

**SHARED RESPONSIBILITY FOR THE ENFORCEMENT  
OF  
INTERNATIONAL CRIMINAL LAW**

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## CANDIDATE'S SUMMARY OF THESIS

This thesis is concerned with 'international criminal law'. It examines the historical development of this body of law. This thesis also examines the record of enforcement of international criminal law. Historically the enforcement of international criminal law has primarily been a matter for states. States possess the capacity and lawful means of coercion necessary to enforce the criminal law. On occasions states have acted in concert with other states to enforce international criminal law by means of international criminal tribunals. However the enforcement of the decisions of these tribunals has been by the use of co-opted state coercive power.

The thesis set out to prove that states through their representatives do at times perpetrate international crimes upon humanity. International criminal law prohibits this conduct. The argument of the thesis is that the role of law enforcer cannot properly be performed by a state that has a common interest with the perpetrator of the crime. This conflict of interest has been responsible for a poor record of enforcement of international criminal law by states. However states often assert that the enforcement of the criminal law (including international criminal law) is exclusively their sovereign right, especially if the crimes are committed upon their territory or by their citizens.

This thesis addresses this conflict of interest and argues that exclusive state dominion over international criminal law is incongruent with the achievement of justice. The thesis asserts that humanity has a superior claim to states when human interests are threatened by the 'criminal conduct' of states. The thesis considers the role of 'global civil society' and postulates a role for 'global civil society' when states should be disqualified from exercising exclusive authority over the enforcement of international criminal law because of their irreconcilable conflict of interest.

The thesis considers the position of the International Criminal Court (ICC) and argues that this court, as presently constituted, is greatly dependant upon states in order to fulfil its prosecutorial role. This dependency can at times influence whether or not the ICC prosecutor is permitted to investigate international crimes. The thesis proposes a means whereby global civil society might apply pressure upon states in order to ensure that international criminal law is properly enforced by either the ICC or by states themselves.

## **SIGNED DECLARATION**

I CERTIFY THAT THIS THESIS DOES NOT INCORPORATE WITHOUT ACKNOWLEDGEMENT ANY MATERIAL PREVIOUSLY SUBMITTED FOR A DEGREE OR DIPLOMA IN ANY UNIVERSITY; AND THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF IT DOES NOT CONTAIN ANY MATERIAL PREVIOUSLY PUBLISHED OR WRITTEN BY ANOTHER PERSON EXCEPT WHERE DUE REFERENCE IS MADE IN THE TEXT.

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Grant Robert Niemann

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