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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

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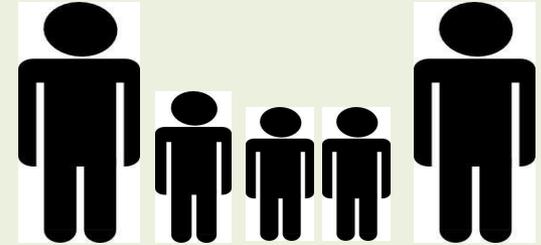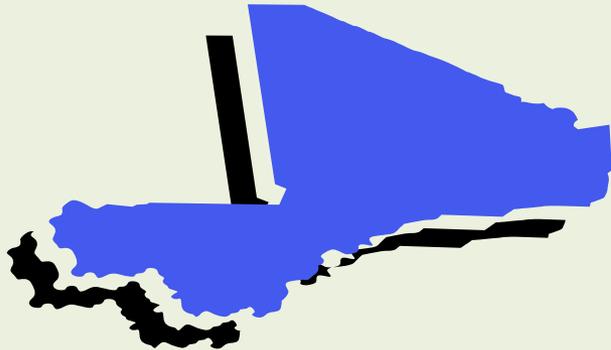
Could five civilian deaths suffered as a result of a French helicopter airstrike in Konna, Mali, on January 11th 2013 fall within Article 1 jurisdiction for the purposes of the European Convention on Human Rights?

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

AMNESTY INTERNATIONAL

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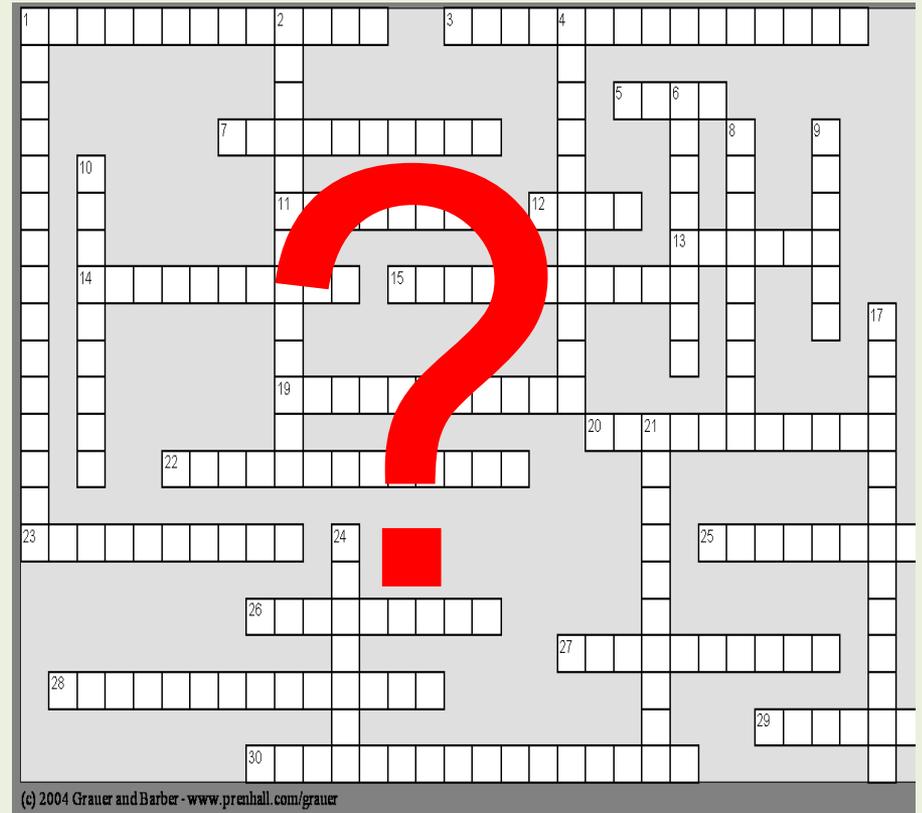
'The use of force by a State's agents operating outside its territory may bring the individual thereby brought under the control of the State's authorities into the State's Article 1 jurisdiction.

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 <u>custody</u> of State agents abroad.'

Al-Skeini and Others v the United Kingdom
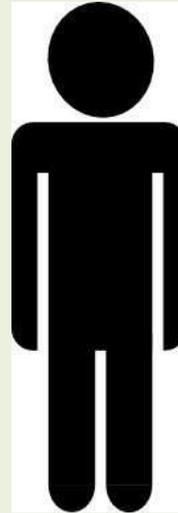
Öcalan v.Turkey [GC], no. 46221/99, § 91, ECHR 2005-IV,

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

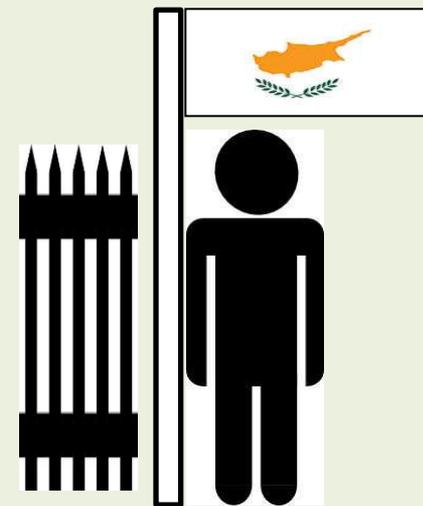*Al-Saadoon and Mufdhi v. the United Kingdom* (dec.), no. 61498/08 30 June 2009,

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*)
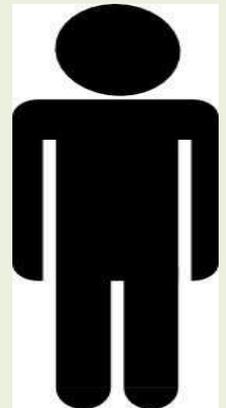
'I suspect that the law on 'jurisdiction' is still in its infancy.'

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

'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.'

STATE AGENT AUTHORITY AND CONTROL OVER AN INDIVIDUAL

'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.'