The European Court of Human Rights and International Criminal Law

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The interplay between the European Court of Human Rights and the Ad Hoc International Criminal Tribunals and the ICC
Jurisdiction – ECHR v ICTY

• GALIĆ v. the Netherlands – Application No. 22617/07

• BLAGOJEVIĆ v. the Netherlands - Application no. 49032/07
“The Court stresses that the present case involves an international tribunal established by the Security Council of the United Nations, an international organisation founded on the principle of respect for fundamental human rights and that moreover the basic legal provisions governing that tribunal’s organisation and procedure are purposely designed to provide those indicted before it with all appropriate guarantees.”
Bède DJOKABA LAMBI LONGA v. the Netherlands (33917/12)

• “The fact that the applicant is deprived of his liberty on Netherlands soil does not of itself suffice to bring questions touching on the lawfulness of his detention within the “jurisdiction” of the Netherlands”

• “the legal ground for his detention remains the arrangement entered into between the International Criminal Court and the authorities of the DRC under Article 93 § 7 of the Statute of the ICC”
Bède DJOKABA LAMBI LONGA v. the Netherlands (33917/12)

• “ICC has powers under Rules 87 and 88 of its Rules of Procedure and Evidence to order protective measures, or other special measures, to ensure that the fundamental rights of witnesses are not violated”
Amnesties
No Peace Without Justice

• Is there an anti-amnesty norm in international law?
• Margus v Croatia - “[g]ranting amnesty in respect of ‘international crimes’ – which include crimes against humanity, war crimes and genocide – is increasingly considered to be prohibited by international law”
MARGUŠ v. CROATIA (4455/10)

• No treaty provisions clearly declare amnesty to be contrary to international law

• Article 6 5 of the 2nd AP to the Geneva Conventions, ““[a]t the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict ...”, 
• “In the present case the applicant was granted amnesty for acts which amounted to grave breaches of fundamental human rights such as the intentional killing of civilians and inflicting grave bodily injury on a child, and the County Court’s reasoning referred to the applicant’s merits as a military officer”
“A growing tendency in international law is to see such amnesties as unacceptable because they are incompatible with the unanimously recognised obligation of States to prosecute and punish grave breaches of fundamental human rights.”
“Even if it were to be accepted that amnesties are possible where there are some particular circumstances, such as a reconciliation process and/or a form of compensation to the victims, the amnesty granted to the applicant in the instant case would still not be acceptable since there is nothing to indicate that there were any such circumstances.”