

## EXILE, AMNESTY AND INTERNATIONAL LAW

*Leila Nadya Sadat\**

### ABSTRACT

This article examines recent state and international practice regarding amnesties for jus cogens crimes, particularly cases from Latin America as well as international courts and tribunals, and explores the transnational legal dialogue between courts, and to a lesser degree, legislatures, that has led to international norm creation in this area, strengthening the prohibition against amnesties considerably. At the same time, constraints upon the exercise of universal jurisdiction, whether imposed by legislatures, articulated in judicial opinions, or created by international treaty, have provided a political check to the otherwise unbounded exercise of universal jurisdiction by states and the exercise of universal international jurisdiction by the international community taken as a whole. Indeed, the article suggests that the question of amnesties for war crimes, crimes against humanity and genocide raises profound questions about the nature and form of international criminal law—its substantive content, temporal dimensions, and constitutional status. The article challenges the conventional wisdom that “swapping justice for peace,” is morally and practically acceptable. Instead, what longitudinal studies we have suggest that amnesty deals typically foster a culture of impunity in which violence becomes the norm, rather than the exception. This Article considers amnesties from a jurisdictional approach, in which domestic,

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\* Henry H. Oerschelp Professor of Law, Washington University in St. Louis and Former Commissioner, U.S. Commission on International Religious Freedom. Thanks to the many colleagues who have commented on earlier versions of this Article or offered intellectual critiques, particularly William Aceves, Rosa Brooks, Alison Danner, Laura Dickinson, Mark Drumbl, John O. Haley, Laurence Helfer, Mark Janis, Bill Jones, Stephen Legomsky, David Luban, William Schabas, Michael Scharf, Margo Schlanger, David Sloss, David Wippman and the participants in the Workshop on the Princeton Principles of Universal Jurisdiction, the Vanderbilt Colloquium on International Law and the International Conference on Atrocities in Galway, Ireland, and the Washington University School of Law Faculty Colloquium series. A very special thank you is owed to Diane Orentlicher, who shared her considerable time and expertise with the author. Finally, thanks to T.H. Clark, Ilissa Gould, Jennifer Lin, Andres Pacheco, Terri Payne and Matthew Bunda for their able research assistance, and to the Washington University School of Law for its generous support.

transnational and international amnesties are considered in both horizontal and vertical perspective. Finally, while noting that international criminal justice is not a “one size fits all” proposition, and that carefully tailored and culturally sensitive approaches suitable to individual cases are required, the article underscores the importance of the emerging normative and legal structure apparent in international criminal law, as well as the need for imperial powers such as the United States to submit themselves to the rule of law in order to enhance the legitimacy and effectiveness of the rules.