

Human right and peace operations: Focus on the European Convention on Human Rights

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Any views expressed are strictly my own

Article 1

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

***Banković and Others v. Belgium and 16 Other Contracting States* (dec.) [GC], no. 52207/99,
12 December 2001, ECHR 2001 XII**

- Ordinary and essentially territorial notion of jurisdiction

***Cyprus v. Turkey* [GC], no. 25781/94,
10 May 2001, ECHR 2001-IV**

- On territory of another Convention State:
entire range of substantive Convention rights
applies (including Protocols ratified by sending
State) – need to avoid a “vacuum”

***Banković and Others v. Belgium and 16 Other Contracting States* (dec.) [GC], no. 52207/99, 12 December 2001, ECHR 2001 XII**

- Ordinary and essentially territorial notion of jurisdiction
- Outside Convention legal space (*espace juridique*)
 - “cause-and-effect” model of jurisdiction does not apply
 - “need to avoid a vacuum” does not arise

***Issa and Others v. Turkey*, no. 31821/96,
16 November 2004**

- Essential question to be examined was whether at the relevant time Turkish troops conducted operations in the area where the killings took place.

***Hassan v. the United Kingdom* [GC],
no. 29750/09, 16 September 2014, ECHR 2014**

- Detainee fell within the jurisdiction of the United Kingdom from the moment of his capture by United Kingdom troops until his release from the bus that took him to the drop-off point

Al-Skeini and Others v. the United Kingdom

[GC], no. 55721/07, 7 July 2011, ECHR 2011

- State agent authority and control
 - obligation under Article 1 to secure to individual the rights and freedoms under Section I of the Convention that were relevant to the situation of that individual
- Effective control over an area
 - 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

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

- Dutch troops subordinate to British commander
- Netherlands retained “full command” – and accordingly Article 1 jurisdiction
- Concurrent Article 1 jurisdiction United Kingdom - ??

Article 15

- “1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under [the] Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (§ 1) and 7 shall be made under this provision.
3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefore. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.”

***Behrami v. France and Saramati v. France,
Germany and Norway (dec.) [GC], nos.
71412/01 and 78166/01, 2 May 2007***

- Peacekeeping organisation as a subsidiary organ of the United Nations
- Exercise of lawfully delegated Chapter VII powers of the United Nations Security Council
 - Caveat: if the Security Council resolution leaves an option that is Convention compliant, then that option should be used

Summing up

- Assume that the European Convention on Human Rights applies
- Consider derogating under Article 15 in appropriate cases
- Or fly the flag of the United Nations (Chapter VII or subsidiary organ) ...
- ... in which case, your moral duty is to find an alternative way to protect human rights