BRILL

EUROPEAN REVIEW OF INTERNATIONAL STUDIES
7 (2020) 338-364

eris
brill.com/eris

The Pitfalls and Promises of Human Rights Claims in the Chechen Wars: Russia at the European Court

Matthew Evangelista
Department of Government, Cornell University, Ithaca, NY, US
matthew.evangelista@cornell.edu

Abstract

Russia's brutal wars against the separatist republic of Chechnya, starting in the mid-1990s, entailed untold numbers of war crimes and human rights abuses, including kidnapping, extrajudicial killings, torture, murder, and vast destruction of property and civilian life by aerial bombardment and artillery barrages. Blocked from pursuing justice through the Russian courts or by having the Russian government fulfill its obligations under the Geneva Conventions, victims instead worked with activists and lawyers to bring cases before the European Court of Human Rights. Starting in 2003, the Court has found against Russia in some 250 cases – in effect bringing the higher standards of human rights law to the domain of armed conflict, normally regulated (with mixed success) by international humanitarian law ("laws of war"). The first step in the process of understanding this normative change is to identify and understand the transformation: from a normative standpoint, the Court rulings constitute a major achievement for civilian protections during wartime; they build on earlier precedents in cases against Turkey and the United Kingdom, which not only expand protections for civilians but also extend the *espace juridique* of the Court's competence beyond Europe to include, for example, British military forces in Iraq. The second step provides a social-sciences perspective by adding an empirical dimension to the study of these cases. We see that the actual consequences of the Court's decisions on the military practices of Russia and other states have been limited and may even portend a backlash that could undermine protections for civilians in warfare. The last step of normative analysis suggests that even if appeals to a court of human rights might not serve the goal of reducing war crimes in general, the use of human-rights norms retains a certain plausibility to the extent that if offers victims an opportunity to present their claims and seek remedies.

 | DOI:10.1163/21967415-BJA10024

Keywords

human rights – Russia – Chechnya – European Court of Human Rights – war crimes

Introduction

Russia's military intervention in 1994 to suppress an armed secessionist movement in the North Caucasus republic of Chechnya ushered in decades of violence in the region. The war was accompanied by terrorist attacks by rebels and government forces alike, human-rights abuses, torture, 'disappearances', and extrajudicial killing. The conflict – particularly Russia's indiscriminate aerial bombardment – generated tens of thousands of refugees and internally displaced persons and spread throughout the North Caucasus. Estimates of the civilian death toll vary widely, but number at least in the tens of thousands.

This account of the human consequences of the conflict is familiar from numerous journalistic and scholarly accounts.[1] Less attention has been paid to the international legal implications of the Chechen wars.[2] An argument can be made that the scores of judgments by the European Court of Human Rights (ECtHR) against the Russian government for its conduct in Chechnya have made an impact on the law, in part by continuing a trend toward bringing the standards of human-rights law to the laws of war, known formally as International Humanitarian Law (IHL) or the Law of Armed Conflict (LOAC). Such a trend should presumably be welcomed from a normative standpoint: expanding protections for civilians in armed conflict represents progress in the ethics and morality of war. Yet we should also consider the empirical consequences of the expansion of rights – particularly, whether or not military practices conform to the expanded legal standards.

This paper contrasts perspectives from international law with those of scholars of International Relations (IR), particularly of the realist tradition, with its emphasis on state sovereignty and power. International lawyers, particularly those engaged in 'strategic litigation' on behalf of victims of human-rights abuses during conflict, tend to focus on courts' decisions about which body of law is relevant, as if states' subsequent behaviour will reflect those

1 Evangelista, *The Chechen Wars*, (2002); Hughes, *Chechnya: From Nationalism to Jihad,* (2008); Gilligan, *Terror in Chechnya,* (2010).

2 Important studies of legal activism of nongovernmental organizations in the Chechen case include: Solvang, "Chechnya", (2008); Sundstrom, "Advocacy Beyond Litigation", (2012); van der Vet, "Seeking Life", (2012); van der Vet, "Transitional Justice", (2013).

decisions unproblematically.[3] IR realists, by contrast, reject international law and institutions as a constraint on state behaviour, and so are indifferent as to which body of law the legal experts consider more relevant.[4] To the extent that law constrains state behaviour, realists would point to the mechanisms of reciprocity underlying certain provisions in the laws of war – those governing, for example, treatment of prisoners of war.[5]

This paper poses the question whether states are more likely to react to the judgments of the European Court according to the expectations of realists or of international legal scholars. The answers are necessarily tentative – the Court's decisions are recent, and we have only preliminary evidence of state responses. Yet, such evidence suggests that the normative advances in bringing human-rights standards to warfare may be provoking a backlash among states that regularly engage in armed conflict. One could imagine, as legal experts seem to do, that as human-rights norms come to influence the laws of war, protections for civilians will increase with concomitant constraints on the conduct of armed conflict. But this normative goal could be at odds with the empirical reality.[6] In E.H. Carr's terms, unless the laws genuinely constrain states' behaviour in military conflicts, we observe a potential conflict between utopian aspirations of law and the reality of war.[7]

The paper is organized as follows: the first section describes how the crimes of the Chechen wars moved from the jurisdiction of international humanitarian law or Russian domestic law to international human-rights law. The second section summarizes the key cases decided by the European Court on Chechnya and the extent to which they followed or established precedents. The third section describes an emerging backlash to the Court's decisions that could undermine the protections that the expanded understanding of civilians' rights promises. The example of Russia is important because it ranks with Turkey among the top two in cases before the Court related to armed conflict, and its ongoing military interventions allow us to evaluate the impact of the Court's rulings. Whether it is the best case to demonstrate 'backlash' is less certain, as it

3 Duffy, "Trials and Tribulations", (2020), ch. 1.

4 For a strong statement of this position, see Mearsheimer, "The False Promise", (1995). An earlier, more sophisticated analysis of the relationship between power and law is Carr, *The Twenty Years' Crisis*, (2016), originally published in 1939 and revised in 1945.

5 Morrow, *Order within Anarchy*, (2014); Wallace, *Life and Death*, (2015).

6 A similar debate concerns the impact of the International Criminal Court on situations of ongoing conflict. See Reike, "The International Criminal Court", (2017).

7 Carr, *Twenty Years' Crisis*; how law constrains military practice is the subject of Evangelista and Tannenwald, *Do the Geneva Conventions Matter?* (2017); and Evangelista and Shue, *The American Way of Bombing,* (2014).

may be that Russia's behaviour remains consistently impervious to the Court, rather than representing a reaction to it. Thus, I supplement my discussion of Russia with another example that demonstrates potential backlash, namely the United Kingdom.

How the Chechen Conflict Came to Strasbourg

In reviewing the distinction between international humanitarian law and human-rights law and their application to armed conflict, we should first recognize that the distinction has tended to blur over time. This tendency is consistent with what legal scholars call the fragmentation of international law, where each domain claims its own body of law, but where there is also considerable overlap.[8] Political scientists have introduced the related concept of 'norm hybridization' to describe overlapping normative and legal frameworks for promoting rights.[9] Consider how the Israeli government described the distinction between IHL and human-rights law in 2004:

> Humanitarian law is the protection granted in a conflict situation such as the one in the West Bank and Gaza Strip, whereas human rights treaties were intended for the protection of citizens from their own Government in times of peace.[10]

That distinction is not really tenable anymore – not least because the worst human rights abuses typically take place during wartime and most people think human-rights law should cover them if the laws of war fail to do so.

The traditional approach to legal restraints on war identified the laws of war as *lex specialis* that should supersede other laws during wartime. Yet, as Ziv Bohrer has argued, for many human-rights activists and lawyers, those laws are "insufficiently effective in diminishing wartime suffering." They do believe – in contrast to realists, for example – "that international law can influence combat behaviour," and that human-rights law offers the best prospect.[11] That is where the European Court of Human Rights comes in.

8 Bohrer, Dill, and Duffy, *Law Applicable to Armed Conflict*, (2020); Ohlin, ed., *Theoretical Boundaries*, (2016); Corn, "Mixing Apples", (2010).

9 Fehl, "Bombs, Trials, and Rights", (2019).

10 Quoted in the Case of Al-Skeini and others v. the United Kingdom, Application no. 55721/07, Strasbourg, 7 July 2011, 90. For a comparative analysis of Israeli and US practice employing these competing legal frameworks, see Kretzmer, "Targeted Killing", (2005).

11 Bohrer, "Divisions over Distinctions", (2020), 172.

The Court, established in 1959, allows individuals or their representatives to bring cases against states to hold them to account for violations of human rights, and they have done so, and with success, at an increasing pace. When its jurisdiction extends to the protection of human rights during armed conflict, the ECtHR represents a rare institution that allows individuals to seek redress against their governments for abusing those rights. Thus, it constitutes a major example of what has come to be called the 'individualization' of war and international law.[12]

The Russian Federation came under the jurisdiction of the ECtHR as a consequence of its joining the Council of Europe in 1996. Russia ratified the European Convention on Human Rights (ECHR) – formally the Convention for the Protection of Human Rights and Fundamental Freedoms – in May 1998. That same year the Court's jurisdiction over cases brought by individuals from member states of the Council of Europe become compulsory, whereas previously states could opt out. In early 2003 the Court admitted the first applications related to the war in Chechnya and two years later found in the applicants' favour in three judgments.

In 2019 the ECtHR received 9,238 applications concerning Russia, most of which (8,793) were declared inadmissible. Of the ones it accepted, the Court delivered 198 judgments, 186 of which found Russia in violation of at least one provision of the ECHR.[13] As of March 2020 the Court had issued more than 250 judgments finding violations of the Convention in connection with the armed conflict in Chechnya.[14]

Unlike the International Criminal Court, the ECtHR does not hold individuals responsible for abuses, but only governments. It decides on the admissibility of cases on the basis of whether they fulfil criteria such as: 1) exhaustion of domestic remedies; 2) case filed within six months of final domestic judicial decision; 3) complaints based on the European Convention; and 4) applicant has suffered a significant disadvantage.[15] Given the hostile attitude of

12 Welsh, "The Individualisation of War", (2019); I discuss the concept in "Diritti umani, conflitti armati e il diritto internazionale: il ruolo dell'individuo nel contesto europeo," lecture at Università degli Studi Roma Tre, Rome, Italy, 29 November 2016, http://gina.uniroma3.it/download/1480355183.pdf.

13 European Court of Human Rights, Press country profile – Russia, February 2020, 1, https://www.echr.coe.int/Documents/CP_Russia_ENG.pdf.

14 European Court of Human Rights, Factsheet – Armed Conflicts, March 2020 (hereafter: ECtHR, Factsheet), https://www.echr.coe.int/Documents/FS_Armed_conflicts_ENG.pdf, 10.

15 For more detail on how the Court operates, see: https://www.echr.coe.int/Pages/home.aspx?p=court/howitworks&c; on questions of implementation in comparative perspective, see Baluarte and De Vos, *From Judgment to Justice*, (2010).

the Russian government toward complaints about actions taken during the Chechen wars, and given the danger to their own lives that complainants faced when seeking domestic remedies, the ECtHR eventually came to relax that first criterion in considering whether to take on the Chechen cases, as we shall see.

Aside from not carrying out the violations in the first place, the Russian government could have sought to avoid the attention of the Court in three ways: 1) It could have claimed that as an internal armed conflict, the war in Chechnya fell under international humanitarian law, namely Common Article 3 and Additional Protocol II of the Geneva Conventions, and that the government was prosecuting violations under the laws governing Russian armed forces; 2) it could have declared a state of emergency and thereby derogated from some of its obligations under the European Convention; or 3) it could have investigated and prosecuted crimes under domestic criminal law. The first two measures would not have excluded potential scrutiny by the Court: legal authorities who reject the *lex specialis* excuse for neglecting human-rights law would argue that the Convention continues to apply in times of armed conflict (especially in non-international armed conflicts as the one that took place in Chechnya). Moreover, even if Russia would have derogated from some obligations under the ECHR, the Court could still review the lawfulness of such derogations and Russia's compliance with its remaining obligations under the Convention.[16]

Regarding the first option, shortly after the administration of Boris Yeltsin began attacking Chechnya in November 1994, the International Committee of the Red Cross informed the Russian government that it considered the fighting to have achieved the status of an 'armed conflict not of an international character' – the formal legal terminology that designates a civil war or war of secession – and that the Geneva Conventions applied.[17] The Russian Constitutional Court agreed that Additional Protocol II should apply to the conflict, but the Russian legislature failed to incorporate its provisions into law. The Geneva Conventions are not self-enforcing. States must adopt laws that reflect the Geneva principles, such as the Uniform Code of Military Justice in the case of the United States. Russia never did so.

The International Committee of the Red Cross continued to designate the Chechen conflict a non-international armed conflict, subject to Common Article 3, but the Russian government no longer accepted that judgment after 1996, when Russian troops withdrew from Chechnya as part of an uneasy truce.[18]

16 I owe this point and some of the wording, with gratitude, to an anonymous reviewer.

17 Baturin, et al., *Epokha El'tsina*,(2001), 696.

18 Author's interview with François Bellon, head of the ICRC regional delegation, 20 May 2008, Moscow.

When the administration of Vladimir Putin launched the second Chechen war in 1999 it characterized the conflict as an anti-terrorist operation, an internal affair that did not implicate the Geneva Conventions. What it failed to do, however, was to pursue option two: to declare a state of emergency that would allow it to derogate some of its obligations under the ECHR, as Article 15 would allow. The Convention permits derogation from Article 2, the right to life, 'in respect of deaths resulting from lawful acts of war', during 'time of war or other public emergency threatening the life of the nation', and when the measures leading to death are 'strictly required by the exigencies of the situation'.[19]

The Russian government failed to acknowledge that it was engaged in an armed conflict and decided not to declare a state of emergency. That is what gave Russian and Chechen applicants the opening to bring their cases before the European Court. The Court would still not have acted, however, had the Russian government prosecuted the crimes under its own laws – option three – as human-rights activists urged.

Human-rights activists in Russia have sought legal remedies for the devastation wrought by Russian military action in Chechnya since the outbreak of the conflict in 1994. They engaged in a variant of what legal analysts have called 'forum-shopping', looking for domestic courts that would be sympathetic to their claims, but also issuing appeals for support from abroad, as they realized the gravity of the crimes their government was committing.[20] In March 1995, for example, a group of mathematicians and physicists distributed by electronic mail an open letter to foreign colleagues expressing their concern about the war. It represents views widely held in Russia at the time. The letter begins, 'We are compelled to write to you from the feeling that the terrible crimes committed by Russian authorities and armed forces in Chechnya are not accidental and that we are all responsible for them'. Already less than three months into the first war, 'journalists, defenders of human rights and mothers of the soldiers fighting there' were reporting not only indiscriminate bombing of towns and villages, 'but also the capturing of hostages, robberies, organization of filtration camps where people, incarcerated on the basis of their race, are cruelly beaten, tortured, maimed and murdered'. The authors of the letter characterized these

19 http://www.echr.coe.int/Documents/Convention_ENG.pdf.

20 The human rights group Memorial was the earliest and most active in this sphere. See, for example, *Rossiia-Chechnia: Tsep' oshibok i prestuplenii* (Moscow: Zven'ia, 1998); *Narushenie mezhdunarodnykh norm i rossiiskogo zakonodatel'stva v otnoshenii pray bezhentsev i vynuzhdennykh pereselentsev* (Moscow: Zven'ia, 1998); *Pravovye aspekty Chechenskogo krizisa* (Moscow: Memorial, 1995). Some activists sought to promote an international tribunal to try the crimes; see Lilia Isakova, Elena Oznobkina, eds., *Voina v Chechne: Mezhdunarodnyi Tribunal* (Moscow: Obshchestvennyi fond Glasnost', 1997).

actions as genocide and crimes against humanity and insisted, therefore, that they not 'be considered merely as an internal affair of Russia'.[21]

An early challenge to the legality of the first Chechen War in a domestic court came with the attempted impeachment of Russian President Boris Yeltsin. In July 1995 the Constitutional Court of the Russian Federation heard a case brought against him by members of the Russian Duma for illegal use of armed force in launching the attack against Chechnya in November 1994. At issue here was the conflict's legal status according to the Russian Constitution, rather than the acts committed during the conflict itself that became the subject of subsequent legal proceedings.[22] The impeachment hearings did, nevertheless, produce considerable information relevant to Russian behaviour that appeared to constitute war crimes and would later be deemed violations of human rights under the European Convention.[23]

Russian leaders' unwillingness to acknowledge the crimes committed in Chechnya, let alone investigate and prosecute them, prompted the judges of the European Court to respond favourably to complainants' attempts to hold Russia to account for its treaty obligations. In 1939, Carr had argued that 'every state concludes treaties in the expectation that they will be observed; and states which violate treaties either deny that they have done so, or else defend the violation by argument designed to show that it was legally or morally justified'. For Carr, 'violation of treaties, even when frequently practised, is felt to be something exceptional requiring special justification. The general sense of obligation remains'.[24] Even within a general sense of obligation, however, we should distinguish between the dishonest denial of violations of international law, the attempt to excuse the violation, and the recognition of violation and promise to remedy it. The first behaviour – outright mendacious denial – characterized much of the Kremlin's response to charges of war crimes in Chechnya.

---

21 "Open Letter from Russia," distributed by Christopher Lazzo and Ryszard Sidor, http://www.hartford-hwp.com/archives/63/100.html. The signatories of the letter, dated 13 March 1995, were A. Belavin, V. Drinfeld, and B. Feigin. For other international efforts of Russian human-rights activists, see "Chechnya, Yeltsin, and Clinton: The Massacre at Samashki in April 1995 and the US Response to Russia's War in Chechnya," introductory essay and summary of declassified documents, National Security Archive Briefing Book #702, Svetlana Savranskaya and Matthew Evangelista, eds.,15 April 2020 https://nsarchive.gwu.edu/briefing-book/russia-programs/2020-04-15/massacre-at-samashki-and-us-response-to-russias-war-in-chechnya. On the plight of journalists, see Simonov, ed., *Informatsionnaia voina v Chechne*, (1997); Politkovskaya, *A Small Corner of Hell* (2003).

22 Gaeta, "The Armed Conflict" (1996).

23 Testimony by Russian military leaders, for example, revealed a poor knowledge and lack of interest in the laws of war. See the discussion in Evangelista, *The Chechen Wars,* ch. 7.

24 Carr, *Twenty Years' Crisis,* 790 (eBook).

The most egregious example of denial came at the very outset of Moscow's first war against Chechnya, when military authorities denied the bombing of Grozny. In fact, they went a step further and tried to pin the blame on the Chechens themselves. Report 27, issued at 12:30 p.m. on Friday, 22 December 1994, claimed:

> The city of Grozny was not bombarded. However, the [Chechen] militants imitated the bombing of residential areas. About 1 a.m., an administrative building and an apartment house were blown up. People living in it, Chechens and Russians, were not warned. The imitation of a bomb was done to prove the notion of the 'war against the Chechen nation being waged by the Russian leadership'.[25]

Even after his retirement from office, Boris Yeltsin continued to maintain:

> we have never committed mass executions of unarmed people in Chechnya. There have been no ethnic cleansings or concentration camps. The main reason for the missile strikes and bombs that have brought pain and grief to ordinary citizens is the war unleashed by the terrorists against the Russian people.[26]

With such unwavering opposition to even admitting crimes committed in the course of the Chechen conflict, Russian leaders left its victims only one recourse: the European Court. Observers have thus dubbed it Chechnya's last chance, Chechnya's last hope, and even the Supreme Court of the North Caucasus.[27] How well the Court has met up to expectations for justice for Chechen victims, and how far its rulings have pushed the boundaries for protecting human rights in war are the topics of the next section.

The Chechen Cases, Following and Setting Precedents

Most of the European Court's cases concerning Chechnya have involved forced disappearances, unacknowledged detention, torture, and extrajudicial killing. Even if these take place during an armed conflict, they are not actions

25 Steven Erlanger, "Russians Step Up Assault on Rebels by Air and Armor", *New York Times*, 23 December 1994.

26 Yeltsin, *Midnight Diaries*, (2000), 340.

27 Barrett, "Chechnya's Last Hope?", (2009); Abdel-Monem, "The European Court", (2004); Avetisyan, "Strasbourg: Supreme Court of the North Caucasus", (2012).

permitted in any way by the laws of war, so they are not the sort of precedent-setting cases that could affect the extension of human-rights norms into the realm of war – our main concern here. Here we consider military actions that would normally constitute a state of armed conflict, such as aerial and artillery attacks and the use of landmines.

The European Court cases that addressed the military actions of the Russian armed forces were among its first regarding Chechnya; they were decided in February 2005 and are known by the name of the surviving victim who brought the case as Isayeva I and II. The first dealt with a Russian rocket and air attack against a civilian convoy fleeing the capital city Grozny in October 1999, after the Russian authorities had designated their route a humanitarian corridor and urged the residents to use it. The second addressed an incident in February 2000, when Russian forces launched an indiscriminate attack on the village of Katyr-Yurt, where some rebels had escaped. Under the laws of war, the attack on a civilian convoy would on its face appear illegal, but the perpetrators might avoid prosecution if they claimed it was a mistake. The legality of the assault on the village would depend on an assessment of intention (that civilians were not deliberately targeted) and proportionality – whether the military objective justified the harm to civilians – and whether the military leaders took adequate precautions to avoid that harm. But because the Russian authorities denied that the attacks took place and that the country was engaged in an armed conflict that entailed obligations under the Geneva Conventions, and neglected to declare a state of emergency, they opened the way for the ECtHR to judge their actions by human-rights standards.

The gist of the Court's judgment is this:

> No martial law and no state of emergency has been declared in Chechnya and no derogation has been made under Article 15 of the Convention…the operation in question therefore has to be judged against a normal legal background…The massive use of indiscriminate weapons…cannot be considered compatible with the standard of care prerequisite to an operation of this kind involving the use of force by State agents.[28]

The importance of this judgment is that it seems to hold states to a higher standard of protection of civilians and even armed fighters than under the laws of war: According to the Court's language, the 'State agents' – not described as *soldiers* – do not seem to enjoy the 'combatant's privilege' to kill enemy belligerents. Armed Chechens are understood as criminals to be subdued with 'care'.

28 Isayeva v. Russia, 24 February 2005; see the discussion in Garraway, "The Law Applies" (2014).

The European Convention contains no discussion of the military value of a target or whether the harm to civilian life and property is proportionate to the military benefit. Priority accords to protecting individual lives.

As an example of norm hybridity, however, cases such as Isayeva I and II do discuss terms from the laws of war: proportionality, indiscriminate attacks, precautionary measures. But, as William Abresch puts it, the Court's case law is 'highly fact-specific'. It raised questions such as:

> Were the missiles used by the Russian forces insufficiently accurate to fire them against a convoy of civilian vehicles that might have included some insurgents?
>
> Were the gravity bombs dropped on a village too powerful to inflict proportionate damage?[29]

These are the sorts of questions that would be posed to cases in other countries where law enforcement officials used excessive force against criminal suspects.[30] In the United States, relevant examples would include the 1985 attack by Philadelphia police on an apartment where members of the radical group MOVE lived with their families. An incendiary weapon dropped from a helicopter caused a fire that destroyed 65 homes in the neighborhood and killed 11 people, including five children in the MOVE apartment.[31] Another example would be the 51-day siege by federal law-enforcement agents of the 'Branch Davidian' compound in Waco, Texas that resulted in a shoot-out and deaths of 75 people, including many children, on 19 April 1993. The group was suspected of illegally stockpiling weapons.[32] When victims of such attacks accuse the government of committing crimes by employing excessive and indiscriminate force, they do so under the relevant domestic laws, not international human-rights law or the laws of war.

For this reason, the framing of the situation in the Chechen cases is key. Because Russia did not acknowledge an armed conflict, the European Court

29 Abresch, "Human Rights Law", (2005), 763.

30 In this respect, Israel appears as an exception because of its appeal to the law of armed conflict. Kretzmer, "Targeted Killing," argues, however, that domestic law should apply in the Palestinian territories where Israeli authorities provide security, rendering targeted killings illegal: one does not preventively kill a potential murderer. I thank Ariel Colonomos for this point.

31 "MOVE Bombing at 30: 'Barbaric' 1985 Philadelphia Police Attack Killed 11 & Burned a Neighborhood," *Democracy Now*, 13 May 2015, https://www.democracynow.org/2015/5/13/move_bombing_at_30_barbaric_1985.

32 Childress, "10 Things", (2018).

treated these cases as matters of law enforcement: It described the Chechen insurgents as 'manifesting "active resistance to…law-enforcement bodies"' and criticized the armed forces for not showing 'the degree of caution expected from a law-enforcement body in a democratic society'.[33]

If the Russian government had carried out investigations once the victims had called its attention to the use of excessive force, then the case could have been addressed through domestic law. The case of Abdulkhanov and others v. Russia, decided by the ECtHR in October 2013, is typical. In the course of the Second Chechen War, the elders of the village of Aslanbek-Sheripovo had received assurances from Russian army commanders in early 2000 that their people would be safe as long as they did not shelter armed insurgents. Yet on 17 February 2000 the armed forces launched an air and artillery attack that killed 18 people and wounded several others, including three of the applicants to the Court. Their attempt to achieve justice through the domestic legal system met resistance from local military and civil authorities, as the Court's press release on the case summarizes:

> The applicants' complaint to the law-enforcement authorities remained unanswered for a long period of time and, in May 2002, the military prosecutor decided not to open a criminal investigation into the attack. The decision was subsequently quashed, but no criminal investigation was opened. According to the Russian Government's submissions in 2010, the preliminary examination of the case remained pending. The applicants also brought civil proceedings seeking compensation for damages because their relatives had been killed and because they had been wounded themselves. Their claims were eventually rejected in December 2005.[34]

Thus, the Court took advantage of the Russian government's framing of the case as an internal matter of law enforcement (anti-terrorism), and accepted the case because it was clear that domestic remedies failed to address the applicants' grievances.

The Court had already set a precedent for charging a country with human-rights violations for military actions carried out during operations the government resisted acknowledging as war -- in cases against Turkey in its conflict

33 Isayeva II, quoted in Abresch, "Human Rights Law", 752.

34 Summary from European Court of Human Rights, press release #282, "Military strike on Chechen village in 2000 was in breach of the Convention, as acknowledged by the Russian Government", 3 October 2013.

with the Workers' Party of Kurdistan (PKK). In Orhan v. Turkey (18 June 2002), for example:

> The applicant, a Turkish national of Kurdish origin, complained in particular of the destruction of the village in south-east Turkey, where he lived, by State security forces in May 1994, of the detention and disappearance of his two brothers and his son, and of the inadequacy of the ensuing investigations.[35]

The Court found violations in the course of Turkey's military actions, notably deaths caused by use of excessive force by members of the Turkish security forces and destruction of property (burning down of houses), as well as torture of captives. In its security operations Turkey had violated, among others, the Convention's Article 2 (right to life), Article 3 (prohibition of torture), and Article 8 (right to respect for private and family life and the home). Later, in Bezner and Others v. Turkey (12 November 2013), the Court supported the 'applicants' allegation that the Turkish military bombed their two villages by aircraft in March 1994, killing more than 30 of their close relatives…'[36] The Court ultimately filed 280 judgments finding violations of the Convention during Turkey's conflict with Kurdish separatists in the 1990s.[37]

Another important encroachment of human-rights law into the domain of war concerned a particular military weapon: the antipersonnel landmine. The Court's judgment in the case of Albekov and others (9 October 2008) called Russia to account for leaving unexploded landmines in Chechnya after the end of the active fighting; they killed three civilians.[38] What is remarkable about this judgment, again, is that it is not put in the context of laws governing armed conflict, such as the 1997 Ottawa Mine Ban Treaty. Since Russia has not signed that treaty, it is not apparent that it could be held to account, *except* under human-rights law. So this is a case where a country can deliberately decide not to become a party to a treaty constraining its ability to use certain weapons, and nevertheless suffer legal consequences for using them – on the basis of a different treaty that it did sign (the ECHR) governing a different body of law (human rights).

How did it happen? In a previous case against Turkey in 2006, the Court had, according to the lawyer Kiril Koroteev, made the provisions of the Ottawa

35 ECtHR, Factsheet, 4.
36 *Ibid.,* 5
37 *Ibid.,* 3.
38 Albekov and others "Legal Remedies", (2010), 281.

Treaty part of the European Convention when it decided to 'read them into' Article 2 of the Convention, which prescribes a 'positive obligation to protect life by locating the mines, demining the minefield', and so forth.[39]

There is also an important procedural matter worth mentioning. Normally, as the admissibility criteria mentioned above require, for each case examined by the European Court the judges have to determine that the applicants have exhausted all domestic remedies before approaching the international court, and there has to be a certain amount of evidence that a crime has been committed.[40] This is often difficult in the case of disappearances, because the person is gone and presumed dead and the perpetrators often deliberately hid their identity. Ole Solvang, in his discussion of the 2006 Imakayeva judgment, wrote: 'the Court concluded that unacknowledged detention in Chechnya in and of itself is a life-threatening situation, which then warranted a consideration of whether the Russian authorities had violated the right to life in addition to the right of liberty'.[41] The precedent here, according to Solvang, is that 'in all disappearance-related cases in which the Court has established that there has been a violation of the right to liberty, it has also concluded that there has been a violation of the right to life'.[42] It no longer needs to investigate on a case-to-case basis.

The Court's Impact on International Law

Based on his analysis of the European Court's judgments relevant to Russia's wars in Chechnya, Abresch concluded:

> It is now clear that the ECtHR will apply the doctrines it has developed on the use of force in law enforcement operations even to large battles involving thousands of insurgents, artillery attacks, and aerial bombardment. It is also clear that it will do so by directly applying human rights law, not only without reference to humanitarian law but also in a manner that is at odds with humanitarian law.[43]

39 Koroteev, "Legal Remedies", 282. The case was Paşa and Erkan Erol v. Turkey, Application No. 51358/99, ECtHR, Chamber, 12 December 2006.

40 Leach, "The Chechen Conflict", (2008).

41 Solvang, "Chechnya", 213.

42 *Ibid*.

43 Abresch, "Human Rights Law", 742.

Since he wrote that in 2008, his predictions have been borne out in several cases. In Esmukhambetov and Others v. Russia (29 March 2011), the ECtHR charged Russia with violations of human rights resulting from a Russian military air strike on a village in Chechnya in September 1999 that killed five people and destroyed houses and property.[44] In the Abdulkhanov case discussed above, not only did the Court find Russia responsible for the military strike and the deaths of 18 of the applicants' relatives, it elicited an acknowledgment from the Russian government of the actions as violations of human rights under the ECHR: 'For the first time in a case concerning the armed conflict in Chechnya, the Russian Government acknowledged that there had been a violation of Article 2 (right to life), both as regards the use of lethal force and as regards the authorities' obligation to investigate its circumstances'.[45] Thus Russia apparently accepted the human-rights framing of its armed conflict and the inadequacy of its domestic remedies.

What about the impact of the Court's jurisprudence beyond the Russian case? Again, writing in 2008, Abresch had suggested that the European Court 'has shown great caution in applying the ECHR to a state's actions outside of its territory'.[46] This is no longer true. In the case of al Skeini and others v. United Kingdom (7 July 2011), the Court identified conditions under which Britain exercised control in occupied Iraq such that the geographic jurisdiction of the European Convention – *espace juridique* – would apply. The case concerned incidents in Basra

> in 2003 while the UK was an occupying power: three of the victims were shot dead or shot and fatally wounded by British soldiers; one was shot and fatally wounded during an exchange of fire between a British patrol and unknown gunmen; one was beaten by British soldiers and then forced into a river, where he drowned; and one died at a British military base, with 93 injuries identified on his body.[47]

Thus, from a normative standpoint, we observe remarkable progress. The rights enshrined in the European Convention now extend to individuals as far away as Iraq, if a European power is in effective control as a military occupier.

In March 2015 the British High Court of Justice accepted the European Court's understanding of the *espace juridique* of the Convention and went one

44 ECtHR, Factsheet, 11.
45 *Ibid.,* 11–12.
46 Abresch, "Human Rights Law", 746.
47 ECtHR, Factsheet, 13.

step further. In the context of British military activities following the invasion of Iraq, the Court argued, 'it is impossible to say that shooting someone dead does not involve the exercise of physical power and control over that person'.[48]

The Court's Impact on State Behaviour, of Russia and Other Countries

In the European Court judgments, remedies have entailed mainly the requirement of financial payments by the Russian government to relatives of the victims. Russia has usually made the payments in a timely manner.[49] Beyond the monetary compensation, the Court, and the Council of Europe under which it serves, mandated such measures as the reopening of investigations into the crimes, the drafting of new laws, and development of new investigative and judicial procedures. Here the record has been less impressive.

This assessment is not intended to underestimate the achievements of the lawyers who brought cases before the Court on behalf of Russian and Chechen victims. The sense of having achieved some justice in itself is important. As Solvang writes of his clients, after 'years of a fruitless battle for their rights in the Russian judicial system, an international court has established that the Russian authorities have violated their rights. It is difficult to overestimate the importance of this acknowledgment for the people who are affected'. Moreover, in cases of disappearances 'several of the cases from Chechnya have set an important precedent or reaffirmed crucial principles such as what constitutes inhuman treatment of relatives, under what circumstances it is possible to hold that a disappearance is a violation of the right to life, and what are the obligations of a respondent state when it comes to cooperating' with the Court.[50] Nevertheless, it is still accurate to argue that 'Russia violates the spirit and letter' of the European Convention 'by ignoring the substance' of the ECtHR 'judgments, failing to implement measures that are necessary to punish wrongdoers and prevent human rights violations in the future, and engaging in techniques, including intimidation of human rights applicants, attorneys, and activists, that are designed to dissuade Russian nationals, including Chechen residents, from accessing the ECHR'.[51]

48 Al-Saadoon and Others v. Secretary of State for Defence, (2015).

49 Baluarte and De Vos, *From Judgment to Justice,* 15–16.

50 Solvang, "Chechnya", 211.

51 Lapitskaya, "ECHR, Russia, and Chechnya", (2011), 480; for barriers to compliance particular to the Russian legal system, see Kahn, "Russian Compliance", (2002).

As Petr Preclík reports, 'following the first judgments, Russia engaged actively with the Council's representatives and initiated the necessary steps to fulfill Court's demands. However, as the number of lost cases and the complexity of needed reforms rose so did the Russian reluctance to continue with the steps taken.' This early period 'witnessed a flurry of legislative activity'. These included a new law on Suppression of Terrorism and an amendment of the Code of Criminal Procedure. The government initiated ten new training programs for security personnel and new procedures for detaining suspects.[52] There also seems to have been some improvement in the conditions of detention facilities.[53]

Regarding the issues most relevant to armed conflict, in 2008 the Russian Prosecutor's Office informed the Committee of Ministers of the Council of Europe of new laws on the use of force that prescribe that: 1) weapons 'shall be used by servicemen taking part in anti-terrorist operations in a manner strictly proportionate to the situation, only in cases of imminent risk of death or serious harm, and as a last resort'; and 2) that military officers immediately inform the prosecutor of any case of bodily injury or death caused by the unit under their command.[54] Russia had clearly learned to 'talk the talk' of human rights during armed conflict.

The Court remained unconvinced that Russia would 'walk the walk'. In the case of Abuyeva and Others v. Russia (2 December 2010), the judges argued that 'Russia had manifestly disregarded the specific findings of the Court's previous binding judgment Isayeva v. Russia of 24 February 2005, concerning the ineffectiveness of the same set of criminal proceedings'. In 'its judgment in the case of Aslakhanova and Others v. Russia of 18 December 2012, concerning the complaints brought by 16 applicants, the Court found that the *non-investigation of disappearances that have occurred between 1999 and 2006 in Russia's North Caucasus was a systemic problem*, for which there was no effective remedy at national level' (emphasis in original).[55]

Not long after Russia's seemingly conciliatory report to the Council of Europe, Putin subcontracted the conflict in Chechnya to the local warlord Ramzan Kadyrov. 'Chechenization' has resulted in unending rights abuses,

52 Preclík, *Judging the Chechen War,* (2009), 78.

53 *Ibid.,* 81. This accords with the assessment of Tatiana Lokshina of the Demos human-rights group when I interviewed her in Moscow in May 2008; and with the report, "Chechen cases at the ECtHR", European Center for Constitutional and Human Rights (n.d., circa 2008).

54 Committee of Ministers (CoE), Information Submitted by the General Prosecutor's Office of the Russian Federation, 8 September 2008, paragraphs 8 and 12, quoted in Preclík, *Judging the Chechen War*, 82.

55 ECtHR, Factsheet, 10–11.

including assassination of Chechen torture victims who had escaped to western Europe and provided testimony to the ECtHR.[56]

What impact have the Court's rulings had on Russian military practices or treatment of civilians in conflict zones? Not only has Russian behaviour failed to meet the standards of human-rights law, its compliance with the lower standards (regarding harm to civilians and the right to life, for example) associated with the laws of war has shown no improvement either.[57] Indeed, Russian behaviour in the annexation of Crimea and the intervention in eastern and southern Ukraine would suggest the opposite. Oleg Orlov of the Russian human-rights group Memorial visited the city of Pervomaisk in Luhansk Oblast in January 2015 and compared it to wartime Grozny in the degree of devastation ('reduced to rubble').[58] In 2020, there were in fact several cases still pending before the European Court regarding Russian intervention in Ukraine, as well as the prospect of a case before the International Court of Justice in The Hague regarding the annexation of Crimea.[59]

Far from learning any lessons from the scores of cases it lost at the European Court, Russia seemed determined to repeat its past crimes. As Mark Galeotti pointed out, Russia's military practices since it intervened in the Syrian civil war, and particularly the bombing of Aleppo, look quite similar to the brutal destruction of Grozny and other Chechen cities and villages.[60]

Backlash and its Antidotes

The Russian reaction to the European Court's judgments suggests an attitude of indifference toward the implications for changes in Russian military practices. One analyst has identified a certain degree of cynicism in the Russian approach to the Court and its umbrella organization, the Council of Europe (CoE): 'One would be forgiven for thinking that the Russian government has started to use its membership in the CoE, and especially being under the

56 Human Rights Watch, *Making Justice Count* (2011); European Center for Constitutional and Human Rights, "Kadyrov and massive human rights violations," 31 October 2012, https://www.ecchr.eu/en/our_work/international-crimes-and-accountability/chechnya/articles/chechnya.html. See also Civil Rights Defenders, "First European Court Judgment on Kadyrov's Chechnya," 1 February 2013, https://www.civilrightsdefenders.org/news/achievements/first-european-court-judgment-on-kadyrovs-chechnya/.

57 For an explanation of the barriers to improvement, see Kramer, "Russia, Chechnya", (2017).

58 Orlov, "Ukraine's forgotten city", (2015).

59 ECtHR, Factsheet, 16–18; Englund, "International court clears" (2019).

60 Galeotti, "Putin Is Playing" (2016).

jurisdiction of the ECtHR, as indulgences were used by certain people in medieval Europe – by paying money for one's sins one can actually keep committing them or perhaps even [commit] more of them'.[61]

Beyond Russia, one can detect evidence of a backlash against the Court's role in making pronouncements about human-rights abuses during armed conflict.[62] The Court's efforts to expand the *espace juridique* of the Convention beyond Europe has come under particular attack in Britain. Again, the normative advances confront the empirical reality. On humanitarian grounds, extending the rights that Europeans enjoy to countries occupied by European military forces seems an unalloyed good. Yet the response has been so hostile in some segments of British society that it would not be too far-fetched to imagine a Brexit from the European Court, justified on national security grounds – that the Court should not be allowed to constrain the exercise of British military power by appealing to human-rights norms. Some British comedians have already filmed a Monty Python-style sketch to that effect. Based on 'What have the Romans ever done for us?' from the film *Life of Brian*, they have produced 'What has the European Court of Human Rights ever done for us?'[63] Although the sketch effectively mocks the criticism of the Court, the animosity in some policy circles is real, albeit sometimes expressed with a certain degree of hyperbole ('Saving our armed forces from defeat by judicial diktat').[64]

In 2016, a prominent Conservative politician – then serving as home secretary, later prime minister – joined the chorus of calls for Britain to renounce the European Convention on Human Rights.[65] Although opposition to the Court's interference in matters of national security is not the Tories' only gripe, their threats to carry out a second Brexit from this key institution of the Council of

61 Mälksoo, "Introduction", (2017), 70 (eBook version).

62 Thanks to Neta Crawford and an anonymous reviewer for pointing out that Russia's response might be considered more business-as-usual when it comes to military practices than backlash. Scholars are, however, increasing using the term 'backlash' to refer to Russia's attitude toward the European Court in other domains, particularly where European norms regarding, for example, the rights of sexual minorities, face conservative opposition grounded in supposed traditional values. See Mälksoo and Benedek, *Russia*, (2017); and Mälksoo, "Russia's Constitutional Court", (2016).

63 https://www.theguardian.com/culture/video/2016/apr/25/patrick-stewart-sketch-what-has-the-echr-ever-done-for-us-video.

64 Ekins, Morgan, and Tugendhat, *Clearing the Fog*, (2015).

65 BBC, "Theresa May: UK should quit European Convention on Human Rights.", 25 April 2016, http://www.bbc.co.uk/news/uk-politics-eu-referendum-36128318.

Europe – one founded in 1950 at Britain's initiative in the wake of fascism and war – does represent the potential for backlash against ECtHR rulings.[66]

Let me conclude with a couple of paradoxes. From a normative standpoint, the spread of human-rights norms (with an emphasis on human dignity and the value of individual life) into the realm of warfare seems appealing.[67] But as David Luban has pointed out, it does require a reinterpretation of international humanitarian law 'that drifts far from its history', which has emphasized the reduction of human suffering in war, rather than the promotion of human dignity at the heart of human-rights law. The reinterpretation by courts such as the ECtHR

> takes on a self-fulfilling performative role: the court's saying it is so helps make it so. This is the path of the law; it is one way law evolves. Perhaps the nature of IHL has evolved over time in the direction of human rights thinking, and should evolve that way.[68]

Some legal experts have made a similar point – that the "claimed rights-oriented shift" in law governing armed conflict "is less an impartial account of the law and more an attempt to bring about such a shift".[69]

Yet, as I have suggested with reference to the behaviour of Russia and the rhetoric of British politicians and analysts, we can have a progressive body of human-rights law that increasingly offers protections to civilians, but it could create a backlash that leaves civilians even less protected.[70] Naz Modirzadeh has raised a related concern, particularly regarding the 'full extraterritorial application of human rights law in armed conflict', as implied by several ECtHR cases and the British ruling in Al-Saadoon. As she explains, 'it dilutes the clarity and moral resonance of human rights law and human rights advocacy by introducing IHL s often brutal balance between military necessity and humanity into situations that would otherwise be governed by more restrictive approaches, especially regarding the right not to be arbitrarily deprived of life'.[71]

---

66 Donald, Gordon, and Leach, *The UK and the European Court*, (2012).

67 For representative discussions, see Droege, "Elective Affinities?", (2008); Hitchcock, "Human Rights", (2012); Teitel, *Humanity's Law*, (2011).

68 Luban, "Human Rights Thinking", (2016), pp. 45–46.

69 Bohrer, "Divisions over Distinctions," 161.

70 *Ibid.,* 175.

71 Modirzadeh, "Folk International Law," (2016), 194. For further discussion see her "The Dark Sides of Convergence: A Pro-civilian Critique of the Extraterritorial Application of Human Rights Law in Armed Conflict," U.S. Naval War College International Law Studies (Blue Book) Series, vol. 86 (2010) 349–410. Also relevant is Janina Dill, "Towards a Moral Division of

The second paradox is Russia-specific. We have a court that is supposed to reflect the values of European democracies; it keeps finding Russia in gross violation of those values. Is there any benefit to keeping Russia as a member of the European human rights regime – either for Russia or for the rest of Europe?[72] Perhaps the biggest concession that normative concerns must make to power realities comes if Russia leaves or is expelled from the Council of Europe. With no international legal leverage over Russian behaviour, how could human rights be protected?[73] If Russia were a weak state such as those that emerged from the disintegration of Yugoslavia, it could become a target of 'humanitarian intervention' in response to mass violations of the rights of Chechens or Ukrainians. Posing the question of the 'right of international intervention' in the Russian case, without taking into account the fact that Russia is a major, nuclear-armed military power, is the sort of thing that inspired E.H. Carr to write on the distinction between utopia and reality.[74]

Some have argued that walking the tightrope between the utopia of normative progress and the reality of military power requires not leaning too far in the direction of utopia. Thus, observers have expected the European Court to temper its judgments of Russia for fear of losing leverage altogether and provoking Russian defection from the human-rights regime.[75] Another approach, equally realistic in my view, would seek to bring the reality more in line with the utopia. As Carr wrote in his chapter on The Limitations of Realism, 'In politics, the belief that certain facts are unalterable or certain trends irresistible commonly reflects a lack of desire or lack of interest to change or resist them'.[76] Rather than concede to states' granting priority to narrow concepts of national security, activists could continue to assert their broader understandings of

---

Labour between IHL and IHRL during the Conduct of Hostilities," in Duffy, Bohrer, and Dill, *Law Applicable to Armed Conflict*, ch. 3.

72 Leach, "Strasbourg's Oversight", (2007); Leach, "Chechen Conflict"; Solvang, "Russia" (2008); Mälksoo, "Strasbourg's Effect" (2017); Mälksoo, "Russia's Constitutional Court"; and Mälksoo and Benedek, *Russia*.

73 These questions are posed by the debate over suspension and then reinstitution of Russia's voting rights in the Parliamentary Assembly of the Council of Europe. For competing views, see John Dalhuisen, "What is the Council of Europe for?" *Open Democracy*, 27 June 2019, https://www.opendemocracy.net/en/odr/what-council-europe/; Vladimir Kara-Murza, "The Council of Europe just handed the Kremlin a major victory – and a huge rebuke," *Washington Post*, 5 July 2019. For an argument in favor of using the European Court to advance rights in Russia (and Turkey) in the domain of gender equality, see Lisa McIntosh Sundstrom, Valerie Sperling, and Melike Sayoglu, *Courting Gender Justice: Russia, Turkey, and the European Court of Human Rights* (Oxford: Oxford University Press, 2019).

74 Larson, "The Right of International Intervention", (2001), 251.

75 Preclík, *Judging the Chechen War*.

76 Carr, *Twenty Years' Crisis*, ch. 6.

human rights. Not everyone in Russia agrees with Putin's militaristic approach to international affairs or his suppression of democracy in favour of a strong state. A realistic strategy for advancing rights would be for activists to take advantage of the popular dissatisfaction that wars in Chechnya, Ukraine, and Syria provoke – by imposing costs in resources and lives – to try to bring Russia into compliance with international norms.[77]

The same approach should apply beyond Russia to other war-making states. Recognizing the limits that 'reality' places on 'utopian' aspirations to improve the human condition should not become a counsel of despair. Even if the threat of backlash makes progress seem a matter of 'two steps forward, one step back', changes in public opinion, shaped by human-rights and anti-war activism, can lead to meaningful and enduring normative shifts. What constitutes legitimate use of force – both *ad bellum* and *in bello* – has changed over time, generally in a restrictive fashion, in no small part because of the efforts of social movements and activist lawyers.[78]

Theories of moral change can contribute to understanding the conditions under which legal efforts at expanding human rights even during armed conflict can succeed without provoking damaging backlash. Activist-scholars, such as the late Randall Forsberg, founder of the Nuclear Freeze movement, and Neta Crawford, co-founder of the Costs of War project, have worked within the discourse-ethics tradition of Jürgen Habermas, to explore mechanisms of normative change that depend on a combination of argument, public engagement, and protest.[79] As we have seen from the examples of Russia and Britain, states may well react to the efforts of courts and activist-lawyers to impose human-rights standards on the laws of war with a backlash that leads to fewer protections for civilians in the name of national security. But, as these theories suggest, persuasive arguments and popular mobilization could undermine the legitimacy of war as an institution, the way previous practices of socially sanctioned violence such as slavery, human sacrifice, and cannibalism came to be discredited and ultimately unthinkable.[80] Under those conditions,

77 The work of Sarah E. Mendelson and Theodore P. Gerber is particularly suggestive in this regard; see their "Activist Culture and Transnational Diffusion: Social Marketing and Human Rights Groups in Russia, *Post-Soviet Affairs* 23, no. 1 (2007); "Casualty Sensitivity in a Post-Soviet Context: Russian Views of the Second Chechen War, 2001–2004," *Political Science Quarterly* 123, no. 1 (2008); and "Russian Public Opinion on Human Rights and the War in Chechnya," *Post-Soviet Affairs* 18, no. 4 (2002).

78 Boulding and Forsberg, *Abolishing War* (1998); Finnemore, *The Purpose of Intervention,* (2003).

79 Forsberg, *Toward a Theory of Peace* (2020): Crawford, *Argument and Change* (2002); Hathaway and Shapiro, *The Internationalists* (2017).

80 See, particularly, Forsberg, *Toward a Theory of Peace,* on the example of cannibalism.

justifications for killing on grounds of national security will increasingly fail to persuade citizens to allow their governments to abandon the protection of individuals and human dignity in the service of war. Indeed, recognition that wars persist in the face of a sophisticated body of humanitarian law is one reason activists sought to invoke human rights in the first place and appeal to institutions such as the European Court of Human Rights. If these Habermasian-inflected theories are right, the antidotes to backlash against the promotion of human-rights norms during armed conflict include persuasive argumentation and a popular movement against war, both of which could complement and bolster judicial decisions.

This paper has sought to contrast the normative aspirations of human-rights lawyers to the empirical expectations of the realist school of International Relations. The cases of the European Court of Human Rights against Russia and Turkey constitute an extension of human-rights norms to situations of armed conflict, with the promise of greater protection for civilians than under the laws of war. Yet preliminary evidence suggests, as realists would expect, that these decisions could fail to influence states' behaviour during armed conflicts and could even create a backlash against and reinforce cynicism about international legal constraints on war. A broader attempt by activists and scholars to transform popular understanding of the costs of war could provide a more solid foundation for meaningful protection of civilians in armed conflict than legal changes alone.

Bibliography

Abdel-Monem, T., "The European Court of Human Rights: Chechnya's Last Chance?" *Publications of the University of Nebraska Public Policy Center*, Paper 44, 2004.

Abresch, W., "A Human Rights Law of Internal Armed Conflict: The European Court of Human Rights in Chechnya," *European Journal of International Law* 16, no. 4 (2005).

Albekov et al in Kirill Koroteev, "Legal Remedies for Human Rights Violations in the Armed Conflict in Chechnya: The Approach of the European Court of Human Rights in Context," *Journal of International Humanitarian Legal Studies* 1, issue 2, 1 December 2010.

Al-Saadoon and Others v. Secretary of State for Defence, High Court of Justice of England and Wales, quoted in David Goddard, "Britain's Al-Saadoon Case: A Matter of Human Rights Law and the use of Military Force Overseas," *Just Security*, 16 June 2015, https://www.justsecurity.org/23921/applying-european-convention-human-rights-physical-force-al-saadoon/.

Avetisyan, G., "Strasbourg: Supreme Court of the North Caucasus," *Open Democracy Russia* (24 August 2012), available at https://www.opendemocracy.net/od-russia/grigor-avetisyan/strasbourg-supreme-court-of-north-caucasus.

Baluarte D., C., and De Vos, C., M., *From Judgment to Justice: Implementing International and Regional Human Rights Decisions* (New York: Open Society Foundations, 2010).

Barrett, J., "Chechnya's Last Hope? Enforced Disappearances and the European Court of Human Rights," *Harvard Human Rights Journal* 22 (2009).

Baturin, I., E., et al., *Epokha El'tsina: Ocherki politicheskoi istorii* (Moscow: Vagrius, 2001).

Bohrer, Z., "Divisions over Distinctions in Wartime International Law," in Duffy, Bohrer, and Dill, *Law Applicable to Armed Conflict*, (Cambridge, CUP 2020).

Bohrer, Z., Dill, J., and Duffy, H., *Law Applicable to Armed Conflict* (Cambridge, UK: Cambridge University Press, 2020).

Boulding, E., and Forsberg, R., *Abolishing War: Culture and Institutions* (Boston: Boston Research Center for the 21st Century, 1998).

Carr, E., H., *The Twenty Years' Crisis* (London: Palgrave Macmillan, 2016), originally published in 1939 and revised in 1945.

Childress, C., "10 Things You May Not Know About Waco," *Frontline*, 28 February 2018, https://www.pbs.org/wgbh/frontline/article/10-things-you-may-not-know-about-waco/.

Corn, G., "Mixing Apples and Hand Grenades: The Logical Limit of Applying Human Rights Norms to Armed Conflict," *International Humanitarian Legal Studies* 1 (2010).

Crawford, N., C., *Argument and Change in World Politics: Ethics, Decolonization, and Humanitarian Intervention* (Cambridge, UK: Cambridge University Press, 2002).

Donald, A., Gordon, J., and Leach, P., *The UK and the European Court of Human Rights*, Equality and Human Rights Commission, London Metropolitan University, Research report 83 (2012).

Droege, C., "Elective Affinities? Human Rights Law and Humanitarian Law," *International Review of the Red Cross* 871 (September 2008).

Duffy, H., "Trials and Tribulations: Co-Applicability of IHL and Human Rights in an Age of Adjudication," in Bohrer Ziv, Dill Janina and Duffy Helen, *Law Applicable to Armed Conflict* (Cambridge, UK: Cambridge University Press, 2020), ch. 1.

Ekins, R., Morgan, J., and Tugendhat, T., *Clearing the Fog of Law: Saving our armed forces from defeat by judicial diktat* (London: Policy Exchange, 2015).

Englund, W., "International court clears way to hear cases against Russia on Crimea and eastern Ukraine," *Washington Post*, 9 November 2019.

European Court of Human Rights, Factsheet – Armed Conflicts, March 2020 https://www.echr.coe.int/Documents/FS_Armed_conflicts_ENG.pdf.

European Court of Human Rights, Press country profile – Russia, February 2020, https://www.echr.coe.int/Documents/CP_Russia_ENG.pdf.

Evangelista, M., *The Chechen Wars: Will Russia Go the Way of the Soviet Union?* (Washington, DC: Brookings Institution Press, 2002).

Evangelista, M., and Shue, H., eds., *The American Way of Bombing: Changing Ethical and Legal Norms, from Flying Fortresses to Drones* (Ithaca, NY: Cornell University Press, 2014).

Evangelista, M., and Tannenwald, N., eds., *Do the Geneva Conventions Matter?* (Oxford, UK: Oxford University Press, 2017).

Fehl, C., "Bombs, Trials, and Rights: Norm Complexity and the Evolution of Liberal Intervention Practices" *Human Rights Quarterly* 41 (2019).

Finnemore, M., *The Purpose of Intervention: Changing Beliefs about the Use of Force* (Ithaca, NY: Cornell University Press, 2003).

Forsberg, R., C., W., *Toward a Theory of Peace: The Role of Moral Beliefs* (Ithaca, NY: Cornell University Press, 2020).

Gaeta, P., "The Armed Conflict in Chechnya before the Russian Constitutional Court," *European Journal of International Law* 7, no. 4 (1996).

Galeotti, M., "Putin Is Playing by Grozny Rules in Aleppo," *Foreign Policy*, 26 September 2016, http://foreignpolicy.com/2016/09/29/putin-is-playing-by-chechen-rules-in-aleppo-syria-russia/.

Garraway, C., "The Law Applies, But Which Law? A Consumer Guide to the Laws of War," ch. 4 in Evangelista and Shue, *The American Way of Bombing*, (Cornell: Cornell University Press 2014).

Gilligan, E., *Terror in Chechnya: Russia and the Tragedy of Civilians in War* (Princeton, NJ: Princeton University Press, 2010).

Hathaway, O., and Shapiro, S., J., *The Internationalists: How a Radical Plan to Outlaw War Remade the World* (New York: Simon & Schuster, 2017).

Hitchcock, W., I., "Human Rights and the Laws of War: The Geneva Conventions of 1949," in Iriye Akira, Goedde Petra, and Hitchcock William I., eds., *The Human Rights Revolution: An International History* (New York: Oxford University Press, 2012).

Hughes, J., *Chechnya: From Nationalism to Jihad* (Philadelphia: University of Pennsylvania Press, 2008).

Human Rights Watch, *Making Justice Count in Chechnya: Implementation of the European Court of Human Rights Rulings against Russia*, 2011.

Kahn, J., "Russian Compliance with Articles Five and Six of the European Convention of Human Rights as a Barometer of Legal Reform and Human Rights in Russia," *University of Michigan Journal of Law Reform* 35, no. 3 (Spring 2002).

Kramer, M., "Russia, Chechnya, and the Geneva Conventions, 1994–2006: Norms and the Problem of Internalization," ch. 7 in Evangelista and Tannenwald, *Do the Geneva Conventions Matter?*. (Oxford: Oxford University Press 2017).

Kretzmer, D., "Targeted Killing of Suspected Terrorists: Extra-Judicial Executions or Legitimate Means of Defence?" *European Journal of International Law* 16, no. 2 (2005).

Lapitskaya, J., "ECHR, Russia, and Chechnya: Two is Not Company and Three is Definitely a Crowd," *NYU Journal of International Law and Politics* 43, no. 2 (2011).

Larson, G., The Right of International Intervention in Civil Conflicts: Evolving International Law on State Sovereignty in Observance of Human Rights and Application to the Crisis in Chechnya, *Transnational Law & Contemporary Problems*, 11 (Spring 2001).

Leach, P., "Strasbourg's Oversight of Russia: An Increasingly Strained Relationship," *Public Law* (Winter 2007).

Leach, P., "The Chechen Conflict: Analysing the Oversight of the European Court of Human Rights," *European Human Rights Law Review*, issue 6 (2008).

Luban, D., "Human Rights Thinking and the Laws of War," ch. 2 in Jens David Ohlin (Ed), *Theoretical Boundaries of Armed Conflict and Human Rights*, (Cambridge: Cambridge University Press, 2016).

Mälksoo, L., "Russia's Constitutional Court Defies the European Court of Human Rights: Constitutional Court of the Russian Federation Judgment of 14 July 2015," *European Constitutional Law Review* 12, issue 2 (September 2016): 377–395.

Mälksoo, L., "Introduction," in Mälksoo and Benedek Wolfgang, eds., Russia *and the European Court of Human Rights: The Strasbourg Effect* (Cambridge, UK: Cambridge University Press, 2017), 70 (eBook version).

Mälksoo, L., "Strasbourg's Effect on Russia – and Russia's Effect on Strasbourg", *Völkerrechtsblog*, 3 January 2017, http://voelkerrechtsblog.org/strasbourgs-effect-on-russia-and-russias-effect-on-strasbourg/.

Mälksoo L., and Benedek, W., eds., *Russia and the European Court of Human Rights: The Strasbourg Effect* (Cambridge, UK: Cambridge University Press, 2017).

Mearsheimer, J. J., "The False Promise of International Institutions," *International Security*, vol. 19, no. 3 (Winter 1994–1995), 5–49.

Modirzadeh, N., K., "Folk International Law," ch. 6 in Jens David Ohlin (Ed), *Theoretical Boundaries of Armed Conflict and Human Rights,* (Cambridge: Cambridge University Press, 2016).

Morrow, J., D., *Order within Anarchy: The Laws of War as an International Institution* (Cambridge, UK: Cambridge University Press, 2014).

Ohlin, J., D., ed., *Theoretical Boundaries of Armed Conflict and Human Rights* (Cambridge, UK: Cambridge University Press, 2016).

Orlov, O., "Ukraine's forgotten city destroyed by war," trans. by Cameron Johnston, *The Guardian*, 7 January 2015.

Politkovskaya, A., *A Small Corner of Hell: Dispatches from Chechnya* (University of Chicago Press, 2003).

Preclík, P., *Judging the Chechen War: Assessing the Impact of the European Court for Human Rights on Russia's Conduct in Chechnya*, Masters thesis, Department of International Relations and European Studies, Masaryk University, 2009.

Reike, R., "The International Criminal Court and Its Effects on Active Armed Conflicts," *Journal of Intervention and Statebuilding* (2017).

Simonov, A., ed., *Informatsionnaia voina v Chechne: Fakty, Dokumenty, Svidetel'stva* (Moscow: Izd. Prava cheloveka, 1997).

Solvang, O., "Russia and the European Court of Human Rights: The Price of Non-Cooperation," *Human Rights Brief* 15, issue 2 (2008).

Solvang, O., "Chechnya and the European Court of Human Rights: The Merits of Strategic Litigation," *Security and Human Rights* 19, issue 3 (2008).

Sundstrom, L., M., "Advocacy Beyond Litigation: Examining Russian NGO Efforts on Implementation of European Court of Human Rights Judgments," *Communist and Post-Communist Studies* 45, nos. 3–4 (2012), 255–268.

Teitel, R., G., *Humanity's Law* (Oxford University Press, 2011).

van der Vet, F., "Seeking Life, Finding Justice: Russian NGO Litigation and Chechen Disappearances before the European Court of Human Rights," *Human Rights Review* (2012).

van der Vet, F., "Transitional Justice in Chechnya: NGO Political Advocacy for Implementing Chechen Judgments of the European Court of Human Rights," *Review of Central and East European Law*, 38, issue 3–4 (January 2013).

Wallace, G., *Life and Death in Captivity: The Abuse of Prisoners during War* (Ithaca, NY: Cornell University Press, 2015).

Welsh, J., M., "The Individualisation of War: Defining a Research Programme," *Annals of the Fondazione Luigi Einaudi* 53, 1 (2019), 9–28.

Yeltsin, B., *Midnight Diaries*, trans. Fitzpatrick Catherine A. (New York: Public Affairs, 2000).