Foreword
(What happened after the smile left his face)

I do believe that a course on the protection of human rights at the international level can provide law students with a highly formative training. Some messages can be transmitted. First, the State cannot avail itself of any means to reach its objectives, since there are limits which are inherent to human dignity and are imposed by law and morality.[1] Second, certain treaties have established the judiciary machinery that allows the individual to bring an action against the State and obtain redress, if a breach of human rights has occurred. The fact that, unfortunately, this kind of treaties do not always exist or are not always applicable can only confirm the strict link between the substantive and the procedural aspects of human rights protection.

Since 1998 a course on "international protection of human rights" is being offered in the University of Milano-Bicocca. Until 2007 it was taught by Carlo Russo (1920-2007), a former judge of the European Court of Human Rights, who was extremely effective, also for the clarity of his mind and speech, in involving the audience in the cause of human rights enhancement.[2] The teaching of human rights was subsequently offered in two different courses, one in Italian and the other in English, the latter for the benefit of foreign students and those national students who wanted to engage themselves in a more challenging exercise from the linguistic point of view. I remember that Andrea Carcano and myself – as we were both in charge of the English course – made forecasts about the number of attending students and that the conceptual categories evoked in this regard were those of "nullity", "unity" or "plurality". Fi-

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[1] "Without question, the State has the right and duty to guarantee its security. It is also indisputable that all societies suffer some deficiencies in their legal orders. However, regardless of the seriousness of certain actions and the culpability of the perpetrators of certain crimes, the power of the State is not unlimited, nor may the State resort to any means to attain its ends. The State is subject to law and morality. Disrespect for human dignity cannot serve as the basis for any State action" (INTER-AMERICAN COURT OF HUMAN RIGHTS, judgment of 20 January 1989, *Godínez Cruz v. Honduras*, para. 162).

[2] His teaching is reflected in RUSSO & QUAINI, La Convenzione europea dei diritti dell'uomo e la giurisprudenza della Corte di Strasburgo, 2nd ed., Milano, 2006.

nally we were happy enough to get "plurality" (which, in fact, refers to any number above one).

Convinced that numbers are not the most important aspect of life, we also planned a publication devoted to the human rights cases addressed in the classes. The outcome is the present book. It focuses on the right to life and aims at acquainting the reader with the events and the legal elaboration that mark a number of seminal judgments rendered by the European Court of Human Rights on the right to life. It also includes a critical analysis of the judicial developments linked to those judgments.

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Even in the short space reserved to a foreword, I cannot refrain from putting forward a few remarks that show how interesting are some of the cases discussed in this book.

As regards the right to life, the applicable rule of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 1950)[3] is Art. 2. While apparently absolute and included by Art. 15 in the so-called hard-core of the Convention to which no derogation is admissible, Art. 2 allows for three exceptions, namely the death penalty,[4] the lethal use of force[5] and lawful acts of war.[6]

Where lethal use of force is being discussed, the description of the relevant facts becomes particularly important in order to seize the relationship between the rule and the exception. For instance, this is the way in which, on 6 March 1988, Mr. Daniel McCann (1957-1988) and Ms. Mairéad Farrell (1957-1988) approached the end of their life (judgment by the European Court of Human Rights of 27 September 1995 in the case *McCann and others v. the United Kingdom*):[7]

> "Soldiers *A* and *B* continued north up Winston Churchill Avenue [in Gibraltar] after McCann and Farrell, walking at a brisk pace to close the distance. McCann

[3] Commonly called European Convention on Human Rights (hereinafter: Convention).

[4] Second sentence of para. 1 of Art. 2.

[5] Art. 2, para. 2.

[6] Art. 15, para. 2. The right of the State to kill people as a result of "lawful acts of war" can logically be seen as an exception to an exception (human rights provided for in the Convention can be derogated; exceptionally, no derogation is allowed to the right to life as set forth in Art. 2 of the Convention; exceptionally, the right to life can be derogated if people are killed as a result of lawful acts of war). However, it should be noticed that Art. 2 already has in itself two derogations (death penalty and lethal use of force).

[7] For a comprehensive recollection of all the relevant facts, see Chap. 5, paras. from A to D.

was walking on the right of Farrell on the inside of the pavement. He was wearing white trousers and a white shirt, without any jacket. Farrell was dressed in a skirt and jacket and was carrying a large handbag.

When Soldier *A* was approximately ten metres (though maybe closer) behind McCann on the inside of the pavement, McCann looked back over his left shoulder. McCann appeared to look directly at *A* and the smile left his face, as if he had a realisation of who *A* was and that he was a threat.

Soldier *A* drew his pistol, intending to shout a warning to stop at the same time, though he was uncertain if the words actually came out. McCann's hand moved suddenly and aggressively across the front of his body. *A* thought that he was going for the button to detonate the bomb and opened fire. He shot one round into McCann's back from a distance of three metres (though maybe it may have been closer). Out of the corner of his eye, *A* saw a movement by Farrell. Farrell had been walking on the left of McCann on the side of the pavement next to the road. *A* saw her make a half turn to the right towards McCann, grabbing for her handbag which was under her left arm. *A* thought that she was also going for a button and shot one round into her back. He did not disagree when it was put to him that the forensic evidence suggested that he may have shot from a distance of three feet. Then *A* turned back to McCann and shot him once more in the body and twice in the head. *A* was not aware of *B* opening fire as this was happening. He fired a total of five shots.

Soldier *B* was approaching directly behind Farrell on the road side of the pavement. He was watching her. When they were three to four metres away and closing, he saw in his peripheral vision that McCann turned his head to look over his shoulder. He heard what he presumed was a shout from *A* which he thought was the start of the arrest process. At almost the same instant, there was firing to his right. Simultaneously, Farrell made a sharp movement to her right, drawing the bag which she had under her left arm across her body. He could not see her hands or the bag and feared that she was going for the button. He opened fire on Farrell. He deemed that McCann was in a threatening position and was unable to see his hands and switched fire to McCann. Then he turned back to Farrell and continued firing until he was certain that she was no longer a threat, namely, her hands away from her body. He fired a total of seven shots".[8]

The third and last member of the group of people suspected of a terrorist attack by way of a car bomb was Mr. Sean Savage (1965-1988):

"After the three suspects had split up at the junction, Soldier *D* crossed the road and followed Savage who was heading towards the Landport tunnel. Savage

[8] Paras. 60-62 of the judgment. The paragraphs are based on the evidence provided by soldiers *A* and *B* at the inquest made by the Gibraltar Coroner. The European Commission of Human Rights found that "Ms Farrell and Mr McCann were shot by Soldiers A and B at close range after the two suspects had made what appeared to the soldiers to be threatening movements. They were shot as they fell to the ground but not when they were lying on the ground" (para. 132). The Court took the Commission's establishment of the facts and findings to be an accurate and reliable account of the facts underlying the case (para. 169).

> was wearing jeans, shirt and a jacket. Soldier *C* was briefly held up on the other side of the road by traffic on the busy road but was catching up as *D* closed in on Savage. *D* intended to arrest by getting slightly closer, drawing his pistol and shouting 'Stop. Police. Hands up'. When *D* was about three metres away, he felt that he needed to get closer because there were too many people about and there was a lady directly in line. Before *D* could get closer however, he heard gunfire to the rear. At the same time, *C* shouted 'Stop'. Savage spun round and his arm went down towards his right hand hip area. *D* believed that Savage was going for a detonator. He used one hand to push the lady out of line and opened fire from about two to three metres away. *D* fired nine rounds at rapid rate, initially aiming into the centre of Savage's body, with the last two at his head. Savage corkscrewed as he fell. *D* acknowledged that it was possible that Savage's head was inches away from the ground as he finished firing. He kept firing until Savage was motionless on the ground and his hands were away from his body.
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> Soldier *C* recalled following after Savage, slightly behind *D*. Savage was about eight feet from the entrance to the tunnel but maybe more. *C*'s intention was to move forward to make arrest when he heard shots to his left rear from the direction in which Farrell and McCann had headed. Savage spun round. *C* shouted 'Stop' and drew his pistol. Savage moved his right arm down to the area of his jacket pocket and adopted a threatening and aggressive stance. *C* opened fire since he feared Savage was about to detonate the bomb. He saw something bulky in Savage's right hand pocket which he believed to be a detonator button. He was about five to six feet from Savage. He fired six times as Savage spiralled down, aiming at the mass of his body. One shot went into his neck and another into his head as he fell. *C* continued firing until he was sure that Savage had gone down and was no longer in a position to initiate a device.[9]

Mr. McCann was hit by five bullets, Ms. Farrell by eight and Mr. Savage by sixteen.

At this point, on the basis of the knowledge of what happened after "the smile left the face" of Mr. McCann, the task of the lawyer begins, that is the framing of the facts into the logical scheme set forth by a legal provision. According to Art. 2, para. 2, of the Convention, the deprivation of life shall not be regarded as inflicted in contravention with the right to life when it results from the use of force which is no more than absolutely necessary in defence of any person from unlawful violence or in order to effect a lawful arrest. The question is whether the relevant facts fit the rule (an instance of violation of

[9] Paras. 78-79 of the judgment. The paragraphs are based on the evidence provided by soldiers *C* and *D* at the inquest made by the Gibraltar Coroner. The European Commission of Human Rights found that "there was insufficient material to rebut the version of the shooting given by Soldiers C and D. Mr Savage was shot at close range until he hit the ground and probably in the instant as or after he hit the ground" (para. 132). The Court took the Commission's establishment of the facts and findings to be an accurate and reliable account of the facts underlying the case (para. 169).

the right of the human being to life) or the exception (an instance where the State has the right to deprive a human being of his/her life). As the Court said, the British authorities, who had been informed that there would be a terrorist attack in Gibraltar, were presented with a fundamental dilemma that had the right to life as its core:

> "On the one hand, they were required to have regard to their duty to protect the lives of the people in Gibraltar including their own military personnel and, on the other, to have minimum resort to the use of lethal force against those suspected of posing this threat in the light of the obligations flowing from both domestic and international law".[10]

In the specific case, additional, but not irrelevant, facts come into play when trying to give an answer to the dilemma. It is true that "soldiers A to D opened fire with the purpose of preventing the threat of detonation of a car bomb in the centre of Gibraltar by suspects who were known to them to be terrorists with a history of previous involvement with explosives".[11] But it is also true that, on 6 March 1988, after the shooting, the bodies of the three suspects were searched and no weapons or detonating devices were discovered on them.[12] An explosive device, which was not primed or connected, was later found concealed in the spare-wheel compartment of a car hired by the three people killed. It was believed that the device was set to explode at the time of the military parade to be held two days later, on 8 March.[13] Moreover, it appears that the three suspects could have been arrested at the border by a special surveillance team immediately on their arrival in Gibraltar, with less danger to the population of Gibraltar and their own lives. Why were they not prevented from entering the city if they were believed to be on a bombing mission? All this makes the picture of the facts and the lawyer's task (is the rule or the exception applicable?) more complex.

Another case where the facts display all their pervasive influence on legal questions is *Soering v. the United Kingdom*, decided by the European Court of Human Rights on 7 July 1989. Here the facts disclose a series of paradoxes in the legal fabric of the Convention.

In March 1985, Mr. Jens Soering (1966-living) killed the parents of his girlfriend. The victims, who opposed to the relationship, were found dead as the result of multiple and massive stab and slash wounds to the neck, throat

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[10] Para. 192.

[11] As found by the Commission (para. 132).

[12] Para. 93.

[13] Paras. 99 and 100.

and body. The homicide was committed in Virginia, United States of America, but Mr. Soering, who fled abroad, was arrested in the United Kingdom. Relying on the European Convention on Human Rights, he tried to prevent his extradition for trial in the United States, a country which is not a party the Convention.

From the judgment we are informed that, according to a medical report, Mr. Soering was an immature and inexperienced young man who had lost his personal identity in a symbiotic relationship with his girlfriend – a powerful, persuaded and disturbed young woman. He is said to have entered into a syndrome referred to as *folie à deux*, that is a state of mind where one partner is suggestible to the extent that he or she believes in the psychotic delusions of the other.[14] Why this kind of personal details, however relevant from the psychiatric point of view, are of interest also for determining the scope of application of the Convention?

The answer can be found inside one ring of the chain of hypothetical periods that characterize the Soering case. If Mr. Soering had been extradited to the United States, he would have been accused of capital murder. If he had been extradited and found guilty, the American court could have taken mental insanity at the time of the offence as a mitigating factor at the sentencing stage. If he had been extradited, found guilty and not considered mentally insane, he could have run the risk of being convicted to the death penalty. If he had been extradited, found guilty, not considered mentally insane and convicted to the death penalty, he could have run the risk of being subjected to inhuman or degrading treatment due to the "death row phenomenon", in violation of Art. 3 (prohibition of torture) of the European Convention on Human Rights.

The Court chose not to break the chain of hypothetical periods and basically concluded that contributing through an extradition to a hypothetical "death row phenomenon" inflicted by a non-party State would amount to a violation of Art. 3 by a State party. This is not written in Art. 3 of the Convention,[15] but fully corresponds to its object and purpose.

The hypothetical periods displayed by the *Soering* case are the consequence of a number of logical paradoxes that mark the way in which the right to life is addressed by the Convention.

The first paradox is that a question substantively relating to the right to life was skilfully transformed by the applicant into a question relating to another human right.

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[14] Para. 21 of the judgment.

[15] It is however written in Art. 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (New York, 1984).

The second paradox is that para. 1 of Art. 2, which apparently was drafted to protect the "right to life", in fact protects the right of the State to wildly kill people by convicting them to the death penalty (and this is the reason why Mr. Soering had no better choice than resorting to Art. 3). It is sufficient to read the provision,[16] to discover that the State can kill by the death penalty people who are guilty of slight offences, who have no right to make an appeal, who were under 18 years of age when the crime was committed, who are mentally insane, who are pregnant.

The third paradox is that the European Court of Human Rights took the opportunity to start a process that led it to the final result of depriving of any effect that same paradoxical provision that, under the label of "right to life", protects the right of the State to wildly kill people.

The first step was made in the *Soering* judgment, where the Court remarked that *de facto* the death penalty no longer existed in time of peace in the States parties to the Convention and that an established practice within them could give rise to an amendment of the Convention. However, the Court, not departing from a strictly legal approach, added that, to construe Art. 3 in harmony with Art. 2, para. 1, the former could not be interpreted as generally prohibiting the death penalty[17] (this is to say, implicitly, that there must be at least one manner to kill a human being without inflicting on the victim an inhuman or degrading treatment).

The second step was made by the judgment of 12 May 2005 on the *Öcalan v. Turkey* case. The Court (Grand Chamber) observed that, since the *Soering* case was decided, the legal position as regards the death penalty had undergone a considerable evolution among the States parties to the Convention and that such a marked development could be taken as signalling their agreement to abrogate, or at the very least to modify, the second sentence of Article 2, para. 1.[18] However, the Court did not take a definite position on whether Art. 2 was to be construed as still permitting the death penalty.[19] It took advantage of the loop-hole that Mr. Öcalan had not been granted a fair trial to reach the conclusion that the implementation of the death penalty in such a circumstance was not permitted by Art. 2.[20]

The third and final step was made by the Court in the judgment of 2 March

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[16] Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law".

[17] See, implicitly, paras. 103 and 104 of the judgment.

[18] Para. 163 of the judgment.

[19] Para. 165.

[20] Para. 166.

2010 on the *Al-Saadoon and Mufdhi v. the United Kingdom* case. Against a background of constant evolution towards the complete *de facto* and *de iure* abolition of the death penalty within the member States of the Council of Europe,[21] the Court concluded that the words "inhuman or degrading treatment or punishment" in Art. 3 could be interpreted as including the death penalty and that Art. 2 had been amended through subsequent practice so as to prohibit the death penalty in all circumstances.[22]

It thus appears that the Court "amended" the Convention by deleting altogether one sentence written in its Art. 2, para. 1. The legal justification for doing what in principle a court cannot do is the figure of termination of a treaty provision through subsequent practice, which in fact cannot be found in the Convention on the Law of Treaties (Vienna, 1969).[23] Probably, termination as a consequence of a fundamental change of circumstances[24] or even invalidity as a consequence of an error[25] would have been more convincing grounds under the Vienna Convention for reaching the result of deleting the sentence in question. The Court could have found that the circumstance of the inclusion of the death penalty among the sanctions in the criminal legislation of many European States, which was an essential basis for the drafting of Art. 2, para. 1, at the time of adoption of the Convention, did not exist anymore due to changes in national legislation, as also reflected by the adoption of Protocols Nos. 6[26] and 13[27] to the Convention. Even better, the Court could have found that the assumption that there must be at least one manner to kill a human being without inflicting on the victim an inhuman or degrading treatment had been discovered as being an error of fact.

However, there should be no need to enter into paradoxes and legal intricacies where the right to life is at stake. It is instead important to remark that, by a process that started with the *Soering* judgment, the Court reached a simple conclusion that was forgotten at the time when the Convention was adopted. The killer cannot be killed by the State, because the State cannot put itself at the same level as the killer.

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[21] Para. 116 of the judgment.

[22] Para. 120.

[23] Hereinafter: Vienna Convention. Subsequent practice in the application of a treaty provision can be taken into account for the purpose of its interpretation (Art. 31, para. 3, *b*, Vienna Convention), but not for the purpose of its termination.

[24] Art. 62 of the Vienna Convention.

[25] Art. 48 of the Vienna Convention.

[26] Protocol No. 6 concerning the abolition of the death penalty (Strasbourg, 1983).

[27] Protocol No. 13 concerning the abolition of the death penalty in all circumstances (Vilnius, 2002).

To be precise, there is another paradox within the *Soering* case. The Court addressed the argument that, in the case of people convicted in the United States to the capital punishment, the lapse of time awaiting death is largely due to the prisoner's attempts to take advantage of all means of appeal available under the applicable legislation one after the other. Can someone complain about the duration of a period of time that has become too lengthy because of his or her own behaviour? Yes, he or she can – did the Court answer – where the right to life is at stake, as it is part of human nature that a person clings to life by exploiting to the full all existing safeguards.[28]

The innovating aspects that are evident in the *Soering* case go all in the direction of strengthening the protection of human rights. It is disappointing to remark how the same European Court of Human Right did subscribe a decision that, besides being completely wrong from the legal point of view, goes in the opposite direction of restricting the protection of the human right to life granted by the Convention. This is the decision of 12 December 2001 on the admissibility of the application in the case *Banković and others v. Belgium, the Czech Republic, Denmark, France, Germany, Greece, Hungary, Iceland, Italy, Luxembourg, the Netherlands, Norway, Poland, Portugal, Spain, Turkey and the United Kingdom*.

The seventeen respondent States belong to the North Atlantic Treaty Organization (NATO), an international organization that effected from 24 March to 8 June 1999 air strikes against Yugoslavia.[29] On 23 April 1999 a missile launched from an aircraft engaged in the NATO air strikes hit the television and radio station in Belgrade. Two of the four floors of the building collapsed. Sixteen civilians were killed and another sixteen were seriously injured. Most of the six applicants – Vlastimir and Borka Banković, Živana Stojanović, Mirjana Stoimenovski, Dragana Koksimović and Dragan Suković – were relatives of the people killed.[30]

The legality of such an action by the bombing States is highly questionable under international law of war, as the Belgrade station was not involved in military activities and the attack was justified by NATO as a way to enforce the request to broadcast its own propaganda programmes (have you ever heard of a belligerent State that broadcasts for its population the propaganda programmes of the enemy?):

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[28] Para. 106.

[29] Even though this has no direct relationship with the occurrence of human rights violations, it can be added that force was used in this case without any authorization by the Security Council of the United Nations and, consequently, in violation of the Charter of the United Nations (San Francisco, 1945) and the North Atlantic Treaty (Washington, 1949) itself.

[30] As it was not possible to identify the nationality of the aircraft that launched the missile, the applicants brought the case against all the States parties to the Convention involved in the air strikes, which they considered as severally liable for the attacks against Yugoslavia.

> "More controversially, however, the bombing was also justified on the basis of the propaganda purpose to which it was employed (…) In a statement of 8 April 1999, NATO also indicated that the TV studios would be targeted unless they broadcast 6 hours per day of Western media reports: 'If President Milosevic would provide equal time for Western news broadcasts in its programmes without censorship 3 hours a day between noon and 1800 and 3 hours a day between 1800 and midnight, then his TV could be an acceptable instrument of public information'.
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> NATO intentionally bombed the Radio and TV station and the persons killed or injured were civilians. The questions are: was the station a legitimate military objective and; if it was, were the civilian casualties disproportionate to the military advantage gained by the attack?".[31]

The European Court of Human Rights based its decision on Art. 1 of the Convention, according to which the States parties shall secure to everyone within their "jurisdiction" the rights and freedoms defined in it, and on the fact that Yugoslavia was not a party to the Convention. The Court read the word "jurisdiction" as if it were the word "territory".[32] It found that the Convention has the special character as a "constitutional instrument of European public order", presenting an "essentially regional vocation":

> "In short, the Convention is a multi-lateral treaty operating (…) in an essentially regional context and notably in the legal space (*espace juridique*) of the Contracting States. The FRY [= Federal Republic of Yugoslavia] clearly does not fall within this legal space. The Convention was not designed to be applied throughout the world, even in respect of the conduct of Contracting States".[33]

In short, the Court tells us that what would be a breach of the Convention if committed by a State party in its own territory – for example, to arbitrarily kill or to torture – is not anymore a breach if committed by the same State in the territory of a non-party State. How the European Court of Human Rights could have subscribed such an unbelievable conclusion is wholly mysterious. It may be true that in international law the notion of "jurisdiction" is often territorial. But this is not the case for human rights treaties, which regulate the relationship between State agents and an individual. Their provisions must be interpreted in the light of the object and purpose of this category of treaties,[34]

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[31] Paras. 74 and 75 of the Final Report submitted to the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia by the Committee Established to Review the NATO Bombing Campaign against the Federal Republic of Yugoslavia.

[32] Nobody knows what the abstract word "jurisdiction" means in fact. But, whatever it means, it must be something different from "territory".

[33] Para. 80 of the decision.

[34] As required by Art. 31, para. 1, of the Vienna Convention.

which are intended to apply everywhere agents of States parties happen to act in a way that could affect an individual. The "jurisdiction" of a State party is dependent on the act done by its agents and not on the place where the act is done. As far as human rights are concerned, a person is under the "jurisdiction" of a State if he or she is subject to the authority and control of its agents. Such "jurisdiction" is neither territorial, nor extra-territorial. It has to be understood as authority and control, irrespective of territory.

In the *Banković* decision, a court specifically established for the protection of human rights was not able to read a human rights treaty according to its very nature. It preferred too restrictive an interpretation which is in itself contrary to the object and purpose of this category of treaties, that is to protect the weaker party in the relationship between a State and an individual. If the Court had considered the jurisprudence of other international human rights bodies – but it chose not to do so –, it would have found, for instance, that the Inter-American Commission of Human Rights made the following remarks in the report of 29 September 1999 on the case *Coard and others v. United States*:

> "(...) Given that individual rights inhere simply by virtue of a person's humanity, each American State is obliged to uphold the protected rights of any person subject to its jurisdiction. While this most commonly refers to persons within a state's territory, it may, under given circumstances, refer to conduct with an extraterritorial locus where the person concerned is present in the territory of one state, but subject to the control of another state – usually through the acts of the latter's agents abroad. In principle, the inquiry turns not on the presumed victim's nationality or presence within a particular geographic area, but on whether, under the specific circumstances, the State observed the rights of a person subject to its authority and control".[35]

Without explicitly recognizing its previous mistake, the European Court of Human Rights itself was ready to contradict in subsequent cases the untenable assumption that the Convention applies only to the territories of States parties. For instance, it did so in the decision of 30 June 2009 on the admissibility of the application in the *Al-Saadoon and Mufdhi v. the United Kingdom* case and in the judgment of 7 July 2011 on the *Al-Skeini and others v. the United Kingdom* case, where it affirmed the "jurisdiction" of the respondent State for acts committed in Iraq.

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[35] Para. 37 of the report. The remark was made with regard to Art. 1, para. 1, of the American Convention on Human Rights (San José, 1969). The principle that human rights treaties apply to every person who is "within the power and effective control" of a State party was confirmed, as regards Art. 2, para. 1, of the 1966 Covenant on Civil and Political Rights (New York, 1966), by the Human Rights Committee in General Comment No. 31 of 29 March 2004 (para. 10 of the comment).

Yet the name of the last bomb launched on the radio and television people in Belgrade is “jurisdiction”.

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For our shared course on international human rights law Andrea Carcano and myself selected cases relating to two human rights, namely the right to life and the prohibition of torture. There is an evident link between these two fundamental rights, not only because of Soering-like instances, but also because torture can too often be followed by an arbitrary killing. However, the prohibition of torture has its own peculiarities, starting from the point that, unlike the right to life, it is a truly absolute human right, which allows for no exception whatsoever. Especially cases related to torture show what is a promising way to approach human rights: not to contemplate abstract concepts, such as values or common heritage of ideals, which are devoid of any useful meaning, but to describe the relevant facts, which prove how the so-called sovereign States can engage themselves in the most disgusting behaviours.

The original idea was to include in this publication cases on both the above mentioned human rights. While I was delayed by a number of events, Andrea Carcano was able to complete his task, relating to the right to life, within the expected time. He has now moved to the University of Modena and there is no reason to delay a publication that reflects the spirit of our common teaching and, in my view, provides a strong contribution to the effective training of any students interested in human rights protection.

Milan, 2 June 2020

Tullio Scovazzi