

The Standing on the Edge of a Slippery Slope: The Potential Non-Application of Article 5 ECHR to 'Inter Partes' International Armed Conflict, Following *Hassan v the United Kingdom*

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Introduction

It has been a little over four years since the European Court of Human Rights (the Court) delivered its ground-breaking judgment in the case of *Hassan v United Kingdom* ('*Hassan*' hereafter), where it should be recalled the Court seized the opportunity to clarify the position of the European Convention of Human Rights (ECHR or the Convention) in situations of international armed conflicts.¹ Firstly, the Court held that Member States of the Council of Europe (Member States) are not required to derogate from the Convention under article 15 in cases of international armed conflicts.² Secondly, the Court also provided that while the Convention remains applicable to such conflicts, it is, however, interpreted in light of '[...] provisions of international humanitarian law'.³

This controversial judgment, in apparent contradiction with the Court's earlier case law,⁴ raised many questions.⁵ Amongst these, a question raised by Judge Spano in his dissent cannot be overlooked – not only is this question

¹ See also Lawrence Hill-Cawthorne, 'The Grand Chamber Judgement in *Hassan v UK*' (*EJIL: Talk!* 19 September 2014) <www.ejiltalk.org/the-grand-chamber-judgment-in-hassan-v-uk/> accessed 1 December 2018.

² *Hassan v the United Kingdom* App no 29750/09 (ECHR, 16 September 2014) [103-107].

³ *ibid* [104].

⁴ See *Bankovic and Others v Belgium and 16 Other Contracting States* App no 52207/99 (ECHR, 19 December 2001) [80].

⁵ See Marko Milanovic, 'Extraterritorial Derogations from Human Rights Treaties in Armed Conflict' in Nehal Bhuta (ed), *The Frontiers of Human Rights* (OUP 2016) 78.

daring, but also seemingly unanswerable. It is namely whether the Court's precedent in *Hassan* apply equally to active international armed conflict within the Convention's judicial remit *espace juridique*?⁶ More precisely, is article 5 of the ECHR also bound to erode in case of inter partes international armed conflict as per *Hassan*? Indeed, it should be recalled that *Hassan* concerned an Iraqi citizen who was captured and, subsequently, detained by British forces while in Iraq during the active hostilities phase of so-called 'Operation Iraqi Freedom'.⁷ Rationally, the answer to this question would appear to be a simple yes.⁸ This issue is, however, less straightforward than one might prima facie expect. To illustrate, consider the following example: Member State A has recourse to the use of force and invades neighbouring Member State B. This invasion is, however, met by fierce resistance from B's armed forces which leads to hostilities being conducted on both sides of the border, until a peace agreement is reached and effectively implemented by the two state parties. Irrespective of the underlying reasons or legality of this invasion, would Member State A's possible human rights violations while at war with Member State B and vice versa be assessed based on International Humanitarian Law standards, following *Hassan*? And if so, would this assessment standard apply equally to interterritorial violations? Even more importantly, would both Member States be required to derogate from the Convention under art 15 while at war with each other? And if so, would this obligation also apply to interterritorial violations?⁹

This case note is divided into four parts and proceeds as follows. The first part defends the practical relevance surrounding *Hassan*'s possible application within the Convention *espace juridique*. The second part scrutinises the Court's case law concerning violations which occurred extra-territorially, but still within the Convention's *espace juridique*. The third part develops the argument that *Hassan* is – as the latest example confirming the existence of legal détente trend in the Court's case law on extra-territorial jurisdiction – only bound to generate extra-muros implications, which are outside the Convention's *espace juridique*. The final part concludes by holding

⁶ Partly Dissenting Opinion in *Hassan v the United Kingdom* (n 1) [8].

⁷ *Hassan v the United Kingdom* (n 3) [8-32].

⁸ Partly Dissenting Opinion in *Hassan v the United Kingdom* (n 1) [5.]

⁹ See also Milanovic (n 5) 78.

that, however unpredictable, the Court is unlikely to uphold *Hassan's* precedent in a case shadowing an inter partes international armed conflict.

1. Practical Relevance

While deeply theoretical, the issue surrounding *Hassan's* application to inter partes international armed conflicts has some practical relevance too. Indeed, low to moderate level incidents occur at relatively frequent intervals between Member States as exemplified by the 2014 Russian annexation of Crimea and, more recently, by the 2015 Turkish downing a Russian fighter jet over the Turkish-Syria border. There has, in fact, been over a dozen incidents involving Member States since the turn of the 21st century, not to mention incidents dating back to 1949 year in which the Council of Europe was established. These include, inter alia, the Russo-Georgian war in 2008, the Donbas war in 2014, the first Armenia-Azerbaijan four-day war in 2016, the second Armenia-Azerbaijan seven-day war in 2018, and several incidents involving Council of Europe-NATO Member States and Russia.¹⁰

Far from suggesting that hostilities, let alone a scenario as described above, will eventually occur between two or more Member States in the foreseeable future, it should still be borne in mind that the Council of Europe is composed out of 47 culturally and ethnically very diverse Member States which often share complex historical relations. Put simply, the international relations of a number of Member States, particularly in Eastern Europe, remain tense and, consequently, very much prone to further deterioration.¹¹

¹⁰ See Enrico Milano, 'Territorial Conflicts and Disputes in Europe: What Role for International Law in the 21st Century?' [2018] 16 BYIL 7.

¹¹ Recently, tensions have reached a boiling point after Russia captured three Ukrainian ships navigating near the Crimean coast. See *inter alia* *sn*, 'Russia-Ukraine tensions rise after Kerch Strait ship capture' (*British Broadcasting Corporation*, 26 November 2018) <www.bbc.co.uk/news/world-europe-46340283> accessed 1 December 2018.

2. Relevant Case Law

While the issue surrounding *Hassan's* application to inter partes international armed conflicts has not yet been fully addressed, let alone raised, in both the literature and case law of the Court, it is, however, not entirely uncharted legal territory.¹² Indeed, the fact that this issue has never been addressed by the Court does not presuppose that cases where violations occurred outside the territory of an offending Member State, but still within the Convention's *espace juridique* have never arisen. On the contrary, there has been a number of instances where the Court effectively reviewed the application of the ECHR in such circumstances, several of which have genuine relevance to the discussion at hand.¹³ Before further analysis, it is important to note that while a good example for illustrative purposes, cases which have arisen out of the second Chechen war are not directly relevant to this discussion due to the non-international nature of the conflict in question. The same holds true for the cases shadowing the so-called Troubles in Northern Ireland, the Russian annexation of Crimea and the war in Donbass, though it can still reasonably be argued that these conflicts constituted in some way international armed conflicts.¹⁴ However, for the purpose of this present case note, international armed conflict means a '[...] war or of any other armed conflict which may arise between two or more [states...]'¹⁵ sensu stricto excluding so-called proxy wars. That said, a

¹² However, see *Milanovic* (n 6) 78; *Georgia v Russia (II)* App no 38263/08 (ECHR, case pending).

¹³ For a concise overview see *sn*, 'Extra-territorial Jurisdiction of States Parties to the European Convention on Human Rights' (*European Court of Human Rights Press Release*, July 2018) <www.echr.coe.int/Documents/FS_Extra-territorial_jurisdiction_ENG.pdf> accessed 1 December 2018; *sn*, 'Guide on Article 1 of the European Convention on Human Rights: Obligations to respect human rights – Concepts of "jurisdiction" and imputability' (*European Court of Human Rights*, 31 August 2018) <www.echr.coe.int/Documents/Guide_Art_1_ENG.pdf> accessed 2 December 2018.

¹⁴ Indeed, the Troubles could as a 'war of national liberation' be classified as an international armed conflict, for instance. Similarly, the ongoing Ukrainian civil war could follow Russia's intervention in Eastern Ukraine also be classified as an international armed conflict.

¹⁵ Art 2 Geneva Conventions and their Additional Protocols [1950] 75 UNTS 31, 75 UNTS 85, 75 UNTS 135, 75 UNTS 287.

total of nine cases having relevance to the discussion at hand can be identified in the case law of the Court. Needless to say, in cases where the Convention was found to apply outside the Member States *espace juridique*, it remained subject to ordinary interpretative standards.

The first three cases involved violations which occurred in the shadow of an inter partes international armed conflict, namely the 1974 Turkish invasion of the Republic of Cyprus. Firstly, *Loizidou v Turkey* concerned a Greek Cypriot who was prevented from accessing her house by Turkish troops in Northern Cyprus and, consequently, complained that her property rights had been violated under art 1 Protocol 1.¹⁶ The Court first reiterated that the notion of jurisdiction as enshrined in art 1 was not constrained to apply solely on an intra-territorial basis within a Member State territory.¹⁷ It then argued that

[...] the responsibility of a Contracting Party may [...] arise when as a consequence of military action – whether lawful or unlawful – it exercises *effective* control of an area outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention derives from the fact of such control whether it be exercised directly, through its armed forces, or through a subordinate local administration.¹⁸

The two following cases essentially further expanded the notion of ‘effective control’.¹⁹ In *Cyprus v Turkey*, the Court held that violations committed by a ‘puppet’²⁰ local authority exercising ‘effective control’²¹ over a territory could be attributed to a Member State if the authority in question subsisted by reason of that Member State’s support.²² This was subsequently upheld in *Manitaras and Others v Turkey*, where it was argued that when ‘effective

¹⁶ *Loizidou v Turkey* App no 15318/89 (ECHR, 18 December 1996) [11-27].

¹⁷ *ibid* [52].

¹⁸ *ibid* (emphasis added).

¹⁹ *ibid* [52- 56].

²⁰ *ibid* [50].

²¹ *ibid* [52- 56].

²² *Cyprus v Turkey* App no 25781/94 (ECHR, 10 May 2001) [77].

control'²³ is retained by a Member State over a foreign territory through the local authorities of that territory, the jurisdiction of the implicated Member State over the territory in question '[...]' must be considered to extend to securing the entire range of substantive rights set out in the Convention [...]'²⁴ inclusive of relevant additional protocols.²⁵

Leaving Cyprus aside, similar cases have subsequently arisen in Eastern Europe, the whole summary of which is far beyond the scope of this present case note. In a few words, these cases predominantly arose in the shadow of post-Soviet proxy wars and related, content-wise, to the cases involving the Cyprus conflict as discussed above.²⁶ The case of *Georgia v Russia (II)* is of special relevance in this regard.²⁷ It arose out of the 2008 Russo-Georgian war which can be categorised as an inter partes international armed conflict. Indeed, contrary to most post-Soviet conflicts and proxy wars, the 2008 Russo-Georgian saw regular troops of two sovereign States, namely Georgia and Russia, engage in direct hostilities over the provinces of South Ossetia and Abkhazia.²⁸ Here again, the fact that both Georgia and Russia did not derogate from the Convention under art 15 while at war with each other presupposes that the Convention remained fully applicable during the active phase of the conflict.²⁹ This has, however, been rejected by Russia which essentially argued that 'no effective control [can be established] over people

²³ See inter alia *Loizidou v Turkey* (n 16) [52 & 56].

²⁴ *Manitaras and Others v Turkey* App no 54591/00 (ECHR, 3 June 2008) [27].

²⁵ *ibid.*

²⁶ See inter alia *Ilascu and Others v the Republic of Moldova and Russia* App no 48787/99 (ECHR, 8 July 2004); *Catan and Others v the Republic of Moldova and Russia* App no 43370/04 & 18454/06 (ECHR, 19 October 2012); *Ivantoc and Others v the Republic of Moldova and Russia* App no 23687/05 (ECHR, 19 October 2012); *Pisari v the Republic of Moldova and Russia* App no 42139/12 (ECHR, 21 April 2015); *Chiragov and Others v Armenia* App no 13216/05 (ECHR, 16 June 2015); *Mozer v the Republic of Moldova and Russia* App no 11138/10 (ECHR, 23 February 2016); *Sandu and Others v the Republic of Moldova and Russia* App no 21034/05 (ECHR, 17 July 2018).

²⁷ See *Georgia v Russia (II)* (n 12).

²⁸ *ibid.*

²⁹ Gioia, 'The Role of the European Court of Human Rights in Monitoring Compliance with Humanitarian Law in Armed Conflict' in Orna Ben-Naftali (Ed), *International Humanitarian Law and International Human Rights Law* (OUP 2011) 206; Milanovic (n 6) 83.

and places [...] in time of conflict',³⁰ and that international armed conflicts should be regulated by rules of international humanitarian law rather than by the Convention, which has of itself no jurisdiction over such conflicts.³¹ The answer to this question, which incidentally constitutes the *raison d'être* of this present case note, remains unclear as this case is still pending before the Court almost a decade after the claim was lodged by Georgia. While it is unlikely that the Court will agree with Russia's reasoning, it still faces the challenge of having to choose between either upholding *Hassan* to inter partes international armed conflicts or declaring the Convention fully applicable to such conflicts.³²

That said, it should be recognised that the Court has demonstrated an inclination to adopt contrasting principles based on whether an alleged violation occurred within the Convention's *espace juridique* or not. Coming back to the Cyprus conflict, the last three cases, *Isaak v Turkey (Isaak)*, *Solomou and Others v Turkey (Solomou)* and *Andreou v Turkey (Andreou)*, all concerned violations perpetrated by Turkish-Cypriot forces on territory over which Turkey did not exercise jurisdiction *sensu stricto*, but still occurred within the Conventions' *espace juridique*.³³ Firstly, the case of *Isaak* concerned a cross-border incident where a Greek Cypriot national was 'beaten to death'³⁴ by a group of Turkish-Cypriot civilians and police officers during a demonstration which took place in the UN buffer zone separating the Republic of Cyprus from the so-called Turkish Republic of Northern Cyprus.³⁵ The Court, instead of relying on its well-established territorial jurisdictional framework, adopted a more personal-centred approach and

³⁰ Hearing of *Georgia v Russia (II)* (n 12) at 1:05:00-1:15:00, 23 May 2018 (ECHR, case pending)

<www.echr.coe.int/Pages/home.aspx?p=hearings&w=3826308_23052018&language=lang&c=&py=2018> accessed 2 December 2018.

³¹ *ibid.*

³² Milanovic (n 5) 78-82.

³³ *Isaak v Turkey* App no 44587/98 (ECHR, 24 September 2008); *Solomou and Others v Turkey* App no 36832/97 (ECHR, 24 September 2008); *Andreou v Turkey* App no 45653/99 (ECHR, 27 January 2010); Ian Park, *The Right to Life in Armed Conflict* (OUP 2018) 80.

³⁴ *Isaak v Turkey* (n 33) [110].

³⁵ *ibid* [7-58].

held that jurisdiction could still be attributed to Turkey by reason of the fact that the applicant was at the time of the violation 'under the authority and/or effective control'³⁶ of Turkish-Cypriot policemen.³⁷ Likewise, in the case of *Solomou*, which occurred in the same context as *Isaak* and also concerned the killing of a Greek-Cypriot demonstrator in the UN buffer zone by Turkish-Cypriot personnel, the Court reaffirmed '[...] that in any event the deceased was under the authority and/or effective control of the respondent State through its agents'.³⁸

Last and most importantly, the case of *Andreou* is of special relevance to the issue at hand. The facts of this case are relatively straightforward. It concerned a cross-border incident where a British national of Greek Cypriot descent was shot and, consequently, grievously wounded in the territory of the Republic of Cyprus by Turkish-Cypriot soldiers firing from the Turkish Republic of Northern Cyprus.³⁹ *Andreou*, thus, concerned an alleged violation of art 2 of the Convention which occurred outside of the territory of an offending Member State – Turkish occupied Northern Cyprus – but still within the Convention's *espace juridique*, namely in the Republic of Cyprus. In its analysis, the Court

[...] observed that even though the applicant [*Andreou*] had sustained her injuries in territory over which Turkey exercised no control, the opening of fire [...], had been such that the applicant should be regarded as 'within [the] jurisdiction' of Turkey within the meaning of Article 1 of the Convention.⁴⁰

It would, consequently, appear that violations can still be attributed to a Member State even in situations where that Member State did not exercise personal or territorial jurisdiction, provided that the violation occurred within the Convention's *espace juridique*.⁴¹ Against this, a striking difference

³⁶ *Solomou and Others v Turkey* (n 33) [51].

³⁷ *Isaak v Turkey* (n 33) [119-120]; *Park* (n 33) 80.

³⁸ *Solomou and Others v Turkey* (n 33) [51].

³⁹ *Andreou v Turkey* (n 33) [1-22].

⁴⁰ *ibid* [25].

⁴¹ *Park* (n 33) 80-81.

with the case of *Bankovic and Others v Belgium and 16 Other Contracting States* (*Bankovic*) cannot be overlooked here.⁴² While both cases shared relatively similar facts, the outcomes were, however, inherently different. Indeed, it should be recalled that *Bankovic* concerned a group of Serbian residents who sustained loss of life and property during the NATO bombing campaign of the Federal Republic of Yugoslavia in 1999.⁴³ The Court notoriously contended that the Convention applied *exclusively* within the *espace juridique* of the Member States and could, therefore, not apply to the Federal Republic of Yugoslavia, which fell outside of the Convention's scope.⁴⁴ Put differently, *Bankovic* concerned the opening of fire by the armed forces of several Member States against the territory of a non-Member State over which the attacking states could not be regarded to have held 'effective control'⁴⁵ at the time of the recourse to the use of force. Yet, contrary to *Bankovic*, the Court in *Andreou* argued that the opening of fire by a Member State armed forces against the territory of another Member State over which the attacking Member State had, *prima facie*, no 'effective control'⁴⁶ at the time of the recourse to force could still be viewed as falling within the jurisdiction of the attacking Member State under art 1.⁴⁷

By contrast, the Court in *Issa and Others v Turkey* (*Issa*), a case which gravitated around the 1995 Turkish invasion of so-called Iraqi Kurdistan during 'Operation Steel',⁴⁸ conveyed the feeling that the Convention could, in fact, apply to such active military operations outside the Convention's *espace juridique*.⁴⁹ Indeed, the Court emphasised that violations committed by a Member State in the territory of another state, as a consequence of a legal or illegal invasion, could be attributed to the former if it exercised 'effective

⁴² Needless to say *Bankovic and Others v Belgium and 16 Other Contracting States* has long been replaced by *the United Kingdom*.

⁴³ *Bankovic and Others v Belgium and 16 Other Contracting States* (n 5) [1-13].

⁴⁴ *ibid* [80].

⁴⁵ *Loizidou v Turkey* (n 16) [52 & 56].

⁴⁶ *ibid*.

⁴⁷ *ibid* [25].

⁴⁸ *Issa and Others v Turkey* App no 31821/96 (ECHR, 16 November 2004) [1-47].

⁴⁹ *Gioia* (n 29) 210; *Park* (n 33) 77-78.

control'⁵⁰ over a territory abroad, or 'authority and control'⁵¹ over individuals abroad through the operation of its agents.⁵² In the Court's wording, art 1 must '[...] not be interpreted so as to allow a State party to perpetrate violations of the Convention on the territory of another State, which it could not perpetrate on its own territory.'⁵³ However, the applicants' claim was, in light of the incomplete and contradictory nature of the underlying evidence, ultimately declared inadmissible by the Court.⁵⁴ Consequently, this case essentially constituted a claim which failed to materialise and should, as such, be classified as *sui generis* event generating modest practical implications rather than an authoritative precedent.⁵⁵

Returning to *Bankovic* and *Andreou*, though both cases shared relatively similar facts, it should, however, be borne in mind that the wider political context underlying these cases diverged significantly from one another. Indeed, *Bankovic* occurred in the context of an armed confrontation between Council of Europe-NATO Member States and the Federal Republic of Yugoslavia which can be categorised an international armed conflict,⁵⁶ whereas *Andreou* occurred in the context of a minor border incident.⁵⁷ This probably justified the Court's diverging decisions in these cases. And yet, it remains difficult to establish that the Court's departure from *Bankovic* in *Andreou* was not somewhat motivated by the fact that the violation occurred within the Convention's *espace juridique*.⁵⁸

3. Analysis

To sum up it could be said that, while peace is largely being kept in Europe, tensions remain high between a number of Member State and it is not rare for these tensions to materialise in low to moderate conflicts as exemplified

⁵⁰ *Loizidou v Turkey* (n 16) [52 & 56].

⁵¹ *Solomou and Others v Turkey* (n 33) [51].

⁵² *Issa and Others v Turkey* (n 48) [71].

⁵³ *ibid.*

⁵⁴ *ibid* [80-82].

⁵⁵ See *Gioia* (n 29) 210.

⁵⁶ *Bankovic and Others v Belgium and 16 Other Contracting States* (n 5) [1-13].

⁵⁷ *Andreou v Turkey* (n 33) [8-22].

⁵⁸ See *Bankovic and Others v Belgium and 16 Other Contracting States* (n 5) [80].

by inter alia the 2008 Russo-Georgian war, for instance. As an instrument designed to apply both in times of peace and war, the Convention would appear to remain fully applicable in such circumstances, provided it has not been derogated from under art 15. Although this is clear for non-international armed conflicts occurring within the Convention's *espace juridique*,⁵⁹ this remains debated for international armed conflicts occurring between two or more Member States.⁶⁰ Yet, the fact that no Member State has ever derogated while at war with another Member State presupposes that the Convention would remain fully applicable in such circumstances. Indeed, the 1974 Turkish invasion of Cyprus is par excellence a case where the Convention was widely perceived to have remained fully applicable during the active phase of an inter partes international armed conflict.⁶¹ While the same would hold true for the 2008 Russo-Georgian conflict, it remains unclear through what standards the Convention will be given effect, if at all, in this conflict.⁶²

In attempting to answer the underlying question, two presumptions can be relied on. Firstly, the Convention was, from a textual standpoint, clearly meant to apply in times of war both intra and extra-territorially.⁶³ Indeed, coming back to Judge Spano's rhetorical dissent, why would art 15 have been included if the Convention's safeguards can effectively be suppressed every time a Member State has recourse to the use of force?⁶⁴ Although the precise intention of the drafters remains unclear,⁶⁵ it should be borne in mind that the Convention was drafted with the firm intention to prevent the reoccurrence of the atrocities witnessed by the Second World War.⁶⁶ This certainly ought to be reflected in practice, even though the Convention is

⁵⁹ *Isayeva v Russia* App no 57950/00 (ECHR, 24 February 2005) [191].

⁶⁰ *Georgia v Russia (II)* (n 12).

⁶¹ See inter alia Gioia (n 29) [205].

⁶² *Georgia v Russia (II)* (n 12).

⁶³ Art. 1 & 15 European Convention on Human Rights [1953] ETS 5.

⁶⁴ Partly Dissenting Opinion in *Hassan v the United Kingdom* (n 1) [8].

⁶⁵ Milanovic (n 6) 76.

⁶⁶ Ed Bates, 'The Birth of the European Convention on Human Rights – and the European Court of Human Rights' in Jonas Christoffersen and Mikael Rask Madsen (eds), *The European Court of Human Rights Between Law and Politics* (OUP 2011) 18-19.

now interpreted as 'a living instrument [...].'⁶⁷ Secondly, the Court has shown a tendency to follow an uncompromising approach where *all* rights apply within and *none* outside the Convention's *espace juridique* as exemplified by *Bankovic*.⁶⁸ This is, however, changing. Indeed, the Court has, over the last decade, adopted a more lenient approach by acknowledging the possibility that the Convention could genuinely apply outside of its *espace juridique* as characterised by the case of *Al-Skeini and Others v the United Kingdom*, for instance.⁶⁹ In line with this dynamic, the case of *Hassan* may, thus, be perceived as an attempt by the Court to further expand the Convention's reach extra-muros without affecting its application in the *espace juridique* of the Member States. From this perspective, the case of *Hassan*, as yet another decision stretching the Convention's external scope, should then only be deemed to generate extra-muros implications. This argument is further supported by the existence of two different standards in the Court's case law on armed hostilities occurring amongst Member States and those taking place with third states, as epitomised by the *Bankovic - Andreou* sequence.

Conclusion

To conclude, it could be suggested that the Convention ought to remain applicable to *inter partes* international armed conflicts, '[...] albeit interpreted against the background of the provisions of international humanitarian law',⁷⁰ as per *Hassan*. A more probable scenario, however, would witness the Court seize the opportunity to consolidate the fact that a Member State may be held responsible for violations committed in the territory of another Member State during active military operations by way of enlarging the concept of 'authority and/or effective control'⁷¹ to such

⁶⁷ See *inter alia* *Tyrer v the United Kingdom* App no 5856/72 (ECHR, 25 April 1978) [31].

⁶⁸ *Bankovic and Others v Belgium and 16 Other Contracting States* (n 5) [80].

⁶⁹ *Al-Skeini and Others v the United Kingdom* App no 55721/07 (ECHR, 7 July 2011) [137].

⁷⁰ *Hassan v the United Kingdom* (n 3) [104].

⁷¹ *Solomou and Others v Turkey* (n 33) 51.

situations, as implied in *Issa*⁷² and experimented with in *Andreou*.⁷³ Whether this prediction will ultimately materialise in *Georgia v Russia (II)*,⁷⁴ if at all, remains difficult to foresee, especially considering that the Court has had a long reputation for unpredictability.⁷⁵ And yet, it cannot reasonably be expected that the Court will, in clear contradiction with its own precedents and the Convention's spirit, decide to uphold *Hassan* in a case shadowing an inter partes international armed conflict. And, in light of this, the answer to Judge Spano's question could probably only be answered as no.

⁷² *Issa and Others v Turkey* (n 48) 71.

⁷³ *Andreou v Turkey* (n 33) 25.

⁷⁴ See *Georgia v Russia (II)* (n 12).

⁷⁵ See Steven Greer, 'The Margin of Appreciation: Interpretation and Discretion under the European Convention on Human Rights' [2018] 17 CFP 5.