

Table of Contents

| | | |
|----|--|-----------|
| 1 | | |
| 2 | | |
| 3 | | |
| 4 | | |
| 5 | | |
| 6 | | |
| 7 | Acknowledgements | v |
| 8 | List of Case Studies | xiii |
| 9 | Table of Cases | xv |
| 10 | Municipal Cases | xx |
| 11 | International Cases | xx |
| 12 | Table of Municipal Legislation | xx |
| 13 | Table of Official International Documents | xx |
| 14 | Treaties | xx |
| 15 | Other Documents | xx |
| 16 | List of Figures | xx |
| 17 | Abbreviations | xx |
| 18 | | |
| 19 | Introduction | 1 |
| 20 | | |
| 21 | Defining 'Amnesty' | 3 |
| 22 | Controversial Nature of Amnesty Laws | 7 |
| 23 | Amnesties, International Law and Legal Claims-making | 7 |
| 24 | Amnesties and the Views of Victims | 10 |
| 25 | Amnesties and Pragmatic Peacemaking | 12 |
| 26 | Amnesties and Dealing with the Past | 13 |
| 27 | Amnesty and Reconciliation | 16 |
| 28 | Trends in the Introduction of Amnesty Laws | 18 |
| 29 | Creating the Amnesty Law Database | 24 |
| 30 | Structure and Purpose of the Book | 25 |
| 31 | | |
| 32 | Part I Amnesties and Peacemaking: Context and Content | 29 |
| 33 | | |
| 34 | 1 Enacting Amnesties | 31 |
| 35 | Introduction | 31 |
| 36 | How are Amnesty Laws Introduced? | 32 |
| 37 | Exercises of Executive Discretion | 33 |
| 38 | Negotiated Peace Agreements | 34 |
| 39 | Statutes | 35 |
| 40 | Public Consultation | 36 |
| 41 | Why Do States Introduce Amnesty? | 39 |
| 42 | Amnesty as a Reaction to Internal Unrest and Domestic Pressure | 42 |
| 43 | Amnesty as a Tool for Peace and Reconciliation | 48 |
| 44 | Amnesty as a Response to International Pressure | 63 |

viii *Contents*

| | |
|--|-----|
| Amnesty as a Cultural or Religious Tradition | 65 |
| Amnesty as Reparation | 66 |
| Amnesty as a Shield for State Agents | 68 |
| Repeated and 'Rolling' Amnesties | 70 |
| Conclusion | 73 |
| 2 Whom do Amnesties Protect? The Personal Jurisdiction of Amnesty Laws | 77 |
| Introduction | 77 |
| Amnesties, Equality and the 'Myth of Equivalency' | 78 |
| How have States Distinguished between Offenders with Different Allegiances? | 84 |
| State Agents | 87 |
| Opponents of the State | 89 |
| Non-Violent Political Prisoners | 90 |
| Exiles and Refugees | 91 |
| Foreign Nationals | 93 |
| Can an Offender's Reasons for Committing a Crime Justify an Amnesty? | 94 |
| Ideology and Political Offenders | 95 |
| Duress | 98 |
| Self Protection and Personal Gain | 99 |
| Victim-Perpetrator Axis | 100 |
| Importance of Rank: Should States distinguish different Levels of Responsibility | 102 |
| Amnesty for Subordinates? | 102 |
| Amnesty for Superiors? | 104 |
| Individual <i>v</i> Blanket Amnesties | 112 |
| Can Amnesties Prevent Individuals from Proving their Innocence? | 113 |
| Conclusion | 115 |
| 3 Granting Immunity? The Material Scope of Amnesty Laws | 119 |
| Introduction | 119 |
| Which Crimes Are Granted Amnesty? | 120 |
| Amnestying Atrocities? Can States Amnesty Crimes under International Law? | 125 |
| Should Amnesties Treat Political Crimes Differently? | 137 |
| Impinging on Individual Rights: Amnesties for Crimes Against Civilians and Combatants who are <i>Hors de Combat</i> | 146 |
| Do States Amnesty Economic Crimes? | 147 |
| Restricting Amnesties and the Scope of the Duty to Prosecute | 150 |
| Conclusion | 152 |

| | | | |
|----|---|--|-----|
| 1 | 4 | Towards Greater Accountability: The Role of Conditional | |
| 2 | | Amnesties | 155 |
| 3 | | Introduction | 155 |
| 4 | | Which Conditions are Attached to Amnesties? | 156 |
| 5 | | Amnesty for Surrender and Disarmament | 158 |
| 6 | | Application Deadlines for Amnesties | 161 |
| 7 | | Amnesty and Repentance | 162 |
| 8 | | Amnesty and the Search for Truth | 165 |
| 9 | | Amnesty and Repairing the Harm | 173 |
| 10 | | Amnesty and Restorative Approaches to Justice | 186 |
| 11 | | Lustration and Vetting Procedures and Amnesty | 192 |
| 12 | | Enforcing Conditions and the Potential of Temporary Amnesties | 195 |
| 13 | | Conclusion | 200 |
| 14 | | | |
| 15 | | | |
| 16 | | Part II Approach of Courts to Amnesties | 203 |
| 17 | 5 | Implementing the Amnesty: The Approach of National Courts | 204 |
| 18 | | Introduction | 204 |
| 19 | | Trends in the Responses of National Courts to Amnesty Laws | 206 |
| 20 | | How have National Courts explained their Approach to | |
| 21 | | Amnesty Laws? | 212 |
| 22 | | Legality of Amnesty Processes Under Municipal Law | 213 |
| 23 | | Legality of Amnesty Processes Under International Law | 220 |
| 24 | | Adhering to the Separation of Powers Doctrine | 234 |
| 25 | | Learning from Experiences Elsewhere | 239 |
| 26 | | Promoting Peace and Reconciliation | 241 |
| 27 | | Disclosing or Concealing the Truth | 244 |
| 28 | | Conclusion | 247 |
| 29 | | | |
| 30 | | | |
| 31 | 6 | International Courts and National Amnesty Laws | 251 |
| 32 | | Introduction | 251 |
| 33 | | Whom do International Courts Hold Accountable? | 252 |
| 34 | | Who has Standing? | 256 |
| 35 | | When do International Courts have Jurisdiction to Rule on | |
| 36 | | National Amnesties? | 257 |
| 37 | | Potential to Create Change: How the Rulings of International | |
| 38 | | Courts Can Affect National Amnesties? | 265 |
| 39 | | Amnesties and Victims' Rights: The Verdicts of the International | |
| 40 | | Courts | 266 |
| 41 | | Right to a Remedy | 267 |
| 42 | | Duty to Investigate | 270 |
| 43 | | Duty to Prosecute and Punish | 274 |
| 44 | | Right to Reparations | 281 |

x *Contents*

| | |
|--|------------|
| Potential Approach of the International Criminal Court | 283 |
| Security Council Deferral (Article 16) | 286 |
| Complementarity (Article 17) | 286 |
| <i>Non bis in idem</i> (Article 20) | 289 |
| Prosecutorial Discretion (Article 53) | 290 |
| Conclusion | 295 |
| | |
| 7 Beyond Territoriality: Transnational Prosecutions and Amnesties | 297 |
| Introduction | 297 |
| Jurisdiction of Courts in Third States to Rule on Amnesties | |
| Introduced Elsewhere | 298 |
| Treaty Law | 299 |
| Customary International Law | 303 |
| Domestic Law | 306 |
| Scope of Universal Jurisdiction within Third States | 308 |
| Role of Subsidiarity | 308 |
| Executive Discretion | 312 |
| ‘Nexus Requirement’ and <i>In Absentia</i> Prosecutions | 313 |
| Selectivity | 315 |
| ‘Ripple Effect’: The Impact of Investigations in Third States on National Amnesties | 315 |
| Conclusion | 318 |
| | |
| Part III Views of Stakeholder Groups | 321 |
| | |
| 8 Legal Obligations <i>v</i> Self-interest: The Contradictory Approach of International Actors to Amnesty | 323 |
| Introduction | 323 |
| What Motivates International Actors’ Decisions on Involvement in Domestic Amnesty Processes? | 325 |
| Attitudes of International Actors towards Amnesties | 331 |
| Diplomatic Pressure | 337 |
| Economic Pressure | 346 |
| Legal Pressure | 348 |
| Military Pressure | 356 |
| Conclusion | 357 |
| | |
| 9 Prioritising Needs: Amnesties and the Views of Victims | 361 |
| Introduction | 361 |
| Research on Victims | 362 |
| Identifying Victims and their Needs | 364 |
| How do Amnesty Laws Affect Victims? | 371 |

| | | |
|----|---|-----|
| 1 | How can Amnesty Laws Be Made More Responsive to the | |
| 2 | Needs of Victims? | 379 |
| 3 | Conclusion | 382 |
| 4 | | |
| 5 | 10 Promoting Participation: Making Amnesties Attractive to the | |
| 6 | Targeted Groups | 385 |
| 7 | Introduction | 385 |
| 8 | Combatants, Perpetrators, Victims or Freedom Fighters? | |
| 9 | The Complex Terminology for Amnesty Beneficiaries | 386 |
| 10 | Amnesty and Disarmament, Demobilisation and Reintegration | 387 |
| 11 | Methods to Encourage Participation | 390 |
| 12 | Publicising Amnesties | 391 |
| 13 | Sensitising Communities | 393 |
| 14 | Providing Financial Incentives | 396 |
| 15 | Establishing Training and Employment Programmes | 399 |
| 16 | Integrating Former Combatants into the Armed Forces | 400 |
| 17 | Establishing Power-sharing Governments | 402 |
| 18 | Impact of Truth commissions on Potential Amnesty Applicants | 404 |
| 19 | Conclusion | 406 |
| 20 | | |
| 21 | Conclusions | 409 |
| 22 | Appendix 1: List of Amnesty Processes | 421 |
| 23 | Appendix 2: International Court System | 429 |
| 24 | Appendix 3: Provisions of the Universal Jurisdiction Legislation in | |
| 25 | Third States | 435 |
| 26 | | |
| 27 | Bibliography | 439 |
| 28 | | |
| 29 | | |
| 30 | | |
| 31 | | |
| 32 | | |
| 33 | | |
| 34 | | |
| 35 | | |
| 36 | | |
| 37 | | |
| 38 | | |
| 39 | | |
| 40 | | |
| 41 | | |
| 42 | | |
| 43 | | |
| 44 | | |