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Commentary



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## Dismantling the Chaos Exception: Ukraine v. Russia and Human Rights Accountability

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The author argues that the Grand Chamber's landmark ruling represents a "Nicaragua moment" for human rights law, fundamentally recalibrating the relationship between armed conflict and accountability by dismantling the doctrinal barriers that previously immunized battlefield violence from European Convention scrutiny...

The **Grand Chamber judgment** delivered unanimously by the European Court of Human Rights (ECtHR) July 9 in [Ukraine and the Netherlands v. Russia](#) represents a transformative moment in international human rights law. The ruling does far more than document Russia's systematic violations from 11 May 2014 to 16 September 2022. It fundamentally recalibrates the ECtHR's approach to armed conflict, dismantling doctrinal barriers that previously shielded battlefield conduct from scrutiny. The judgment's significance lies not merely in its factual findings across the **Geneva Conventions**, but in its sophisticated reconfiguration of the relationship between human rights law and the conduct of hostilities.

### Dismantling the Chaos Exception

The judgment's most consequential innovation addresses the jurisdictional question that has plagued the Court since its 2021 ruling in **Georgia v. Russia II**. That earlier decision had effectively created a *context of chaos* doctrine, suggesting that active hostilities precluded the degree of control necessary for establishing **Article 1 jurisdiction**, under the European Convention on Human Rights (European Convention). As **international law scholars observed**, this formulation risked immunising battlefield violence from human rights oversight precisely when such protection was most urgently needed. The Grand Chamber confronts this legacy directly, methodically distinguishing between genuinely unplanned violence and Russia's *extensive, strategically planned military attacks*.

The Court's jurisdictional reasoning demonstrates remarkable doctrinal sophistication. Rather than simply overruling Georgia II, it establishes that Russia assumed *a degree of responsibility over those individuals affected by its attacks* through deliberate military operations aimed at displacing Ukrainian authority. This finding extends beyond traditional territorial control models, holding that sustained, organised cross-border attacks constitute sufficient authority over victims for European Convention purposes. The implications cascade beyond Ukraine; any state launching calculated military operations now faces potential accountability under the European Convention regardless of territorial occupation.

### Harmonious Integration Without Subordination

The judgment's treatment of international humanitarian law (IHL) merits particular attention for its careful balancing act. The Court explicitly rejects any *lex specialis* approach that would permit IHL to displace European Convention guarantees, instead adopting what might be termed harmonious co-application. The Grand Chamber insists that *there is no circumstance in which international humanitarian law will apply to the complete exclusion of the Convention's human rights guarantees*, while simultaneously acknowledging IHL's relevance in interpreting Convention rights during armed conflict. This formulation respects the distinct normative functions of each legal regime without conceding primacy to either.

The practical implications emerge vividly in the Court's examination of specific incidents. In assessing violations from Bucha to Izium, the Grand Chamber evaluated whether Russia took *all feasible precautions* before attacks, directly invoking **IHL standards of distinction and proportionality** while applying **Article 2's right to life**. This methodology proves significant given Russia's non-participation following its **expulsion from the Council of Europe**. The Court's willingness to make explicit IHL findings without adversarial briefing demonstrates institutional confidence and recognition that silence would effectively privilege the non-cooperating party. The judgment thus reflects the Court's evolved understanding that addressing contemporary armed conflicts requires proactive integration of humanitarian law principles rather than rigid compartmentalisation.

### Attribution Through De Facto Organs

The attribution analysis breaks essential ground in addressing proxy warfare. By treating the Donetsk and Luhansk separatist entities as de facto organs of the Russian state under **Article 4 of the ILC Articles on State Responsibility**, the Court eliminates responsibility gaps that might otherwise shield states operating through proxy forces. The finding rests on evidence of complete military, political, and economic dependence, establishing that from 11 May 2014 onward, separatist operations were attributable to Russia. Crucially, the Court separates attribution from jurisdiction, clarifying that even where Russia did not occupy territory, its direction of forces that violated Convention rights triggered state responsibility. This doctrinal refinement addresses **longstanding debates about the relationship** between extraterritorial jurisdiction and attribution in international human rights law.

### Documenting Systematic Atrocities

The judgment's factual findings compel attention for their comprehensiveness and gravity. The Court documents an administrative practice of extrajudicial killings, torture, arbitrary detention, and widespread destruction spanning eight years. Most notably, the Grand Chamber explicitly recognises that *sexual violence and rape were deployed in Ukraine following the February 2022 invasion as part of a military strategy to dehumanise, humiliate and break the morale of the Ukrainian population*. This finding places the judgment within a broader jurisprudential tradition established by the International Criminal Tribunals for Rwanda and the former Yugoslavia.

The Court's analysis of **conflict-related sexual violence** demonstrates sophisticated engagement with both European Convention standards and IHL norms. Drawing on extensive documentation from **UN investigative bodies** and international organisations, the Grand Chamber concludes that systematic rape constituted **torture within Article 3's meaning**. The judgment explicitly references IHL provisions prohibiting such conduct, particularly **Article 27 of the Fourth Geneva Convention**, while recognising sexual violence's status as both a **war crime under the Rome Statute** and a grave breach of fundamental humanitarian principles. This integrative approach, **though not without interpretive complexity**, establishes important precedent for addressing gender-based violence in armed conflict contexts.

### Broader Implications and Enforcement Challenges

The judgment's significance extends well beyond Strasbourg's institutional boundaries. While the ECHR lacks jurisdiction over *jus ad bellum* questions, its **findings on effective control and systematic violations** will inevitably inform the International Court of Justice's deliberations in **Ukraine's Genocide Convention case** and shape the International Criminal Court's **ongoing war crimes investigations**. The Court's meticulous documentation creates an authoritative historical record transcending any institution's mandate.

Significant challenges remain, however. The deferral of **Article 41's just satisfaction determination award** due to the **ongoing discussions vis-à-vis the future compensation mechanism** has created a remedy vacuum. The interaction between these cases and Ukraine's **Register of Damage mechanism** raises complex questions about compensation architecture and victims' remedy pathways. Russia's withdrawal from the Council of Europe further complicates enforcement prospects, though the Committee of Ministers retains **supervisory authority under Article 46**. The practical efficacy of this judgment depends less on formal compliance mechanisms than on its persuasive authority within international legal discourse.

### A Nicaragua Moment for Human Rights Law

This judgment represents what observers have termed the **ECHR's Nicaragua moment**, evoking the landmark 1986 ruling by the International Court of Justice that redefined international law's engagement with proxy warfare and state-sponsored violence. Like Nicaragua, this decision confronts contemporary conflict realities with doctrinal innovation firmly grounded in existing legal frameworks. The Court has demonstrated institutional courage in expanding human rights protection during armed conflict while maintaining appropriate judicial restraint regarding questions beyond its mandate.

As European security architecture faces unprecedented strain, this judgment affirms that human rights adjudication remains viable even amid geopolitical fracture. Whether it catalyses comparable jurisprudential evolution in other regional systems remains uncertain. Still, its immediate contribution is a definitive repudiation of impunity during armed conflict and a powerful assertion that the rule of law endures even in the fog of war.

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### US Supreme Court decided Dartmouth College case

On February 2, 1819, the US Supreme Court decided [Dartmouth College v. Woodward](#), ruling that the charter of a college was a contract that a state could not alter arbitrarily.

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### New Amsterdam incorporated

On February 2, 1653, the City of [New Amsterdam](#) was incorporated by the Dutch Republic. After the British conquest, the city was renamed New York after the Duke of York.

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### Breviary of Alaric put into effect by Visigoth king

King Alaric II of the Visigoths put the Breviary of Alaric, a collection of Roman laws, into effect on February 2, 506. The breviary contains constitutions and laws of the newly fallen Roman Empire, including the Theodosian code, and parts of the Gregorian and Hermogenian Codes. The Breviary of Alaric predated the Byzantine Empire's Code of Justinian by 23 years. Read an [entry](#) on the Breviary of Alaric from the Encyclopaedia Britannica.

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