Latin American and International Criminal Law: Introduction and General Overview

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I.

Latin America is, together with Europe, the region where the most prosecutions of international crimes have taken place during the last few years. This goes hand-in-hand with the proactive case law of the Inter-American Court of Human Rights (IACHR), which, since the Velásquez Rodríguez case, has continuously held that the State parties to the American Convention on Human Rights are under an obligation to investigate and prosecute international crimes and punish those responsible. From this it follows that any kind of “impunity laws”, in particular blanket self-amnesties, are inadmissible under the Convention. This strong and unequivocal stance of the Court is complemented by the Latin American States’ almost complete commitment to the International Criminal Court and the corresponding codification of international crimes in Latin America. Against this background, this special issue of the *International Criminal Law Review* dedicated to the “Latin American and International Criminal Law”, is overdue.

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1) Velásquez-Rodríguez v. Honduras, Judgement 29 July 1988, para. 162 et seq.


3) Barrios Altos v. Perú, Judgement 14 March 2001, para. 41 et seq.; Almonacid-Arellano et al. v. Chile, Judgement of 26 September 2006, para. 114 and passim. For a twofold approach distinguishing between (inadmissible) blanket amnesties and (under certain circumstances admissible) conditions amnesties see Ambos, supra note 2, at 54 et seq.

4) Out of the twenty-four Latin American states, only six less important ones (Cuba, Puerto Rico, El Salvador, Guatemala, Nicaragua, French Guayana) have not ratified so far, see http://www.icc-cpi.int/Menus/ASP/States+Parties/Latin%20American%20and%20Caribbean%20States.
II.

In the first part of this special issue, the region’s extensive codification of international crimes, i.e., genocide, crimes against humanity and war crimes, and the special treatment of the crime of forced disappearance of persons (as an individual crime), are analysed. As to the crime of genocide, Elizabeth Santalla demonstrates that it was included in most Latin American Criminal Codes long before the adoption of the ICC Statute. National definitions have, to a large extent, deviated from the Genocide Convention, in particular with regard to the protected groups (inclusion of political groups). There is but little jurisprudence on the matter, and existing law does not shed much light on the reasons or justifications for the deviations. Yet it is a plausible argument to see a connection, as Santalla does, between an over-inclusive genocide offence and the lack of an offence of crimes against humanity. Thus, with the codification of crimes against humanity in the ICC Statute, there is an increasing need to reflect on the coherence of the domestic criminalization of genocide on the one hand, and crimes against humanity on the other.

As to crimes against humanity, Ramiro García presents a brief overview showing that several countries have tried to incorporate the rules of the ICC Statute into their legal systems, but that others treat such crimes as common offences regulated by the Penal Code. His analysis also reveals, confirming the point made earlier with regard to Santalla’s article, that genocide and crimes against humanity are often mixed up and codified together. Finally, he makes the critical and certainly correct point that the codification is often characterized more by each country’s political circumstances than by any uniform and consistent process of lawmaking.

Salvador Herencia shows that war crimes have only been codified exceptionally before the entry into force of the ICC Statute (in Colombia), and selectively afterwards (Argentina, Chile, Costa Rica, Nicaragua, Panama, Uruguay). The reason for this unsatisfactory situation is twofold. One the one hand, most Latin American countries do not consider it to be probable that war crimes will be committed on their territories. On the other hand, the great number of offenses contemplated in Article 8 presents a challenge for national parliaments, despite sustained efforts by the International Committee of the Red Cross and other organizations to provide technical assistance. The lack of codification, though, comes as a surprise given the Inter-American Court’s linkage between human rights law and International Humanitarian Law (IHL). The general structure used in war crimes legislation has been:

(i) the protection of persons and property covered by the IHL;
(ii) the protection of humanitarian missions;
(iii) the prohibition of certain methods and means of warfare; and