National Prosecution of Genocide from a Comparative Perspective

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I. Introduction

1. From international law reforms to national law reforms

The field of international criminal law has gained much attention since the world order fundamentally changed after the breakdown of the socialist system at the end of the eighties. The two UN-Tribunals were established in 1993 and 1994. In 1998, the first permanent International Criminal Court (ICC) was founded with the adoption of the Rome Statute. Only four years later, in 2002, the ICC Statute entered into force and the Court became a reality. All these important developments took place at the international level. Therefore it is not surprising that the discussion in the public and the scientific interest was and is mainly focused on the international prosecution of international crimes. But the development on the international level had important effects on the national law of many States and for the national prosecution of international crimes as well. One consequence of the adoption of the Rome Statute was that many States throughout the world started reforming their own national criminal laws to enable themselves to punish international crimes by their own national courts. In some countries—for example, in Australia, in Canada, in England, in Germany and in the Netherlands—new legislation for a national prosecution of international crimes has already entered into force; in other countries—for example, in Sweden—reforms are currently in the parliamentary process—or commissions have been established to prepare drafts. Only few countries have so far not at all reacted to the development in international law—among these countries are China, Israel, Russia and the USA.

1 <www.icc-cpi.int/officialjournal/legalinstruments.html> (28.03.2005).
2. The research of the Max Planck Institute

The reform processes on the national level provoke several questions: Are States obliged to prosecute international crimes? To what extent does international law allow for a national prosecution of international crimes? How and in what manner do States provide for the punishment of international crimes in their own national courts? To answer these and other questions the Max Planck Institute for Foreign and International Criminal Law in Freiburg, Germany, an independent research institute for criminal law and criminology, started the international comparative research project “National Prosecution of International Crimes”. This project investigates how and in what manner the criminal law systems of various countries provide for or make possible the punishment of international crimes—genocide, crimes against humanity, war crimes and acts of aggression—using their own national courts, whether the national systems exhibit deficits in comparison to currently binding international law (and the obligations to prosecute derived from international law), and whether reforms have been carried out or are planned in order to make national prosecution of international crimes possible.\(^3\) By way of individual country reports the criminal law systems of over 30 countries are analyzed.\(^4\) This paper presents some results of the project concerning Genocide.

II. The International Legal Framework for a National Prosecution of Genocide

1. The Rome Statute of the International Criminal Court

The Rome Statute itself, which is binding for the (currently 98) states that have ratified it so far,\(^5\) does not oblige the State Parties to prosecute persons

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\(^3\) For detailed information see: <www.iuscrim.mpg.de/forsch/straf/projekte/s_index.html> (28.03.2005).


\(^5\) For the ratification status cf. <www.icc-cpi.int/statesparties.html> (28.03.2005).