## Contents

*Preface*  
*Acknowledgments*  
*Abbreviations and Legal Terms*  

**Opening Considerations: On the Perennial Relevance of Amnesties**  

**Part I: The Debate on Amnesties**  

1. Introduction  
2. Defining Amnesty  
3. Amnesties and the Fight against Impunity  
   3.1 Transitional justice and amnesty  
   3.2 The lesser-evil argument and the limits of trial impact  
   3.3 Evaluating the legitimacy and impact of amnesties  
   3.4 Conclusion  
4. Amnesties and International Law  
   4.1 Treaty sources explicitly related to amnesty  
   4.2 Treaty sources implicitly related to amnesty  
   4.3 Nontreaty sources explicitly related to amnesty  
   4.4 International jurisprudence explicitly related to amnesties  
      4.4.1 UN treaty bodies  
      4.4.2 Regional human rights courts and commissions  
      4.4.3 International and hybrid criminal courts

---

<table>
<thead>
<tr>
<th>Preface</th>
<th>page xiii</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acknowledgments</td>
<td>xvii</td>
</tr>
<tr>
<td>Abbreviations and Legal Terms</td>
<td>xix</td>
</tr>
<tr>
<td><strong>Opening Considerations: On the Perennial Relevance of Amnesties</strong></td>
<td>1</td>
</tr>
<tr>
<td><strong>Part I: The Debate on Amnesties</strong></td>
<td>10</td>
</tr>
<tr>
<td>1. Introduction</td>
<td>10</td>
</tr>
<tr>
<td>2. Defining Amnesty</td>
<td>12</td>
</tr>
<tr>
<td>3. Amnesties and the Fight against Impunity</td>
<td>17</td>
</tr>
<tr>
<td>3.1 Transitional justice and amnesty</td>
<td>18</td>
</tr>
<tr>
<td>3.2 The lesser-evil argument and the limits of trial impact</td>
<td>23</td>
</tr>
<tr>
<td>3.3 Evaluating the legitimacy and impact of amnesties</td>
<td>24</td>
</tr>
<tr>
<td>3.4 Conclusion</td>
<td>31</td>
</tr>
<tr>
<td>4. Amnesties and International Law</td>
<td>32</td>
</tr>
<tr>
<td>4.1 Treaty sources explicitly related to amnesty</td>
<td>32</td>
</tr>
<tr>
<td>4.2 Treaty sources implicitly related to amnesty</td>
<td>36</td>
</tr>
<tr>
<td>4.3 Nontreaty sources explicitly related to amnesty</td>
<td>43</td>
</tr>
<tr>
<td>4.4 International jurisprudence explicitly related to amnesties</td>
<td>47</td>
</tr>
<tr>
<td>4.4.1 UN treaty bodies</td>
<td>48</td>
</tr>
<tr>
<td>4.4.2 Regional human rights courts and commissions</td>
<td>48</td>
</tr>
<tr>
<td>4.4.3 International and hybrid criminal courts</td>
<td>50</td>
</tr>
</tbody>
</table>
CONTENTS

4.5 Other legal rights and obligations 54
  4.5.1 Whether the right to amnesty is untouched by explicit prosecution commitments 55
  4.5.2 Whether there are countervailing obligations with respect to the same violations 56
  4.5.3 Whether there are conflicting state obligations between different human rights 63

4.6 Legal defenses 65

4.7 The question of limitations and derogations 68

4.8 Reconciling international legal norms 70

5. Amnesties and the International Criminal Court 73
  5.1 Background on the ICC 73
  5.2 General considerations about amnesties and the ICC 75
  5.3 Specific Rome Statute provisions related to amnesty 80
  5.4 The ICC in Uganda 84
  5.5 Conclusion 87

6. The Evolving UN Position on Amnesties 88
  6.1 Legal questions about the UN position 92
  6.2 Policy questions about the UN position 93
    6.2.1 The mediation influence argument 94
    6.2.2 The burden-of-persuasion argument 96
    6.2.3 The practical guidance argument 99
    6.2.4 The counterweight argument 100
    6.2.5 The rigid and principled stand argument 102
    6.2.6 The deterrence of violence argument 104
    6.2.7 The ethics and rule of law argument 105
  6.3 Alternatives to the current UN position 106

7. Conclusions 108

Part II: The Design of Amnesties 110
  1. Introduction 110
  2. Last Recourse Threshold 112
    2.1 Existence of an urgent and grave situation 112
    2.2 Exhaustion of appropriate options to end the urgent and grave situation 113
    2.3 Exhaustion of leniency options short of amnesty to end the blackmail 118
  3. Overarching Parameters for Amnesty Design 122
    3.1 A legitimate process 122
    3.2 Minimum legal entrenchment 126
    3.3 Legitimate end 126
3.4 Minimum leniency 127
3.5 Maximum conditions 128
3.6 Maximum viability 129
  3.6.1 Typology of context and amnesty beneficiaries 130
  3.6.2 Transitional justice measures 131
  3.6.3 Features of the broader settlement 135
4. Specific Amnesty Design Choices 137
  4.1 Minimum legal entrenchment 138
    4.1.1 Nature of legal instrument 139
    4.1.2 Whether permanent or temporary in character 140
    4.1.3 Relation between amnesty and other laws 142
  4.2 Legitimate end 143
    4.2.1 Explicit objectives mentioned in the preamble 143
    4.2.2 References to sources of international law 144
  4.3 Minimum leniency 144
    4.3.1 The crimes or acts that are expressly eligible or ineligible 145
      4.3.1.1 Political versus ordinary offenses distinction 145
      4.3.1.2 Express exclusion of human rights crimes 148
      4.3.1.3 Express exclusion of crimes motivated by greed 149
      4.3.1.4 Express exclusion of crimes motivated by malice 150
      4.3.1.5 Express exclusion of selected context-specific crimes 150
    4.3.2 The persons who are expressly eligible or ineligible 151
      4.3.2.1 Distinctions according to affiliations and subaffiliations 152
      4.3.2.2 Distinctions according to rank 154
      4.3.2.3 Distinctions according to forms of criminal participation 155
      4.3.2.4 Express exclusion of beneficiaries of prior amnesties 156
      4.3.2.5 Express exclusion of foreign mercenaries 156
      4.3.2.6 Express exclusion of specific individuals 156
    4.3.3 Express legal consequences of grant of amnesty for the beneficiary 157
      4.3.3.1 Immunity of individual from prospective forms of liability 157
      4.3.3.2 Effect on ongoing investigations, subpoenas, warrants, and trials 158
      4.3.3.3 Effect on prior judgments and sentences 159
      4.3.3.4 Effect on personal records 160
      4.3.3.5 Effect on third parties 161
4.3.3.6 Variation in legal consequences depending on crime or rank 161
4.3.4 Geographical scope of application 162
4.3.5 Temporal scope of application 163
4.4 Maximum conditions 164
4.4.1 Conditions for obtaining individual grants of amnesty 164
  4.4.1.1 Requirement to submit an individual application 164
  4.4.1.2 Requirement to meet application deadline 165
  4.4.1.3 Requirement of full and accurate disclosure of crimes 166
  4.4.1.4 Requirement of apology 167
  4.4.1.5 Requirement of public hearing 168
  4.4.1.6 Requirement to participate in tradition-based justice process 168
  4.4.1.7 Requirement of restitution and community service 169
  4.4.1.8 Requirement of relocation and supervision 170
  4.4.1.9 Requirement of DDR participation 170
  4.4.1.10 Requirement of renunciation of violence 171
  4.4.1.11 Requirement of release of hostages and prisoners of war 172
  4.4.1.12 Requirement of cooperation with law enforcement authorities 172
4.4.2 Conditions for retaining individual grants of amnesty 172
  4.4.2.1 Requirement of nonbreach of amnesty's preconditions 172
  4.4.2.2 Requirement of nonrecidivism 173
  4.4.2.3 Requirement of compliance with prospective prohibitions 173
  4.4.2.4 Parallel requirement of pledges by the larger group 174
4.5 Maximum viability 174
  4.5.1 The supervisory body and its mandate 175
  4.5.2 Contestation of individual amnesties by victims 178
  4.5.3 Contestation of individual amnesties by rejected applicants 179
5. Conclusions 180
## Final Considerations: On the Perennial Contestation of Amnesties

183

**Appendix 1:** Summary Guidelines for Effective Amnesty Design
189

**Appendix 2:** Selected Excerpts from International Legal Instruments
192

**Appendix 3:** Selected Excerpts from Jurisprudence on Amnesties
196

**Notes**
249

**Index**
347