

CONTENTS

<i>Preface</i>	v
----------------------	---

Human Rights without Peace? The European Court of Human Rights and Conflicts Between High Contracting Parties

Egbert MYJER	1
1 War, never again. No peace without human rights	1
2 Did this succeed?	2
3 Execution of judgments	5
4 No human rights without peace?	7
4.1 How come it took 19 years before the case was finally decided?	9
4.2 Could Turkey be held responsible for what had happened in Cyprus in 1974?	9
4.3 Since Turkey is the respondent government, did the Turkish judge sit in the Grand Chamber?	11
4.4 What were the typical legal issues in the <i>Varnava and others</i> case?	12
4.4.1 Lack of legal interest?	12
4.4.2 Admissibility <i>ratione temporis</i> ?	13
4.4.3 Six-month rule (Article 35 paragraph 1)	17
4.4.4 Fact-finding: burden of proof and procedural obligations.	22
4.4.5 Can relatives of the missing persons be considered victims of a violation of Article 3?	27
4.4.6 What is wisdom in cases like this as far as Articles 41 and 46 are concerned? No punitive damages imposed by the Court	28
5 Other post-conflict cases and situations	30
6 Interim measures: a paper tiger?	31
7 Conclusion	32

Crisis Situations, Counter Terrorism and Derogation from the European Convention of Human Rights. A Threat Analysis

Jan-Peter LOOF	35
1 Introduction	35
1.1 The subject of this contribution from a historical perspective	35

1.2	Derogation of human rights in the post-9/11 era: what about the European supervision?	37
2	History and content of the derogation clause	38
3	The principle of exceptional threat	40
4	The ‘normalcy-rule, emergency-exception’ hypothesis and ‘entrenched emergencies’	42
5	The level of scrutiny applied by the European Court and its ability to ascertain the existence of a ‘public emergency’	45
5.1	A wide margin of appreciation	45
5.2	Risks	46
5.3	The case of <i>A. and others v. the United Kingdom</i> and the inherent limits to review of the actual existence of a public emergency	48
6	Supervision of derogations: a ‘legal grey hole’?.	51
7	Filling the grey hole: the principle of proportionality and non-derogable rights	52
8	Article 15 ECHR: a relatively small problem.	55

Really Out of Sight? Issues of Jurisdiction and Control in Situations of Armed Conflict under the ECHR

	Rick LAWSON	57
1	Introduction	57
2	The basics of extra-territoriality: Article 1 ECHR and <i>Loizidou</i>	59
3	Not designed to be applied throughout the world: <i>Bankovic</i>	61
4	Moving beyond <i>Bankovic</i> : <i>Öcalan/Al-Saadoon, Issa/Pad</i> and <i>Ilaşcu/Treska</i>	63
4.1	<i>Öcalan</i> : the confusion sets in	63
4.2	<i>Issa and Pad</i> : outright rebellion against <i>Bankovic</i>	65
4.3	<i>Ilaşcu and Treska</i> : a very generous approach	67
5	Reading between the lines: <i>Saddam Hussein</i>	68
6	Dying between the lines: <i>Isaak</i> and <i>Andreou</i>	69
7	Outlook: <i>Medvedyev</i> and <i>Al-Skeini</i>	70
8	<i>Tertium non datur?</i>	72
9	Some tentative conclusions	75

The Use of Interim Measures Issued by the European Court of Human Rights in Times of War or Internal Conflict

	Yves HAECK and Clara BURBANO HERRERA	77
1	Introduction	77
2	Procedural aspects of interim measures	79
2.1	Introduction of a request: easy access	79
2.2	Receiving evidence: flexible criteria and lower level of proof	81

2.3	Accepted or rejected: promptness of response	84
3	Substantial aspects of interim measures	85
4	Application in times of conflict <i>sensu stricto</i> within the territory of Member States	87
4.1	Application and effect within the territory of the Member States	87
4.1.1	The United Kingdom in its crown colony: the death penalty	87
4.1.2	Greece under the military junta: the death penalty.	88
4.1.3	Germany and the Rote Armee Fraktion: the preservation of evidence	89
4.1.4	Turkey and the PKK, the DHKP-C and NGOs: the treatment of prisoners and the death penalty.	90
4.1.5	Russia and Chechnya: the death penalty, the treatment of prisoners and guaranteeing the right to application.	93
4.1.6	The Georgian-Russian conflict	97
4.1.7	The Transdnjestrian conflict	98
4.2	Application within and effect outside the territory of the Member States	99
4.2.1	The Iraqi conflict	99
4.2.2	The Sri Lankan conflict	102
4.2.3	The Afghan conflict	104
4.2.4	The Colombian drug war and the struggle against paramilitary forces	105
4.2.5	The Algerian situation	106
4.2.6	The Somalian conflict.	107
4.2.7	The Darfur conflict.	108
4.2.8	The United States and the struggle against terrorism.	109
4.2.9	Uzbekistan	110
4.2.10	Peru	112
4.2.11	Tunisia.	113
4.2.12	Jordan	114
5	Application in post-conflict situations.	115
5.1	Application and effect within the territory of the Member States	115
5.1.1	Post-Ceausescu Romania.	115
5.1.2	Post-conflict Bosnia-Herzegovina and Kosovo	116
5.2	Application in and effect outside the territory of the Member States	117
5.2.1	Post-Pinochet Chile	117
5.2.2	Cameroon and ex-Yugoslavia	118
6	Compliance: a clear tendency of States to comply with provisional measures in conflict-related situations, but.	119
7	Conclusions	124

Foretelling the future, facing the past. Hate speech and conflict situations under the ECHR	
Marloes VAN NOORLOOS	131
1 Introduction	131
2 The role of hate speech and the media in conflict situations	132
2.1 Setting limits to hate speech: rationales	132
2.2 The ‘marketplace of ideas’ in conflict.	133
2.3 Hate speech before conflict	134
3 Article 10 ECHR and the European Court of Human Rights’ case law ...	136
3.1 General framework Article 10	136
3.2 Extreme speech in the context of terrorism	137
3.2.1 Legitimately restricted speech, context and consequences ..	138
3.2.2 Violations of Article 10.	141
3.2.3 <i>Leroy v. France</i> : glorifying the WTC attacks	142
3.2.4 Conclusion: restricting extreme speech.	143
3.3 ‘Traditional’ hate speech	144
3.3.1 Equality, ‘militant democracy’ and Article 17 ECHR.	144
3.3.2 Racial and religious discrimination under Article 10.	146
3.3.3 Denial or justification of historical facts.	149
4 Conclusion	151
 The Duty to Take Preventive Operational Measures. An Adequate Legal Tool to Hold States Responsible in Enforced Disappearance Cases?	
Marthe Lot VERMEULEN	153
1 Introduction	153
2 The doctrine of positive obligations	155
3 The protection against enforced disappearances	157
4 The scope and content of the duty to take preventive operational measures in enforced disappearance cases	160
4.1 The general test for the obligation to take preventive operational measures.	160
4.2 Application of the test in enforced disappearance cases	161
5 Discussion of the duty to take preventive operational measures in enforced disappearance cases	165
5.1 The scope and content of the duty to take preventive operational measures.	166
5.2 The difference between a procedural and a substantive violation of Article 2 ECHR.	166
5.3 The role of the circumstances under which the enforced disappearance took place.	169

5.4	The relationship between preventive operational measures and the right to liberty.....	173
6	Conclusion: is the protection offered by the duty to take preventive operational measures adequate?.....	173
Airborne or Bound to Crash? The Rise of Pilot Judgments and Their Appeal as a Tool to Deal with the Aftermath of Conflict		
	Antoine BUYSE.....	175
1	Introduction.....	175
2	Pilot judgments: combining individual and general redress.....	176
3	Underlying reasons for the creation of the pilot judgment procedure....	185
4	Challenges for the pilot procedure.....	188
5	Possible use in post-conflict situations.....	192
6	Conclusion.....	195