

Abstract

This thesis aims on the issue of duress as ground for excluding criminal responsibility in international criminal law. Duress arises from a situation when a perpetrator is forced under a threat of immediate death or bodily harm to commit a crime under international law. This thesis shortly explores duress in national legal systems, especially the differences between the duress in common law and in civil law jurisdiction. It further considers the use of duress as an argument of defence in history of international criminal law and focuses on two key judicial decisions in this area – the *Einsatzgruppen* case decided by the American military tribunal after the Second World War and *Erdemović* case decided by the International Criminal Tribunal for Former Yugoslavia.

This thesis discusses with complexity the individual characteristics and conditions of duress. These characteristics and conditions are as follows: i) conduct alleged to constitute a crime under international law, ii) threat of imminent death or of serious bodily harm, iii) necessary acts to avoid threat (subsidiarity) iv) reasonable acts to avoid threat (proportionality), v) the situation leading to duress must not have been voluntarily brought about by the person coerced and vi) person coerced did not have a duty to bear this threat. Duress is further compared against other grounds for excluding criminal responsibility that are made use of in international criminal law – necessity and superior orders.

The fundamental issue dealt with by this thesis is whether duress should be a complete defence for perpetrators in international criminal law even in case of murder, or if duress should be only considered as mitigating circumstances. This issue is closely connected with the discussion, whether duress justifies the perpetrators of crimes under international law or merely excuses, which is also addressed in this work. Finally the author of this thesis supports the opinion that duress should excuse the perpetrators of crimes under international law even in case of murder provided the strict conditions of duress are met.