Ukraine and the Netherlands v. Russia: Seeing Through the Fog; The European Court of Human Rights Redefines Wartime Accountability

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I. OVERVIEW

Beyond the haze of war, jurisdiction continues to endure as the European Court of Human Rights (ECtHR) reversed its prior position on wartime adjudication.[1] The noted case included four inter-state applications based on complaints stemming from the Ukraine-Russia conflict, three from the Ukrainian government and one from the Dutch government.[2] An unprecedented twenty-six high contracting parties intervened before the Court to urge Russia to take accountability following years of alleged violations of the Convention.[3] Russia's

1. Ukraine & the Netherlands v. Russia, App. Nos. 8019/16, 43800/14, 28525/20 & 11055/22, ¶ 182 (July 9, 2025), https://hudoc.echr.coe.int/?i=001-244292.
2. *Id.* at ¶ 14.
3. *Id.* at ¶ 156.

annexation of Crimea and indiscriminate use of military force in Eastern Ukraine were argued to constitute violations of both international humanitarian law and the European Convention on Human Rights (the "Convention").[4] Significant events beginning in 2014, such as the downing of Malaysian flight MH17, the backing of pro-Russia separatists in Ukraine, aerial strikes, and the use of military force on Ukrainian civilians, all culminated in the eventual Russian invasion of Ukraine in 2022.[5]

In the noted case, the Court was tasked with determining whether Russia's actions were consistent with the Convention.[6] However, the previous position of the Court was to remain hands-off when asked to review the conduct of states amidst an ongoing armed conflict, as evidentiary and jurisdictional concerns were understood to prompt a cautious approach.[7] The noted case marked a dramatic turn, as the Court found that Russia's actions fell within Russia's Article 1 obligation to uphold the substantive rights of those living under its effective control.[8] The ECtHR held that, because Russia had a responsibility to protect human rights, its actions amounted to numerous flagrant violations of the Convention and international humanitarian law, transforming the Court's institutional identity from a deferential observer to an active arbitrator of wartime human rights. *Ukraine and the Netherlands v. Russia* [GC], Apps. Nos. 43800/14, 8019/16, 28525/20 & 11055/22,¶ 182 (July 9, 2025).

II. BACKGROUND

A. Historical and Political Context of the Conflict

The historical backdrop of the Ukraine-Russia conflict dates back to the dissolution of the Soviet Union and the uncertainty surrounding Ukraine's subsequent geopolitical alignment.[9] Ukraine declared its independence in 1991, and has since faced pressure to ally with two competing spheres of influence: Russia's vision of regional dominance or

4. *Id.* at ¶ 168.

5. *Id.* at ¶ 41.

6. *Id.* at ¶ 178.

7. Ukraine & the Netherlands v. Russia, App. Nos. 8019/16, 43800/14, 28525/20 & 11055/22, ¶ 295 (July 9, 2025), https://hudoc.echr.coe.int/?i=001-244292.

8. *Id.* at 493 ¶ 4.

9. Matthew Mpoke Bigg, *A History of the Tensions Between Ukraine and Russia*, N.Y. TIMES (Mar. 26, 2022), https://www.nytimes.com/2022/03/26/world/europe/ukraine-russia-tensions-timeline.html.

the democratic ideals of the Western Hemisphere.[10] The 2013 Euromaidan protests, sparked by then-Ukrainian President Viktor Yanukovych's decision to abandon an agreement with the European Union under Russian pressure further heightened tensions.[11] Yanukovych fled Ukraine in 2014, and Russia responded to the movement by labeling it a "fascist coup" backed by the West.[12] Within weeks, the Russian military had covertly entered Crimea under the guise of a "rescue mission" and formally annexed the territory after holding a globally disputed referendum for the territory to secede from Ukraine.[13]

B. Emergence of the Donbas Conflict and Escalation

Following the annexation of Crimea, unrest spread across Eastern Ukraine as the Donbas region, made up of the Donetsk and Luhansk provinces, became the next target.[14] A pro-Russian separatist movement took root, and Russia seized the opportunity to back it with unmarked troops, weapons, intelligence, and financial support.[15] The separatist movement transformed into a puppet government, allowing Russia to expand its regional control.[16] In April 2014, the separatists declared independence, proclaiming the establishment of the Donetsk People's Republic (DPR) and the Luhansk People's Republic (LPR), and held another unrecognized referendum to merge the territory with Russia.[17]

The Russian downing of Malaysia Airlines flight MH17 in July 2014, killing all 298 civilians on board, exposed the extent of Russia's military involvement and shocked the international community.[18] Despite attempts to negotiate ceasefires through the Minsk I (2014) and Minsk II (2015) accords, continuous violations persisted, leaving over 9,000 dead

10. Jonathan Masters, *Ukraine: Conflict at the Crossroads of Europe and Russia*, COUNCIL ON FOREIGN REL. (Feb. 14, 2023), https://www.cfr.org/backgrounders/ukraine-conflict-crossroads-europe-and-russia.

11. *Understanding Ukraine's Euromaidan Protests*, OPEN SOC'Y FOUND. (May 2019), https://www.opensocietyfoundations.org/explainers/understanding-ukraines-euromaidan-protests.

12. Masters, *supra* note 10.

13. *Id.*

14. Michael Ray, *Russia-Ukraine War,* ENCYC. BRITANNICA (Feb. 17, 2022), https://www.britannica.com/event/2022-Russian-invasion-of-Ukraine#ref354582.

15. Bill Hutchinson & Patrick Reevell, *What Are the Ukraine 'Separatist' Regions at the Crux of the Russian Invasion*, ABC NEWS (Mar. 4, 2022), https://abcnews.com/International/ukraineseparatistregionscruxrussianinvasion/story?id=83084803.

16. *Id.*

17. *Id.*

18. *Id.*

by the end of 2015 and forming a front line that began to freeze.[19] By 2021, there were more than 14,000 casualties as civilians endured torture, detainment, executions, and widespread displacement.[20] Russia continued to pursue a hybrid war strategy, combining covert military support with economic coercion, cyberattacks, and disinformation campaigns.[21]

C. The 2022 Invasion

On February 24, 2022, Russia launched a full-scale invasion of Ukraine from multiple fronts.[22] Days prior, Russian President Vladimir Putin claimed that the DPR and LPR regions were independent and that Russia was acting in a peacekeeping capacity, marking the first time Russia openly admitted to any military presence in the area, despite having a covert presence since 2014.[23] Civilian casualties rose quickly as neighborhoods, playgrounds, aid stations, churches, and cemeteries became targets of Russian artillery.[24] The invasion created Europe's largest refugee crisis since World War II, with four million Ukrainians fleeing within the first month of the conflict.[25] Russia installed systems of "filtration," mass deportations, and child abductions, resulting in forced adoptions.[26] The Ukrainian language was systematically suppressed; local schools were forced to adopt a Russian curriculum, while symbols of Ukrainian identity were destroyed.[27]

19. Ray, *supra* note 14.

20. *Id.*; U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Ukraine 2021 Human Rights Report 2-3 (2021).

21. Kateryna Zarembo & Sergiy Solodkyy, *The Evolution of Russian Hybrid Warfare: Ukraine*, CTR. FOR EUR. POL'Y ANALYSIS (Jan. 29, 2021), https://cepa.org/comprehensive-reports/the-evolution-of-russian-hybrid-warfare-ukraine/.

22. Ray, *supra* note 14.

23. *Id.*

24. Amnesty International, *Ukraine: "Anyone Can Die at Any Time": Indiscriminate Attacks by Russian Forces in Kharkiv, Ukraine*, AI Index EUR 50/5682/2022 (June 13, 2022).

25. Ray, *supra* note 14.

26. *Id.*; Patricia Fronek et al., *The Taken Children of Ukraine*, 67 INT'L SOC. WORK 602, 603 (2023).

27. *Russia/Ukraine: A Decade of Suppressing Non-Russian Identities in Occupied Crimea*, AMNESTY INT'L (Mar. 18, 2024), https://www.amnesty.org/en/latest/news/2024/03/russia-ukraine-a-decade-of-suppressing-non-russian-identities-in-occupied-crimea/.

D. Russia's Withdrawal from European Institutions and the International Response

These acts prompted Western states to impose unprecedented economic sanctions, freezing Russian assets and restricting access to foreign markets.[28] The United Nations General Assembly overwhelmingly condemned the invasion.[29] On March 15, 2022, the Committee of Ministers voted in favor of beginning the process to remove Russia from the Council of Europe.[30] Russia announced it would instead start the process of voluntary withdrawal the same day, causing the Council of Europe to expel Russia the next day, March 16, 2022.[31] Simultaneously, Russia gave notice of its intent to denounce the Convention, a treaty to which all members of the Council of Europe are bound.[32] Russia's exit from the organization created jurisdictional challenges for ongoing human rights cases, forcing the Court to act before it lost judicial relevance.[33]

E. The European Court of Human Rights and "the Fog of War"

Historically, the Court has taken a restrained approach to adjudicating wartime conflicts by invoking the "fog of war" doctrine to justify limited jurisdiction over active conflicts.[34] The doctrine is rooted

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28. Cari Stinebower et al., *Sanctions Summary– Russia Invasion of Ukraine*, WINSTON & STRAWN: GLOB. TRADE & FOREIGN POL'Y INSIGHTS (Mar. 28, 2022), https://www.winston.com/en/blogs-and-podcasts/global-trade-and-foreign-policy-insights/sanctions-summary-russia-invasion-of-ukraine.

29. *UN General Assembly Demands Russian Federation Withdraw All Military Forces from the Territory of Ukraine*, EUR. EXTERNAL ACTION SERV. (Mar. 2, 2022), https://www.eeas.europa.eu/eeas/un-general-assembly-demands-russian-federation-withdraw-all-military-forces-territory-ukraine_und_en.

30. Marie Struthers, *Russia's Withdrawal from Council of Europe a Tragedy for Victims of Kremlin's Abuses*, AMNESTY INT'L (Mar. 15, 2022), https://www.amnesty.org/en/latest/news/2022/03/russias-withdrawal-from-council-of-europe-a-tragedy-for-victims-of-kremlins-abuses/.

31. *Id.*; Council of Europe Committee of Ministers, *The Russian Federation Is Excluded from the Council of Europe*, COUNCIL OF EUR. (Mar. 16, 2022), https://www.coe.int/en/web/portal/-/the-russian-federation-is-excluded-from-the-council-of-europe.

32. *Struthers, supra* note 30; *The European Convention on Human Rights*, COUNCIL OF EUR., https://www.coe.int/en/web/human-rights-convention (last visited Feb. 22, 2026).

33. Julia Emtseva, *The Withdrawal Mystery Solved: How the European Court of Human Rights Decided to Move Forward with the Cases Against Russia*, EJIL: TALK! (Feb. 8, 2023), https://www.ejiltalk.org/the-withdrawal-mystery-solved-how-the-european-Court-of-human-rights-decided-to-move-forward-with-the-cases-against-russia/.

34. Helen Duffy, *Georgia v. Russia: Jurisdiction, Chaos and Conflict at the European Court of Human Rights*, JUST SECURITY (Feb. 2, 2021), https://www.justsecurity.org/74465/georgia-v-russia-jurisdiction-chaos-and-conflict-at-the-european-Court-of-human-rights/.

in the jurisdictional and evidentiary uncertainty that comes with active conflict. This doctrine is best demonstrated by the Court's decision in *Georgia v. Russia (II)*.[35] There, the Court declined to find Russia responsible for human rights violations that occurred during the "active phase" of its five-day war with Georgia in 2008, reasoning that the "context of chaos" made it impossible to attribute control or accountability to any one state actor during ongoing combat.[36]

Georgia v. Russia (II) effectively insulated military operations from direct Convention scrutiny, restricting its jurisdiction to periods of recognized control.[37] Even when confronted with evidence of civilian suffering, the Court frequently confined its findings to procedural shortcomings, such as the failure to investigate.[38] Scholars increasingly criticized the deference given to states under the fog of war doctrine as undermining the Court's legitimacy.

In the years preceding the noted case, the Court faced mounting pressure to overcome this legitimacy crisis.[39] The proliferation of digital evidence, satellite forensics, and third-party monitoring by the international community chipped away at prior justifications for judicial restraint.[40] Russia's invasion of Ukraine and withdrawal from the Convention forced the Court to confront these critiques head-on and decide whether human rights protections could survive active conflicts.[41]

F. Current State of the Conflict

As of April 2026, the conflict persists as Russian drone incursions into Poland, Croatia, Romania, and Moldova expand the conflict's

35. *Id.*; Isabella Risini, *Beyond the Fog of War, on the ECtHR's Ukraine, the Netherlands v. Russia Judgment on the Merits*, VERFASSUNGSBLOG (July 12, 2025), https://verfassungsblog.de/beyond-the-fog-of-war/; *see* Georgia v. Russia (II), App. No. 38263/08 (Jan. 21, 2021), https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-207757%22]}.

36. Georgia v. Russia (II), App. No. 38263/08, ¶¶ 136-144.

37. *Id.*

38. *See, e.g.*, European Court of Human Rights Press Release ECHR/095, United Kingdom Required to Investigate Deaths of Six Civilians Killed in Iraq in 2003 in Incidents Involving British Soldiers (July 7, 2011).

39. Vassilis P. Tzevelekos, *Has the ECHR Failed Us?,* 6 EUR. CONV. ON HUM. RTS. L.J. 275, 275-80 (2025).

40. Ginger Pinholster*, Satellite Images Help 'Pierce the Fog of War'*, AM. ASS'N FOR THE ADVANCEMENT OF SCI. (Mar. 17, 2015), https://www.aaas.org/news/satellite-images-help-pierce-fog-war.

41. *See* Ray, *supra* note 14; Struthers, *supra* note 30.

geographic reach.[42] Poland has invoked Article 4 of the North Atlantic Treaty, allowing it to bring forth security concerns to the North Atlantic Council and swiftly shoot down the drones with the assistance of North Atlantic Treaty Organization (NATO) allies.[43] Russian strikes within Ukraine continue to cause civilian casualties, and targeted attacks on infrastructure persist.[44]

III. THE COURT'S DECISION

A. Temporal Scope and Jurisdiction

In the noted case, the Court determined that, while the conflict was ongoing, it only had jurisdiction over events occurring while Russia was a party to the Convention.[45] The Court acknowledged that, while Russia was expelled from the Council of Europe on March 16, 2022, it did not cease to be a high contracting party to the Convention until September 16, 2022.[46] Examining the nature of the allegations and the Convention, the Court held that temporal jurisdiction could only extend to September 16, 2022, but evidence following that date could be considered for contextual purposes.[47]

The ongoing nature of the conflict prompted the Court to begin its jurisdictional analysis by examining the nature of the allegations made by the Ukrainian government.[48] The Ukrainian government alleged that Russia had an administrative practice of violating human rights, dating back to before Russia's exit from the Convention.[49] As a baseline, the Court determined that it would follow the decision made in its admissibility decision and claim temporal jurisdiction over events occurring before September 16, 2022.[50]

To determine if there was jurisdiction over events occurring after September 16, 2022, the Court first examined its own previous treatment

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42. *Emergency Briefing on Drone Incursion into Poland*, SEC. COUNCIL. REP. (Sep. 12, 2025), https://www.securitycouncilreport.org/whatsinblue/2025/09/emergency-briefing-on-drone-incursion-into-poland.php.

43. *Id.*

44. Associated Press, *Russian Strikes Hit Apartment Building and Energy Sites in Ukraine*, *Killing 4*, NBC NEWS (Nov. 8, 2025), https://www.nbcnews.com/world/ukraine/russian-strikes-hit-apartment-building-energy-sites-ukraine-killing-4-rcna242803.

45. Ukraine & the Netherlands v. Russia, App. Nos. 8019/16, 43800/14, 28525/20 & 11055/22, ¶ 188 (July 9, 2025), https://hudoc.echr.coe.int/?i=001-244292.

46. *Id.* at ¶ 180.

47. *Id.* at ¶¶ 180-188.

48. *Id.* at ¶¶ 180-181.

49. *Id.* at ¶ 180.

50. *Id.* at ¶¶ 183-84.

of international conflicts spanning over convention termination dates.[51] Citing *Pivkina and Others v. Russia*, in which the Court had previously found that if an allegation of a violation referred to the "continuous effects" of an act taken before Convention termination, then the entire time period of the effects post-termination would fall under the Court's jurisdiction.[52] However, the allegations made by the Ukrainian government in the noted case concerned an administrative practice instead of individual acts, which rendered it inapplicable to the Court's exception for "continuous effects."[53]

Second, the nature of the convention itself was taken into consideration.[54] In the case of *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, the International Criminal Court (ICC) claimed jurisdiction over events taking place after the denunciation of a treaty because the party owed a continuing obligation under international customary law.[55] The Court differentiated the Convention from the one examined by the ICC, finding that the obligation of a party to the Convention ceased upon termination.[56] Because the Court was created to ensure parties comply with the Convention, jurisdiction is therefore "explicitly linked" to the obligations a state undertakes as a party to the Convention.[57] Further, unlike the ICC, the Court does not have jurisdiction to ensure compliance with other customary international law or treaties.[58] Thus, Russia had no obligation to comply with the Convention after September 16, 2022. The Court held that it could not exercise jurisdiction over new occurrences of the administrative practice occurring after that date.[59] Despite this temporal limitation, the Court reserved the right to examine facts falling outside of its temporal jurisdiction as necessary in its determination of violations.[60] The evidentiary exception was justified on the basis that the facts may be "relevant to the overall context of the case."[61]

51. Ukraine & the Netherlands v. Russia, App. Nos. 8019/16, 43800/14, 28525/20 & 11055/22, ¶ 185-7 (July 9, 2025), https://hudoc.echr.coe.int/?i=001-244292..

52. *Id.* at ¶ 185.

53. *Id.* at ¶ 186.

54. *Id.* at ¶ 188.

55. *Id.* at ¶ 187.

56. *Id.*

57. Ukraine & the Netherlands v. Russia, App. Nos. 8019/16, 43800/14, 28525/20 & 11055/22, ¶ 187 (July 9, 2025), https://hudoc.echr.coe.int/?i=001-244292.

58. *Id.*

59. *Id.*

60. *Id.* at ¶ 188.

61. *Id.*

B. Territorial Jurisdiction and Attribution

In the noted case, the Court examined the nature of control maintained by Russia over the DPR, LPR, and other Ukrainian territories to determine whether Russia had an obligation under Article 1 of the Convention to uphold substantive human rights for those living in these regions.[62] The Court held that the DPR and LPR territories formerly under separatist control were, in effect, politically and economically controlled by Russia for the duration of the Court's temporal jurisdiction.[63]

Additionally, the Court held that the nature and military scale of the 2022 Russian invasion of Ukraine demonstrated that Russia had exercised effective control over additional territory in Eastern Ukraine.[64] Thus, Russia was obligated by Article 1 of the Convention to uphold the human rights of individuals living in these controlled territories.[65] Finally, the Court held that Russia's military attacks were carried out within its Article 1 jurisdiction, and could be attributed to both Russia and the unmarked separatist-Russian agents.[66]

Initial findings during admissibility proceedings determined that, from May 11, 2014 until at least January 26, 2022, the Eastern Ukraine territory occupied by separatists, who later declared independence from Ukraine (the DPR and LPR), was in fact under the effective control of Russia.[67] There was no available evidence the Court could point to that showed the level of control exercised by Russia over the territories had decreased since January 26, 2022.[68] As a result, the Court held that the DPR and LPR territories had remained under Russian control through the period of the Court's temporal jurisdiction up to September 16, 2022.[69]

Next, the Court examined whether the 2022 invasion resulted in the Russian control of additional Ukrainian territory.[70] The Court pointed to numerous widely reported and acknowledged instances of Russian military expansion within Ukrainian sovereign territory.[71] Even though Ukraine successfully recovered portions of its territory, the consistent

62. *Id.* at ¶ 327.

63. Ukraine & the Netherlands v. Russia, App. Nos. 8019/16, 43800/14, 28525/20 & 11055/22, ¶ 331 (July 9, 2025), https://hudoc.echr.coe.int/?i=001-244292.

64. *Id.* at ¶¶ 332, 338

65. *Id.* at ¶¶ 336-338.

66. *Id.* at ¶¶ 361-365.

67. *Id.* at ¶ 328.

68. *Id.* at ¶ 331.

69. Ukraine & the Netherlands v. Russia, App. Nos. 8019/16, 43800/14, 28525/20 & 11055/22, ¶ 331 (July 9, 2025), https://hudoc.echr.coe.int/?i=001-244292.

70. *Id.* at ¶¶ 336-338.

71. *Id.* at ¶ 336.

persistence of the Russian military amounted to effective control over Eastern Ukrainian territory.[72] In light of the evidence, the Court held that Russia had jurisdiction over these areas for the purposes of Article 1 of the Convention.[73]

Lastly, the Court was tasked with determining whether the specific administrative practice of Russian military attacks from 2014 to 2022 fell within the jurisdiction of Russia, as per Article 1 of the Convention.[74] The Court closely examined precedent set by *Georgia v. Russia (II)*, where it was held that Russia did not have "Article 1 jurisdiction in respect of the military operations" it had conducted over the "five-day-war" in Georgia because the chaos created by the war meant that there was no control over the area at all.[75] Here, the Court emphasized the unprecedented nature of Russian action, calling the 2022 invasion a "watershed" moment in history.[76] Historically, the Court has used a "spatial model of jurisdiction," where a party's effective control of an extraterritorial region created an obligation under Article 1 to uphold substantive rights per the Convention.[77] However, there have been instances where a state's agents, operating extraterritorially, bring individuals under the control of the state, either through its treatment of civilians or because of the state agent's responsibility to secure the extraterritorial area.[78]

In the Court's analysis of the facts, it reiterated that separatist forces in Eastern Ukraine were controlled and operated by Russia.[79] There was ample evidence to support that the purpose of the military attacks was to retain control of Ukrainian territory.[80] The Court acknowledged that this pattern of military behavior and control perpetrated by Russia was at odds with the chaos demonstrated in *Georgia v. Russia (II)*.[81] By controlling the armed forces of the DPR and LPR, and continuing military attacks across Ukrainian territory to acquire control over the area, Russia was

72. *Id.* at ¶ 337.

73. *Id.* at ¶ 338.

74. *Id.* at ¶ 340.

75. Ukraine & the Netherlands v. Russia, App. Nos. 8019/16, 43800/14, 28525/20 & 11055/22, ¶ 341 (July 9, 2025), https://hudoc.echr.coe.int/?i=001-244292.; Georgia v. Russia (II), App. No. 38263/08, ¶ 126 (Jan. 21, 2021), https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-207757%22]}.

76. Ukraine & the Netherlands v. Russia, App. Nos. 8019/16, 43800/14, 28525/20 & 11055/22, ¶ 349 (July 9, 2025), https://hudoc.echr.coe.int/?i=001-244292.

77. *Id.* at ¶ 351.

78. *Id.* at ¶¶ 353-54, 361.

79. *Id.* at ¶¶ 356-57.

80. *Id.* at ¶ 360.

81. *Id.* at ¶ 361; Georgia v. Russia (II), App. No. 38263/08, ¶¶ 137-38 (Jan. 21, 2021), https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-207757%22]}.

acting in a calculated, intentional manner rather than chaotically defending itself in the face of war.[82] Due to the strategic nature of the military attacks, Russia maintained an Article 1 obligation to protect the substantive human rights of those living under its effective control and who were affected by its attacks.[83]

To conclude its analysis on Article 1 jurisdiction, the Court noted that actions of the Russian military were plainly attributable to the Russian state, but also held that the separatists in Eastern Ukraine were de facto organs of the Russian government.[84] The Court established that up until September 16, 2022, Russia was to be held responsible for the actions of its own military along with that of the separatists, who had a responsibility for individuals living under their control, as they were acting within Article 1 jurisdiction in the controlled territories throughout the administrative practice of military attacks.[85]

C. Findings of Violations

In the noted case, the Court held that Russia was responsible for widespread systematic violations of the Convention in the territories of Eastern Ukraine and Crimea that were under its effective control.[86] As a matter of procedure, the Court held that the Convention is to be read in harmony with international humanitarian law whenever possible.[87] Relying on extensive evidence submitted by Ukraine and corroboration by the international community, satellite imagery, and independent reports from both the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Organization for Security and Co-operation in Europe (OSCE), the Court determined that Russia's role in the downing of flight MH17 and administrative practices across the DPR, LPR, and other occupied territories, constituted multiple, flagrant violations of the Convention and international humanitarian law.[88]

The Court found both substantive and procedural violations of Article 2 of the Convention in relation to the downing of Malaysian

82. Ukraine & the Netherlands v. Russia, App. Nos. 8019/16, 43800/14, 28525/20 & 11055/22, ¶ 360-1 (July 9, 2025), https://hudoc.echr.coe.int/?i=001-244292..

83. *Id.* at ¶ 361.

84. *Id.* at ¶ 364.

85. *Id.* at ¶¶ 365-366.

86. *Id.* at ¶ 1007.

87. *Id.* at ¶ 430.

88. Ukraine & the Netherlands v. Russia, App. Nos. 8019/16, 43800/14, 28525/20 & 11055/22, ¶¶ 494-95, ¶ 633, ¶ 742, ¶¶ 956-99, ¶¶ 1007-22 (July 9, 2025), https://hudoc.echr.coe.int/?i=001-244292.

Airlines Flight MH17.[89] Evidence demonstrated that a Russian missile launched from a separatist territory caused the crash, constituting an unjustified, indiscriminate use of lethal force and failure to take preventative measures.[90] Further, the Court examined the procedural limb of Article 2 of the Convention, holding that Russia failed to conduct an effective investigation into the MH17 tragedy.[91] The procedural failings, combined with Russia's refusal to provide legal remedies for the victim's relatives, amounted to violations of Article 2, the right to life, and Article 13, which requires an effective remedy in cases of Convention violation.[92] As a result, the continuing anguish of the MH17 victims' relatives reached the threshold of inhumane and degrading treatment prohibited by Article 3 of the Convention.[93]

When analyzing Russia's administrative practices, the Court relied heavily on evidence provided by the OHCHR and the OSCE in the absence of Russian cooperation.[94] Based on these facts, the Court found that Russia maintained an administrative practice of military attacks in Ukraine amounting to violations of Article 2's right to life, Article 3's prohibition of torture, degrading, or inhuman treatment, Article 8's right to private family life and home, and Article 1 of Protocol No. 1's right to the peaceful enjoyment of possessions and property.[95] The Court found that the level of fear and terror instilled in Ukrainian civilians by this practice was enough to constitute an additional violation of Article 3's prohibition of inhuman or degrading treatment.[96] The administrative practice of extrajudicial killings of civilians and Ukrainian soldiers *hors de combat* in occupied areas constituted an additional violation of Article 2's right to life and the rights contained within international humanitarian law.[97]

The Court found additional systemic violations of Article 3, concluding that torture or inhuman treatment was executed as part of an officially accepted administrative practice in occupied territories.[98] Detainees, including Ukrainian civilians, journalists, and prisoners of war,

89. *Id.* at ¶¶ 466, 500.
90. *Id.* at ¶¶ 452, 460.
91. *Id.* at ¶¶ 499-500.
92. *Id.* at ¶¶ 500, 508, 514.
93. *Id.* at ¶ 552
94. Ukraine & the Netherlands v. Russia, App. Nos. 8019/16, 43800/14, 28525/20 & 11055/22, ¶ 758 (July 9, 2025), https://hudoc.echr.coe.int/?i=001-244292.
95. *Id.* at ¶¶ 770-772.
96. *Id.* at ¶¶ 761-763.
97. *Id.* at ¶ 1042.
98. *Id.* at ¶¶ 1079, 1083.

were subjected to severe beatings, electric shocks, and sexual violence.[99] It also found that the suffering of the families of those abducted, disappeared, or killed was so severe as to constitute another violation of Article 3's prohibition of torture and inhuman or degrading treatment.[100] Russia maintained an administrative practice of arbitrarily detaining Ukrainians and forcing them to work in incredibly harsh conditions; a violation of Article 5's right to liberty and security, as well as Article 4's prohibition of forced labor.[101]

Russia also orchestrated the unlawful displacement and transfer of civilians, including large-scale deportations of children.[102] The forced adoption of Ukrainian children by Russian families, the separation of Ukrainian families, and the application of "filtration" procedures all violated Article 8's right to private and family life.[103] The Court found that the administrative practice of the transfer and adoption of Ukrainian children into Russia further violated Article 3's prohibition of inhuman treatment, and Article 5's right to liberty.[104]

The Court continued to document a sweeping campaign of cultural and ideological repression.[105] Russia was found responsible for its administrative practice of intimidation, harassment, and persecution of religious groups in violation of Article 9's protection of freedom of thought, conscience, and religion.[106] Suppression and censorship of the press, as well as the forced dispersal of assemblies, amounted to violations of Article 10's right to free expression and Article 11's right to protest and assembly.[107] The systemic oppression of the Ukrainian language and curriculum in schools violated Ukraine's right to education and constituted indoctrination under Article 2 of Protocol No. 1 to the Convention.[108] Individuals were discriminated against based on national origin and political opinion, which violated the prohibition on discrimination under Article 14, as well as numerous other substantive

99. *Id.* at ¶¶ 1056-57, 1070-78.

100. Ukraine & the Netherlands v. Russia, App. Nos. 8019/16, 43800/14, 28525/20 & 11055/22, ¶ 1080-3 (July 9, 2025), https://hudoc.echr.coe.int/?i=001-244292.

101. *Id.* at ¶¶ 1099, 1124.

102. *Id.* at ¶¶ 1133-50, 1599.

103. *Id.* at ¶¶ 1183-84, 1579, 1598-99.

104. *Id.* at ¶ 1599.

105. *Id.* at ¶ 1193-1263.

106. Ukraine & the Netherlands v. Russia, App. Nos. 8019/16, 43800/14, 28525/20 & 11055/22, ¶ 1277 (July 9, 2025), https://hudoc.echr.coe.int/?i=001-244292.

107. *Id.* at ¶¶ 1349-52, ¶ 1374-83.

108. *Id.* at ¶ 1482.

rights.[109] Moreover, the absence of any domestic remedies or investigations into these practices rendered further violations of Article 13's right to an effective remedy across the full spectrum of human rights abuses.[110] Mass destruction, looting, and expropriation of civilian property without compensation, as well as the targeting of cultural sites, violated the protection of property and right to peaceful enjoyment of property under Article 1 of Protocol No. 1.[111]

The Grand Chamber condemned Russia's refusal to cooperate with the Court under Article 38 and characterized its obstruction as a "deplorable failure" to abide by fundamental obligations.[112] Under Article 46, the Court ordered Russia to release all individuals unlawfully detained before its withdrawal from the Convention and to cooperate in creating an independent international mechanism to identify and reunite children transferred to Russia with their families and guardians, despite its cessation of membership in the Council of Europe.[113] Questions regarding monetary compensation under Article 41 were deferred pending future proceedings. [114]

IV. ANALYSIS

A. From the "Fog of War" to Judicial Clarity

The noted case represents a defining moment in the Court's evolution of judicial restraint to assertive accountability. Solidified in *Georgia v. Russia (II)*, the Court's previous approach to wartime adjudication was cautious, as it invoked the "fog of war" doctrine to limit its jurisdiction in cases concerning active warfare.[115] Scholars were right to criticize the approach; an examination of Article 15 shows that the Convention was intended to apply during armed conflict, unless parties elect to derogate certain rights.[116]

Even so, in an era of modern technology and widespread surveillance, one wonders how the so-called "fog" can persist as a

109. *Id.* at ¶¶ 1604-07.

110. *Id.* at ¶¶ 1615-22.

111. *Id.* at ¶¶ 1453.

112. Ukraine & the Netherlands v. Russia, App. Nos. 8019/16, 43800/14, 28525/20 & 11055/22, ¶ 1623, 1639 (July 9, 2025), https://hudoc.echr.coe.int/?i=001-244292.

113. *Id.* at ¶¶ 1643-46.

114. *Id.* at ¶ 1652.

115. Georgia v. Russia (II), App. No. 38263/08, ¶¶ 126, 136-37 (Jan. 21, 2021), https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-207757%22]}.

116. Tzevelekos, *supra* note 39; Convention for the Protection of Human Rights and Fundamental Freedoms art. 15, Nov. 4, 1950, 213 U.N.T.S. 221 [hereinafter ECHR].

justification for remaining hands-off. The pervasive nature of social media and the Internet serves as a real-time evidentiary tool that can be used to examine what is happening on the ground.[117] The Court correctly took advantage of documentation from several non-governmental organizations and digital satellite data.[118] By affirming that, despite the continuation of active war, Russia's effective control over the region triggered an obligation to respect human rights under the Convention, allowing the Court to break decisively from the past, seeing through the fog.[119]

Despite this affirmation, the decision in the noted case confronts the harsh limits of international adjudication. Russia's withdrawal from the Council of Europe and its denunciation of the Convention in 2022 deprived the Court of any direct enforcement authority.[120] Although the Grand Chamber ordered Russia to release unlawfully detained persons and to cooperate in identifying and returning deported Ukrainian children, compliance is unlikely due to the continuation of the conflict.[121] Article 46 of the Convention grants the Committee of Ministers supervisory jurisdiction to ensure that states implement judgments, but Russia's withdrawal from the Council of Europe renders this jurisdiction difficult to fully utilize.[122]

To address this, potential reforms could include an amendment to the Convention empowering the Committee of Ministers to continue monitoring states that withdraw amid active conflicts. Alternatively, the judgment can still be indirectly enforced, as it may encourage the international community to respond with additional sanctions on and isolation of Russia.

B. Effects on the Continuing Conflict

Notably, the noted case only examined Russian actions before September 16, 2022. Since then, Russia has continued the same pattern of conduct, leaving a gap to be addressed by future tribunals. By attributing

117. *See* Emily Chen & Emilio Ferrara, *Tweets in Time of Conflict: A Public Dataset Tracking the Twitter Discourse on the War Between Ukraine and Russia*, ASS'N FOR THE ADVANCEMENT OF A.I. 1007 (2023), https://ojs.aaai.org/index.php/ICWSM/article/view/22208/21987.

118. Ukraine & the Netherlands v. Russia, App. Nos. 8019/16, 43800/14, 28525/20 & 11055/22, ¶ 633.

119. *Id.* at 493-94 ¶¶ 2-4.

120. *See* discussion *supra* notes 30 and 33.

121. Ukraine & the Netherlands v. Russia, App. Nos. 8019/16, 43800/14, 28525/20 & 11055/22, ¶¶ 1643-46; *supra* note 44.

122. ECHR, *supra* note 116, at art. 46.

systemic violations of indiscriminate killing of civilians, torture, forced deportations, and suppression of cultural identity to Russia as an administrative practice, the Court provided a factual and legal foundation for future proceedings.[123] As nearby states such as Poland invoke NATO protections and other regional actors are drawn into the conflict, additional litigation is likely to emerge.[124] Ukraine can now rely on the Court's unanimous factual findings in its ongoing cases before the International Court of Justice and the ICC, where questions of attribution and effective control remain relevant.[125]

Worldwide, additional active conflicts persist, which may benefit from the secondary effects of the noted case. The UN Independent International Commission of Inquiry on the Occupied Palestinian Territory found that, as of September 2025, the actions of Israel against Palestinians in the Gaza Strip amount to genocide.[126] Similarly, the civil war in Sudan has begun to reach a boiling point, as bloodshed is now visible from satellite images.[127] As allegations of severe human rights violations come to light, international tribunals can now follow this framework created by the Court.[128] In the noted case, the intensive factual analysis undertaken by the Court resulted in a judgment upwards of five hundred pages.[129] While much of the judgment interpreted the application of the Convention, the meticulous approach taken to the evidence and synergetic application of international humanitarian law may serve as a useful reference for the tribunals tasked with upholding human rights in the Gaza Strip and Sudan.[130]

123. *See* Ukraine & the Netherlands v. Russia, App. Nos. 8019/16, 43800/14, 28525/20 & 11055/22, ¶ 1170.

124. *Emergency Briefing on Drone Incursion into Poland*, *supra* note 42.

125. *See* Risini, *supra* note 35 (touching on the ongoing ICJ genocide proceedings between Ukraine and Russia); *Situation in Ukraine*, INT'L CRIM. CT. (Mar. 2, 2022), https://www.icc-cpi.int/situations/ukraine (discussing the ongoing ICC investigation into Russian conduct and current arrest warrants for Russian agents).

126. Press Release, Off. of the U.N. High Comm'r for Hum. Rts., Israel Has Committed Genocide in the Gaza Strip, U.N. Commission Finds, U.N. Press Release HRC/60/CRP.3 (Sep. 16, 2025).

127. Natasha Booty, et al., *A Simple Guide to What Is Happening in Sudan*, BBC NEWS (Nov. 13, 2025), https://www.bbc.com/news/articles/cjel2nn22z9o; Nesrine Malik, *Blood Spilled in Sudan Can Be Seen from Space. Nobody Can Feign Ignorance About What's Going on*, THE GUARDIAN (Nov. 3, 2025), https://www.theguardian.com/commentisfree/2025/nov/03/blood-spilled-sudan-el-fasher-space-rsf-uae-darfur.

128. *Supra* notes 126-127.

129. *See generally* Ukraine & the Netherlands v. Russia, App. Nos. 8019/16, 43800/14, 28525/20 & 11055/22, ¶ 188 (July 9, 2025), https://hudoc.echr.coe.int/?i=001-244292.

130. *See id.*

V. CONCLUSION

The noted case marked a major shift in wartime accountability under the Convention and an evolution of the Court's institutional identity. By rejecting the "fog of war" as a limitation on jurisdiction, the Court reaffirmed that the protection of fundamental rights does not yield to the chaos of conflict.[131] However, the noted case exposes the limited nature of international enforcement, as Russia's withdrawal from the Council of Europe left the Court without any direct means of ensuring compliance.[132] By establishing a definitive historical and legal record, the Court laid the foundation for future prosecutions and may inspire other international tribunals to reexamine their approaches to active conflicts in the modern era. Ultimately, the judgment was a strategic move by the Court to authoritatively conclude that accountability in times of active war can no longer be escaped. Through judicial clarity, the ECtHR has illuminated the path forward for a continent and world, once again confronting the specter of aggression.

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131. Risini, *supra* note 35.

132. Struthers, *supra* note 30.

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