

Northumbria Research Link

Citation: Mallory, Conall (2013) The European Convention on Human Rights and Jurisdictional Links during Military Operations. In: 4th Scottish Colloquium for Early Career Legal Researchers April 2013, 19 April 2013, University of Dundee. (Unpublished)

URL:

This version was downloaded from Northumbria Research Link:
<http://nrl.northumbria.ac.uk/17620/>

Northumbria University has developed Northumbria Research Link (NRL) to enable users to access the University's research output. Copyright © and moral rights for items on NRL are retained by the individual author(s) and/or other copyright owners. Single copies of full items can be reproduced, displayed or performed, and given to third parties in any format or medium for personal research or study, educational, or not-for-profit purposes without prior permission or charge, provided the authors, title and full bibliographic details are given, as well as a hyperlink and/or URL to the original metadata page. The content must not be changed in any way. Full items must not be sold commercially in any format or medium without formal permission of the copyright holder. The full policy is available online: <http://nrl.northumbria.ac.uk/policies.html>

This document may differ from the final, published version of the research and has been made available online in accordance with publisher policies. To read and/or cite from the published version of the research, please visit the publisher's website (a subscription may be required.)

www.northumbria.ac.uk/nrl



The European Convention on Human Rights and Jurisdictional Links During Military Operations

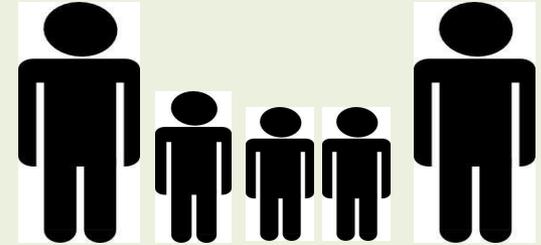
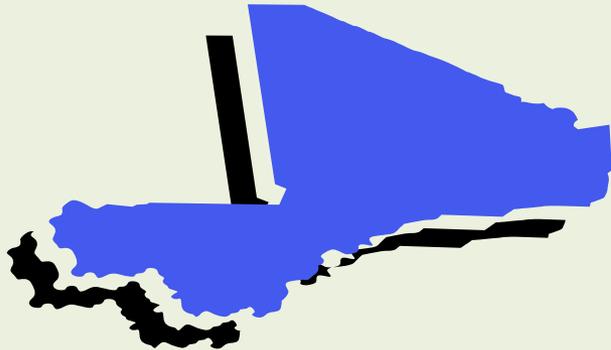


Conall Mallory
Northumbria University, Newcastle-upon-Tyne
4th Scottish Colloquium for Early Career Researchers



‘[t]he High Contracting Parties shall secure to everyone **within their jurisdiction** the rights and freedoms defined in Section I of [the] Convention.’

Article 1: European Convention on Human Rights, 1950.



Could five civilian deaths suffered as a result of a French helicopter airstrike in Konna, Mali, on January 11th 2013 fall within Article 1 jurisdiction for the purposes of the European Convention on Human Rights?





Al-Skeini and Others v the United Kingdom
(2011) 53 E.H.R.R. 18



Jurisdiction is primarily/essentially territorial with two exceptions. When:

1. A State exercises Effective Control of an Area outside of their territory.
2. State Agents Exercise Authority and Control over individuals.

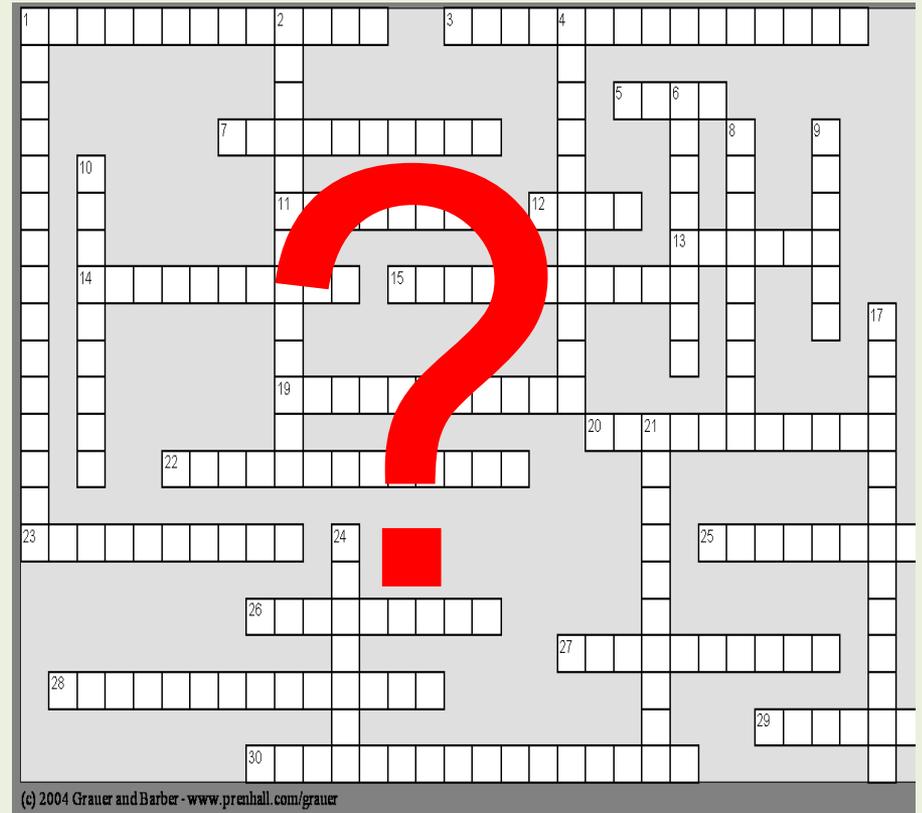
State Agents Exercise Authority and Control

Al-Skeini and Others v United Kingdom. (2011) 53 E.H.R.R. 18

1. Where the acts of **diplomatic and consular agents**, who are present on foreign territory in accordance with provisions of international law, exert authority and control over others
2. When, through the consent, invitation or acquiescence of the Government of that territory, a State **exercises all or some of the public powers normally to be exercised by that Government**
3. **The use of force by a State's agents operating outside its territory may bring the individual thereby brought under the control of the State's authorities into the State's Article 1 jurisdiction.** This principle has been applied where an individual is taken into the custody of State agents abroad

‘In my view, this relentless search for eminently tangential case law is as fruitful and fulfilling as trying to solve one crossword puzzle with the clues of another.’

Judge Giovanni Bonello
Al-Skeini and Others v the United Kingdom
(2011) 53 E.H.R.R. 18



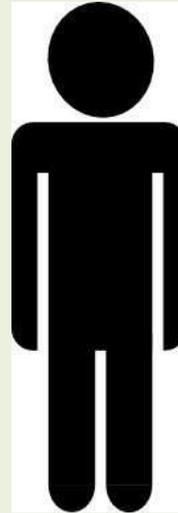
‘The use of force by a State's agents operating outside its territory may bring the individual thereby brought under the control of the State's authorities into the State's Article 1 jurisdiction.

This principle has been applied where an individual is taken into the custody of State agents abroad.’

Al-Skeini and Others v United Kingdom. (2011) 53 E.H.R.R. 18

‘[T]he use of force by a state’s agents operating outside its territory may bring the individual thereby brought under the control of the state’s authorities into the state’s art.1 jurisdiction. This principle has been applied where an individual is taken into the custody of State agents abroad.’

Al-Skeini and Others v the United Kingdom



Öcalan v. Turkey
[GC], no.
46221/99, § 91,
ECHR 2005-IV,

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

*Al-Saadoon and
Mufdhi v. the
United
Kingdom* (dec.),
no. 61498/08
30 June 2009,

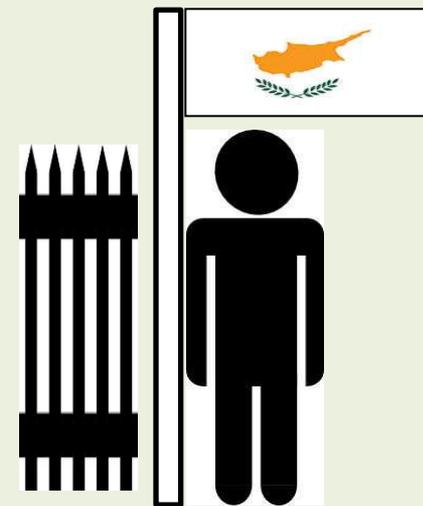
*Medvedyev and
Others
v. France* [GC],
no. 3394/03,
§ 67, ECHR
2010

Non-custody examples of jurisdiction through force: Cyprus

*Solomou
and Others v
Turkey*
App. No.
36832/97
24 June
2008

*Maria Isaak
and Others v
Turkey*
App. No.
44587/98
28 September
2006

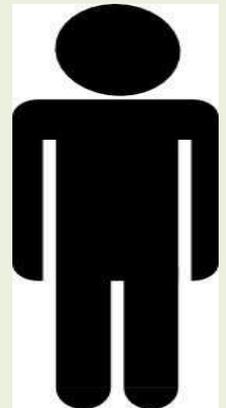
*Georgia
Andreou v
Turkey*
App. No.
45653/99
3 June 2008



←TRNC -----Buffer Zone -----Southern Cyprus →

Non-custody characteristics

- Control can be temporary (*Isaak*)
- Control can exist through the actions of state agents:
(Gunfire brought the individual) under the authority/and or effective control of the respondent state through its agents (*Solomou*)
- Jurisdiction can be brought about when the actions of state agents is the 'direct and immediate cause' of injuries (*Andreou*)



‘I suspect that the law on ‘jurisdiction’ is still in its infancy.’

Michael O’Boyle, ‘The European Convention on Human Rights and Extraterritorial Jurisdiction: A comment on ‘Life After Banković’ in Fons Coomans and Menno Kamminga (ed) *Extraterritorial Application of Human Rights Treaties* (Intersentia 2004), p.139.



Questions



Exceptions

EFFECTIVE CONTROL OF AN AREA



STATE AGENT AUTHORITY AND CONTROL OVER AN INDIVIDUAL



‘The controlling state has the responsibility under art.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.’

‘the state is under an obligation under art.1 to secure to that individual the rights and freedoms under s.1 of the Convention that are relevant to the situation of that individual.’