* [GC], §§ 20-23 and 80).

52. The Court delivered its judgment in the case of *Al-Jedda v. the United Kingdom* [GC] on the same day as the *Al-Skeini and Others* judgment. That case concerned the internment of an Iraqi civilian for over three years (2004-2007) in a detention centre run by the British forces in Basra. Unlike in *Al-Skeini and Others*, the facts of this case had taken place after the end of the occupation regime, when power had already been transferred to the interim government; however, the multinational force, including British forces, were still stationed in Iraq at the Government's request and with the authorisation of the United Nations Security Council. The respondent Government had denied that the detention at issue fell within the United Kingdom's jurisdiction, because the applicant had been interned at a time when the British forces had been operating as part of a Multinational Force authorised by the Security Council and subject to the ultimate authority of the United Nations; they had submitted that in detaining the applicant, the British troops had not been exercising the sovereign authority of the United Kingdom but the international authority of the Multinational Force, acting pursuant to the binding decision of the United Nations Security Council. The Court rejected that argument. It noted that at the time of the invasion of Iraq, no Security Council resolution had specified how the roles should be distributed in Iraq should the regime be overthrown. In May 2003 the United Kingdom and the United States, having removed the former regime, had taken control of security in Iraq; the UN had been assigned a role in the fields of humanitarian aid, supporting the reconstruction of Iraq and assistance in setting up an Iraqi provisional authority, but not in the security sphere. The Court took the view that the subsequent resolutions had not altered that situation. Since the Security Council had had neither effective control nor ultimate authority and control over the acts and omissions of troops within the Multinational Force, the applicant's detention was not attributable to the United Nations. The internment decision against the applicant had been taken by the British officer in command of the detention facility, and he had been interned in a detention facility in Basra City, controlled exclusively by British forces. Although the decision to keep the applicant in internment had, at various points, been reviewed by committees including Iraqi officials and non-The United Kingdom representatives from the Multinational Force, the existence of these reviews had not operated to prevent the detention from being attributable to the United Kingdom. Mr Al-Jedda had therefore been under the authority and control of the United Kingdom for the duration of his detention. In conclusion, the Court found that the internment of the applicant had been attributable to the United Kingdom and that during his internment the applicant *had fallen within the jurisdiction of the United Kingdom* for the purposes of Article 1 of the Convention (§§ 76-86). The Court had thus concentrated on whether the applicant had been effectively subject to the power of the respondent State rather than assessing the extent and nature of the controlee exercised by the United Kingdom over the territory in question.

53. The same approach had been adopted in the case of *Hassan v. the United Kingdom* [GC], concerning the capture of the applicant's brother by the British armed forces and his detention in Camp Bucca in south-eastern Iraq during the hostilities in 2003. The applicant submitted that his brother had been under the control of the British forces and that his corpse, when subsequently

found, had borne traces suggesting that he had been tortured and executed. As in the *Al-Skeini and Others* judgment, the Court did not deem it necessary to determine whether the United Kingdom had indeed been in control of the area in question during the relevant period because the direct victim had fallen under that country's jurisdiction for another reason. In that connection the Court rejected the Government's argument to the effect that no jurisdiction had applied because as regards the period subsequent to his admission to Camp Bucca, the applicant's brother had been transferred from the authority of the United Kingdom to that of the United States. Having regard to the arrangements operating at Camp Bucca, the Court held that the United Kingdom had retained authority and control over the direct victim. That authority and that control had extended from the admission of the applicant's brother to the Camp through the period following his admission, when he had been taken to the Joint Forward Interrogation Team compound, which was under the exclusive control of the British forces. Following the interrogation the British authorities had placed him on one of the categories set out in international humanitarian law, deciding that he was a "civilian" who did not pose a threat to security, and ordered that he should be released as soon as practicable. Finally, it was clear that when he had been taken to the civilian holding area with a view to his release, the applicant's brother had remained in the custody of armed military personnel and under the authority and control of the United Kingdom until the moment he was let off the bus that took him from the Camp. He *had therefore been within the jurisdiction of the United Kingdom* throughout the period in question (§§ 75-80).

54. In the case of *Jaloud v. the Netherlands* [GC], the Court broadened the concept of extraterritorial jurisdiction as compared with *Al-Skeini and Others* and *Al-Jedda*, explicitly stating that the "occupying power" status mentioned in Article 42 of the Hague Convention respecting the Laws and Customs of War on Land was not in itself decisive *vis-à-vis* the question of jurisdiction for the purposes of Article 1 of the Convention (§ 142). Following the Iraq invasion, the Netherlands Government had provided troops which had been based in south-east Iraq between July 2003 and March 2005, as part of a multinational division under the command of an officer of the British armed forces. In the instant case the applicant's son had been fatally wounded by gunfire in April 2004, when he had been attempting to pass a checkpoint which was controlled by the Iraqi Civil Defence Corps (ICDC) but which also involved members of the Netherlands Royal Army operating under the command and direct supervision of a Royal Army officer; the shots had been fired by a Dutch lieutenant. The Court noted that the Netherlands had not forfeited jurisdiction by the mere fact of accepting the operational control of a British officer. As the evidence on file demonstrated, not only had the Netherlands retained full command of their military personnel in Iraq, but also the establishment of separate rules on the use of force in Iraq remained the reserved domain of individual sending States. The Court therefore concluded, in the circumstances of the case, that the Netherlands forces had not been placed at the disposal of any other State, be it Iraq or the United Kingdom, and that the death of the applicant's brother *had occurred under the jurisdiction of the Netherlands* (§ 142).

55. However, the Court reached the *opposite conclusion* in the case of *Issa and Others v. Turkey*, which concerned Iraqi Kurdish shepherds who had allegedly been arrested by Turkish soldiers during a Turkish military operation in northern Iraq in 1995, and then been taken to a cave and killed. In the Court's view, notwithstanding the large number of soldiers involved in that operation, it did not appear that Turkey had exercised effective overall control of the entire area in question. Moreover, it had not been sufficiently established by the evidence on file that the Turkish armed forces had been conducting operations in the geographical area in question when the victims had been present there. Consequently, the direct victims *could not be considered to have been within the jurisdiction of the Turkish State* (§§ 71-82).

ii. Creation of a separatist entity unrecognised by the International community

56. The Court has considered this type of situation in three different historical-political contexts: Turkey's responsibility for breaches of the Convention in *Northern Cyprus*, Russia's responsibility for violations committed in *Transdniestria*, and Armenia's responsibility for violations in *Nagorno-Karabakh*.

57. The acquiescence or connivance of the authorities of a Contracting State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction may engage the State's responsibility under the Convention. That is particularly true in the case of recognition by the State in question of the acts of self-proclaimed authorities which are not recognised by the international community (*Ilaşcu and Others v. Moldova and Russia* [GC], § 318).

58. The *first* series of cases concerns the situation which has prevailed in northern Cyprus since *Turkey* conducted military operations there in July and August 1974, and the continuing division of the territory of Cyprus. Before the organs of the Convention Cyprus affirmed that Turkey was responsible under the Convention for the alleged violations despite the proclamation of the "Turkish Republic of Northern Cyprus" ("TRNC") in November 1983, followed by the adoption of the "Constitution of the TRNC" in May 1985. Cyprus submitted that the "TRNC" was an illegal entity under international law, stressing that the international community had condemned its creation. Turkey, for its part, stated that the "TRNC" was a constitutional and democratic State politically independent from any other sovereign State, including Turkey. For that reason Turkey emphasised that the alleged violations were exclusively imputable to the "TRNC" and that it could not be held responsible under the Convention for the acts or omissions which had led to the complaints (*Cyprus v. Turkey* [GC], §§ 13-16).

59. The Commission and the Court reaffirmed that having regard to international practice and the condemnations set out in the Resolutions of the UN Security Council and of the Committee of Ministers of the Council of Europe, it was clear that the international community did not recognise the "TRNC" as a State under international law. Only the Republic of Cyprus, a High Contracting Party to the Convention, constituted the legitimate government of Cyprus (*Cyprus v. Turkey*, Commission decision; *Loizidou v. Turkey* (preliminary objections), § 40; *Loizidou v. Turkey* (merits), § 44; *Cyprus v. Turkey* [GC], § 61) ; *Güzelyurtlu and Others v. Cyprus and Turkey* [GC], § 193).

60. The Court acknowledged that the alleged violations in the North of Cyprus *fell within Turkey's jurisdiction* in the following cases:

- In two initial inter-State cases examined in its decision of *Cyprus v. Turkey*, the Commission held that the Turkish armed forces in Cyprus were representatives of Turkey, which meant that all the military property and personnel present in Cyprus fell within the jurisdiction of that State, insofar as that military personnel exercised their authority over such persons and property.
- In the case of *Loizidou v. Turkey* (preliminary objections), where the applicant, a Greek Cypriot, complained that she had been deprived of access to her property in northern Cyprus, the Court noted, at the preliminary objections stage, that the applicant's loss of control of her property stemmed from the occupation of the northern part of Cyprus by Turkish troops and the establishment there of the "TRNC", and that the applicant had been prevented by Turkish troops from gaining access to her property. The impugned acts were therefore capable of falling within Turkish "jurisdiction" within the meaning of Article 1 of the Convention (*ibid.*, §§ 63-64). In the judgment on the merits of the same case, the Court, considering the "imputability" of the alleged violations to Turkey, held that it was unnecessary to determine whether that country actually exercised detailed control over the policies and actions of the authorities of the "TRNC", because it was obvious from the large number of troops engaged in active duties in the disputed area that the Turkish army

exercised effective overall control over that part of the island; such control incurred Turkish responsibility for the policies and actions of the "TRNC". Persons affected by those policies and actions therefore fell within the "jurisdiction" of Turkey, and the alleged violations were consequently "imputable" to that State (*Loizidou v. Turkey* (merits), §§ 52-57).

- In the inter-State case of *Cyprus v. Turkey* [GC], the Court reiterated its general finding in *Loizidou* that Turkey in practice exercised overall control in northern Cyprus via its military presence on the ground; consequently, its responsibility under the Convention was incurred for the policies and actions of the "TRNC" authorities. The Court emphasised that Turkey's responsibility under the Convention could not be confined to the acts of its own soldiers or officials in northern Cyprus but had also to be engaged by virtue of the acts of the local administration which survives by virtue of Turkish military and other support. Turkey's "jurisdiction" should be considered to extend to securing the entire range of substantive rights set out in the Convention and those additional Protocols which Turkey has ratified, and violations of those rights were imputable to it (§§ 76-77).
- In the case of *Güzelyurtlu and Others v. Cyprus and Turkey* [GC] concerning the murders of several former residents of the "Turkish Republic of Northern Cyprus" ("TRNC") in the territory of the Republic of Cyprus and the investigations conducted into those facts by the "TRNC" authorities, the Court pointed out that the international community regarded Turkey as being in occupation of the northern part of Cyprus, and did not recognise the "TRNC" as a State under international law. Northern Cyprus was under the effective control of Turkey for the purposes of the Convention. Secondly, the murder suspects had fled to the "TRNC" and as a consequence, the Republic of Cyprus had been prevented from pursuing its own criminal investigation in respect of those suspects and thus from fulfilling its Convention obligations (§ 193).

61. The *second* series of cases concerns the responsibility of *Russia* for acts committed in the "Moldovan Republic of Transdniestria", an entity set up in Moldavan territory. In the case of *Ilaşcu and Others v. Moldova and Russia* [GC], the applicants, who had been sentenced variously to death and heavy prison sentences by the "supreme court" of that entity, complained of a series of violations of their fundamental rights which they alleged were imputable to Russia. The Court noted that in 1991-1992, forces of the former 14th Army (which had belonged successively to the USSR and Russia), stationed in Transdniestria, had fought with and for the Transdniestrian separatist forces. Large quantities of weapons from the 14th Army's arsenal had been transferred voluntarily to the separatists, who had, moreover, been able to secure further arms, unopposed by the Russian military. Furthermore, throughout the confrontations between the Moldovan authorities and the Transdniestrian separatists, the Russian leaders had issue political statements in support of the separatist authorities. Even after the ceasefire agreement, Russia had continued to provide military, political and economic support to the separatist regime, thus enabling it to survive by strengthening itself and by acquiring a certain amount of autonomy *vis-à-vis* Moldova. In the Court's view, all the acts committed against the applicants by the Russian military authorities, including their handover to the separatist regime, in the context of collaboration between the Russian authorities and that unlawful regime, which was not recognised by the international community, had been such as to create responsibility for the consequences of the acts of that regime. The whole case-file proved that the Transdniestrian region remained under Russia's effective authority, or at least under its decisive influence, and at any event that it survived thanks to the military, economic, financial and political support provided by Russia both before and after its ratification of the Convention. In those circumstances, the applicants were within the "jurisdiction" of Russia, whose responsibility was incurred in relation to the impugned acts (§§ 377-394).

62. This conclusion as regards *Russia's responsibility vis-à-vis* Transdniestria was reiterated in the following cases:

- In the case of*Ivanţoc and Others v. Moldova and Russia*, concerning the continued detention of two of the four applicants in *Ilaşcu and Others v. Moldova and Russia* [GC] after and despite the delivery of the Grand Chamber judgment in this case. The Court sought to establish whether Russia's policy of supporting the Transdniestrian separatist regime had changed between 2004 and 2007, the date of the applicants' release. It noted that Russia continued to enjoy a close relationship with the "Moldovan Republic of Transdniestria", amounting to providing political, financial and economic support to the separatist regime. Moreover, the Court found that the Russian army (troops, equipment and ammunition) had, at the date of the applicants' release, still been stationed on Moldovan territory in breach of the Russian Federation's undertakings to withdraw completely and in breach of Moldovan legislation. The applicants had therefore fallen within Russia's "jurisdiction" for the purposes of Article 1 of the Convention (*Ivanţoc and Others v. Moldova and Russia*, §§ 116-120).
- In the case of *Catan and Others v. the Republic of Moldova and Russia* [GC], concerning a complaint lodged by children and parents belonging to the Moldovan community in Transdniestria regarding the effects of a language policy adopted in 1992 and 1994 by the separatist regime prohibiting the use of the Latin alphabet in schools, as well as the subsequent measures to implement that policy. Having reiterated its finding already set out in the *Ilaşcu and Others v. Moldova and Russia* [GC] and *Ivanţoc and Others v. Moldova and Russia* judgments, the Court noted that Russia was continuing to provide military, economic and political support to the Transdniestrian separatists (gas supplies, payment des pensions, etc.). The impugned facts therefore fell within the jurisdiction of Russia, even if no Russian agents had been directly involved in the measures adopted against the applicants' schools (*Catan and Others v. the Republic of Moldova and Russia* [GC], §§ 116-123).
- In the case of *Mozer v. the Republic of Moldova and Russia* [GC], concerning the detention of a man suspected of fraud, as ordered by the courts of the "Moldovan Republic of Transdniestria" ("MRT"). Given the absence of any relevant new information to the contrary, the Court considered that its conclusion concerning Russia's jurisdiction expressed in all the above-mentioned judgments continued to be valid for the period under consideration in that case (§§ 109-111); see the same reasoning in respect of a subsequent period in *Apcov v. the Republic of Moldova and Russia*, § 24).

63. The *third* situation examined by the Court concerned the responsibility of *Armenia* for acts committed in the "Republic of Nagorno-Karabakh" established in an area of Azerbaijan. At the time of the dissolution of the Soviet Union in December 1991, the Nagorno-Karabakh Autonomous Oblast (the "NKAO") had been an autonomous province situated within the Azerbaijan Soviet Socialist Republic ("the Azerbaijan SSR"). There had been no common border between the NKAO and the Armenian Soviet Socialist Republic ("the Armenian SSR"), which had been separated by Azerbaijani territory. In 1988 armed hostilities broke out in this region. In September 1991 – shortly after Azerbaijan had proclaimed its independence from the Soviet Union – the NKAO *soviet* announced the foundation of the "Nagorno-Karabakh Republic" ("the NKR"), comprising the NKAO and the Shahumyan district of Azerbaijan. Following a referendum held in December 1991 (and boycotted by the Azeri population) in which 99.9 % of voters had come down in favour of the secession of the "NKR", the latter reaffirmed its independence from Azerbaijan in January 1992. After that the conflict gradually escalated into full-scale war. By the end of 1993 the ethnic Armenian troops had gained control over almost the entire territory of the former NKAO and seven adjacent Azerbaijani regions. In May 1994 the belligerents signed a ceasefire agreement, which is still in force. The self-proclaimed independence of the "NKR" has not been recognised by any State or international organisation (*Chiragov and Others v. Armenia* [GC], §§ 12-31; *Sargsyan v. Azerbaijan* [GC], §§ 14-28).

64. In the case of *Chiragov and Others v. Armenia* [GC] the applicants, Azerbaijani Kurds from the Lachin district (which is part of Azerbaijan, separating Nagorno-Karabakh from Armenia), complained of their inability to accede to their homes and property since having been forced to leave the district by the armed conflict between the two countries. Under Article 1 of the Convention, the Court had regard to a whole series of reports and public statements – particularly from present and former members of the Armenian Government – and concluded that Armenia, through its military presence and its provision of military material and advice, had been involved in the Nagorno-Karabakh conflict from the very early stages. In the Court's view, that military support was decisive for the control over the territories in issue, and moreover, it was obvious from the facts of the case that Armenia provided substantial political and financial support to the "NKR" ("Nagorno-Karabakh Republic"). Furthermore, the residents of the "NKR" were required to obtain Armenian passports to travel abroad. The Court found that Armenia and the "NKR" had been highly integrated in virtually all important matters, and that the NKR and its administration survived thanks to the military, political, financial and other supported provided by Armenia, which, accordingly, exercised effective control over Nagorno-Karabakh and the adjacent territories. The alleged facts *had therefore occurred within the jurisdiction of Armenia* (§§ 169-186).

b. Jurisdiction of a State undergoing foreign military (or separatist) action within its territory

65. The responsibility of a "passive" Contracting State, that is to say a State which is undergoing military action launched by another State (whether or not a Party to the Convention) or by a local separatist regime, follows a different logic from that of an "active" State. The Court does not seek to establish whether or not that State holds "jurisdiction", because it is deemed to exercise the latter normally throughout its territory; the Court therefore always starts from the presumption that the facts of the case fall within the jurisdiction of the "passive" State. On the other hand, in exceptional circumstances, where the State is unable to exercise its authority in a part of its territory, that presumption may be *limited*. In other words, there is a presumption of jurisdiction (or competence), and the Court must determine whether there are any valid reasons to rebut that presumption (*Assanidze v. Georgia* [GC], § 139).

66. The respondent State's jurisdiction may be limited because of a military occupation by the armed forces of another State effectively controlling the territory in question, because of acts of war or rebellion, or because of the actions of a foreign State supporting the installation of a separatist regime in the territory of the State concerned. In order to be able to conclude that such an exceptional situation exists, the Court must examine, on the one hand, all the objective facts capable of limiting the effective exercise of a State's authority over its territory, and on the other, the State's own conduct. The undertakings given by a Contracting State under Article 1 of the Convention include, in addition to the duty to refrain from interfering with the enjoyment of the rights and freedoms guaranteed, positive obligations to take appropriate steps to ensure respect for those rights and freedoms within its territory. Those obligations remain even where the exercise of the State's authority is limited in part of its territory, so that it has a duty to take all the appropriate measures which it is still within its power to take (*Ilaşcu and Others v. Moldova and Russia* [GC], §§ 312-313; *Sargsyan v. Azerbaijan* [GC], §§ 127-129). The respondent State's obligation under Article 1 of the Convention, to "secure to everyone within their jurisdiction the [Convention] rights and freedoms", was, however, limited in the circumstances to a positive obligation to take the diplomatic, economic, judicial or other measures that were both in its power to take and in accordance with international law (*Catan and Others v. the Republic of Moldova and Russia* [GC], § 109; *Ilaşcu and Others v. Moldova and Russia* [GC], § 331).

67. Drawing on the above principles, the Court recognised Moldova's "jurisdiction" over the violations committed in Transdniestria, despite the fact that the Moldovan State had been prevented from exercising effective control over the relevant part of its territory (*Ilaşcu and Others*

v. Moldova and Russia [GC], §§ 322-331; *Ivanţoc and Others v. Moldova and Russia*, §§ 105-106; *Catan and Others v. the Republic of Moldova and Russia* [GC], §§ 109-110; *Mozer v. the Republic of Moldova and Russia* [GC], § 99-100).

The fact that under public international law the region is recognised as part of the territory of Moldova bestows on the latter a positive obligation, based on Article 1 of the Convention, to use all the legal and diplomatic means at its disposal to continue to ensure that the persons living in the region can benefit from the rights and freedoms set forth in the (see, for a reminder of the principles, *Pocasovschi and Mihaila v. the Republic of Moldova and Russia*, §§ 43-44).

It is noted that this case concerned a specific situation. Prisoners being held in unacceptable conditions in a Moldavan prison complained that water and electricity supplies had been cut off by the separatist entity. Even if the municipal authority which had ordered the cutting off of the water, heating and electricity supplies had operated under the control of that entity, unlike in the other cases, the Moldavan authorities had exercised effective control over the prison in which the alleged violations had occurred, as well as over its inmates. The latter authorities could therefore have intervened directly (§ 46).

68. In the case of *Sargsyan v. Azerbaijan* [GC], an Armenian refugee who had had to flee his home in the Shahumyan region of Azerbaijan in 1992, during the conflict between Armenia and Azerbaijan over Nagorno-Karabakh (see above), complained that he had been unable to return to his village in order to access and use his property there. This was the first case in which the Court was called upon to determine a complaint against a State which had lost control of part of its territory as a result of a war and occupation, but which was alleged to have been responsible for refusing to allow a displaced person to accede to his property situated in a region which was still under its control. The Court first of all noted that the village in question was located in the internationally recognised territory of Azerbaijan and that, accordingly, the presumption of Azerbaijan's jurisdiction applied. It was therefore incumbent on the Azerbaijani Government to demonstrate the existence of exceptional circumstances liable to limit its responsibility under Article 1 of the Convention. Having regard to the facts before it, the Court noted that it was impossible to determine with any certainty whether the Azerbaijani military forces had been present in the village during its period of temporary jurisdiction (that is to say since the ratification of the Convention by Azerbaijan). Moreover, it observed that no party had alleged that the "Republic of Nagorno-Karabakh" had had any troops in the village. The Court was not convinced by the Government's argument to the effect that because the village had been located in a disputed are and was surrounded by mines and military positions, Azerbaijan's responsibility under the Convention had been limited. Indeed, unlike in other similar cases concerning Transdniestria or Northern Cyprus, the territory in question had not been occupied by the armed forces of a third State. The facts of the case *had therefore fallen within the jurisdiction of Azerbaijan* (§§ 132-151).

69. The case of *Assanidze v. Georgia* [GC] concerned an unusual situation. The applicant complained that he had been retained in the custody of the authorities of the Ajarian Autonomous Republic, an autonomous territorial unit of Georgia, despite having received a presidential pardon for a first offence and been acquitted of a second by the Supreme Court of Georgia. The Court noted that Georgia had ratified the Convention for the whole of its territory, and that no other State exercised effective overall control in Ajaria. On ratifying the Convention, Georgia did not make any specific reservation under Article 57 of the Convention with regard to Ajaria or to difficulties in exercising its jurisdiction over that territory. Such a reservation would in any event have been ineffective, as the case-law precludes territorial exclusions other than in the instance referred to in Article 56 § 1 of the Convention (dependent territories). Therefore, the impugned facts had fallen within the "jurisdiction" of Georgia for the purposes of Article 1 of the Convention (§§ 139-143). The Court then considered the "imputability" to the Georgian State of the alleged violations. It noted that the central authorities had taken all the procedural steps possible under domestic law to secure compliance with the judgment acquitting the applicant, sought to resolve the dispute by various

political means, and repeatedly urged the Ajarian authorities to release him, all in vain. Consequently, the facts complained of by the applicant had been directly imputable to the local Ajarian authorities. However, even though it is not inconceivable that States will encounter difficulties in securing compliance with the rights guaranteed by the Convention in all parts of their territory, each State Party to the Convention nonetheless remains responsible for events occurring anywhere within its national territory. The Court therefore found that *the responsibility of the Georgian State had been incurred* under the Convention (§§ 144-150).

70. When a Contracting State is prevented from exercising authority over its whole territory due to an exceptional factual situation, it does not cease to have jurisdiction within the meaning of Article 1 of the Convention over the part of its territory which is temporarily beyond its control (*Sargsyan v. Azerbaijan* [GC], § 130). Such a factual situation nonetheless has the effect of reducing the scope of that jurisdiction, in that the commitment entered into by the Contracting State under Article 1 must be examined by the Court solely in the light of the State's positive obligations in respect of persons present in its territory. The State in question must endeavour, with all the legal and diplomatic means available to it *vis-à-vis* foreign States and international organisations, to continue to guarantee the enjoyment of the rights and freedoms defined in the Convention. Although it is not for the Court to indicate which measures the authorities should take in order to comply with their obligations most effectively, it must verify that the measures actually taken were appropriate and sufficient in the present case. When faced with a partial or total failure to act, the Court's task is to determine to what extent a minimum effort was nevertheless possible and whether it should have been made. Determining that question is especially necessary in cases concerning an alleged infringement of absolute rights such as those guaranteed by Articles 2 and 3 of the Convention (*Ilaşcu and Others v. Moldova and Russia* [GC], §§ 333-334).

71. Generally speaking, the following *six positive obligations* incumbent on the "passive" State can be identified in the Court's existing case-law:

a. Three general obligations
   i. to affirm and reaffirm its sovereignty over the territory in issue (*Ilaşcu and Others v. Moldova and Russia* [GC], §§ 339-341 and 343; *Ivanţoc and Others v. Moldova and Russia*, § 108);
   ii. to refrain from providing any kind of support to the separatist regime (*Ilaşcu and Others v. Moldova and Russia* [GC], § 345);
   iii. to actively attempt to re-establish control over the disputed territory (*ibid*., § 341-344; *Ivanţoc and Others v. Moldova and Russia*, § 108);

b. Three special obligations relating to individual applicants
   i. to attempt to resolve the applicants' situation by political and diplomatic means (*Ilaşcu and Others v. Moldova and Russia* [GC], §§ 346-347; *Ivanţoc and Others v. Moldova and Russia*, § 109);
   ii. to attempt to resolve the applicants' situation by appropriate practical and technical means (*Catan and Others v. the Republic of Moldova and Russia* [GC], § 147);
   iii. to take the appropriate judicial action to protect the applicants' rights (*Ilaşcu and Others v. Moldova and Russia* [GC], §§ 346-347; *Ivanţoc and Others v. Moldova and Russia*, § 110).

72. Furthermore, the Court has held that the efforts expended by the "passive" State in question to honour the six above-mentioned obligations should be constant and relevant (*Ilaşcu and Others v. Moldova and Russia* [GC], §§ 348-352; *Ivanţoc and Others v. Moldova and Russia*, § 111; *Catan and Others v. the Republic of Moldova and Russia* [GC], § 148). However, the question whether the State

in question has fulfilled its positive obligations as defined by the Court's case-law must be decided in the light of the individual case rather than with reference to Article 1 of the Convention.

II. Delegation of State powers or joint exercise of the latter with other States

73. The fact that a Contracting State executes a decision or an order given by an authority of a foreign State is not in itself sufficient to relieve a Contracting State of the obligations which it has taken upon itself under the Convention (*Jaloud v. the Netherlands* [GC], § 143).

74. The mere fact that a State exercises the right to vote in an inter-State entity is not sufficient for the persons affected by the decisions of that entity to be deemed to fall within the jurisdiction of that State for the purposes of Article 1 of the Convention. The first case in which the Commission had to consider this kind of situation was that of *Hess v. the United Kingdom*, Commission decision. Rudolf Hess, the former head of the chancellery of the German National-Socialist Party, who had been sentenced to life imprisonment by the Nuremberg International Military Tribunal, was incarcerated in the Allied Military Prison in Berlin-Spandau. That prison was jointly administered by the four occupying powers (the United Kingdom, the United States, France and the Soviet Union), and all decisions concerning the administration of the prison could only be taken in agreement with the representatives of all four States. The United Kingdom had therefore been acting as a partner, sharing authority and responsibility with the other three powers. The Commission ruled that that shared authority could not be divided up into four separate jurisdictions and that, therefore, the United Kingdom's participation in the administration of the prison had not fallen under that State's jurisdiction. The application was therefore declared incompatible *ratione personae* with the Convention.

A. Imputability to the European Union of an alleged violation: the *Bosphorus* presumption or the principle of equivalent protection

75. In *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], concerning the implementation in the respondent State of an EU Regulation adopted on the basis of a UNSC Resolution, the Court created a nuanced case-law mechanism which may be summarised as follows:

- States are responsible under the Convention for measures which they adopt pursuant to international legal obligations, including where such obligations stem from their membership of an international organisation to which they have transferred part of their sovereignty.
- However, a measure adopted pursuant to such obligations must be deemed justified provided that the organisation in question affords fundamental rights protection at least equivalent – that is to say comparable – to that provided by the Convention.
- Nevertheless, such justification lapses in two situations:
  - where the impugned acts do not fall strictly within the ambit of the respondent State's international legal obligations, in particular where that State has exercised discretionary powers;

  or else
  - where the protection of the rights in issue, guaranteed by the Convention, is manifestly deficient.

76. In the case of *M.S.S. v. Belgium and Greece* [GC], the Belgian Government invoked the Bosphorus presumption on the grounds that by sending the applicant back to Greece they were

merely complying with the "Dublin II" Regulation, to which the Court replied that under the so-called "sovereignty clause" set out in Article 3 § 2 of the Regulation, that Government had had the discretionary power not to expel the applicant and thus to comply with the Convention. Consequently, the presumption had not been applied (§§ 339-340).

B. Imputability to the UN of alleged violations

77. As regards the UN, there are two different hypotheses:

1. international military operations, and
2. international sanctions imposed by the UN Security Council (UNSC).

1. International military operations

78. As regards alleged violations of human rights in the framework of international military operations, the Court has concentrated on identifying the entity responsible for the military operation or action in question, that is to say the entity which held ultimate authority and control. In the case of *Behrami and Behrami v. France and Saramati v. France, Germany and Norway* (dec.) [GC], the applicants had been victims of airstrikes and deprivation of liberty, respectively, in the framework of NATO military operations in Yugoslav territory in 1999. A UNSC Resolution had provided for the provision of a security presence (KFOR) by "Member States and relevant international institutions", "under UN auspices", with "substantial NATO participation" but "under unified command and control". That Resolution had also provided for the deployment, under UN auspices, of an interim administration for Kosovo (MINUK).

79. In its decision, the Court considered whether the material facts had been attributable to the UN. It noted the delegation by the UNSC of its powers under Section VII of the UN Charter, and concluded that the decisive question was whether the UNSC had retained "ultimate authority and control" over the armed forces. Applying that criterion, the Court ruled that the UNSC had indeed retained "ultimate authority and control". Having established that the acts and omissions of the MINUK and KFOR had been attributable to the UN, the Court declared the applications incompatible *ratione personae* with the Convention.

80. The case of *Al-Skeini and Others v. the United Kingdom* [GC] concerned the deaths of six Iraqis who had been killed or fatally wounded by British troops during the invasion of Iraq, where the United Kingdom had held occupying power status. The Court conducted a traditional analysis under Article 1 of the Convention in order to determine whether the victims had been within the "jurisdiction" of the United Kingdom. It noted that at the material time the United Kingdom (together with the United States of America) had assumed in Iraq the exercise of some of the public powers normally to be exercised by a sovereign government. In such exceptional circumstances, there had been a "jurisdictional link" between the United Kingdom and the persons killed. As regards the UNSC, it had merely acknowledged the role and status of the occupying powers in Iraq.

81. In the *Al-Jedda v. the United Kingdom* [GC] judgment delivered on the same day as *Al-Skeini and Others*, the Court adjudicated on an application lodged by an Iraqi civilian who had been interned for over three years in a detention centre run by the British forces in Iraq. The defendant Government submitted that that internment had been imputable to the UN rather than to the United Kingdom. The Court rejected that plea. It noted that there had been no UNSC resolution stipulating the distribution of powers in Iraq under the occupation regime. The only role assigned to the UN had been in the areas of humanitarian aid, support for reconstruction, etc., but not in the security field. However, since the UNSC had not exercised effective control or ultimate authority and control over the acts and omissions of the troops of the multinational force, the applicant's internment was not deemed imputable to the UN.

82. The United Kingdom's second argument in this case was that UNSC Resolution 1546 had required it to resort to internment in Iraq and that, pursuant to Article 103 of the UN Charter, the obligations laid down in that Resolution had taken precedence over those stemming from the Convention. Nevertheless, the Court noted that the UN had not been set up for the sole purpose of ensuring peace and security at the international level, but also in order to "*achieve international cooperation in ... promoting and encouraging respect for human rights and for fundamental freedoms.*" Article 24 § 2 of the Charter required the UNSC to act "in accordance with the Purposes and Principles of the Untitled Nations". The Court concluded that in in interpreting UNSC resolutions, there must be a presumption that the Security Council does not intend to impose any obligation on member States to breach fundamental principles of human rights. In the event of any ambiguity in the terms of a United Nations Security Council resolution, the Court must therefore choose the interpretation which is most in harmony with the requirements of the Convention and which avoids any conflict of obligations.

83. Moreover, the Court has recently confirmed the *Al-Jedda* principles in its *Hassan v. the United Kingdom* [GC] judgment concerning the capture of an Iraqi national by the British armed forces and his detention in a camp during the hostilities in 2003. This was the first case in which a respondent State had relied on international law to request the Court to find inapplicable its obligations under Article 5 of the Convention or, failing that, to interpret them in the light of the powers of detention conferred on it by international humanitarian law. The Court unanimously found that the victim had been within the United Kingdom's jurisdiction rather than that of the United States, as contended by the British Government. The Court rejected the latter's submissions denying the application of any jurisdiction during the active hostilities phase of an international armed conflict, when the agents of the Contracting State are acting within a territory of which the latter is not the occupying power and the conduct of the Contracting State is instead governed by the provisions of international humanitarian law. The Court considered that such a conclusion would be contrary to its previous case-law. It also held that even after the area in question had been transferred from British to US authority, the United Kingdom had retained authority and control over all the aspects of the complaints raised by the applicant.

2. International sanctions ordered by the UN Security Council

84. The issue of sanctions ordered by the UNSC was dealt with in the case of *Nada v. Switzerland* [GC], which concerned a ban on the applicant transiting through Swiss territory, which was the only way out of the small Italian enclave where he lived. That restriction had been imposed by the Swiss authorities in pursuance of a number of UNSC resolutions relating to the fight against terrorism (particularly the Taliban and al-Qaeda). The Court first of all acknowledged the admissibility of the application *ratione personae*: even though the case concerned the application of a UNSC resolution, the impugned decisions had not been taken by the Swiss authorities. On the merits of the case, the Court observed that the terms of the resolution had been clear and explicit, imposing on Switzerland an obligation to take measures capable of breaching human rights. The Court deduced that there had been a rebuttal of the presumption that a UNSC resolution could not be interpreted as imposing on member States an obligation contravening the fundamental principles relating to human rights protection. Furthermore, the Court did not contest the binding force of the UNSC resolution, although it did note that Switzerland had some limited, but nonetheless real, discretion in the application of such resolutions (see, in particular, § 179). Under those circumstances, the State could no longer hide behind the binding nature of the resolutions; on the contrary, it should have persuaded the Court that it had taken – or at least had attempted to take – "all possible measures to adapt the sanctions regime to the applicant's individual situation" (§ 96).

85. The Court reached a similar conclusion in *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC]. The applicant was an Iraqi national who had been responsible for the finances of the Iraqi secret services under Saddam Hussein's regime and for a company which he had owned.

The applicants having been included on the lists of sanctions appended to UNSC Resolution 1483 (2003) concerning Iraq, their assets in Switzerland had been frozen and made subject to a confiscation procedure. The Swiss Federal Court had merely checked whether the applicants' names duly appeared on the lists drawn up by the Sanctions Committee and whether the assets in questions belonged to them. That court had, on the other hand, refused to consider their allegations regarding the compatibility of the procedure used to confiscate their assets with the fundamental safeguards on a fair trial set out in the Convention. The Federal Court had invoked the absolute precedence of the obligations stemming from the UN Charter and the decisions taken by the UNSC under that Charter over any other standard of international law, and the very precise and detailed nature of the obligations imposed on States by the Resolution, which left them no margin of discretion. The Court considered that such resolutions should always be interpreted on the basis of the (rebuttable) presumption that the UNSC does not intentionally impose on States an obligation contravening the fundamental principles of human rights. Therefore, when a resolution contains no clear and explicit exclusion or limitation of respect for human rights in the framework of the implementation of sanctions, it must always be understood as authorising the courts of the respondent State to exercise sufficient scrutiny to avoid any arbitrariness. Consequently, to that extent, Switzerland had been responsible for a possible violation of the right to a fair trial.

C. Imputability of the alleged violation to other international organisations

86. As regards other international organisations, the Court has always adopted a differential approach, drawing a distinction between two types of case.

87. Where the applicant complains about a *structural deficiency* in the internal workings of the international organisation in question, the Court applies the *Bosphorus* presumption, which involves verifying whether the States, when transferring some of their sovereign powers to the relevant international organisation, ensured that the rights secured under the Convention were afforded protection equivalent to that of the Convention (*Gasparini v. Italy and Belgium* (dec.); *Rambus Inc. v. Germany* (dec.); *Klausecker v. Germany* (dec.)).

88. On the other hand, where the applicant complains not about of a structural deficiency in the internal machinery of the international organisation in question but about a *specific decision* taken within that organisation, the application is incompatible *ratione personae* with the provisions of the Convention (*Boivin v. 34 member States of the Council of Europe* (dec.); *Connolly v. 15 member States of the European Union* (dec.); *Beygo v. 46 member States of the Council of Europe* (dec.); *López Cifuentes v. Spain* (dec.)).

List of cited cases

The case-law cited in this Guide refers to judgments or decisions delivered by the Court and to decisions or reports of the European Commission of Human Rights ("the Commission").

Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber.

Chamber judgments that were not final within the meaning of Article 44 of the Convention when this update was published are marked with an asterisk (*) in the list below. Article 44 § 2 of the Convention provides: "The judgment of a Chamber shall become final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43". In cases where a request for referral is accepted by the Grand Chamber panel, it is the subsequent Grand Chamber judgment, not the Chamber judgment, that becomes final.

The hyperlinks to the cases cited in the electronic version of the Guide are directed to the HUDOC database (*http://hudoc.echr.coe.int*) which provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note) and of the Commission (decisions and reports), and to the resolutions of the Committee of Ministers.

The Court delivers its judgments and decisions in English and/or French, its two official languages. HUDOC also contains translations of many important cases into more than thirty non-official languages, and links to around one hundred online case-law collections produced by third parties.

—A—

Al-Dulimi and Montana Management Inc. v. Switzerland [GC], no. 5809/08, ECHR 2016
Aliyeva and Aliyev v. Azerbaijan, no. 35587/08, 31 July 2014
Al-Jedda v. the United Kingdom [GC], no. 27021/08, ECHR 2011
Al-Saadoon and Mufdhi v. the United Kingdom (dec.), no. 61498/08, 30 June 2009
Al-Skeini and Others v. the United Kingdom [GC], no. 55721/07, ECHR 2011
Apcov v. the Republic of Moldova and Russia, no. 13463/07, 30 May 2017
Assanidze v. Georgia [GC], no. 71503/01, ECHR 2004-II

—B—

Bakanova v. Lithuania, no. 11167/12, 31 May 2016
Banković and Others v. Belgium and Others (dec.) [GC], no. 52207/99, ECHR 2001-XII
Behrami and Behrami v. France and Saramati v. France, Germany and Norway (dec.) [GC], nos. 71412/01 and 78166/01, 2 May 2007
Beygo v. 46 member States of the Council of Europe (dec.), no. 36099/06, 16 June 2009
Boivin v. 34 member States of the Council of Europe (dec.), no. 73250/01, ECHR 2008
Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland [GC], no. 45036/98, ECHR 2005-VI

—C—

Catan and Others v. the Republic of Moldova and Russia [GC], nos. 43370/04 and 2 others, ECHR 2012
Chagos Islanders v. the United Kingdom (dec.), no. 35622/04, 11 December 2012
Chiragov and Others v. Armenia [GC], no. 13216/05, ECHR 2015
Cyprus v. Turkey, nos. 6780/74 and 6950/75, Commission decision of 26 May 1975, Decisions and Reports 2
Cyprus v. Turkey [GC], no. 25781/94, ECHR 2001-IV
Connolly v. 15 member States of the European Union (dec.), no. 73274/01, 9 December 2008
Cummins v. the United Kingdom (dec.), no. 27306/05, 13 December 2005

—D—

Drozd and Janousek v. France and Spain, 26 June 1992, Series A no. 240

—G—

Gasparini v. Italy and Belgium (dec.), no. 10750/03, 12 May 2009
Gentilhomme, Schaff-Benhadji and Zerouki v. France, nos. 48205/99 and 2 others, 14 May 2002
Güzelyurtlu and Others v. Cyprus and Turkey [GC], no. 36925/07, 29 January 2019

—H—

Hassan v. the United Kingdom [GC], no. 29750/09, ECHR 2014
Hess v. the United Kingdom, no. 6231/73, Commission decision of 28 May 1975, Decisions and Reports 2
Hirsi Jamaa and Others v. Italy [GC], no. 27765/09, ECHR 2012

—I—

Ilaşcu and Others v. Moldova and Russia [GC], no. 48787/99, ECHR 2004-VII
Issa and Others v. Turkey, no. 31821/96, 16 November 2004
Ivanţoc and Others v. Moldova and Russia, no. 23687/05, 15 November 2011

—J—

Jaloud v. the Netherlands [GC], no. 47708/08, ECHR 2014

—L—

Loizidou v. Turkey (preliminary objections), 23 March 1995, Series A no. 310
Loizidou v. Turkey (merits), 18 December 1996, *Reports of Judgments and Decisions* 1996-VI
López Cifuentes v. Spain (dec.), no. 18754/06, 7 July 2009

—M—

M. v. Denmark, no. 17392/90, Commission decision of 14 October 1992, Decisions and Reports 73
M.A. and Others v. Lithuania, no. 59793/17, 11 December 2018
Medvedyev and Others v. France [GC], no. 3394/03, ECHR 2010
Marković and Others v. Italy (dec.), no. 1398/03, 12 June 2003
Marković and Others v. Italy [GC], no. 1398/03, 14 December 2006
Mozer v. the Republic of Moldova and Russia [GC], no. 11138/10, ECHR 2016
M.S.S. v. Belgium and Greece [GC], no. 30696/09, ECHR 2011

—N—

Nada v. Switzerland [GC], no. 10593/08, ECHR 2012

—O—

O'Loughlin and Others v. the United Kingdom (dec.), no. 23274/04, 25 August 2005
Öcalan v. Turkey [GC], no. 46221/99, ECHR 2005-IV

—P—

Pocasovschi and Mihaila v. the Republic of Moldova and Russia, no. 1089/09, 29 May 2018

—Q—

Quark Fishing Ltd v. the United Kingdom (dec.), no. 15305/06, ECHR 2006‑XIV

—R—

Rambus Inc. v. Germany (dec.), no. 40382/04, 16 June 2009
Rantsev v. Cyprus and Russia, no. 25965/04, ECHR 2010

—S—

Sargsyan v. Azerbaijan [GC], no. 40167/06, ECHR 2015
Solomou and Others v. Turkey, no. 36832/97, 24 June 2008
Stephens v. Malta (no. 1), no. 11956/07, 21 April 2009

—V—

Vasiliciuc v. the Republic of Moldova, no. 15944/11, 2 May 2017

—W—

W. v. Ireland, no. 9360/81, Commission decision of 28 February 1983, Decisions and Reports 32

W. v. the United Kingdom, no. 9348/81, Commission decision of 28 February 1983, Decisions and Reports 32

—X—

X. v. Germany, no. 1611/62, Commission decision of 25 September 1965, Yearbook 8
X. v. the United Kingdom, no. 7547/76, Commission decision of 15 December 1977, Decisions and Reports 12
X. and Y. v. Switzerland, no. 7289/75, Commission decision of 14 July 1977, Decisions and Reports 9