Introduction

Present international law provides general protection for certain core values and interests that are common to mankind as a whole. Such values, which form the raison d’être of the international community are enshrined in the texts of various international law instruments such as the Charter of the United Nations, the UDHR, the ICCPR, etc. However, certain international values and interests are so fundamental that their effective protection necessitates special arrangements aimed at punishing persons who trample them underfoot. Thus, acts of war crimes, aggression, terrorism, genocide, slavery, torture and crimes against humanity constitute criminal acts punishable under international law. These offences, generally referred to as delicti jus gentium, do not only constitute crimes under international law, but their prohibition is believed to have reached the status of jus cogens thereby imposing certain imperative obligations upon each State to be exercised in their own interest and in the interest of the international community as a whole.

This chapter examines crimes against humanity as an offence under international law (or as part of delicti jus gentium) and as a jus cogens crime. The aim here is to demonstrate that the characterisation of crimes against humanity as both an international crime and a peremptory norm produces one fundamental consequence: their prohibition does not permit any form of derogation, thereby constituting a profound limitation to the State’s sovereign power to grant amnesty. On the basis of recent developments in international law and practice, it is argued that amnesty for crimes against humanity is legally invalid under international law.
Crimes against Humanity as Delicti Jus Gentium

The very concept of *delicti jus gentium* connotes the existence of certain core values that are common to mankind and that are protected by both customary and conventional international law. Therefore, making crimes against humanity an offence under international law is fundamental for the survival of entire human groups and their prosecution is in the interest of all nations.

**The Concept of Delicti Jus Gentium**

*Delicti jus gentium* refers to offences against the law of nations, crimes against the law of mankind, or simply to international crimes.¹ The expression ‘international crime’ finds its source in the 1996 version of the International Law Commission’s (ILC) Draft Articles on State Responsibility,² which provides in its Article 19 that:

1. An act of State which constitutes a breach of an international obligation is an internationally wrongful act, regardless of the subject matter of the obligation breached.
2. An internationally wrongful act which results from the breach by a State of an international obligation so essential for the protection of fundamental interests of the international community that its breach is recognised as a crime by the community as a whole constitutes an international crime.
3. Subject to paragraph 2, and on the basis of the rules of international law in force, an international crime may result, *inter alia*, from:
   (a) a serious breach of an international obligation of essential importance for the maintenance of international peace and security, such as that prohibiting aggression;
   (b) a serious breach of an international obligation of essential importance for safeguarding the right of self-determination of people, such as that prohibiting the establishment or maintenance by force of colonial domination;
   (c) a serious breach on a widespread scale of an international obligation of essential importance for safeguarding the human being, such as those prohibiting slavery, genocide and apartheid;
   (d) a serious breach of an international obligation of essential importance for the safeguarding and preservation of the human environment, such as those prohibiting massive pollution of the atmosphere or of the seas.
4. Any internationally wrongful act which is not an international crime in accordance with paragraph 2 constitutes an international delict.

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² See text of the Draft Articles as provisionally adopted by the International Law Commission on first reading, available at www.javier-leon-diaz.com/humanitarianIssues/State_Resp.pdf; the modifications of this provision as introduced by the 2001 final version of the Draft Articles are dealt with in the next sections.