

The Role of the Russian Federation in the Pridnestrovian¹ Conflict: an International Humanitarian Law Perspective

Kieran O'Reilly and Noelle Higgins

Irish Studies in International Affairs, Volume 19, (October 2008), pp. 57 - 72

ABSTRACT

Pridnestrovie, a *de facto* state within the territory of the Republic of Moldova, declared itself independent in September 1990, a declaration that was followed by an armed conflict between Moldova and Pridnestrovie in 1992. To date no settlement has been achieved between the conflicting parties. The situation is complicated by the fact that the Soviet Union and subsequently the Russian Federation has been involved in the conflict in various ways. This article seeks to analyse the conflict from an international humanitarian law perspective. The involvement of the Soviet Union and the Russian Federation in the conflict is of great significance because third-party involvement, depending on the level of involvement, has the potential to change the categorisation of a conflict from a non-international armed conflict to an international armed conflict. This in turn impacts on the number and nature of international humanitarian law provisions applicable to the conflict situation. As international humanitarian law provides protection to those fighting in and those caught up in a conflict, it is important to investigate which international humanitarian law provisions could be applicable. The article offers an assessment of the categorisation of the Pridnestrovian conflict, focusing on the role of the Soviet Union and Russian Federation, and the consequent implications for the application of international humanitarian law.

¹ There are a number of names used to refer to the de facto state. Pridnestrovie is used throughout the article, but when quoting others, the names used in those quotes are given. These include Transdniester and the MRT (Moldavian Republic of Transnistria).

INTRODUCTION

Pridnestrovie, a *de facto* state within the territory of the Republic of Moldova, declared itself independent in September 1990. It now claims a multi-ethnic population of over half a million, and an area twice the size of Luxembourg. It holds regular elections, has a *de facto* elected government and engages in international trade.² Pridnestrovie's territory lies between the river Dniester and the Ukrainian border; a long thin sliver of land that was the heart of the economy of the Moldovan Soviet Socialist Republic (MSSR) and home to the 14th Division of the Soviet Army.³ Pridnestrovie won its independence through an armed conflict that claimed approximately 1,000 victims, and displaced up to 100,000 people in 1992.⁴ Tensions had arisen in 1990 between Moldovan nationalists and pro-Soviet retentionists, who were mainly of Russian and Ukrainian origin. Although the main parties to the conflict are Moldova and Pridnestrovie, the Moscow-based government, first of the Soviet Union and subsequently of the Russian Federation, has also been involved. This article examines the role of the Soviet Union and Russian Federation in the Pridnestrovian conflict and assesses the implications of this involvement from an international humanitarian law (IHL) perspective. The article seeks to ascertain whether Moscow's involvement in the conflict can be adjudged to have transformed the conflict from a non-international armed conflict to an international armed conflict, and how this impacts on the application of IHL, otherwise known as the laws of war, to this conflict. IHL provides protection to those fighting in and those caught up in armed conflicts. However, different provisions, providing a higher level of protection, are applicable to international armed conflicts than are applicable to non-international armed conflicts. Therefore, it is important first of all that it be

² See <http://www.pridnestrovie.net> (16 October 2008). This website is one of a small number of pro-Pridnestrovian websites that appear to support the 'government' position. Radio Free Europe describes the emergence of English-language websites as a 'charm offensive' being undertaken by Pridnestrovie. See Luke Allnut, Radio Free Europe, Radio Liberty, 'Moldova: in Cyberspace, Transdnister doesn't look that bad', 15 September 2006, available at <http://www.rferl.org/featuresarticle/2006/09/794de55df342-4f9d-8f1a-534a6ea58b78.html> (26 March 2008).

³ Reneo Lukic and Allen Lynch, *Europe from the Balkans to the Urals: the disintegration of Yugoslavia and the Soviet Union* (Oxford, 1996), 358–9.

⁴ Organisation for Security and Co-operation in Europe (OSCE), 'Transnistrian conflict: origins and main issues', 1, available at: http://www.osce.org/documents/mm/1994/06/455_en.pdf (26 March 2008).

determined if a conflict is international or non-international, and second that IHL be practically implemented in order to provide protection for individuals living in a region in which a conflict is ongoing, such as Pridnestrovie. Part 1 of this article describes the potentially applicable IHL regime and Part 2 describes the Pridnestrovian conflict, with a focus on Moscow's role in it. The article concludes with a determination of the implications of Soviet Union and Russian Federation involvement in the conflict from an IHL perspective.

PART 1—THE IHL REGIME

Does a conflict situation still exist in Pridnestrovie?

IHL only applies in time of 'armed conflict', and therefore the first issue in this discussion must be to determine if an armed conflict exists in the Pridnestrovian region. The *Tadić Appeals Chamber Decision* before the International Criminal Tribunal for the Former Yugoslavia gave a definition of armed conflict that has implications for determining whether an armed conflict exists in Pridnestrovie. This decision states that

...an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there.⁵

Although the conflict in question could be regarded as a frozen conflict, as hostilities subsided in 1992, the *Tadić* decision definition would appear to include the conflict between Moldova and Pridnestrovie as an 'armed conflict', as there was a protracted armed conflict between a government authority (Moldova) and an organised armed group (Pridnestrovie) but a peaceful settlement has not yet been achieved. This suggests that IHL should apply in the Pridnestrovian region, as it is stated in *Tadić* that IHL extends 'beyond the cessation of hostilities until a general conclusion of peace is reached' or until 'a peaceful settlement is achieved'.⁶ While there have been a number

⁵ International Criminal Tribunal for the former Yugoslavia (hereafter cited as ICTY), *Tadić Appeals Chamber Decision*, Paragraph 70.

of initiatives attempting to bring peace to Pridnestrovie, they have failed, and indeed Russian troops are still present in the region in a peacekeeping capacity. Pridnestrovie has undertaken a state-building initiative, while having no recognition from the international community as a state, and little prospect of gaining such recognition, and its Republican Guard has been growing stronger. Were Russian peacekeeping troops to withdraw a return to conflict could certainly be possible. Therefore, it can be concluded that an armed conflict situation existed and continues to exist in the Pridnestrovian region and that IHL should apply. It is now necessary to determine the categorisation of this conflict and, if Moscow's involvement impacts on this categorisation, to see the potential extent of the application of IHL in the region.

The categorisation of armed conflicts under IHL

IHL applies to two categories of armed conflicts: international armed conflicts and non-international armed conflicts, but does not apply to situations of internal disturbance.⁷ The primary documents of IHL are the Geneva Conventions, which were adopted in 1949, and their Additional Protocols, which were adopted in 1977. The conventions have been ratified by nearly every state in the world,⁸ but they have also gained recognition as part of customary law, which means that they apply in all conflict situations, regardless of their ratification. The Additional Protocols are less widely ratified,⁹ but certain aspects of these instruments have also been recognised as being part of customary law.¹⁰ The four Conventions, focusing on the wounded and sick on land¹¹ and at sea,¹² prisoners of war¹³ and civilians,¹⁴ were adopted in the

⁶ Tadić Appeals Chamber Decision, Paragraph 70.

⁷ See article 1(2) of the Additional Protocol II to the Geneva Conventions. See also Dietrich Schlindler, 'The different types of armed conflicts according to the Geneva Conventions and Protocols' 163 *Recueil des Cours* II (1979), 116–63: 126.

⁸ There are 194 High Contracting Parties, as of March 2008.

⁹ Additional Protocol I has 167 High Contracting Parties and Additional Protocol II has 163 High Contracting Parties, as of March 2008.

¹⁰ See Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (2 vols, Cambridge and Geneva, 2005).

¹¹ Geneva Convention I, 1949, for the 'Amelioration of the condition of the wounded and sick in armed forces in the field' (hereafter cited as Convention I); the text of the convention is available at: <http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/fe20c3d903ce27e3c125641e004a92f3> (16 October 2008).

¹² Geneva Convention II, 1949, for the 'Amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea' (hereafter cited as Convention II); the text of this convention is available at: <http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/44072487ec4c2131c125641e004a9977> (16 October 2008).

¹³ Geneva Convention III, 1949, relative to the 'Treatment of prisoners of war'; available at:

aftermath of World War II and apply to conflicts of an international character, i.e. conflicts between two High Contracting Parties. In 1949 intra-state conflicts were a lot less common than inter-state conflicts and there is but one provision in the conventions that extends the scope of protection to those involved in and caught up in conflicts of a non-international character—Common Article 3,¹⁵ which provides only a minimum and very basic level of protection to those caught up in non-international armed conflicts. Obviously, the present state of IHL does not adequately reflect the current predominance of non-international armed conflicts, which can only be to the detriment of those fighting in and caught up such conflicts as the protection on offer to them is a lot less than that provided for those in an international armed conflict situation. If a conflict is categorised as international, then all *c.* 400 articles of the Conventions apply. However, if a conflict is considered to be a non-international conflict, it is only the ‘rudimentary rules’¹⁶ of Common Article 3 that apply.

Additional Protocol I to the Geneva Conventions also applies to international armed conflicts between High Contracting Parties, while Additional Protocol II applies to non-international armed conflicts taking place on the territory of a High Contracting Party to the Protocol. The USSR was a state party to the Geneva Conventions, including Additional Protocols I and II, and Moldova is now a state party by succession.¹⁷ There have been a number of calls in recent years for the amendment of IHL by means of abandoning the division between international armed conflicts

<http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6fef854a3517b75ac125641e004a9e68> (16 October 2008).

¹⁴ Geneva Convention IV, 1949, relative to the ‘Protection of civilian persons in time of war’; available at: <http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6756482d86146898c125641e004aa3c5> (16 October 2008).

¹⁵ Regarding the Geneva Conventions and Common Article 2, Rwelamira comments: ‘The only mitigation to this rigorous provision was mildly provided for in common Article 3, which specified certain minimum standards to be applied in internal conflicts, i.e. wars of non-international character. Common Article 3 required parties to the conflict to be guided by considerations of humanity towards each other’, see Medard R. Rwelamira, ‘The significance and contribution of the Protocols Additional to the Geneva Conventions of August 1949’, in Jean Pictet and Christophe Swinarski (eds), *Etudes et essais sur le droit international humanitaire et sur les principes de la Croix-Rouge - en honneur de Jean Pictet*, (The Netherlands, 1984), 227–36, 230.

¹⁶ Dietrich Schlindler, ‘The different types of armed conflicts according to the Geneva Conventions and Protocols’, 163 *Recueil des Cours* II (1979), 116–63: 126.

¹⁷ Moldova ratified both Additional Protocol I and Additional Protocol II in 1993, however, they had already been ratified by the Soviet Union in 1989 and ‘All the States, including Russia, which are former members of the USSR, have assumed by succession the obligation to apply the Additional Protocols in their territory in the event of an armed conflict’; see Igor Blishchenko, ‘Adoption of the 1977 Additional Protocols’, *International Review of the Red Cross* (320) 1977, 511–14, available at: <http://www.icrc.org/web/eng/siteeng0.nsf/html/57JNV3> (26 March 2008).

and non-international armed conflicts,¹⁸ but the division remains in place. For the purposes of this article the vital question is whether Moscow's involvement transformed the Pridnestrovian conflict into an international armed conflict, thus potentially triggering the application of the whole corpus of IHL and providing more protection for people living in the Pridnestrovian region.

It is all the more important that a legal regime, and moreover an expansive legal regime, be deemed to be applicable and indeed actually applied in areas such as Pridnestrovie because, as it is a *de facto* state, the same obligations and indeed possibilities to apply regular international law standards and norms do not exist, leaving the Pridnestrovian population lacking in international legal protection. The IHL regime would provide a level of protection for the population in certain areas, prescribing war crimes such as rape, murder and torture; protecting civilian property; and providing an option for the prosecution of alleged violators.¹⁹ However, as stated above, the level of protection potentially on offer depends on the categorisation of the conflict.

International armed conflicts can be defined as 'situations that involve two or more states engaged in armed conflict'.²⁰ Additional Protocol II to the Geneva Conventions provides a definition of the type of non-international armed conflict to which it can apply, as all armed conflicts not covered by Article 1 of Protocol I and which 'take place in the territory of a High Contracting Party between its armed forces and dissident armed forces of other organised armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol'.²¹

As can be seen from this definition, the threshold of application of the protocol is

¹⁸ See Deirdre Willmott, 'Removing the distinction between international and non-international armed conflict in the Rome Statute of the International Criminal Court', *Melbourne Journal of International Law* (May 2004), available at: <http://www.austlii.edu.au/au/journals/MelbJIL/2004/8.html> (12 June 2008).

¹⁹ In relation to IHL and the protection offered by it, see Hans-Peter Gasser, 'International humanitarian law and the protection of war victims', available at: <http://www.icrc.org/web/eng/siteeng0.nsf/html/57JM93> (12 June 2008).

²⁰ See Mark Freeman, 'International law and internal armed conflicts: clarifying the interplay between human rights and humanitarian protections', available at: <http://www.jha.ac/articles/a059.htm> (30 January, 2008). Wars of national liberation are also regarded as international armed conflicts if these meet the criteria set down in Article 1(4) of Additional Protocol I to the Geneva Conventions.

²¹ Article 1, Additional Protocol II.

very high. This means that most non-international armed conflicts will only be dealt with by Common Article 3, which has a lower, although somewhat unclear, threshold.²² Common Article 3 can also apply to conflicts that take place between two groups on the territory of a High Contracting Party. The statute of the International Criminal Court (ICC) provides an intermediary threshold of application, whereby there is no longer a requirement for conflict to take place between governmental and rebel forces, for the latter to control part of the territory, nor for there to be a responsible command. However, the conflict must be protracted and the armed group must be organised.²³ With regard to the situation in Pridnestrovie, it must be questioned whether Moscow's activity in the area, as outlined below, has changed the categorisation of the conflict, and thus the applicable IHL regime. Intervention can come in many forms, from the presence of third-party military consultants, to the financing of a group that opposes the government to the sending of troops.²⁴ The tests for assessing whether external intervention internationalises a conflict have been discussed by both the International Court of Justice (ICJ) and the International Criminal Tribunal for the Former Yugoslavia (ICTY). These cases and involvement tests will now be discussed to ascertain the status and categorisation of the Pridnestrovian conflict. The actual Pridnestrovian conflict itself was also discussed in a case before the European Court of Human Rights (ECtHR). This case will be discussed in Part 2.

The Nicaragua test

The first major examination of third-party involvement in a conflict situation and its impact on conflict categorisation was in the judgement of the *Case concerning military and paramilitary activities in and against Nicaragua (Merits)* of 27 June 1986, before the ICJ. In this case, the court examined the involvement of a third state,

²² See Keith Suter, *An international law of guerrilla warfare: the global politics of law-making* (London, 1984), 15.

²³ See Article 8(2)(f) Rome Statute.

²⁴ The issue of whether intervention internationalises a conflict should be interpreted in light of resolution 2625 of the UN General Assembly, 'Declaration on principles of international law concerning friendly relations and co-operation among states in accordance with the Charter of the United Nations', (hereafter cited as GA Res 2625); the text of the resolution is available at: <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/348/90/IMG/NR034890.pdf?OpenElement> (27 March 2008).

the United States, in a conflict taking place in Nicaragua. The main focus of this case was a determination of whether the United States could be held to be responsible for the actions of two agents in the conflict—the Unilaterally Controlled Latino Assets (UCLAs) and the Contras—and centred on state responsibility. The Court examined the activities of the UCLAs, who were totally dependent on the United States, and the Contras, who maintained a certain degree of autonomy, though receiving payment and equipment from the United States. While the acts committed by the first group were found to be attributable to the United States, the issue of the Contras was more complex.²⁵

With regard to acts committed by the Contras against the territorial sovereignty and political independence of Nicaragua, the United States was found to bear responsibility because of the support it gave to the Contras; this was a breach of ‘the obligations not to intervene in the internal affairs of another state’.²⁶ The Court introduced an ‘effective control’ test in order to find that the United States had responsibility for ‘acts committed’ by the Contras. In order to satisfy this test it would ‘have to be proved that the state had effective control of the military or paramilitary operations in the course of which the alleged violations were committed’.²⁷ Obviously, this is quite a heavy burden to prove. As the case centred on ascertaining whether the Contras constituted an organ of the United States government or were acting on its behalf,²⁸ it is somewhat different in nature from the Pridnestrovian case. However, the Tadić case, before the ICTY is more similar to the Pridnestrovian situation.

The Tadić test

The Tadić case examined the involvement of a third party in a conflict situation, and whether such involvement elevated the conflict to one of an international nature. The question at issue was whether an armed conflict in Bosnia was of an internal or international nature, and thus which IHL regime could be deemed to be applicable.

²⁵ Antonio Cassese, ‘The Nicaragua and Tadić tests revisited in light of the ICJ judgment on genocide in Bosnia’, *European Journal of International Law* 18 (4) (2007), 649–68: 652.

²⁶ Cassese, ‘Nicaragua and Tadić tests revisited?’, 652.

²⁷ International Court of Justice (hereafter cited as ICJ), ‘Military and paramilitary activities in and against Nicaragua’ (Nicaragua v United States), *Reports of judgments, advisory opinions and orders* (1984), paragraph 115; available at: <http://www.icj-cij.org/docket/files/70/6503.pdf>, (March 26 2008).

²⁸ Francis A. Boyle, ‘Determining U.S. responsibility for Contra operations under international law’, *American Journal of International Law*, 81(1) (1987), 86–93.

With regard to the involvement of a third party in a conflict, the *Tadić Appeals Chamber Decision* stated that:

[c]ontrol by a State over subordinate *armed forces or militias or paramilitary units* may be of an overall character (and must comprise more than the mere provision of financial assistance or military equipment or training). This requirement, however, does not go so far as to include the issuing of specific orders by the State, or its direction of each individual operation.²⁹

The ICTY also stated that the

...control required by international law may be deemed to exist when a State (or, in the context of an armed conflict, the Party to the conflict) *has a role in organising, coordinating or planning the military actions* of the military group, in addition to financing, training and equipping or providing operational support to that group.³⁰

However, the judgement goes on to state that:

...if, as in Nicaragua, the controlling State is not the territorial State where the armed clashes occur or where at any rate the armed units perform their acts, more extensive and compelling evidence is required to show that the State is genuinely in control of the units or groups not merely by financing and equipping them, but also by generally directing or helping plan their actions.³¹

The Bosnian genocide case

The issue of ‘control tests’ was discussed again before the ICJ in 2007, when the court dealt with the question of responsibility for the Srebrenica genocide. Having decided that events in Srebrenica amounted to genocide, the court then examined the question of whether those responsible had acted on behalf of the Former Republic of Yugoslavia (FRY), i.e. if the FRY had control over those who had committed the genocide. It returned to the ‘effective control’ test as set out in Nicaragua as, again, the main issue to be decided was that of state responsibility.³² In so doing it contrasted the ‘effective control’ test needed in order for ‘FRY’s international responsibility’ to be incurred,³³ with the ‘overall control test’ used in *Tadić*, which the court considered ‘may well be sufficient to determine if a conflict is international’.³⁴

²⁹ *Tadić Appeals Chamber Decision*, paragraph 137.

³⁰ *Tadić Appeals Chamber Decision*, paragraph 137.

³¹ *Tadić Appeals Chamber Decision*, paragraph 138.

³² Cassese, ‘Nicaragua and *Tadić* tests revisited’, 650.

³³ ICJ, ‘Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) (Judgment)’, paragraphs 397 and 400; available at: <http://icj-cij.org> (26 March 2008).

Which test can be applied to Pridnestrovie?

As the issue at hand in the Pridnestrovian conflict is whether Russia's involvement elevates it to the level of an international conflict, and not a discussion of Russia's responsibility for any acts committed by Pridnestrovian forces, the 'overall control' test is more suitable and relevant.

It can be seen that the 'overall control' test is broader than the 'effective control' test put forward in Nicaragua and centres not merely on the equipping, financing or training of a paramilitary organisation by a state, but also includes state help in or co-ordinating of the general planning of the actual paramilitary activities.³⁵ Evidence of financing and support by Moscow for the separatists in the Pridnestrovian case is detailed below, but a nexus between Moscow and the Pridnestrovian regime regarding planning and direction needs to be proven in order for the overall control test to be satisfied, and thus for the conflict to be elevated to an international armed conflict. While it is argued in some quarters that the Pridnestrovian situation is used as an instrument of Russian policy in its 'near abroad',³⁶ further detailed examination of the conflict is necessary in order to ascertain to what extent Moscow was involved in planning and directing the Pridnestrovian leadership. This issue is dealt with in the discussion of a case before the ECtHR in Part 2 below. However, before the test can be applied, a discussion of the background to the conflict is necessary.

PART 2—THE SITUATION IN PRIDNESTROVIE

Introduction to Pridnestrovie

For over fifteen years Pridnestrovie has looked like a state—it has the trappings of a state, with an elected government, constitution, flag and currency. It also engages in international trade and participates in peace negotiations. In addition, it has maintained *de facto* control over its territory. However, no third state has recognised Pridnestrovie as a state. It is seen internationally as an integral part of Moldova, even though Moldova has virtually no control over the region. A situation has arisen

³⁴ ICJ, 'Application of the Convention on the Prevention and Punishment of the Crime of Genocide', paragraphs 402–04.

³⁵ Cassese, 'Nicaragua and Tadić tests revisited', 657.

³⁶ See, for example, Tony Vaux with Jan Barrett, *Conflicting interests. Moldova and the impact of Transdnestrria* (Stonesfield, Oxfordshire, 2003), 7; available at: <http://www.humansecurity.org.uk/downloads/MoldovaSCA.pdf> (16 October 2008).

whereby a *de facto* regime exists and has ruled over a people and territory for a considerable period of time. As it operates at a level below that of a fully recognised state, its position in terms of international law is at times confusing and unclear. It is denied rights granted to recognised states, but is also exempt from the responsibilities that states acquire when joining the international community, through the signing of treaties and membership of international organisations; thus the people living in the region are denied the protection of international law standards.³⁷

However, the European Court of Human Rights found in the case of *Ilascau* that ‘even in the absence of effective control over the Transdnestrian region, Moldova still has a positive obligation’ to use diplomatic, economic and judicial measures to ensure that rights granted by the European Convention on Human Rights are enjoyed there,³⁸ thus providing that some international standards should be applied in the region. Unfortunately, this does not seem to happen in practice, and Pridnestrovie is reportedly a hub for organised crime, including human trafficking and smuggling, due to the lack of the application of an international legal regime.

A prehistory of the conflict—Moldova as part of the Soviet Union

Before the collapse of the Soviet Union, Moldova as it exists today had never appeared on any map as an independent and sovereign state. Until 1940 the territory had never had a shared administrative structure.³⁹ The area to the west of the river Dniester is primarily ethnic Moldovan/Romanian, and was part of Romania in the inter-war period. It links itself closely with Romania, and at the time of the collapse of the Soviet Union there was much talk of possible reunification with Romania. The initial incorporation of Moldovan territory into the Soviet Union was traumatic. There was an active policy of Russification in the region following World

³⁷ With regard to international humanitarian law, this means that Pridnestrovie cannot ratify international agreements that regulate the conduct of hostilities and the use of force, such as the Geneva Conventions.

³⁸ European Court of Human Rights, ‘Case of *Ilascau and Others v Moldova and the Russian Federation*’, paragraph 331.

³⁹ International Crisis Group (ICG), ‘Moldova: no quick fix’, (2003), 2, available at: http://www.crisisgroup.org/home/index.cfm?action=login&ref_id=1691 (26 March 2008), and Rebecca Haynes, ‘Historical introduction’ in Rebecca Haynes (ed.) *Occasional Papers in Romanian Studies*, no. 3: Moldova, Bessarabia, Transnistria, (London, 2003), 1–142: 111.

War II. Up to 300,000 Russians were moved to Moldova, mainly to Pridnestrovie and urban areas in the rest of Moldova. An estimated 500,000 Moldovans were deported to Siberia and the east, and another 200,000 died in famine caused by intensive collectivisation.⁴⁰ Pridnestrovie in 1936 was almost 42% Moldovan, with 14.2% Russian and 28.7% Ukrainian. By 1989 those figures were 39.3% Moldovan, 25.5% Russian and 28.3% Ukrainian populations.⁴¹ Whereas in 1936 there was an almost equal balance between Moldovans and Slavs (Russians and Ukrainians) in the region, by 1989 Slavs accounted for 14.5% more of the total population than Moldovans.

Under Soviet rule, Pridnestrovie was built up as an industrial region, while the area to the west of the Dniester remained mainly agricultural.⁴² Moldovans generally worked in low-skilled jobs while high-skilled jobs and local positions of power were mainly filled by Russian-speakers, creating a perception of discrimination.⁴³ Towards the end of the 1980s a democratic movement emerged in Moldova, and the Popular Front of Moldova (PFM) was formed. In the 1990 elections the PFM performed well and was able to form a government with centrist deputies. The Moldovan majority took over leadership of the republic, and minorities felt their position might be threatened.⁴⁴ At this time speculation about the unification of Moldova and Romania was rife with Romanian President Iliescu stating that unification was ‘historically inevitable’.⁴⁵ Minorities may have felt that their situation could worsen under a greater Romania.⁴⁶

Towards de facto independence for Pridnestrovie and the outbreak of hostilities

In September 1990 following a similar Gagauz⁴⁷ proclamation in August, a group of

⁴⁰ ICG, Moldova: no quick fix, 2.

⁴¹ Marius Vahl and Michael Emerson, ‘Moldova and the Transnistria conflict’, in Bruno Coppieters, Michael Emerson, Michel Huysseune, Tamara Kovziridze, Gergana Noutcheva, Nathalie Tocci and Marius Vahl (eds) *Europeanization and conflict resolution. Case studies from the European Periphery*, (Gent, 2004), 149–90: 155.

⁴² Lukic and Lynch, *Europe from the Balkans to the Urals*, 358.

⁴³ William Crowther, ‘The politics of democratisation in post-communist Moldova’, in Karen Dawisha and Bruce Parrott (eds), *Democratic changes and authoritarian reactions in Russia, Ukraine, Belarus and Moldova* (Cambridge, 1997), 286–95: 286 and Haynes, ‘Historical introduction’, 118.

⁴⁴ Crowther, ‘Politics of democratisation in post-communist Moldova’, 292.

⁴⁵ Viktor Volodin, ‘IASI conference calls for unification’, *Izvestiia*, 25 January 1992, (accessed through the ‘Current Digest of the Soviet/Post-Soviet Press on CD-Rom’, 2nd edn, 1982–97, 44 (4), 26 February 26 1992).

⁴⁶ Crowther, ‘Politics of democratisation in post-communist Moldova’, 293.

deputies wishing to show their loyalty to the Soviet Union declared the formation of the Transnistrian People's Congress and proclaimed the creation of the Soviet Socialist Dnestr Republic as part of the Soviet Union.⁴⁸ The first armed conflict in the dispute between Moldova and the breakaway region occurred in the town of Dubasari/Dubossary in November 1990.⁴⁹ In June 1991 the MSSR declared itself the Republic of Moldova, a sovereign state within a future confederation of Soviet states. However, after the failed Moscow coup of August 1991, Moldova declared complete independence on 27 August that year. Both the Gagauz and Pridnestrovie regions supported the pro-Soviet coup. In its aftermath the leaders of the Pridnestrovie region stepped up their attempts to take over the institutions of power, in what has been described as a 'creeping putsch'.⁵⁰ Resistance to this from Moldova eventually led to violent conflict in the region in March 1992, and 'from March 1992 the conflict escalated into a full-scale war, as rocket launchers, artillery, and armoured cars were employed'.⁵¹ A state of emergency was declared by the authorities and there was fighting until a ceasefire in July 1992.⁵² Serious fighting in Pridnestrovie lasted for about five months. There is dispute about the exact number of fatalities, but the figure is in the region of several hundred to around one thousand deaths; the number of refugees is much greater.⁵³ The main fighting took place around the towns of Dubossary and Bendery, both located on the border between the breakaway region and the rest of Moldova. On 23 and 24 June *Izvestiia* reported about 400 fatalities in Bendery, with civilians and children among the casualties.⁵⁴ At the peak of the conflict there were an estimated 100,000 refugees

⁴⁷ The Gagauz are a Turkic minority in the south of Moldova.

⁴⁸ OSCE, Transnistrian conflict: origins and main issues, 2.

⁴⁹ Natalia Gherman, 'Transnistria since 1990 as seen from Chisinau', in Haynes, *Occasional Papers in Romanian Studies*, no. 3, 181–8: 183.

⁵⁰ Vahl and Emerson, 'Moldova and the Transnistria conflict', 158.

⁵¹ Pål Kolstø and Andrei Malgin, 'The Transnistrian Republic: a case of politicized regionalism', *Nationalities Papers* 26 (1) (1998), 103–28: 110.

⁵² Vahl and Emerson, 'Moldova and the Transnistria Conflict', 158–9.

⁵³ Gotfried Hanne and Claus Neukirch, 'Moldovan schools in Transnistria: an uphill battle against "linguistic cleansing"', *OSCE Magazine*, 2005; available at:

http://www.osce.org/publications/sg/2005/07/15621_425_en.pdf (26 March 2008). Hanne and Neukirch's article quotes 'several hundred' human casualties and 100,000 refugees. European Court of Human Rights, 'Ilascu and Others v. Moldova and Russia', Judgement, paragraph 51 (Application Number 48787/99), 8 July 2004, also gives this figure. The pro-Pridnestrovian newspaper the *Tiraspol Times* puts the total figure at just over 1,000. See '15 years later Pridnestrovie still grieves its war dead', *Tiraspol Times*, 20 June, 2007, available at: http://www.tiraspoltimes.com/news/15_years_later_pridnestrovie_grieves_its_war_dead.html (26 March 2008).

and displaced people,⁵⁵ and there remain a large number of displaced people in Moldova because of the conflict.⁵⁶

The forces on the Pridnestrovian side were well-organised and armed, and they fought under responsible command.⁵⁷ They were supported by Cossack soldiers who had travelled from Russia through the Ukraine to fight for Pridnestrovie's independence.⁵⁸ Reading accounts by *Izvestiia* journalists present in the region at the time, there can be no doubting that the human cost of the hostilities was high—although the conflict did not attract the same attention as conflicts in Transcaucasia and also the former Yugoslavia in the early 1990s, it has inflicted severe damage on the region. A ceasefire reached in July was the result of talks between the leaders of Russia and Moldova and the consequent signing of the Yeltsin–Snegur Agreement on 21 July 1992. The agreement allowed for a security zone and a joint peacekeeping force of Russian, Moldovan and Pridnestrovian troops.⁵⁹ Since then, several peace initiatives have been undertaken, but they have not yet led to a lasting settlement of the conflict.

The involvement of the Soviet Union and the Russian Federation in the conflict

The main focus of this article is to ascertain whether the involvement of Moscow in the Pridnestrovian conflict changed its categorisation, thus, in theory, triggering the application of the whole corpus of IHL rather than just Common Article 3 and Additional Protocol II of the Geneva Conventions. The following sections of this paper, therefore, contain a description and analysis of the role of the Soviet Union and Russian Federation in Pridnestrovie. The 14th Division of the Russian (then Soviet) army was based in the area that now constitutes Pridnestrovie during Soviet times, with soldiers and officers establishing roots in the region as it became their permanent home. In the aftermath of the conflict Russian politicians and leaders

⁵⁴ See *Izvestiia*, 23 and 24 June 1992.

⁵⁵ Kenneth Roth (ed.), *Human Rights Watch world report 1993: events of 1992*, (New York, 1992), 232.

⁵⁶ Internal Displacement Monitoring Centre, 'Republic of Moldova: uncertainty about the integration of displaced from the Transdnestrian region', March 2004, available at: [http://www.internaldisplacement.org/8025708F004CE90B/\(httpCountrySummaries\)/8FA38C0718350FB6802570C00056B6D3?OpenDocument&count=10000](http://www.internaldisplacement.org/8025708F004CE90B/(httpCountrySummaries)/8FA38C0718350FB6802570C00056B6D3?OpenDocument&count=10000) (26 March 2008).

⁵⁷ See for example *Izvestiia*, March to June 1992.

⁵⁸ Kondratov, 'Even more victims', *Izvestiia*, 3 March, 1992.

⁵⁹ Trevor Waters, 'Security concerns in post-Soviet Moldova: the roots of instability', in Haynes, *Occasional Papers in Romanian Studies*, no. 3, 189–204: 193–4.

made strong statements in favour of Pridnestrovie.⁶⁰ Some commentators hold the view that the conflict situation ‘poisons Moldova’s prosperity and has wider political significance because it draws Moldova back within the Russian ambit’.⁶¹ However, the issue at hand is whether the involvement of a third party raises the conflict to the level of an international armed conflict. With that in mind, the information below concentrates on the time after Moldova became a fully independent sovereign state on 27 August 1991. From this point on, any involvement of a third party in the conflict, whether it is the Soviet Union or the Russian Federation, has a significance in determining if the conflict is international in nature.

Does Moscow’s role amount to third-party involvement?

While the involvement of Russian troops in the conflict is not disputed, and is detailed below, it is not clear in what capacity they were acting. The 14th Division was ‘embedded’ in Tiraspol and its troops had homes and families there.⁶² For this reason, as Moldova moved towards independence there may have been greater resistance to any transfer of power from Moscow to Chisinau among soldiers and officers of the 14th. Lukic and Lynch state that there was a conspiracy between reactionary pro-Soviet politicians in Moscow and the leadership of Pridnestrovie. They claim that the military acted on its own to create a *fait accompli* to which Moscow subsequently accommodated itself.⁶³ However, it is difficult to prove this. Looking at Bennouna’s statement that a conflict becomes international when ‘an entity is in the services of a foreign state with which it shares the same objectives and strategy’,⁶⁴ it becomes necessary to examine whether the objectives of the separatists and the Russian Federation were the same. This issue was elucidated by the ECtHR.

Evidence presented to the ECtHR

The case of *Ilascu and Others v. Moldova and the Russian Federation* before the ECtHR involved an in-depth examination of the circumstances around the emergence and continued existence of the *de facto* state of Pridnestrovie.⁶⁵ The court examined

⁶⁰ Waters, ‘Security concerns in post-Soviet Moldova’, 197.

⁶¹ Vaux with Barrett, *Conflicting interests. Moldova and the impact of Transdnistria*, 7.

⁶² Crowther, ‘Politics of democratisation in postcommunist Moldova’, 297.

⁶³ Lukic and Lynch, *Europe from the Balkans to the Urals*, 359–60.

⁶⁴ Mohamed Bennouna, ‘The characterisation of the Armed Conflict in the practice of the ICTY’, Richard May (ed.), *Essays on ICTY procedure and evidence in honour of Gabrielle Kirk McDonald* (The Hague and London, 2001) 55–64: 64.

the issue in order to determine whether Russia's involvement in the conflict was enough to bring the conflict under Russia's jurisdiction. Any decision on whether Russian involvement raises the conflict to the level of international armed conflict would need to examine many of the same details outlined by the ECtHR and consider whether this amounted to Russia having '*a role in organising, coordinating or planning the military actions* of the military group, in addition to financing, training and equipping or providing operational support to that group'.⁶⁶ However, the level of activity sought for exercise of jurisdiction is lower than that for control over, or involvement in, an armed conflict. The ECtHR case is the main source of information regarding the involvement of Russia in the Pridnestrovian conflict. Only information that the court accepted as fact is considered here, as the court explicitly rejected some claims that it felt had not been proven beyond reasonable doubt.⁶⁷ With regard to the transfer of arms the court stated that it considered it to have been established beyond a reasonable doubt that Transdnistriean separatists were able to arm themselves with weapons taken from the stores of the 14th Army stationed in Transdnistria. The 14th Army troops chose not to oppose the separatists who had come to help themselves from the Army's stores; on the contrary, in many cases they helped the separatists equip themselves by handing over weapons and by opening up the ammunition stores to them.⁶⁸ The court also received a statement from a former employee of the general staff of the 14th Army's command and espionage centre, who 'had sent the Moldovan Ministry of National Security hundreds of documents confirming the participation of Russian troops in the armed operations and the massive contribution of weapons they had made' and 'had also gathered information proving that the separatists' military operations were directed by the 14th Army, which coordinated all its actions

⁶⁵ It should be noted at the outset that the court examined Russia's involvement for a quite different and specific reason: in order to decide whether Russia could be found responsible for alleged breaches of human rights in Pridnestrovie, through its obligations as a States Party to the European Convention for the Protection of Human Rights and Fundamental Freedoms. In considering whether the alleged offences came under Russian jurisdiction, the court held that in relation to Article 1 of the Convention 'in exceptional circumstances the acts of Contracting States performed outside their territory, or which produce effects there, may amount to exercise by them of their jurisdiction'; see 'Case of Ilaşcau and Others v. Moldova and the Russian Federation', paragraph 314.

⁶⁶ The Prosecutor v. Tadić, Judgment, 15 July 1999, paragraph 137.

⁶⁷ European Court of Human Rights, 'Ilaşcau and Others v. Moldova and the Russian Federation', paragraph 62.

⁶⁸ European Court of Human Rights, 'Ilaşcau and Others', paragraph 57.

with the Ministry of Defence of the Russian Federation’.⁶⁹

In addition, the court, referring to a book published in 1996 on General Aleksander Lebed, who led the 14th Army from June 1992 until then end of May 1995, stated that:

...the author, Vladimir Polushin, supplies plentiful evidence, backed up by documentary sources, of the support given by the Russian Federation to the Transdnestrian separatists. The book mentions, for example, the creation by General Lebed of the Russo-Transdnestrian joint defence headquarters and the participation by the 14th Army in the military operations conducted by the Transdnestrian forces against the Moldovan ‘enemy’.⁷⁰

In particular the ‘destruction of a Moldovan unit by the 14th Army at Chit,cani on 30 June 1992 and the shelling by the 14th Army of several Moldovan positions between 1 June and 3 July 1992? are referred to by the applicants and the court.⁷¹

While the Russian government claimed that the Russian Federation had remained neutral throughout the conflict⁷² the court referred to ‘the abundance and the detailed nature of the information in its possession’ from Moldovan witnesses and an OSCE report, detailing the involvement of the 14th Division and later the Russian Operational Group (ROG).⁷³ The court saw ‘no reason to doubt the credibility of the Moldovan witnesses heard’ and furthermore added that ‘the support given by the troops of the 14th Army to the separatist forces and the massive transfer of arms and ammunition from the 14th Army’s stores to the separatists’ made certain that the Moldovan forces were in an inferior position and unable to regain control of the region.⁷⁴

It was also stated in the case that on 1 April 1992 the president of the Russian Federation placed the 14th Division under Russian jurisdiction, renaming it the Russian Operational Group (ROG).⁷⁵ The following day General Netkachev, the commander of the ROG (the 14th Army), ordered the Moldovan forces which had encircled the town of Tighina (Bender), held by the separatists,

⁶⁹ European Court of Human Rights, ‘Ilaşcau and Others’, paragraph 59.

⁷⁰ European Court of Human Rights, ‘Ilaşcau and Others’, paragraph 61.

⁷¹ European Court of Human Rights, ‘Ilaşcau and Others’, paragraph 61.

⁷² European Court of Human Rights, ‘Ilaşcau and Others’, paragraph 64.

⁷³ The 14th Division became the Russian Operational Group in Pridnestrovie on 1 April 1992, (Paragraph 70).

⁷⁴ European Court of Human Rights, ‘Ilaşcau and Others’, paragraph 65.

⁷⁵ European Court of Human Rights, ‘Ilaşcau and Others’, paragraph 70.

to withdraw immediately, failing which the Russian army would take counter-measures.⁷⁶

On 5 April Alexander Rutskoy, vice president of the Russian Federation, visited Pridnestrovie. According to reports, which the court noted were undisputed by the Russian Federation, Rutskoy stated at a public gathering that ‘the 14th Army should act as a buffer between the combatants so that the Transdnestrian people could obtain their independence and their sovereignty and work in peace.’⁷⁷

Examining events after the conflict, and whether Russia had supported the separatist region, the Russian government submitted a document to the court that outlined the compensation that Pridnestrovie would receive for the withdrawal of Russian military equipment from Pridnestrovie. This amounted to a reduction of one hundred million United States dollars in its debt for gas imported from the Russian Federation, and the transfer to it by the ROG, in the course of their withdrawal, of part of their equipment capable of being put to civilian use.⁷⁸

According to the commander of the ROG, withdrawals in 2002 ‘had been made possible by an agreement with the Transdnestrians under which the Transdnestrian authorities were to receive half of the non-military equipment and supplies withdrawn’.⁷⁹

Referring to undated statements, uncontested by other parties, the court heard that Alexander Rutskoy, who had been vice-president of the Russian Federation, that he supported the ‘legitimacy of the entity created on the left bank of the Dniester’, and Yeltsin’s statement that ‘Russia has lent, is lending and will continue to lend its economic and political support to the Transdnestrian region’.⁸⁰ The court also heard that ‘on 11 September 1993 General Lebed, the ROG’s commander, was elected a member of the ‘Supreme Soviet of the MRT’’ (the Moldavian Republic of Transdnistria – another name for Pridnestrovie).⁸¹

⁷⁶ European Court of Human Rights, ‘Ilaşcau and Others’, paragraph 72.

⁷⁷ European Court of Human Rights, ‘Ilaşcau and Others’, paragraph 75.

⁷⁸ European Court of Human Rights, ‘Ilaşcau and Others’, paragraph 128.

⁷⁹ European Court of Human Rights, ‘Ilaşcau and Others’, paragraph 130.

⁸⁰ European Court of Human Rights, ‘Ilaşcau and Others’, paragraphs 137 and 138, respectively.

Relating to later years, the court heard that the arms trade, described as ‘one of the pillars of the Transdnestrian economy’, was directly supported by Russian firms.⁸² It also heard of ‘direct relations’ between the Russian Federation and Pridnestrovie regarding gas exports, whereby ‘contracts for supplying gas to Moldova do not apply to Transdnestria, to which gas is delivered separately on more favourable financial terms than those granted to the rest of the Republic of Moldova’.⁸³ ‘Pridnestrovie also received electricity directly from the Russian Federation and there was ‘judicial cooperation for the transfer of prisoners between the Russian Federation and Transdnestria, without going through the Moldovan authorities’.⁸⁴ Russia claimed that:

...[T]he units of the 14th Army had not interfered in the armed conflict between Moldova and Transdnestria, but by virtue of agreements between Moldova and the Russian Federation they had taken on peacekeeping duties and had thus prevented an aggravation of the conflict and an increase in the number of victims among the civilian population,⁸⁵ and furthermore ‘categorically denied that they exercised, or had exercised in the past, any control whatsoever over Transdnestrian territory and pointed out that the “MRT” had set up its own power structures, including a parliament and a judiciary’.⁸⁶ However both Moldova and Romania disputed this claim.

The ECtHR decision

In light of the support given by Russian troops, the transfer of weapons and the public utterances of support by Russian leaders, the court, in its judgement on jurisdiction, considered:

...that the Russian Federation’s responsibility is engaged in respect of the unlawful acts committed by the Transdnestrian separatists, regard being had to the military and political support it gave them to help them set up the separatist regime and the participation of its military personnel in the fighting. In acting thus, the authorities of the Russian Federation contributed both militarily and politically to the creation of a separatist regime in the region of Transdnestria, which is part of the territory of the Republic of Moldova.⁸⁷

The court also noted that even after the ceasefire agreement in July 1992, the Russian Federation continued to support the separatist Pridnestrovian regime militarily, politically and economically, ‘thus enabling it to survive by strengthening itself and

⁸¹ European Court of Human Rights, ‘Ilaşcau and Others’, paragraph 139.

⁸² European Court of Human Rights, ‘Ilaşcau and Others’, paragraph 150.

⁸³ European Court of Human Rights, ‘Ilaşcau and Others’, paragraph 156.

⁸⁴ European Court of Human Rights, ‘Ilaşcau and Others’, paragraphs 157 and 153, respectively.

⁸⁵ European Court of Human Rights, ‘Ilaşcau and Others’, paragraph 354.

⁸⁶ European Court of Human Rights, ‘Ilaşcau and Others’, paragraph 356.

⁸⁷ European Court of Human Rights, ‘Ilaşcau and Others’, paragraph 382.

by acquiring a certain amount of autonomy *vis-à-vis* Moldova’.⁸⁸)

In relation to this determination, particular importance was attached to the ‘financial support enjoyed by the “MRT” by virtue of agreements on gas, armaments, ammunition, technology and debts’.⁸⁹ In conclusion, the court held that:

All of the above proves that the ‘MRT’, set up in 1991–92 with the support of the Russian Federation, vested with organs of power and its own administration, remains under the effective authority, or at the very least under the decisive influence, of the Russian Federation, and in any event that it survives by virtue of the military, economic, financial and political support given to it by the Russian federation.⁹⁰

Thus the court drew a very strong link between the Russian Federation and the authorities in Tiraspol, speaking of ‘decisive influence’ and even possibly ‘effective authority’.

Implications of the Ilascau case on the categorisation of the Pridnestrovian conflict

An examination of the Pridnestrovian conflict aiming to determine whether Soviet / Russian involvement was sufficient to elevate the conflict to one of an international nature would look at similar information as the Ilascau case, although with a different objective. The objective would be to determine whether the ‘overall control’ test criteria were fulfilled, i.e. whether Russia was ‘generally directing or helping plan’⁹¹ Pridnestrovie’s actions. In light of the Tadić case discussed above, and given such evidence as the direct involvement in the conflict of the ROG, then under Russia’s control, when it ordered Moldovan forces to withdraw immediately from an area where it had surrounded separatists, along with the ECtHR’s acceptance of other evidence of support given by the Russian Federation to the separatists, this leads to the conclusion that Moscow did exert overall control over the separatists. This amounted to third-party involvement, thus elevating the conflict to an international armed conflict.

⁸⁸ European Court of Human Rights, ‘Ilascau and Others’, paragraph 382.

⁸⁹ European Court of Human Rights, ‘Ilascau and Others’, paragraph 389.

⁹⁰ European Court of Human Rights, ‘Ilascau and Others’, paragraph 392.

⁹¹ Tadić Appeals Chamber Decision, paragraph 138.

CONCLUSION

From the examination of the facts of the conflict and the international legal framework above, it can be concluded that the conflict in the Pridnestrovian region was in 1992, and still is, an international armed conflict. The central point in this determination is that Moscow's role in the conflict amounts to third-party involvement, thereby internationalising it. This means that rather than the just the basic rules of Common Article 3 of the Geneva Conventions, the whole corpus of IHL should be applicable to the conflict, thus offering a considerably more expansive protective regime to those involved in and those caught up in it. The fact that an international law regime can be deemed to be applicable in the region of Pridnestrovia is all the more significant given the region's status as a de facto state that is unable to ratify international legal instruments. While it is accepted that IHL is subject to many criticisms—and particularly salient in this case is the distinction between international and non-international armed conflicts—the application of the IHL regime could still provide a level of protection for those living in Pridnestrovia in relation to torture, rape and other international crimes. However, it is up to the actors involved in the conflict to realise the many potential benefits offered by the IHL regime and to apply it in practice.⁹² Unfortunately, this has not yet happened.

⁹² It is accepted that recognition of the application of the IHL regime applicable to international armed conflicts has political implications, but a discussion of this issue is outside the scope of the article.