

## THE APPLICATION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS TO MILITARY OPERATIONS

The European Convention on Human Rights is being applied to military operations of every kind from internal operations in Russia and Turkey, to international armed conflicts in Iraq, Ukraine and elsewhere. This book exposes the challenge that this development presents to the integrity and universality of Convention rights. Can States realistically investigate all instances where life is lost during military operations? Can the Convention offer the same level of protection to soldiers in combat as it does its citizens at home? How can we reconcile the application of the Convention with other international law applicable to military operations? This book offers detailed analysis of how the Convention applies to military operations of all kinds. It highlights the creeping relativism of the standards applied by the European Court of Human Rights to military operations and offers guidance on how to interpret and apply the Convention to military operations.

Stuart Wallace is Lecturer in Law at Homerton College, University of Cambridge, where he teaches human rights law. He received an LLM in international human rights law from the Irish Centre for Human Rights and a PhD from the University of Nottingham. He has previously worked at the European Court of Human Rights, the International Criminal Court and the Human Rights Law Centre at the University of Nottingham.



# The Application of the European Convention on Human Rights to Military Operations

**STUART WALLACE**

University of Cambridge



**CAMBRIDGE**  
UNIVERSITY PRESS

**CAMBRIDGE**  
UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom  
One Liberty Plaza, 20th Floor, New York, NY 10006, USA  
477 Williamstown Road, Port Melbourne, VIC 3207, Australia  
314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India  
79 Anson Road, #06-04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9781108475181](http://www.cambridge.org/9781108475181)

DOI: 10.1017/9781108566469

© Cambridge University Press 2019

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2019

Printed in Great Britain by Clays Ltd, Elcograf S.p.A

*A catalogue record for this publication is available from the British Library.*

ISBN 978-1-108-47518-1 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

*For Emma, co-author of my life*



## Contents

<i>Acknowledgements</i>	xi
<i>List of Abbreviations</i>	xiii
<i>Table of Cases</i>	xv
<i>Table of Legislation</i>	xxv
<b>Introduction</b>	<b>1</b>
The European Court of Human Rights and Military Operations	3
Applying the Convention to All Military Operations	4
International Humanitarian Law	7
The Court's Mandate and International Humanitarian Law	9
Central Arguments	13
Territorial Bias	16
Operationalising Human Rights Protection	17
Substantive Content	18
Relationship between the Convention and IHL	19
<b>1 Jurisdiction over Domestic Military Operations</b>	<b>21</b>
1.1 Introduction	21
1.2 Defining Jurisdiction	22
1.3 Jurisdiction over Domestic Territory	26
1.4 Losing Control	29
1.5 Positive Obligations	35
1.6 Discharging Positive Obligations	37
1.7 Conclusion	41

<b>2</b>	<b>Jurisdiction over Extra-Territorial Military Operations</b>	43
2.1	Introduction	43
2.2	Extra-Territorial Jurisdiction: A Primer	44
2.2.1	Personal Jurisdiction	44
2.2.2	Personal Jurisdiction and Military Personnel	46
2.2.3	Spatial Jurisdiction	47
2.3	Bankovic	48
2.3.1	The Court's Understanding of Jurisdiction	49
2.3.2	Exceptional Jurisdiction	50
2.3.3	Espace Juridique	51
2.3.4	Instantaneous Acts	53
2.4	Al-Skeini	56
2.4.1	Instantaneous Acts after Al-Skeini	59
2.4.2	Integrity of Convention Obligations	62
2.4.3	Early Occupation	63
2.5	Spatial Jurisdiction Tests	64
2.5.1	Public Powers	64
2.5.2	Effective Control over Territory	65
2.6	Conclusion	71
<b>3</b>	<b>Article 2: Substantive Obligations</b>	73
3.1	Introduction	73
3.2	Obligations under Article 2	74
3.3	The Standard of Necessity	75
3.3.1	Interpreting Absolute Necessity	77
3.3.2	Necessity of Attack	77
3.3.3	Immediate Threats	79
3.3.4	Consistency in Applying IHL	80
3.3.5	Abandoning Absolute Necessity?	82
3.4	Proportionality	86
3.4.1	Implicit Use of IHL	87
3.4.2	Indiscriminate Attacks	89
3.5	Positive Obligation to Protect during Military Operations	93
3.5.1	Protection of Civilians	93
3.5.2	An Obligation to Protect Soldiers?	98
3.5.3	Interpreting the Positive Obligation to Protect Soldiers	101
3.5.4	State Application of Positive Obligations	106
3.6	Conclusion	107



<b>4</b>	<b>Article 2 Procedural Obligations</b>	<b>110</b>
4.1	Introduction	110
4.2	The Procedural Obligations in Article 2	111
4.3	General Scope of the Procedural Obligations	112
4.4	Modifying the Procedural Obligation	115
4.4.1	Derogation	116
4.4.2	Sharing the Procedural Obligation	117
4.4.3	Co-application of IHL and the Convention	118
4.4.4	Flexible Interpretation of Article 2	122
4.5	Independence	122
4.5.1	Independence during Extra-Territorial Military Operations	123
4.5.2	Adapting Investigation Procedures	126
4.6	Conduct of Investigations	128
4.6.1	Legal Barriers to Investigation	130
4.7	Transparency	132
4.7.1	State Secrecy	133
4.7.2	Political Compromises	134
4.8	Promptness	135
4.8.1	Concessions for Delay	136
4.8.2	Post-Conflict Situations	137
4.9	Conclusion	139
<b>5</b>	<b>Norm Conflict</b>	<b>141</b>
5.1	Introduction	141
5.2	Approaches to Norm Conflict Resolution	143
5.2.1	Lex Posterior	143
5.2.2	Lex Superior	145
5.2.3	Lex Specialis	151
5.2.4	Harmonious Interpretation	155
5.3	Hassan v. United Kingdom	157
5.3.1	Derogation	160
5.3.2	Beyond Interpretation	161
5.3.3	Guiding Adaptation	163
5.4	Conclusion	164
<b>6</b>	<b>Article 7</b>	<b>166</b>
6.1	Introduction	166
6.2	Overview of Article 7	168

6.3	The Interpretation and Application of IHL under Article 7	170
6.3.1	Omissions	170
6.3.2	Reinterpreting Historical Law	175
6.3.3	Construing Law to the Applicant's Detriment	182
6.3.4	Interference with Domestic Rulings	183
6.4	Analysis	184
6.4.1	Genuine Error	185
6.4.2	Deliberate Error	186
6.4.3	Institutional Capacity	188
6.5	Conclusion	191
<b>7</b>	<b>Derogation</b>	192
7.1	Introduction	192
7.2	Benefits of Derogation	193
7.3	Derogation Practice	197
7.4	Key Issues with Derogation during Military Operations	200
7.4.1	War or Other Public Emergency	200
7.4.2	'Threaten the Life of the Nation as a Whole'	203
7.4.3	Proportionality and Necessity	206
7.4.4	Interaction of Derogations with IHL	208
7.4.5	Tailoring Extra-Territorial Derogations	210
7.5	Conclusion	212
	<b>Conclusion</b>	214
	<i>Bibliography</i>	221
	<i>Index</i>	239

## Acknowledgements

This book started as a random thought, one that I have probably spent too much time thinking about. The thought first occurred to me while I was working as a trainee lawyer at the European Court of Human Rights almost a decade ago. I am immensely grateful to all of my former colleagues there whose hard work and dedication in extremely challenging circumstances was inspirational. I would like to thank Anna Austin and Guillem Cano Palomares, in particular, for their guidance and assistance during my time there.

The random thought eventually evolved into a PhD dissertation at the University of Nottingham. I would like to express my gratitude to the University of Nottingham for providing me with a scholarship to complete the dissertation that led to this book. I owe an immense debt to my supervisors, Marko Milanovic and Dominic McGoldrick, for their patience, guidance and support in completing my doctoral dissertation. I would also like to thank my examiners, Alistair Mowbray and Ed Bates, for their kindness and invaluable feedback.

The dissertation evolved over time and with plenty of assistance into a book. I am incredibly lucky to have crossed paths with some extremely talented and supportive friends and colleagues. Sarah Worthington provided sage advice and assistance with developing the book proposal. Hayley Hooper has been an indispensable consultant on all things book related and a valued friend. Conall Mallory has worked on several projects with me over the past few years with good humour and patience. I am immensely grateful for his input on earlier drafts and his help in refining my ideas. I am also grateful to the Shucksmith-Wesleys and Colm McGrath for their extensive moral and academic support over the past years. I should also thank the multifarious anonymous reviewers who have provided input on parts of this work over the years – it may well have been helpful.

At Cambridge University Press, I would like to thank Tom Randall, Priyaa Menon, Laura Blake and the project management staff at CUP who provided helpful guidance throughout the writing process. The comments of the anonymous reviewers for Cambridge University Press also enhanced the book immensely. Any remaining errors are my responsibility.

Finally, I would never have reached this stage without the support of my family, Kevin, Kathy, Elayne and my brother Jeff. I must thank my parents, in particular, for their support and understanding without necessarily understanding what I've been doing all this time. My nieces and nephews have given me perspective on what's really important – dinosaurs and bubbles. But most of all I must thank my eternally patient wife, Emma. Having married me, she understands the difficulties of speculative long-term projects more than most. So much more than just a loyal companion, she has proofread, encouraged, cajoled and consoled. She has restored my self-belief and determination when they waned and stood by my side along each step of this path. I could never have done this without her.

## Abbreviations

AJIL	<i>American Journal of International Law</i>
BYIL	<i>British Yearbook of International Law</i>
ECtHR	European Court of Human Rights
EHRLR	<i>European Human Rights Law Review</i>
EHRR	European Human Rights Reports
EJIL	<i>European Journal of International Law</i>
GC	Grand Chamber of the European Court of Human Rights
HRLR	<i>Human Rights Law Review</i>
IAC	International Armed Conflict
IAComHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICLQ	<i>International and Comparative Law Quarterly</i>
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
HRL	International Human Rights Law
IRRC	<i>International Review of the Red Cross</i>
NIAC	Non-International Armed Conflict
NQHR	<i>Netherlands Quarterly of Human Rights</i>
UKHL	United Kingdom House of Lords
UKSC	United Kingdom Supreme Court
UNSCR	United Nations Security Council Resolution



## Table of Cases

### A. EUROPEAN CASES

- A and Others v. United Kingdom* (2009) 49 EHRR 29 160, 203–205, 207  
*Abuyeva and Others v. Russia* App no 27065/05 (ECtHR, 2 December 2010) 77, 90, 94, 123  
*Ahmet Ozkan and Others v. Turkey* App no 21689/93 (ECtHR, 6 April 2004) 78, 81, 90, 94  
*Akhmadova and Sadulayeva v. Russia* App no 40464/02 (ECtHR, 10 May 2007) 136  
*Akkoc v. Turkey* (2002) 34 EHRR 51 105  
*Aksoy v. Turkey* (1997) 23 EHRR 553 197, 202, 203, 207  
*Al-Adsani v. United Kingdom* (2002) 34 EHRR 11 12, 144–145, 150–151  
*Albekov and Others v. Russia* App no 68216/01 (ECtHR, 9 October 2008) 95, 97  
*Al-Dulimi and Montana Management Inc. v. Switzerland* App no 5809/08 (ECtHR, 21 June 2016) 149–151  
*Al-Jedda v. United Kingdom* (2011) 53 EHRR 23 1, 16, 115, 147–150, 153–155, 159–160, 196, 204–205  
*Al-Saadoon and Mufdhi v. United Kingdom (Admissibility)* (2009) 49 EHRR SE11 57, 115, 195  
*Al-Saadoon and Mufdhi v. United Kingdom (Merits)* (2010) 51 EHRR 9 101, 115, 162  
*Al-Skeini and Others v. United Kingdom* (2011) 53 EHRR 18 1, 6–7, 16, 18, 22–24, 32, 43–45, 48–49, 53–54, 56–72, 99, 101, 104, 110, 113, 115, 122–127, 129, 131, 157, 163, 195, 198  
*Andreou v. Turkey* App no 45653/99 (ECtHR, 27 October 2009) 55, 59, 61  
*Angelova and Iliev v. Bulgaria* (2008) 47 EHRR 7 111–112  
*Armani da Silva v. United Kingdom* (2016) 63 EHRR 12 28  
*Askhabova v. Russia* App no 54765/09 (ECtHR, 18 April 2013) 123

- Aslakhanova and Others v. Russia App no 2944/06 (ECtHR, 18 December 2012) 123, 136
- Assanidze v. Georgia (2004) 39 EHRR 32 23, 26, 29–31, 34, 66, 72
- Atiman v. Turkey App no 62279/09 (ECtHR, 23 September 2014) 80
- Avsar v. Turkey App no 25657/94 (ECtHR, 10 July 2001) 81
- Aytekin v. Turkey App no 22880/93 (EComHR, 18 September 1997) 80
- Azemi v. Serbia App no 11209/09 (ECtHR, 5 November 2013) 29, 31, 33–34, 69, 72
- Bankovic and Others v. Belgium and Others (2007) 44 EHRR SE5 16, 22–23, 26, 32, 43, 48–56, 59–62, 64–65, 71, 81, 101, 198
- Bati v. Turkey (2006) 42 EHRR 37 133
- Bazorkina v. Russia (2008) 46 EHRR 15 136–137
- Behrami v. France (2007) 45 EHRR SE10 7, 65, 130
- Bertrand Russell Peace Foundation v. United Kingdom App no 7597/76 (EComHR, 2 May 1978) 39
- Bijelic v. Montenegro and Serbia App no 11890/05 (ECtHR, 28 April 2009) 32
- Boumediene and Others v. Bosnia and Herzegovina App no 38703/06 (ECtHR, 18 November 2008) 37
- Brannigan and McBride v. United Kingdom (1994) 17 EHRR 539 152, 197, 202–203, 206–207
- Brecknell v. United Kingdom (2008) 46 EHRR 42 138
- Brogan v. United Kingdom (1989) 11 EHRR 117 206–207
- Buckley v. United Kingdom App no 20348/92 (ECtHR, 25 September 1996) 107
- Burdov v. Russia (2009) 49 EHRR 2 115
- Catan and Others v. Moldova and Russia App no 43370/04 (ECtHR, 19 October 2012) 25, 29, 31, 40–41, 71
- Charalambous and Others v. Turkey App no 46744/07 (ECtHR, 3 April 2012) 122, 134, 137–139
- Chember v. Russia App no 7188/03 (ECtHR, 3 July 2008) 103–105, 209
- Chiragov and Others v. Armenia App no 13216/05 (ECtHR, 14 December 2011) 27, 68–69
- Cyprus v. Turkey (1975) 31 DR 125 46, 50
- Cyprus v. Turkey (1982) 4 EHRR 482 6–7, 27, 46, 153, 205
- Cyprus v. Turkey (2002) 35 EHRR 30 48, 118
- Damayev v. Russia App no 36150/04 (ECtHR, 29 May 2012) 77
- Del Rio Prada v. Spain (2014) 58 EHRR 37 182
- Demir and Baykara v. Turkey (2009) 48 EHRR 54 12
- Demir v. Turkey (2001) 33 EHRR 43 207



*Table of Cases*

xvii

- Dimov and Others v. Bulgaria App no 30086/05 (ECtHR, 6 November 2012) 75
- Djavit An v. Turkey (2005) 40 EHRR 45 152
- Dobberstein v. Germany App no 25045/94 (EComHR, 12 April 1996) 39
- Dovletukayev and Others v. Russia App no 7821/07 (ECtHR, 24 October 2013) 136
- Drozd and Janousek v. France and Spain (1992) 14 EHRR 745 168
- Edwards v. United Kingdom (2002) 35 EHRR 19 18, 111
- El-Masri v. Macedonia (2013) 57 EHRR 25 133
- Engel and Others v. Netherlands (1979-80) 1 EHRR 647 105
- Erdogan and Others v. Turkey App no 19807/92 (ECtHR, 25 April 2006) 79
- Ergi v. Turkey (2001) 32 EHRR 18 7, 14, 17, 75, 77-78, 83, 86, 94-95, 97, 111-112
- Esmukhambetov and Others v. Russia App no 23445/03 (ECtHR, 29 March 2011) 81-82, 94, 97
- Fazlic and Others v. Bosnia and Herzegovina App no 66758/09 (ECtHR, 3 June 2014) 139
- Finogenov and Others v. Russia (2015) 61 EHRR 4 83-85, 90-93, 97, 133
- Fogarty v. United Kingdom (2002) 34 EHRR 12 145
- Freda v. Italy App no 8916/80 (EComHR, 7 October 1980) 45-46
- Frerot v. France App no 70204/01 (ECtHR, 12 June 2007) 209
- Georgia v. Russia (II) (2012) 54 EHRR SE10 7, 13, 27, 112, 156, 219
- Giuliani and Gaggio v. Italy (2012) 54 EHRR 10 75-76, 115, 125, 133
- Grigoriades v. Greece (1999) 27 EHRR 464 105
- Gul v. Turkey (2002) 34 EHRR 28 75, 79
- Gulec v. Turkey (1999) 28 EHRR 121 75, 86, 94, 122-123
- Hassan v. United Kingdom App no 29750/09 (ECtHR, 16 September 2014) 12, 15, 19, 70-72, 81, 87, 108, 119, 155, 157-165, 167, 186, 195-198, 218-219
- Hatton v. United Kingdom App no 36022/97 (ECtHR, 8 July 2003) 107
- Ilascu and Others v. Moldova and Russia (2005) 40 EHRR 46 21, 26-31, 34-38, 40-41, 62-63, 67, 69, 72, 163
- Ipek v. Turkey App no 25760/94 (ECtHR, 17 February 2004) 123
- Ireland v. United Kingdom (1979-80) 2 EHRR 25 142, 160, 210
- Isaak and Others v. Turkey App no 44587/98 (ECtHR, 28 September 2006) 25
- Isayeva v. Russia (2005) 41 EHRR 38 7, 30-32, 35, 66, 72, 77, 81, 90-92, 94, 194
- Isayeva, Yusupova, Bazayeva v. Russia (2005) 41 EHRR 39 77-78, 80-83
- Issa v. Turkey (2005) 41 EHRR 27 52-53, 57, 67, 69
- Ivantoc and Others v. Moldova and Russia App no 23687/05 (ECtHR, 15 November 2011) 29, 38, 40-41, 63, 72

- Jaloud v. Netherlands (2015) 60 EHRR 29 18, 48–49, 60–63, 110, 113, 118, 122, 125–127, 129, 131–132, 139, 195, 198
- Janowiec and Others v. Russia (2014) 58 EHRR 30 134, 138
- Jelic v. Croatia App no 57856/11 (ECtHR, 12 June 2014) 137
- Jordan v. United Kingdom (2003) 37 EHRR 2 110–111, 122–123
- Jorgic v. Germany (2008) 47 EHRR 6 179–180, 182–183, 185, 189
- Jularic v. Croatia App no 20106/06 (ECtHR, 20 January 2011) 31, 36, 129, 137–138
- Kafkaris v. Cyprus (2009) 49 EHRR 35 168
- Kalogeropoulou and Others v. Greece and Germany App no 59021/00 (ECtHR, 12 December 2002) 64
- Karefyllides v. Turkey App no 45503/99 (ECtHR, 1 December 2009) 134
- Kaya v. Turkey (1999) 28 EHRR 1 130
- Kelly and Others v. United Kingdom App no 30054/96 (ECtHR, 4 May 2001) 111, 123
- Kelly v. United Kingdom App no 17579/90 (EComHR, 13 January 1993) 80, 82, 129
- Kemmache v. France (No.3) App no 17621/91 (ECtHR, 24 November 1994) 183
- Kerimova v. Russia App no 17170/04 (ECtHR, 3 May 2011) 81, 90, 94
- Khamzayev and Others v. Russia App no 1503/02 (ECtHR, 3 May 2011) 81
- Khatsiyeva and Others v. Russia App no 5108/02 (ECtHR, 17 January 2008) 80
- Kokkinakis v. Greece (1994) 17 EHRR 397 182
- Kolevi v. Bulgaria App no 1108/02 (ECtHR, 5 November 2009) 112, 132
- Kolk & Kislyiy v. Estonia App no 23052/04 (ECtHR, 17 January 2006) 176, 178, 182–184, 186, 190
- Kononov v. Latvia App no 36376/04 (ECtHR, 24 July 2008) 170–172, 176, 184–186, 190
- Kononov v. Latvia (GC) (2011) 52 EHRR 21 10, 170, 173–174, 176, 186, 189–190
- Kontrova v. Slovakia App no 7510/04 (ECtHR, 31 May 2007) 105
- Korbely v. Hungary (2010) 50 EHRR 48 10, 169, 177–179, 181–182, 186
- Kudla v. Poland (2002) 35 EHRR 11 152
- Lawless v. Ireland (1979–80) 1 EHRR 15 197, 202–204
- LCB v. United Kingdom (1999) 27 EHRR 212 98
- Loizidou v. Turkey (Preliminary Objections) (1995) 20 EHRR 99 47, 69, 112
- Loizidou v. Turkey (Merits) (1997) 23 EHRR 513 34, 64, 67
- Luluyev v. Russia (2009) 48 EHRR 45 136
- Lustig-Prean v. United Kingdom (2000) 29 EHRR 548 105
- Maiorano v. Italy App no 28634/06 (ECtHR, 15 December 2009) 84–85
- Makaratzis v. Greece (2005) 41 EHRR 49 84–85, 92

*Table of Cases*

xix

- Maktouf and Damjanovic v. Bosnia and Herzegovina (2014) 58 EHRR 11 117, 182–183
- Markovic v. Italy (2007) 44 EHRR 52 9, 39, 88
- Marshall v. United Kingdom App no 41571/98 (ECtHR, 10 July 2001) 202, 206–207
- McCann and Others v. United Kingdom (1996) 21 EHRR 97 56, 75, 77–78, 83, 188
- McCaughy v. United Kingdom App no 43098/09 (ECtHR, 16 July 2013) 135
- McElhinney v. Ireland (2002) 34 EHRR 13 145
- McKerr v. United Kingdom (2002) 34 EHRR 20 133
- McShane v. United Kingdom App no 43290/98 (ECtHR, 28 May 2002) 123
- Medvedyev v. France (2010) 51 EHRR 39 1, 16, 56–57, 62, 71
- Menson v. United Kingdom (2003) 37 EHRR CD220 112
- Mezhidov v. Russia (2011) 53 EHRR 11 135
- Micallef v. Malta (2010) 50 EHRR 37 125
- Mozer v. Moldova and Russia App no 11138/10 (ECtHR, 23 February 2016) 29, 40–41, 63, 72
- Nachova v. Bulgaria (2006) 42 EHRR 43 75, 79, 111
- Nada v. Switzerland (2013) 56 EHRR 18 148–149, 151, 164
- Nakayev v. Russia App no 29846/05 (ECtHR, 21 June 2011) 96–97, 108, 135
- Nasr and Ghali v. Italy App no 44883/09 (ECtHR, 23 February 2016) 133
- Nevmerzhitsky v. Ukraine (2006) 43 EHRR 32 209
- Ocalan v. Turkey (Merits) (2005) 41 EHRR 45 6, 12, 45–46, 52, 57
- Ogur v. Turkey (2001) 31 EHRR 40 110–111, 133
- Oneryildiz v. Turkey (2005) 41 EHRR 20 98, 107
- Osman v. United Kingdom (2000) 29 EHRR 245 17, 28, 75, 84–85, 93, 102, 105, 115
- Pad v. Turkey App no 60167/00 (ECtHR, 28 June 2007) 52, 55, 59, 62
- Palic v. Bosnia and Herzegovina App no 4704/04 (ECtHR, 15 February 2011) 39, 138–139
- Papon v. France (no. 2) App no 54210/00 (ECtHR, 15 November 2001) 186
- Pasa and Erkan Erol v. Turkey App no 51358/99 (ECtHR, 12 December 2006) 94
- Penart v. Estonia App no 14685/04 (ECtHR, 24 January 2006) 177, 184, 186
- Pereira Henriques v. Luxembourg App no 60255/00 (ECtHR, 9 May 2006) 112
- Pisari v. Moldova and Russia App no 42139/12 (ECtHR, 21 April 2015) 59–60, 62, 80
- Pritchard v. United Kingdom App no 1573/11 (ECtHR, 18 March 2014) 98, 105

- Ramsahai v. Netherlands (2008) 46 EHRR 43 125, 130  
 Reinette v. France App no 14009/88 (EComHR, 2 October 1989) 45–46  
 S.W. v. United Kingdom (1996) 21 EHRR 363 168, 175  
 Saadi v. Italy (2009) 49 EHRR 30 39  
 Sanchez Ramirez v. France App no 28780/95 (EComHR, 24 June 1996) 45–46  
 Sandu and Others v. Moldova and Russia App no 21034/05 (ECtHR, 17 July 2018) 29  
 Saramati v. France and Others (2007) 45 EHRR SE10 65, 146, 164  
 Sargsyan v. Azerbaijan App no 40167/06 (ECtHR, 14 December 2011) 27, 32–33, 35  
 Sen and Others v. Turkey App no 45824/99 (ECtHR, 8 July 2003) 105  
 Sirin Yilmaz v. Turkey App no 35875/97 (ECtHR, 29 July 2004) 96  
 Sisojeva and Others v. Latvia (2007) 45 EHRR 33 183  
 Slimani v. France (2006) 43 EHRR 49 112  
 Slivenko and Others v. Latvia (2004) 39 EHRR 24 143–145  
 Soering v. United Kingdom (1989) 11 EHRR 439 22, 26  
 Stocke v. Germany (1991) 13 EHRR CD126 47  
 Stoyanovi v. Bulgaria App no 42980/04 (ECtHR, 9 November 2010) 103, 209  
 Streletz, Kessler and Krenz v. Germany (2001) 33 EHRR 31 168–169, 183, 187, 189  
 Tagayeva v. Russia App no 26562/07 (ECtHR, 13 April 2017) 83–86, 92–93, 129  
 Tas v. Turkey (2001) 33 EHRR 15 136  
 Touvier v. France App no 29420/95 (EComHR, 13 January 1997) 186  
 Treska v. Albania and Italy App no 26937/04 (ECtHR, 29 June 2006) 64  
 Turluyeva v. Russia App no 63638/09 (ECtHR, 20 June 2013) 123  
 Udayeva and Yusupova v. Russia App no 36542/05 (ECtHR, 21 December 2010) 96–97, 108  
 Van Colle v. United Kingdom (2013) 56 EHRR 23 105  
 Varnava and Others v. Turkey App no 16064/90 (ECtHR, 18 September 2009) 12–13, 87, 134–135, 156, 219  
 Vasiliauskas v. Lithuania (2016) 62 EHRR 31 181–183, 187–188, 218  
 Veeber v. Estonia (No. 2) (2004) 39 EHRR 6 168  
 Velcea and Mazare v. Romania App no 64301/01 (ECtHR, 1 December 2009) 116  
 Velikova v. Bulgaria App no 41488/98 (ECtHR, 18 May 2000) 116  
 W.M. v. Denmark (1993) 15 EHRR CD28 44  
 X v. Federal Republic of Germany App no 1611/62 (EComHR, 25 September 1965) 1, 44  
 X v. United Kingdom App no 7547/76 (EComHR, 15 December 1977) 44  
 Yasa v. Turkey (1999) 28 EHRR 408 129, 136  
 Yilmaz v. Turkey App no 21899/02 (ECtHR, 17 June 2008) 104

*Table of Cases*

xxi

B. INTER-AMERICAN CASES

- Alejandro *v.* Cuba Report No 86/99 IAComHR 29 September 1999 54, 76  
 Ameziane *v.* United States Report No 17/12 IAComHR 20 March 2012 58  
 Arturo Ribón Avilán *v.* Colombia Report No 26/97 IAComHR 30 September  
 1997 7, 11–12, 88, 122, 164  
 Bámaca Velásquez *v.* Guatemala Series C No 70 IACtHR 25 November  
 2000 133  
 Coard et al. *v.* United States Report No 109/99 IAComHR 29 September  
 1999 44, 156  
 Goiburú and Others *v.* Paraguay Series C No 153 IACtHR 22 September  
 2006 38  
 Hugo Bustios Saavedra *v.* Peru Report No 38/97 IAComHR 16 October  
 1997 7, 12, 164  
 Ignacio Ellacurias *v.* El Salvador Report No 136/99 IAComHR 22 December  
 1999 118, 120, 122  
 Juan Carlos Abella *v.* Argentina Report No 55/97 IAComHR 18 November  
 1997 7, 11, 81, 88–89  
 La Cantuta *v.* Peru Series C No 162 IACtHR 29 November 2006 38  
 Las Palmeras *v.* Colombia Series C No 90 IACtHR 6 December 2001 7, 12,  
 164  
 Mapiripán Massacre *v.* Colombia Series C No 134 IACtHR 15 September  
 2005 81  
 Salas and Others *v.* United States Report No 31/93 IAComHR 14 October  
 1993 54, 57  
 Saldaño *v.* Argentina Report No 38/99 IAComHR 11 March 1999 23, 39  
 Santo Domingo Massacre *v.* Colombia Series C No 259 IACtHR 30 November  
 2012 7, 11–12, 120  
 Velásquez-Rodríguez *v.* Honduras Series C No 4 IACtHR 29 July 1988 17, 93

C. UNITED KINGDOM CASES

- A and Others *v.* Secretary of State for the Home Department [2004] UKHL  
 56 204  
 Buttes Gas & Oil Co *v.* Hammer (No.3) [1982] AC 888 39  
 Kuwait Airways Corporation *v.* Iraqi Airways Corporation [2002] 2 AC 883 40  
 Mulcahy *v.* Ministry of Defence [1996] QB 732 98  
 Multiple Claimants *v.* Ministry of Defence [2003] EWHC 1134 98  
 R. (Abbasi) *v.* Secretary of State for Foreign and Commonwealth Affairs [2002]  
 EWCA Civ 1598 39–40

- R. (Ali Zaki Mousa) v. Secretary of State for Defence (CA) [2011] EWCA Civ 1334 114, 126
- R. (Ali Zaki Mousa) v. Secretary of State for Defence (HC No.2) [2010] EWHC 3304 (Admin) 126
- R. (Ali Zaki Mousa) v. Secretary of State for Defence (HC No.3) [2013] EWHC 1412 (Admin) 126–127
- R. (Al-Jedda) v. Secretary of State for Defence [2007] UKHL 58 142, 154, 161, 198, 204
- R. (Al-Rawi) v. Secretary of State for Foreign and Commonwealth Affairs [2006] EWHC 972 (Admin) 39
- R. (Al-Saadoon) v. Secretary of State for Defence [2015] EWHC 715 (Admin) 54
- R. (Al-Saadoon) v. Secretary of State for Defence [2016] EWCA Civ 811 67
- R. (Al-Skeini) v. Secretary of State for Defence [2004] EWHC 2911 (Admin) 37, 52
- R. (Al-Skeini) v. Secretary of State for Defence [2005] EWCA Civ 1609 48, 66–68, 70
- R. (Al-Skeini) v. Secretary of State for Defence [2007] UKHL 26 48, 66
- R. (Gentle) v. Prime Minister [2008] UKHL 20 107
- R. (Long) v. Secretary of State for Defence [2014] EWHC 2391 (Admin) 98, 100–102, 118, 196
- R. (Smith) v. Oxfordshire Assistant Deputy Coroner [2010] UKSC 29 98, 101–102, 104, 107
- Rahmatullah v. Secretary of State for Foreign and Commonwealth Affairs [2011] EWHC 2008 (Admin) 39
- Secretary of State for the Home Department v. Rehman [2003] 1 AC 153 39
- Serdar Mohammed v. Ministry of Defence [2014] EWHC 1369 89, 127, 156, 195, 201, 205
- Smith and Others v. Ministry of Defence [2013] UKSC 41 98–103, 105, 107, 198, 204

#### D. OTHER JURISDICTIONS

- Armed Activities on the Territory of the Congo* (DRC v. Uganda), 2005 ICJ Reports, p. 168 19 December 2005 66, 154
- Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia-Herzegovina v. Yugoslavia), 2007 ICJ Reports, p. 43 26 February 2007 181
- Case Concerning Military and Paramilitary Activities in and Against Nicaragua* (Nicaragua v. United States), 1984 ICJ Reports, p. 392 26 November 1984 145

*Table of Cases*

xxiii

- Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging* (Case No. STL-11-01/I/AC/R176bis) 16  
 February 2011 174
- Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, p. 136 9 July 2004 6, 10
- Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 ICJ Reports, p. 226 8 July 1996 6, 11, 119, 156, 161
- Prosecutor v. Omar Hassan Ahmad Al Bashir* (ICC-02/05-01/09) 4 March 2009 189
- Prosecutor v. Radislav Krstic* (Case no. IT-98-33-T) 2 August 2001 181
- Prosecutor v. Tadic* (Case no. IT-94-1-AR72) 2 October 1995 8, 174, 179
- The Trial of Otto Skorzeny and Others* Law Reports of Trials of War Criminals United Nations War Crimes Commission, Vol IX, 1949 171





## Table of International Agreements

- Agreement for the Prosecution and Punishment of the Major War Criminal of the European Axis (adopted 8 August 1945, entered into force 8 August 1945) 82 UNTS 280. 176–177
- American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 144. 12, 17, 23, 44, 88–89, 116, 141, 200, 203
- Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS 16. 57, 60, 145–150, 154, 164
- Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 222. 4–6, 9–10, 15–19, 21–25, 27, 29–31, 33–34, 36, 39, 45–50, 52, 54–57, 62–63, 73–76, 79, 81–83, 85–90, 92–113, 115–117, 119–122, 125–127, 129–136, 139–142, 144–153, 156–171, 175–179, 182–189, 191–198, 200–206, 208–210, 212–219
- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (adopted 26 November 1968, entered into force 11 November 1970) 754 UNTS 73. 177–179
- Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277. 179–182, 187, 189
- Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight (adopted 29 November 1868). 8
- Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31. 7–8, 12, 16, 78, 120–121, 153, 200
- Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 85. 7–8, 12, 16, 78, 120–121, 153, 200

- Geneva Convention Relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135. 7–9, 12, 16, 78, 120–121, 142, 153, 158–159, 200
- Geneva Convention Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287. 7–9, 12, 16, 78, 120–121, 142, 147, 153–154, 158–159, 200
- Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land (adopted 18 October 1907, entered into force 26 January 1910) 205 CTS 277. 66, 121, 139, 171
- International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171. 6–7, 11, 119, 141, 156, 161
- Minsk Agreement establishing the Commonwealth of Independent States (adopted 8 December 1991, entered into force 22 January 1994) 1819 UNTS 57. 68
- Montevideo Convention on Rights and Duties of States 1933 (adopted 26 December 1933, entered into force 26 December 1934) 165 LNTS 19. 23
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1979) 1125 UNTS 3. 7–8, 53, 76, 79, 89, 91, 94, 171, 201
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609. 5, 8, 95, 201
- Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3. 2, 118, 120–121, 176, 179, 182
- Statute of the International Criminal Tribunal for Rwanda (adopted 12 January 1995) UN doc. SC/5974. 179
- Statute of the International Criminal Tribunal for the Former Yugoslavia (adopted 25 May 1993) UN doc. S/25704. 179
- Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III). 78
- Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331. 12, 145, 150, 156, 162
- Vienna Convention on Consular Relations (adopted 24 April 1963, entered into force 19 March 1967) 596 UNTS 261. 23