Amnesties for International Crimes

*Between legality and reality*

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Abstract

This thesis examines the question whether amnesties for international crimes are valid under international law both from a legal and normative perspective. It does so by putting the debate on amnesty in a broader context and assessing the normative developments in international human rights law and international criminal law. The conclusion is that there is nowadays a generally agreed anti-amnesty norm for genocide, war crimes committed in international armed conflicts and crimes against humanity. This position is also perceptible in legal doctrine, the UN and the case-law of human rights monitoring bodies. Although amnesties are not per se banned under the Rome Statute, it remains unclear how the ICC will deal with amnesties in future cases.

This thesis also asserts that the current state of the law does not correspond with the reality of many transitional societies. A normative analysis reveals that the normative foundations of prosecution are not justified in the context of transitional societies. This thesis therefore proposes to de-emphasise the emphasis on prosecution and shift to the broader notion of accountability. Furthermore, it argues that the primer duty of the State in transitional societies is to bring basic security and a minimum rule of law in order to deliver justice, both as a thin and thick notion. Peace and justice are therefore not contradictory but mutually reinforcing. The validity of an amnesty should therefore be judged by the nominal contribution it makes towards basic security and the rule of law. This approach would grant transitional societies with more flexibility in dealing with past periods of violence.
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List of Abbreviations

ACHR - American Convention of Human Rights
AP - Additional Protocol to the Geneva Conventions
ECHR - European Convention on Human Rights
ECtHR – European Court of Human Rights
ECOSOC - United Nations Economic and Social Council
GAOR - General Assembly Official Records
GC - Geneva Convention
HRC – Human Rights Committee
IACtHR - Inter-American Court of Human Rights
IACHR - Inter-American Commission of Human Rights
ICC - International Criminal Court
ICCPR - International Covenant on Civil and Political Rights
ICJ - International Court of Justice
ICTR - International Criminal Tribunal for Rwanda
ICRC - International Committee of the Red Cross
ICTY - International Tribunal for the Former Yugoslavia
IHL - International Humanitarian Law
ILC - International Law Commission
OAS - Organization of American States
Rome Statute - The Rome Statute of the ICC
UDHR - Universal Declaration of Human Rights
UNGA – United Nations General Assembly
UNSC – United Nations Security Council
OHCHR - Office of the United Nations High Commissioner for Human Rights
UN - United Nations
OTP - Office of the Prosecutor
Res - Resolution
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