

EUROPEAN UNION MILITARY STAFF



Human Rights and the Conduct of Military Operations: Compatible?

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Overview

1. Assisting-training-monitoring-mentoring-equipping armed groups, jurisdiction and attribution of conduct
2. The interplay between LOAC and IHRL in view of the ECtHR jurisprudence





1. Assisting-training-monitoring-mentoring-equipping armed groups, jurisdiction and attribution of conduct
 - **Starting point:**
 - Attribution of State's own armed forces (Art. 4 ARS); *versus*
 - Other groups: rule on "Conduct directed or controlled by a State (Art. 8 ARS)
 - **Attribution must be proven and the threshold of control for such attribution must be determined**





Attribution – ICJ - Nicaragua

- *“For this conduct to give rise to legal responsibility of the United States, it would in principle have to be proved that that State had effective control of the military or paramilitary operations in the course of which the alleged violations were committed.”*
- **See also ICJ – Genocide Case and ARS**





Attribution – ICTY - Tadic

- *The control required by international law may be deemed to exist when a State (or, in the context of an armed conflict, the Party to the conflict) has a role in organizing, coordinating or planning the military actions of the military group, in addition to financing, training and equipping or providing operational support to that group. Acts performed by the group or members thereof may be regarded as acts of de facto State organs regardless of any specific instruction by the controlling State concerning the commission of each of those acts.”*
- **See also ICC Jurisprudence**





Attribution – ECtHR – Cyprus versus Turkey

- *“Having effective overall control over northern Cyprus, its responsibility cannot be confined to the acts of its own soldiers or officials in northern Cyprus but must also be engaged by virtue of the acts of the local administration which survives by virtue of Turkish military and other support. It follows that, in terms of Article 1 of the Convention, Turkey’s “jurisdiction” must be considered to extend to securing the entire range of substantive rights set out in the Convention and those additional Protocols which she has ratified, and that violations of those rights are imputable to Turkey.”*





Attribution – ECtHR – Catan Case

- *“[...] during the period 2002-2004 the “MRT” was able to continue in existence, resisting Moldovan and international efforts to resolve the conflict and bring democracy and the rule of law to the region, only because of Russian military, economic and political support. In these circumstances, the “MRT”’s high level of dependency on Russian support provides strong indication that Russia exercised effective control and decisive influence over the “MRT” administration during the period of the schools’ crisis.”*





Attribution – ECtHR – Chiragov Case

- *“[...] In other words, the “NKR” and its administration survive by virtue of the military, political, financial and other support given to it by Armenia which, consequently, exercises effective control over Nagorno-Karabach and the surrounding territories, including the district of Lachin.”*





Human Rights and the Conduct of Combat Operations

- **IHRL continues to apply in times of AC**
- **Yes, but:**
 - IHRL and LOAC are distinct bodies of law:
 - Strict proportionality and absolute necessity (IHRL)
 - Proportionality and military necessity (LOAC)
 - Remark: Not interchangeable notions
 - In times of armed conflict: LOAC = LEX SPECIALIS
 - Distinguish between CT-operations as LEO and CT-combat operations





Human Rights and the Conduct of Combat Operations

- **Isayeva – Kerimova – Esmukhambetov**
 - *"The Court considers that using this kind of weapon in a populated area, outside wartime, is impossible to reconcile with the degree of caution expected from a law-enforcement body in a democratic society."*





Conclusion

- **Attribution of conduct: lack of consistency.**
- **ECHR and combat operations: applying the correct legal framework**

