

**Forum:** Commission for Crime Prevention and Criminal Justice

**Issue # 11-02:** Measures to evaluate the rights of war criminals during an amnesty.

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## Introduction

With the increase of international war crimes around the world, many countries have started the conversation of whether or not to grant amnesty to people who have committed atrocious crimes in the past. Amnesty consists of a decision by a government that allows political and war prisoners to go free. This could include crimes such as genocide and crimes against humanity. After being granted amnesty, the convicted individual is registered as a new person to live a normal civilian life. Governments usually grant amnesty to criminals because they believe there is no way to resolve their crimes, and they are under the impression that these individuals will stop their outrageous acts and be better off to society as a free individual. It is of extreme importance to solve this issue for all countries to have a base on which rights war criminals should have throughout an amnesty. All the parties involved including civilians, should agree when no other possible solutions are seen. The rights of these criminals must not be violated because even though they are criminals, they are still human and hold the same basic rights as everyone else. Throughout the process of treating with war criminals, their rights have been violated for example article 3 of The Universal Declaration of Human Rights, which states that everyone has a right to Life, have liberty, and have personal security. This has been violated in some cases because they are tortured and beaten like some criminals from the Kosovo war in 1999.

The UN has recommended countries such as Yemen to grant amnesty to some rebel/terrorist groups, like Shiite Houthi, for peace to be incorporated to the country. Some

countries believe that amnesties will work while others believe that it is going to make the situation worse. Some believe it won't work due to the fact that the convicted are criminals and won't change simply because they make a promise. Furthermore, people inside the countries believe that if the convicted did so much damage to civilians, they should pay for what they did. Countries like Germany believe amnesty will serve its purpose and be useful for the greater good. Germany used amnesties with the Nazis. They granted these amnesties because a great majority of the Nazi soldiers served because they didn't want to get killed and therefore followed the government ideology of the time. Furthermore, amnesties are a way of not overcrowding jails. Another reason for the use of amnesties was for scientists that had developed incredible technology such as aircrafts and weaponry advancement that countries such as the U.S and the U.K took advantage of. This is an important use of amnesties because it helps technology develop and it helps in military and civilian advances even if crimes result from the misuse of such powerful technological advances.

## Definition of Key Terms

### War Crimes

Crimes committed against an enemy, prisoners of war, or subjects in wartime that violate international agreements or, as in the case of genocide, are offenses against humanity.

### War Criminal

A person that has violated the war laws and/or human rights during a period of war. Crimes such as genocide.

### Amnesty Law

An amnesty law is when a group of people or a certain person is granted immunity of prosecution by the government.

### International Criminal Courts

A division of the United Nations that settles legal disputes submitted to it by member nations.

The International Court of Justice, also called the World Court.

### **International Crimes**

According to Duhaime's Law Dictionary the definition of international crimes is: "Crimes which affect the peace or safety of more than one state or which are so reprehensible in nature as to justify the intervention of international agencies in the investigation and prosecution thereof."

### **Prosecution**

According to Cambridge Dictionary the definition of prosecution is: the act of officially accusing someone of committing an illegal act, esp. by bringing a case against that person in a court of law.

### **Legal indemnity**

An exemption from liability for damages.

## **General Overview**

### **Advantages of granting amnesties**

Amnesties give opportunities to criminals to have a new beginning in life and live a more honest one. Amnesties' advantages consist of ending conflicts and could encourage other parties involved to give themselves away. Amnesties can bring peace between nations and inside the countries when grave crimes are moved on from. Amnesties could be better than other punishments such as long time imprisonment or death penalty because although criminals might have committed errors they are still human and their crimes should not make others suffer more than they already have if by pardon, the situation can get better. Country governments also should be blamed for war crimes because, to a certain extent, they are also guilty due to the fact that they were the ones that ordered or encouraged their people to commit these. Therefore, in many cases, if an amnesty is being considered, it means that the granting of it would be for the better good of the, the public and the government.

## Social and psychological aspects

If amnesty is granted to war criminals, they will affect society in both positive and negative aspects. They will affect society positively because people can see that there are second chances and that there pardon from the government can be possible. If a amnesty is given to a group of war criminals, then other groups could themselves up. For example, in Colombia. FARC members are now a political party thanks to amnesties which were given to them despite the many crimes committed. However, this also has negative aspects such as implying that laws and rules can always be bent and therefore broken. The respect of the government could be lost in the eyes of the civilians because they are not protecting them as they should and society is going to incorporate criminals that have done deplorable actions and they could do it again if free.

Amnesties could also have big psychological impact on the civilians and on the criminals. This could affect the criminals in a positive way due to the fact that they are given a new start. On the other hand, this could affect civilians in two ways, positive and negative. It may affect them negatively because people that have been affected by these criminals' actions are going to see how they were not punished for the shameful actions they committed. They will lose trust and faith in the government to represent them and be angry for not upholding laws. It can also be seen to make the population more resilient.

## History

Amnesties have been accepted and used in the past for several reasons, for example, Nazi Germany. Amnesties were used because of the overcrowding of the jails, the cost that it would be having some many prisoners, the lack of infrastructure in the country and the lack of monetary power. There were other reasons for this amnesties for example the technology advancements of Nazi scientists. This Amnesties were given in 1949 by the the first German president after Hitler, this was because Although it could be said that this amnesty did not work in certain part because to the date there still are neo-Nazi groups.

The creation of Amnesty can be traced back in ancient law such as Babylonian and Hebrew law. The first amnesty is said to have been attributed Thrasybulus in ancient Greece (403 B.C.E.). Furthermore, the Romans developed a number of forms of clemency which have influenced laws to this day. In medieval Europe, the Roman Catholic Church, local rulers and later the monarch could grant them. During the eighteenth century, the sovereign's power to grant amnesties came under attack by Cesare Beccaria in his famous essay *On Crimes and Punishments*. According to him and many others, including the UN in some cases, the interference with the law's punishments were perceived as a threat to the functionings of society. In the nineteenth century, the Article II, Section 2 of the U.S. Constitution states the president can "grant Reprieves and Pardons for offences against the United States, except in Cases of Impeachment." all of these in the context of war as well.

### Success Stories

An example of a successful amnesty could be in Colombia. The FARC guerrilla group has dissolved and is now a political party in which they have to do their actions in a more political and legal way.

Chile had success with its amnesty, although this amnesty was given by Pinochet in his regime for his own and his people's benefit. People that served for Pinochet and Pinochet himself did not have to face court for their horrific actions. They were the cause for the killing and the disappearance of thousands of Chileans. Sadly this amnesty helped this people to get away from what they did because Pinochet was the ruler. After this and the death of Pinochet after 17 years of regime, Chile had a peaceful transition to democracy.

### Controversy and public opinion

Many people and governments believe criminal prosecution is an important and effective way of "securing accountability for past wrongs". However, there are instances where not prosecuting can be seen as morally justified. For example, if military and security forces are still under the control of the previous regime, if convictions are impossible due to unavailable evidence or the justice system is ineffective due to strong institutional loyalty to the previous regime. Many countries have their own set of amnesty giving rules in their

national legislation. These include “persons involved in terrorist activities who say they wish to stop” in Algeria, or a guerilla in Colombia “has demonstrated its intention to reintegrate into civilian life.”([Country Policies on Amnesties](#)) However, many countries do not allow amnesties to be granted for acts of crimes against humanity in many cases war crimes.

In general, the controversy comes from the population of a country in terms of important crimes. Some want to move on whereas others want justice to be served. The question lies in where to find a balance for the benefit of society as a whole. The point of view of amnesty givers is that although people have violated human rights they are still human they should have the chance to redeem themselves in terms of the actions they have made for the benefit of a greater whole.

However, the UN has shown it is rather opposed to granting amnesties as it says they many are inconsistent with international law. Generally, the UN permits amnesties but highly discourages them in these cases. ([UN View explained in detail](#))

**Under various sources of international law and under United Nations policy, amnesties are impermissible if they:**

- (a) Prevent prosecution of individuals who may be criminally responsible for war crimes, genocide, crimes against humanity or gross violations of human rights, including gender-specific violations;**
- (b) Interfere with victims’ right to an effective remedy, including reparation; or**
- (c) Restrict victims’ and societies’ right to know the truth about violations of human rights and humanitarian law.**

**Moreover, amnesties that seek to restore human rights must be designed with a view to ensuring that they do not restrict the rights restored or in some respects perpetuate the original violations.**

*Extract of the RULE-OF-LAW TOOLS FOR POST-CONFLICT STATES Amnesties UNHCR*

## Major Parties Involved and Their Views

### Colombia

President Los Santos has already granted amnesty to some member of the Fuerzas Armadas Revolucionarias de Colombia (FARC). This is a guerrilla movement involved in the continuing Colombian armed conflict from 1964 to 2017. This guerrilla group killed thousands of civilians. The colombian government underwent negotiations with the FARC

to obtain a peace agree in which one of the clauses was that the Colombian government would grant amnesty to all the FARC members. Colombia's government believes the only way to achieve peace in the nation is to grant guerilla members amnesties. Without amnesties, the government believes that the guerilla members will keep expanding their group and keep causing more terror with only possible solution to grant the members amnesties. The government has previously tried to defend their nation by increasing its military but this action was unsuccessful and only resulted in a monetary loss and loss of many military lives. Colombia's population has a much different opinion on this topic, as they neglect the idea of the pardon because they believe the guerilla groups should pay for the damages and deaths they have inflicted in the nation of Colombia.

## Chile

Chile has a amnesty law that was set by the Pinochet government and is believed to be his legacy. The decree passed by the Pinochet regime in 1978 is to shield those suspected of committing human rights violations between 11 of September 1973 and 10 March 1978 from facing the courts. This is because the country was ruled by a military junta headed by General Pinochet, this junta was characterized by its oppression and violation of the population rights when it came to political point of view. The current Chilean government wants to get rid of this law because they believe that there shouldn't be a pardon for criminals that violate the human rights.

## Brazil

The Brazilian government started to discuss in 2010 the reopening the file of the 1979 Amnesty Law dictated by the Army. This law pardons all political crimes of the military and the guerilla groups since 1964. In 1964 from March 31 to April 1 there were some events that led to the overthrow of President João Goulart by members of the Brazilian Armed Forces supported by the United States government. There were Military leaders who announced their resignation if the law were to be modified, and some key ministers also oppose any change to the pact between military and civilians. Brazil is a pro amnesty country that is rethinking its position.

## Germany

The German government and the international community gave amnesty to a vast majority of Nazi soldiers. This was for various reasons. One of the reasons was the overcrowding in jails. The second was that most of the soldiers joined the Nazi forces because it was obligatory in the regime at the time therefore it was decided it was not with full consent that they committed crimes of humanity. Amnesties were also used for Nazi scientists because of the huge technology advancements they developed despite possible negative consequences. With Nazi ideologies still present and Neo-Nazi groups active in Germany and around the world, it can be debated whether or not it was effective dissuasion for future generations.

### **United States of America**

The U.S has used amnesty in the war against terror thanks to the Military Commission Act of 2006 also known as HR-6166. This is an Act of Congress signed by President George W. Bush on October 17, 2006. The Act's stated purpose was "to authorize trial by military commission for violations of the law of war, and for other purposes". This means that when there is a violation of the law of war, there won't be an international hearing but a court martial or a military trial. This act has an amnesty law in which pardons military violations of the law of war. In a military trial an amnesty could give an amnesty to the person being tried, in the case that this person/s made an extraordinary action for the country.

### **United Kingdom**

The UK is working a general amnesty for all members of the British Forces who served with the country's counterinsurgency campaign in the UK-administered north-east Ireland from the late 1960s to the early 2000s. This campaign is an effort from the military and the civilians to solve the situation. Despite war crimes carried out by Britain's military and paramilitary contingents in the so-called region, from civilian massacres to summary executions, the lobbying of former generals, politicians and the right-wing press in London seems to have succeeded in ensuring the likely granting of amnesty to these militaries and paramilitaries.



## Timeline

Date	Event
1945	<p>First amnesty granted for committers of war crimes. It was for the Polish soldiers after the Second World War because of all the outrageous crimes they committed during the war. Like for example civilian massacres</p> <p>An amnesty was granted to Polish anti-communist soldiers could fight with no restrictions against pro communist advocates.</p>
1947	<p>Amnesty international was founded by Peter Benenson, a British lawyer with the aim of obtaining an amnesty for certain cases. He started in England with this aim which was quickly adopted for prisoners of conscience all over the world.</p>
1961	<p>Reopening of the file of the 1979 Amnesty Law dictated by the Brazilian Army, a law pardoning all political crimes of the military and the guerilla groups like The Araguaia guerrilla since 1964 in the aim of withdrawing the amnesties which did not amount. Many army officials and politicians threatened to resign if it were to be withdrawn.</p>
2006	<p>US-led coalition and Iraqi forces used excessive force in the battle to recapture Mosul, a senior British commander called them out in a human rights group. The US-coalition was not brought to trial because their success on the mission and was granted amnesty.</p>
2017	<p>The Colombian government granted amnesty to the FARC, because they believe that is the only thing that will bring peace to the country after 50</p>

years of war. The FARC is now a political party in Colombia and have the same rights as any other political party.

## **UN involvement, Relevant Resolutions, Treaties and Events**

The UN has found much controversy in amnesties. This is because they believe that people that have produced so much pain should pay for their mistakes to prevent others from doing the same. However, this is not the main reason, it is that international law should be upheld for the sake of humanity's wellbeing, of order. The UN Secretary-General declared to the Security Council that it should reject any amnesty for genocide, war crimes, or crimes against humanity. These are also known as grave breaches. He argues that amnesties are well used when they promote peace, this is seen in article IV of the Geneva convention yet can be inconsistent with international law which says that these crimes should never be forgiven. The UN also remarks that these amenities should be granted to the least amount of people because, although it promotes and brings peace to the nations, they have done wrong and should not be tolerated as some granting of amnesties are not in favour of peace.

## **Evaluation of Previous Attempts to Resolve the Issue**

The United Nations hasn't grant amnesties to war criminals, this is because they haven't been given the judestriction to do so. The UN also believes that amnesties should be carefully given, this is because international courts were created for this crimes not to be forgiven, but they do believe that they could bring peace to the nations. Countries such as Colombia have tried using amnesties, in this cases it seems that is working, but now that the FARC was dissolved, the Ejército de Liberación Nacional (ELN) increased from 50,000 men to 250,000 in only 5 months. This amnesty did allow people to move on till certain extent, this is because people that suffered for years because thies guerrilla group, saw how they were forgiven, but the killing and the kidnaps have decreased. Although the UN has not given

amnesties to war criminals but it has granted amnesties, for example to Yemen President Ali Abdullah Saleh for him to leave office.

## Possible Solutions

This issue has not been talked about enough and action needs to be taken. A possible solution would be for all countries to take initiative and create an standardized set of privileges for war criminals during amnesties. For example, where these criminals should go, and if the UN should moderate it. If they do, how they should, if these criminals should go to jail for a short period, what crimes should be forgiven and which one should not, what should happened if they break the law again. The UN could help the countries approve the amnesty after the they have moderated if the country asks for it, if they do not violate there sovereignty. After the government evaluates it should go to the UN security council to see if this amnesty should be approved or not. standardized set of privileges for war criminals during amnesties more about this. This amnesties should be for both international and national law.

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