

# The “Responsibility to Prevent”: An International Crimes Approach to the Prevention of Mass Atrocities

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**O**n September 9, 2013, diplomats and civil society activists gathered in a ballroom in New York to welcome Jennifer Welsh as the UN Secretary-General’s new Special Adviser on the Responsibility to Protect (RtoP). In her first public appearance in that role, Special Adviser Welsh explained that one of her top priorities would be “to take prevention seriously and to make it meaningful in practice.” “In the context of RtoP,” Welsh added during the discussion, “we are talking about crimes, and crimes have implications in terms of how we deal with them. You’ll hear me say that a lot.”<sup>1</sup> Welsh’s approach of treating RtoP as a principle that is primarily concerned with prevention and is firmly linked to international crimes neatly captures the evolution of RtoP since its formal acceptance by states at the 2005 UN World Summit. Paragraphs 138 to 140 of the World Summit’s Outcome Document not only elevated the element of prevention to a prominent place within the principle of RtoP but also restricted the scope of RtoP to four specific crimes under international law: genocide, war crimes, ethnic cleansing, and crimes against humanity.<sup>2</sup> The crime and prevention-focused version of RtoP has subsequently been defended and promoted by Secretary-General Ban Ki-moon and by UN member states. This article seeks to systematically explore some of the implications of linking RtoP to the concept of international crimes, with a particular focus on the preventive dimension of RtoP, the so-called responsibility to prevent. What, then, are the consequences of approaching the responsibility to prevent as the prevention of international crimes?

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In order to systematically examine this question, this article turns to literature from criminology. While the criminological perspective has so far been neglected in debates on RtoP, the prominent criminologists John Hagan and Wenona Raymond-Richmond argue vehemently that “criminology is crucially positioned to contribute understanding and direction to what the United Nations has mandated as the ‘Responsibility to Protect’ groups that are threatened with mass atrocities.”<sup>3</sup> For the purpose of this article, the label “criminology” comprises domestic criminology, supranational criminology, and international criminal law. While insights from supranational criminology and international criminal law are directly applicable to international crimes, translating knowledge generated in relation to crimes at the domestic level to atrocity crimes at the international level is, of course, not without challenges. Reasoning by analogy is an important method in this regard, though given the anarchical nature of international society some analogies will inevitably be imperfect. The benefits of such an approach, if carefully employed, however, outweigh the risks.<sup>4</sup>

It is the central claim of this article that if one wants to take the linkage of RtoP to four specific international crimes seriously it will require a rethinking of the responsibility to prevent, which is usually approached as a form of conflict prevention. Conflict prevention–inspired accounts of the responsibility to prevent tend to depict the principle as a long-term agenda that seeks to build societies resilient to atrocity crimes, that is supportive rather than undermining of state sovereignty, and that can largely adhere to traditional conflict prevention principles should more direct prevention efforts become necessary.<sup>5</sup> However, this article suggests that an international crimes approach turns the responsibility to prevent into a principle that prioritizes short-term and direct forms of prevention over so-called “root cause” prevention that is geared to long-run societal change; that focuses primarily on individuals (their choices, capacities, and protection needs), rather than on state structures and capacity; that is explicitly partial regarding perpetrators and victims; and that is more coercive, intrusive, and controversial than is commonly acknowledged in academic writing and policy debates on the subject. While an international crimes approach to the prevention of mass atrocities might not offer a radically new set of policy tools for implementing the responsibility to prevent, it suggests using existing tools in different ways, puts tools from RtoP’s third pillar (concerning “timely and decisive response”) at the center of prevention activities,<sup>6</sup> advocates for a shift toward short-term strategies that deter and/or

protect individuals, and provides international actors with a more systematic way of approaching and coordinating their prevention efforts.

This article proceeds in five steps. The first section examines the concept of crime/international crime and identifies some key differences to the notion of conflict. The next section discusses the main criminological approaches to the prevention of crime/international crime: social and situational crime prevention. The article then identifies the key dimensions that structure criminological thinking about crime prevention, namely: perpetrators, victims, crime situations, and third parties. The following section draws on criminological literature to derive more specific prevention strategies that third-party actors can employ across the other three crime dimensions. The conclusion summarizes the distinct characteristics of an international crimes approach to the responsibility to prevent and reflects on potential implications for global politics and the diplomacy around RtoP.

## THE NATURE OF “INTERNATIONAL CRIMES”

How does the concept of “crime” differ from the notion of “conflict”? The concept of crime defines normative boundaries for a society. It expresses and protects shared community values. Thereby, crime strongly emphasizes individual agency and responsibility, and largely ignores the role of collectives or social grievances. Individuals that violate the agreed standards of appropriate behavior put themselves outside the bounds of society and risk punishment. A sharp distinction is drawn between offenders and victims, reflecting a posture of partiality. These assumptions set crime prevention apart from traditional approaches toward conflict resolution, which tend to avoid value judgments, partiality, and coercion, and often try to address structural issues that underpin a crisis.

Legal scholars and criminologists usually define “crime” as intentional human behavior that is criminalized by the legislator and that entails punishment.<sup>7</sup> It can be argued, therefore, that crime is the product of criminal law.<sup>8</sup> The function of criminal law is to establish substantive norms of behavior within societies. It reflects what a society considers to be acceptable and unacceptable, and defines acts that put the agent outside of that society.<sup>9</sup> The notion of crime, therefore, is best seen as a strong expression of social disapproval for certain types of individual behavior, backed by the threat of punitive measures and sanctions.

It is widely acknowledged among criminologists that crime is not an objective category, but a social construct. Crime is behavior that societies decide to label as

such, that is, acts deemed as socially unacceptable. “It is not what people do,” John Muncie argues, “but how they are perceived and evaluated by others that constitutes crime.”<sup>10</sup> Thus, the label “crime” is essentially a reflection of a collective value judgment. On the domestic level, it is assumed that this value judgment is made by the centralized legislator that passes the criminal laws. Legal scholars distinguish two rationales for why legislators criminalize certain forms of human behavior. On the one hand, there is behavior that is labeled as criminal for regulatory purposes (so-called *malum prohibitum* crimes). *Malum prohibitum* crimes are not criminalized because the behavior in question is considered to be inherently evil or morally wrong, but because the lawmakers wish to minimize such behavior for practical purposes: examples include copyright infringements or public alcohol consumption. *Malum prohibitum* crimes do not carry a powerful moral stigma. On the other hand, there is human behavior, such as murder or rape, that is criminalized because it is seen as violating fundamental moral values and thus as inherently evil and wrong (so-called *malum in se* crimes).<sup>11</sup> Such crimes are strongly value-loaded and are widely thought to delineate civilized and uncivilized behavior.<sup>12</sup>

In contemporary international society, it is primarily international criminal law that defines normative boundaries for individual behavior. According to the prominent international criminal lawyer Antonio Cassese, international criminal law rules “are intended to protect values considered important by the whole international community.”<sup>13</sup> The “core” international crimes—usually defined as genocide, war crimes, crimes against humanity, and aggression—are considered to be crimes *mala in se*, carrying a strong social stigma.<sup>14</sup> They are criminalized for their exceptionally cruel and barbarous nature, which threatens “the very foundations of modern civilization and the values it embodies.”<sup>15</sup> According to the International Criminal Tribunal for the former Yugoslavia, atrocity crimes, such as those at the heart of RtoP, violate important values of humanity.<sup>16</sup> Similarly, the 1998 Preamble of the Rome Statute of the International Criminal Court (ICC) recalls that “during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity.” The Rome Statute further notes that the ICC’s subject-matter jurisdiction concerns “the most serious crimes of concern to the international community as a whole.”<sup>17</sup>

The normative boundaries that international criminal law establishes for individuals are not pre-given, of course, but the product of the interaction of states. There is no centralized legislator on the international level. Rather, the society of states establishes international criminal rules through the development of

customary international law, the adoption of international conventions, or both. While international criminal law is made by states, however, it focuses on regulating and punishing the behavior of individuals, rather than collectives.<sup>18</sup> Similarly, even though atrocity crimes are often described as collective crimes, international criminal law tends to reject the notion of collective responsibility and largely ignores the influence of social and structural factors on individual actors.<sup>19</sup> Instead, international criminal law is fundamentally based on the principle of individual criminal responsibility. “The principle of individual autonomy whereby the individual is normally endowed with free will and the independent capacity to choose his conduct,” Cassese argues, “is firmly rooted in modern criminal law, including international criminal law.”<sup>20</sup> In the words of Telford Taylor, the public prosecutor at the Nuremberg Trials, “crimes are committed by individuals and not by abstract entities.”<sup>21</sup>

Individuals that violate international criminal law put themselves outside the bounds of international society. They are turned into global outlaws, “enemies of all humanity” (*hostes humani generis*).<sup>22</sup> Ruti Teitel argues that international criminal law reconstitutes the friend/enemy distinction in legalistic terms as law/outlaw.<sup>23</sup> Thus, it does not remain neutral between the various actors involved in atrocity crimes, but draws a distinction between the perpetrators, who are threatened with punishment, and the victims, who are promised protection.<sup>24</sup> Moreover, the protection and enforcement of the international behavioral code is predicated on coercive measures. International criminal law even imposes an obligation on states to prosecute and punish international criminal conduct.<sup>25</sup> In sum, as John Muncie notes: “Criminal law is coercive and partial, its political neutrality a myth.”<sup>26</sup>

The supranational criminologist Fred Grünfeld draws on this reasoning in his “Guidelines” for the prevention of international crimes. Grünfeld suggests that “any preventive strategy on international crimes cannot be neutral or impartial” (Rule no. 9). He further stresses that, “confronted with international crimes, genocide, and in general gross human rights violations, preventive strategies should not be focused on a peaceful settlement but should be adopted under Chapter VII [of the UN Charter] with the possibility to use threats with enforcement powers” (Rule no. 10).<sup>27</sup>

Thus, the category of “international crimes” differs from the notion of conflict, which often informs thinking on the responsibility to prevent. Conflict is typically defined as a serious disagreement of opinions or incompatibility of interests and

demands between two or more actors.<sup>28</sup> This is not necessarily seen as morally wrong and inherently unjustifiable. In fact, some nonviolent forms of conflict are even perceived as positive phenomena that promote social progress. In contrast to crimes, therefore, conflict is merely regulated, rather than universally outlawed.<sup>29</sup> The notion of conflict does not contain intrinsic value judgments or elements of partiality. As a consequence, “finger pointing” is not traditionally considered to be part of conflict resolution. Despite more recent evolutions in conflict prevention theory, the bedrock principles of conflict prevention and resolution are still impartiality, consent, and minimal coercion. Increasingly, moreover, the prevention of conflict revolves around resolving structural issues and collective grievances that could give rise to a crisis.<sup>30</sup>

Thus, the linking of RtoP to the concept of international crimes makes it more difficult for actors seeking to operationalize the responsibility to prevent to adhere to the traditional conflict prevention and resolution principles of impartiality, consent, and minimal coercion. The concept of international crime reflects international society’s collective value judgment regarding acceptable and unacceptable behavior of individuals. It is inherently predicated on partiality and coercion, and turns individuals who commit international crimes into global outlaws. While some scholars and international policymakers have acknowledged aspects of this argument, it has yet to be systematically reflected in debates on the responsibility to prevent.<sup>31</sup>

## CRIMINOLOGICAL APPROACHES TO THE PREVENTION OF CRIME

What are the main criminological approaches to the prevention of crime? There are two main crime prevention approaches. One is social crime prevention, which focuses on eliminating structural and dispositional risk factors associated with the development of criminality. This is rather similar to what is often referred to as “structural prevention,” such as long-term investment in economic development, democratization, education, or good governance. The other is situational crime prevention, which focuses on reducing crime opportunities and manipulating individual decision-making in more proximate crime situations. This is rather similar to what is often referred to as “direct prevention,” such as preventive diplomacy or sanctions. In criminological theory and crime prevention practice, the situational crime prevention approach is dominant and widely seen as the most promising strategy for preventing crime. This prioritization of direct over

structural prevention approaches challenges the assumption of much contemporary thinking on the responsibility to prevent, which calls for prioritizing structural prevention or giving equal weight to structural and direct prevention.

In the field of criminology, three accounts of the causes of crime are usually distinguished: a *dispositional* account, a *sociological* account, and a *rational choice* account. The dispositional account assumes that criminality is determined by various biological and psychological factors. Dispositional risk factors linked to criminal behavior include, for example, hormone imbalances or the failure to develop self-control mechanisms.<sup>32</sup> The sociological account stresses the role of socioeconomic structures in the production of criminality, such as poverty, unemployment, or class relations. It argues that individual behavior is largely determined by these external forces.<sup>33</sup> Both the dispositional and the sociological accounts focus on factors that lead to the development of criminality, which is why they are called “theories of criminality.” Their focus is on why certain individuals are more likely to be involved in crime. It is assumed that individuals are pushed into crime by either their dispositional characteristics or socioeconomic structures.

The rational choice account, by contrast, argues that crime is the product of individual choices that are mainly influenced by immediate situational factors, including opportunities for crime. It is assumed that there is always a crucial *choice* element in crime. Criminal offenders are conceptualized as “normal” and nonpathological individuals who choose to commit crime because it benefits them in some way. Criminal behavior is seen as goal-oriented and purposive—the most effective means to achieve desired ends.<sup>34</sup> In fact, it is argued that everyone might choose to commit crime under the right circumstances and with powerful situational incentives—something that is also suggested by research on organized crime, white-collar crime, and state crime. Rationality, however, is usually understood in a limited sense. It is not assumed, for example, that actors are fully informed, possess accurate information, or engage in extensive cost-benefit calculations. It is fully expected that potential perpetrators will use rule-of-thumb reasoning and might settle for anticipated outcomes that simply promise enough gain to satisfy or “get the job done.”<sup>35</sup> As crime is seen as the result of choices made in the present, the rational choice account largely ignores the background of offenders.<sup>36</sup> The focus is on individual decision-making in present situational settings. Thus, the rational choice account constitutes a “theory of crime” that seeks to explain the occurrence of crime rather than the roots of criminal propensity.

These three crime causation theories inform the two main crime prevention approaches in the field of criminology. The first is usually referred to as “social crime prevention,” based on the dispositional and sociological crime causation models. The second is “situational crime prevention,” based on the rational choice account. These are the approaches identified by the UN Guidelines on Crime Prevention as well as by the main criminological textbooks.<sup>37</sup> Both approaches will be discussed in turn.

First, social crime prevention assumes that the best way to prevent crime is to tackle the root causes of criminality and thereby reduce the number of potential offenders. The UN Guidelines on Crime Prevention explain that social crime prevention seeks to “promote the well-being of people and encourage pro-social behaviour through social, economic, health and educational measures, with a particular emphasis on children and youth, and focus on the risk and protective factors associated with crime and victimization.” More proximate factors are ignored. Social crime prevention focuses on reducing poverty, fighting unemployment, improving education, strengthening institutions of socialization, changing child-rearing practices, and building stronger communities.<sup>38</sup> The pursuit of these fairly broad social policies is not always explicitly referred to as crime prevention, but often implemented under different labels and as part of other social agendas.

In contrast, situational crime prevention is based on the rational choice theory of crime. It is skeptical about arguments that crime prevention needs to address the “root causes” of criminality, which it sees as an overly ambitious and unfocused task. Advocates of situational crime prevention note that the variables that contribute to the development of criminality are wide and varied, and there is very little that can be done to directly address them. Thus, while situational crime prevention acknowledges that socio-structural and dispositional factors can influence the development of criminality, it treats them as background variables. It is assumed that there will always be motivated offenders that are willing to commit crime. Criminals are viewed as “reasoning criminals,” capable of adjusting and responding to adverse consequences, anticipated or experienced. The most effective means to prevent crime, therefore, is to control and manipulate factors in immediate crime situations that affect the choices of potential criminals.<sup>39</sup> In particular, situational crime prevention emphasizes the central role of opportunities in causing crime. Opportunities are treated as a key “root cause” of crime. Situational crime prevention thus tries to alter the decision-making



process of potential perpetrators by manipulating proximate variables of the crime event—for example, by making crime more risky, more difficult, or less rewarding. Thereby, situational crime prevention is willing to treat the potential offender as “the enemy.”<sup>40</sup>

While social and situational crime prevention differ in nature, the two strategies are not *a priori* irreconcilable or incompatible. Rossella Selmini argues that both strategies should, and often do, form part of one integrated and comprehensive prevention strategy.<sup>41</sup> However, Selmini also stresses that situational crime prevention is usually prioritized by crime prevention practitioners and theorists. Mangai Natarajan also points out that while both approaches help to explain crime, situational crime prevention is significantly more important for preventing and controlling crime.<sup>42</sup> Criminological research has produced a wealth of empirical evidence for the effectiveness of situational crime prevention in very different contexts, including in the context of transnational crimes. As a result, situational crime prevention is now the fastest growing form of crime prevention. It is seen as a practicable prevention approach that produces tangible results.<sup>43</sup> Thus, the most prominent criminological crime prevention approach focuses on manipulating immediate situational factors, rather than on long-term efforts to eliminate risk factors associated with the development of criminality. As this is an important point with regards to the “responsibility to prevent,” the main reasons for prioritizing situational crime prevention will be discussed in more detail.

First, criminologists stress that the impact of social crime prevention strategies is very difficult to prove empirically. Establishing a direct causal link between distant social conditions and the actual commission of crime is almost impossible. Ronald Clarke, a recognized expert on situational crime prevention, argues that focusing on alleged root causes is unpromising as “there are too many intermediary links between distant causes and crime to be sure that action directed at these causes will be effective.”<sup>44</sup> Similarly, Ken Pease argues that “the routes whereby societal structure may impact upon crime are so various as to defy simple classification.”<sup>45</sup> Lawrence Sherman and his colleagues, pioneers in the area of evidence-based crime prevention, emphasize that there is no empirical evidence for the effectiveness of tackling structural causes of criminality. Their empirical research suggests that, “while some might say that no program can work until the ‘root causes’ of crime are cured, we find no scientific basis for that conclusion—and substantial evidence against it.”<sup>46</sup>

On the other hand, criminological research has produced a vast amount of evidence for the effectiveness of situational crime prevention strategies. “There is now a great deal of evidence,” the crime scientist Gloria Laycock notes, “that changing aspects of the immediate situation leads to measurable, and in most cases permanent, reductions in offending.”<sup>47</sup> Thus, in their famous research paper *Opportunity Makes the Thief*, Marcus Felson and Ronald Clarke argue that while some erroneously assume that the earliest and most remote causes are most significant, “the more immediate causes are often more powerful in generating crime.”<sup>48</sup>

Second, social crime prevention faces temporal difficulties, given that dispositional and structural changes take a long time to reduce criminality. Thus, social crime prevention strategies could only contribute to the reduction of crime in the (distant) future; it has almost nothing to say about the prevention of more imminent crime. Targeted interventions into immediate crime situations, on the other hand, can be done relatively quickly and crime reduction results will often show immediately.<sup>49</sup> This is not necessarily an argument against the pursuit of social crime prevention as such, as long-term social changes can hopefully contribute to a reduction in criminality in the longer term. It should be noted, however, that there is a body of literature suggesting that the implementation of measures often associated with social crime prevention, such as the promotion of democracy, horizontal equality, and security sector reform, can enhance the risk of political violence and atrocity crimes in the short to medium term.<sup>50</sup> Thus, designing effective situational strategies for the prevention of more imminent crime is indispensable for dealing with crime problems in the foreseeable future, as well as for mitigating the negative externalities of social crime prevention.

Third, most states already run social programs that address the concerns of social crime prevention. Besides the difficulties of distinguishing these efforts from social crime prevention, only marginal additional impact can be achieved by reorganizing these programs under the label of “crime prevention.” In contrast, prevention strategies that are tailored to the requirements of concrete crime situations have been shown to have a significant additional impact on crime rates. On the international level, to reason by analogy, international actors are often already engaged in social crime prevention—for instance, by promoting democratization, economic development, or human rights. Strengthening these efforts under the label “international social crime prevention” could only have a marginal additional impact.

Finally, social crime prevention strategies are notoriously difficult to implement and sustain, due to limited capacity and resources.<sup>51</sup> Many crime prevention scholars argue that research on the prevention of crimes should have a clear link to practice and achievable public policy goals, that is, to what can realistically be changed and manipulated. Situational crime prevention is seen as a practically oriented crime-prevention approach, which contributes to its popularity among crime prevention practitioners and academics.

Hence, criminological literature suggests that a distinctive strategy for the prevention of international crime would prioritize direct forms of prevention (situational crime prevention) over structural prevention (social crime prevention). While an integrated and comprehensive approach to the prevention of international crimes can combine both social and situational crime prevention, primary importance still needs to be attached to the situational prevention component. This insight turns on its head the usual assumption that, at its core, the responsibility to prevent should seek to promote long-run societal and institutional reform through economic development, democratization, education, security sector reform, and good governance.<sup>52</sup> In recent debates on the responsibility to prevent it is often assumed that preventing atrocity crimes “once and for all” requires, first and foremost, building societies resilient to atrocity crimes—in other words, establishing adequate and legitimate state structures and institutions.<sup>53</sup> For example, Alex Bellamy stresses that “a world of wealthier, more equitable, and more democratic states would be one with far fewer atrocities.”<sup>54</sup> While direct prevention is of course not ignored by scholars such as Bellamy and Lawrence Woocher, it is nevertheless seen as secondary and as amounting to mere fire-fighting. In contrast to these recent accounts of RtoP’s preventive dimension, an international crimes approach would prioritize direct prevention strategies as the most promising way to avoid atrocity crimes.

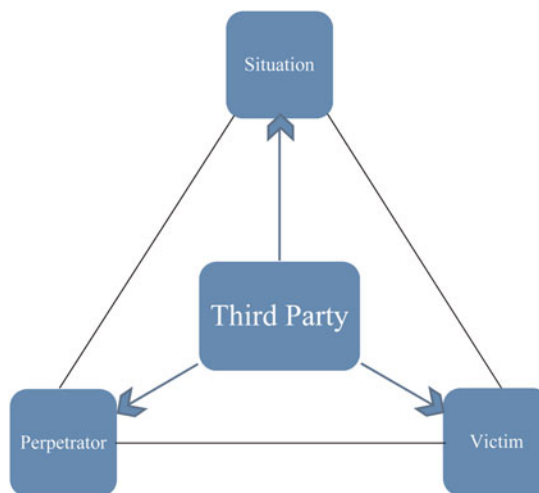
## THE KEY DIMENSIONS OF CRIME

What are the key dimensions of crime? Criminological thinking about crime prevention is usually structured around four dimensions: (1) perpetrators (likely offenders), (2) victims (suitable targets), (3) situations (time and place), and (4) third parties (capable guardians). Third-party actors are seen as the “crime preventers” that design preventive interventions with reference to the other three dimensions. As a consequence, building specific third-party capacities (“external

capacity-building”) becomes a key requirement for the prevention of international crimes.

A good starting point for identifying the dimensions of crime is routine activity theory, which is one of the theoretical foundations of situational crime prevention and one of the most highly cited theories in criminology. Routine activity theory seeks to provide a practical guide for crime prevention and purports that “crime occurs when a *likely offender* and *suitable target* come together in *time and place*, without a *capable guardian* present.”<sup>55</sup>

The assumptions of routine activity theory are reflected in the so-called “crime triangle.”<sup>56</sup> The crime triangle is formed by perpetrators, victims, and the crime situation, as these are the primary dimensions present in any crime event. In order to prevent crime, so-called “controllers” are then assigned to each of the three crime dimensions: a “handler” for the perpetrators, a “guardian” for the victims, and a “manager” for the situation. These controllers are third parties that have the job to effect preventive changes within any of the other three crime dimensions, as demonstrated in Figure 1:



**Figure 1. The Crime Triangle**

Supranational criminologists identify the same four crime dimensions as being crucial in the specific context of international crimes. For instance, Alette Smeulers and Roelof Haveman argue that strategies for the prevention of international crimes need to be structured around a victim dimension, a perpetrator dimension, a situational dimension, and a third-party dimension. They note that:

If we know the groups that are most vulnerable to becoming victims of large scale violence like genocide and the reasons for this vulnerability, it may become possible to develop strategies to strengthen their ability to fight against this [victim dimension]. If we know why bystanders, both individuals and states, stay inactive upon seeing atrocities happening, we possibly may develop strategies to intervene in an effective manner [third-party dimension]. If we know more about the offenders and why they commit their crimes, we may develop mechanisms to prevent them from becoming war criminals and the like [perpetrator dimension]. If we know what exactly turns a specific situation into an ‘atrocities producing situation’ we may be able to prevent those situations from developing in the future [situational dimension].<sup>57</sup>

Drawing on this reasoning, Grünfeld has proposed an “atrocities prevention triangle” that is formed by perpetrators, victims, and third parties. Grünfeld stresses that third-party actors are at the center of international crime prevention efforts.<sup>58</sup> “The supply of capable guardians,” agrees Adam Crawford, “is crucial to prevention efforts.”<sup>59</sup> At the international level, potential actors that could serve as capable guardians are international organizations, regional organizations, national governments, or even nongovernmental organizations. These third-party actors could try to manipulate the decision-making of potential perpetrators by changing their cost–benefit analysis or reducing their capacity to commit crime; they could focus on reducing the vulnerability of potential victims by providing them with protection; or they could try to reduce the permissiveness of the crime situation.<sup>60</sup> Moreover, criminological literature on so-called “third-party policing” suggests that these primary third parties could also persuade or coerce other nonoffending third parties, such as local business communities or local civil society, to take some responsibility for preventing and controlling crime. In other words, international actors can use nonoffending “proximate targets” to affect the behavior of the potential perpetrators, the “ultimate targets.”<sup>61</sup>

In addition to mustering the political will to act as the “crime preventer” (which is an important prerequisite for preventive action that this article cannot discuss in detail), the prevention of atrocities thus requires third parties to acquire specific capacities. To put it another way, international actors need to build generic capacities at the international level, which can then be utilized in specific situations to influence the behavior of potential perpetrators, protect individuals threatened by atrocities, and manipulate crime situations. More inductive case study research is necessary to identify the specific international capacities that need to be built.<sup>62</sup> This focus on “external capacity-building” is at odds with

the current debate on the responsibility to prevent, which focuses predominantly on “internal capacity-building”—that is, capacity-building efforts at the national level directed at mitigating the risk factors of atrocity crimes and building societal resilience.<sup>63</sup>

## PREVENTIVE STRATEGIES ACROSS THE THREE CRIME DIMENSIONS

This section draws on criminological literature to derive some more specific insights on prevention strategies that third-party actors can employ across the other three crime dimensions: the perpetrator, victim, and situational dimensions.

### *Potential Perpetrators*

According to the crime triangle, one way in which third-party actors can prevent crime is by “handling” potential perpetrators. With regards to international crimes, however, it needs to be acknowledged that “perpetrators” cannot be treated as one uniform category, which is something that third parties need to take into consideration when designing preventive strategies. As will be shown in this subsection, preventive strategies in the perpetrator category promise to be most effective if they focus on manipulating the capacities and cost–benefit calculations of criminal masterminds, who can be approached as strategic actors.

Supranational criminologists usually distinguish three broad categories of perpetrators: (1) criminal masterminds, (2) middle-ranking perpetrators, and (3) low-ranking perpetrators.<sup>64</sup> First, “criminal masterminds” are rational actors that plan, incite, and command international crimes. For them, atrocity crimes are a goal-oriented policy—a means to achieve certain political, economic, or military ends.<sup>65</sup> If the commission of atrocity crimes does not risk unacceptable costs, they can appear as a “rational” course of action. While criminal masterminds design the atrocity policies, however, they do not physically execute them. They possess a high level of agency and autonomy, such that their actions are not externally determined by the social context. On the contrary, they are the ones that create the social context in which the commission of atrocity crimes might become acceptable for other actors.<sup>66</sup>

The second group—“middle-ranking perpetrators”—are intermediaries who receive orders from the criminal masterminds while also exercising authority over the low-ranking perpetrators: they are “ordered into ordering others.”<sup>67</sup> They do not design atrocity policies, but are instrumental in supervising and executing

them. They can constitute a critical capacity for the criminal masterminds. Middle-ranking perpetrators can be criminals, bureaucrats, devoted warriors, or profiteers. Some of them follow orders or the chain of command, while others pursue career advancement and material gain.<sup>68</sup> They calculate costs and benefits to a certain degree, but their behavior depends heavily on the situational context that is created by the criminal masterminds.<sup>69</sup>

Finally, there are “low-ranking perpetrators.” These individuals are not involved in designing or supervising atrocity crimes, but are merely “used” for doing the hands-on killing. They are the henchmen. Supranational criminologists highlight the impact of situational factors, such as reversed social norms, structures of authority, or outright coercion in causing otherwise law-abiding individuals to participate in atrocity crimes.<sup>70</sup> Experimental research in social psychology provides evidence for the claim that ordinary people are capable of committing extreme violence when caught in particular situational settings—behavior they would otherwise consider inappropriate.<sup>71</sup> Thus, it is the social situation—deliberately created by the criminal masterminds—that causes low-ranking perpetrators to participate in atrocity crimes. Their agency is significantly constrained by the social environment, though it is never fully relinquished.<sup>72</sup>

This differentiation of perpetrators has implications for the prevention strategies that third parties could use to “handle” potential perpetrators. It suggests that while the criminal masterminds are usually not the only actors involved in the commission of atrocity crimes, they are the *sine qua non* for the occurrence of international crimes. Criminal masterminds not only design and command atrocity crimes but are also instrumental for creating the social context that might cause other actors to get involved. In short, without criminal masterminds there will be no atrocity crimes.<sup>73</sup> Indeed, supranational criminologists suggest that the most promising prevention strategies in the perpetrator dimension focus on manipulating the strategic cost–benefit calculations of criminal masterminds (through “sticks” and “carrots”), or on physically hindering them from designing and inciting atrocity crimes (through “incapacitation”).

Preventive strategies in the category of “sticks” usually revolve around the concept of deterrence. Deterrence is based on the intuitive assumption that harm is generally something actors try to avoid, whereas gain is generally something they seek.<sup>74</sup> This means that awareness of possible punishment changes the

strategic cost–benefit calculations of individuals—potentially to an extent that prevents them from pursuing a certain course of action. Deterrence is a psychological mechanism that depends on the subjective risk assessments of the potential perpetrators. “Deterrence must work through the mind of the actor,” Andrew Ashworth and Julian Roberts argue, “and so the reasoning should always be in terms of what potential offenders believe.”<sup>75</sup> Because criminal masterminds can only be deterred if they are aware of potential punishment and believe that punishment will actually be imposed,<sup>76</sup> the communication of the threat of punishment is an essential part of deterrence strategies.

Deterrence can either target specific individuals (“specific deterrence”) or criminal behavior at large (“general deterrence”). Specific deterrence requires detailed information about the character, circumstances, and previous record of the particular offender, so that punishment threats can be tailored to influence the specific offender. There are generally three components to deterrence: certainty, severity, and celerity. Criminological research has shown that the severity and celerity of punishment do not matter greatly, whereas certainty of punishment is a key factor.<sup>77</sup> Enhancing the certainty of punishment, or at least the perception of its certainty among potential perpetrators, is thus a key issue for crime prevention.<sup>78</sup> In the context of atrocity crimes, deterrence is usually associated with threats of individual criminal accountability, targeted sanctions, threats of military intervention, or threats of incapacitation.<sup>79</sup>

A second, though significantly less common, strategy for altering the behavior of potential perpetrators is to offer “carrots,” which tries to achieve behavioral changes by increasing the rewards of pursuing noncriminal behavior.<sup>80</sup> On the international level, this could involve linking development aid to specific policy changes or providing economic inducements.

Finally, third parties could handle potential perpetrators through incapacitation strategies, which aim to physically hinder criminal masterminds from plotting international crimes and carrying out whatever criminal inclinations they may have.<sup>81</sup> On the international level, preventive incapacitation strategies could involve the removal of specific leaders from positions of power or targeted killings—both of which are likely to give rise to serious legal problems and political controversy. Another, less problematic approach to incapacitating potential perpetrators would be to reduce the availability of “intermediaries”—for example, through encouraging defections.



### *Potential Victims*

A second way for third parties to prevent international crimes is by acting as “guardians” for the potential victims. In the specific context of atrocity crimes, victims are usually not targeted on individual grounds, but rather because of their membership in a particular group. Acting as guardians for potential victims requires third parties to reduce the vulnerability of these groups. According to Simon Green, the concept of “vulnerability” has two dimensions: risk and harm. “Individuals least likely to be victimised and most capable to cope with victimization are the least vulnerable,” Green notes, “whereas those most at risk and least capable to cope with harm caused would be the most vulnerable.”<sup>82</sup> From this, two strategies for reducing the vulnerability of potential victims can be deduced: (1) reducing the level of risk of victimization; and (2) strengthening victim capacity to cope with harm.

With regard to the first strategy, criminologists suggest several ways in which third-party actors could reduce the level of risk of victimization for certain individuals. One would be to prevent potential victims from being depicted as legitimate targets. Situational crime prevention theorists call this strategy “target concealment.”<sup>83</sup> Supranational criminologists purport that incitement and hate propaganda, which quite commonly precede atrocity crimes, increase the risk that certain groups are seen as legitimate targets for atrocity campaigns. Hate propaganda dehumanizes certain groups and falsely portrays situations as being of a “kill or be killed” nature. Thus, international actors could prevent international crimes by challenging hate propaganda and incitement to atrocities by “communication interventions,” such as radio jamming or the spreading of diverse views.<sup>84</sup>

Another strategy for reducing the level of risk of victimization would be to enable potential victims to flee from crime scenes. Situational crime prevention theorists refer to this strategy as “target removal.”<sup>85</sup> By analogy, third-party actors on the international level could provide potential victims with escape routes by opening borders to neighboring countries. Refugee experts have long advocated this strategy as a promising way of protecting vulnerable populations from atrocity crimes.<sup>86</sup> Yet another strategy would be to provide potential victims with physical protection from attacks. Among criminologists, this strategy of “building walls and barriers” is usually referred to as “target hardening.”<sup>87</sup> On the international level, by analogy, third-party actors could contribute to target hardening through measures such as preventive deployments of UN peacekeepers, the creation of safe areas, or the imposition of no-fly zones.

The second broad strategy for reducing the vulnerability of potential victims focuses on strengthening the capacity of potential victims to cope with harm. One way for third parties to assist potential victims to cope with harm would be to increase their self-defense capabilities. This could involve supplying them with arms and military equipment, providing them with intelligence and military training, or tutoring them in self-protection measures.

### *Crime Situation*

Finally, the “crime triangle” suggests that third-party actors can prevent international crimes by “managing” the situational context in which crime takes place. Criminological literature commonly identifies three situational elements that, if present, increase the likelihood that individuals will decide to commit crime: (1) the ready availability of means, (2) a low-risk setting, and (3) the availability of excuses.<sup>88</sup> Smeulers and Haveman suggest that there are some specific situational settings that combine these three “criminogenic” elements, such as war zones or refugee camps, and they regard these situational settings as atrocity producing.<sup>89</sup> From this insight, one can deduce three strategies for reducing the permissiveness of crime situations: (1) limiting the availability of means; (2) increasing the risk of detection; and (3) reducing the persuasiveness of excuses. These prevention strategies do not target specific perpetrators or victims, but focus on the structure of the situation at large. They will be discussed in turn.

First, criminologists argue that limiting the availability of the means to commit crime reduces the criminogenic power of situations, because available means can incentivize individuals to engage in criminal activity that they would not otherwise pursue. With regard to burglary or car theft, for example, it is argued that these crimes will suddenly appear more feasible and tempting to certain individuals if specific tools are within reach. At the international level, by analogy, it can be argued that atrocity crimes become more likely if the situational context provides potential offenders with ready access to weapons or an army of willing killers.<sup>90</sup> Reducing the availability of these means to commit atrocity crimes is thus a promising prevention strategy for third-party actors.

Second, criminologists point out that situational settings differ in the degree of risk that they pose for potential perpetrators. Situations that are characterized by a very low risk of getting caught, for example, because there are no natural or formal surveillance mechanisms, can fuel crime decisions. Thus, dark and deserted alleys are more conducive to crime than busy and well-lit streets with CCTV

surveillance. Even though surveillance technology, street lighting, or high-visibility police patrols do not constitute physical barriers to the commission of crime, criminological research has shown that increasing the risk of detection leads to fewer crime choices.<sup>91</sup> On the international level, by analogy, this suggests that strengthening public scrutiny or enhancing satellite surveillance programs could help to prevent crime.<sup>92</sup> Moreover, the perception that international crimes can often be committed with impunity has a criminogenic effect. Fighting impunity by strengthening international criminal justice mechanisms could therefore be another promising prevention strategy, and one very much aligned with the idea of general deterrence.

Finally, criminologists note that certain situations are criminogenic because they allow potential perpetrators to hide behind a range of excuses. Research shows that removing access to such excuses reduces the likelihood of crime. As Adam Crawford explains, removing excuses means eliminating “the possibility of someone responding that they did not know they were committing an offence or that they had no alternative but to do so.”<sup>93</sup> From this insight, two crime prevention strategies can be deduced: (1) countering the “I did not know” excuse; and (2) opposing the “I had no alternative” excuse. Access to the “I did not know” excuse could be removed by regularly reminding people of the relevant rules that apply in a given situation, as well as the penalties for breaking these rules. More generally, this excuse can be countered by making international criminal laws as clear and unambiguous as possible. This could involve drafting international conventions in clear language, raising public awareness about what kinds of behavior constitute an international crime, or offering training seminars on the subject matter. Access to the “I had no alternative” excuse could be limited by challenging false narratives or providing de-escalating information. At its core, the “I had no alternative” excuse rests on a necessity argument. In the context of atrocity crimes, hate propaganda and incitement to violence often have the purpose of creating the false impression that certain groups or individuals present a threat to another group, which is then supposed to frame the situation as one of “kill or be killed.” Removing access to this excuse could involve challenging such false narratives, spreading alternative views, or simply suppressing this kind of hate propaganda.

Figure 2 summarizes the key elements of an international crimes approach to the prevention of mass atrocities. While the framework might not propose a radically new set of policy tools, it does suggest that tools commonly associated with

RtoP's response pillar (pillar three) are critical for implementing the responsibility to prevent. It advocates using existing tools in particular ways, namely, to deter and punish individuals that are about to commit atrocity crimes and protect those individuals that are about to become victimized. It calls for attaching primary importance to short-term and direct forms of prevention. And it highlights the importance of building generic atrocity prevention capacities at the international level. In short, an international crimes approach to the prevention of mass atrocities provides international actors with a more systematic way of designing and coordinating their prevention efforts.

	<b>Perpetrators (Incentives)</b>	<b>Victims (Vulnerability)</b>	<b>Situation (Permissiveness)</b>
<b>Situational Crime Prevention</b>	<ul style="list-style-type: none"> <li>- <i>Incapacitation</i></li> <li>- <i>Sticks/Deterrence</i></li> <li>- <i>Carrots/Inducement</i></li> </ul>	<ul style="list-style-type: none"> <li>- <i>Strengthen Victim Capacity to Cope with Harm</i></li> <li>- <i>Reduce Risk of Victimization</i></li> </ul>	<ul style="list-style-type: none"> <li>- <i>Eliminate Excuses</i></li> <li>- <i>Increase Risk</i></li> <li>- <i>Reduce Means</i></li> </ul>
<b>Social Crime Prevention</b>	<i>Eliminate Structural &amp; Dispositional Risk Factors Associated with the Development of International Criminality</i>		

**Figure 2. The International Crimes Approach to the Prevention of Mass Atrocities**

## CONCLUSIONS

Insights from criminology suggest that an international crimes approach to the prevention of mass atrocities upends many of the usual assumptions on the preventive dimension of RtoP. Taking such an approach turns the responsibility to prevent into a principle that is more focused on the short-term, rather than on the so-called root causes of atrocity crimes; more focused on individuals, rather than on state structures and capacity; more partial regarding perpetrators and victims; and more coercive, intrusive, and controversial than is commonly acknowledged.

These findings are bound to have implications for global politics, as well as for the diplomacy around RtoP, some of which may not make Welsh's job as UN Special Adviser on RtoP any easier. First, it seems that the logic of international crime prevention can clash with other international policy agendas that many states deem to be important. For example, the partial, coercive, and intrusive

nature of international crime prevention might clash with traditional efforts to prevent, manage, and resolve armed conflicts. In fact, and somewhat counterintuitively, temporarily escalating or internationalizing an armed conflict can be a means of preventing atrocity crimes. Moreover, the logic of international crime prevention can be difficult to reconcile with the provision of humanitarian assistance to needy populations, and this could lead to tensions within the UN system—for instance, with the UN Office for the Coordination of Humanitarian Affairs.

Second, preventing international crimes requires the United Nations and other international actors to reconfigure their dispositions, capacities, and strategies toward protecting and affecting the behavior of individuals, rather than states. This centrality of the role of individuals poses new challenges for an organization such as the United Nations, which has traditionally been concerned with the security of states, the regulation of their behavior, and the organization of their peaceful co-existence. Ultimately, the United Nations is still an intergovernmental organization that is constituted by sovereign states; and the UN Charter regime, at least to a large extent, sets out a view of international order that cherishes the principles of sovereign equality and nonintervention. Efforts to operationalize all aspects of an international crimes approach to the prevention of mass atrocities will thus place enormous strain on the organization and its normative fabric.

Finally, the findings presented in this article may have implications for the diplomacy around RtoP. Turning RtoP into a principle that deals primarily with the prevention of four specific international crimes was at least partly a strategic choice of RtoP advocates, intended to reduce controversy around RtoP and generate greater political consensus on the principle.<sup>94</sup> However, this article suggests that preventing international crimes is not a soft and uncontroversial policy option. This might heighten, rather than lessen, the “temperature” on RtoP in many capitals around the world. To put it another way, the turn from “reaction” to “prevention” does not necessarily solve RtoP’s controversy problem—especially if it is accompanied by a shift to an international crimes approach.

#### NOTES

- <sup>1</sup> Jennifer Welsh, “Keynote Presentation by the UN Special Adviser on RtoP,” *Civil Society Perspectives: Building State Capacity and the Prevention of Atrocity Crimes* (Auschwitz Institute for Peace and Reconciliation, Friedrich-Ebert-Stiftung, International Coalition for the Responsibility to Protect, and Stanley Foundation, New York, September 9, 2013). See also, Don Hubert and Ariella Blätter, “The Responsibility to Protect as International Crimes Prevention,” *Global Responsibility to Protect* 4, no. 1 (2012), p. 63.

- <sup>2</sup> Ethnic cleansing is not technically a separate crime under international law, but constitutes a subcategory of genocide, war crimes, or crimes against humanity. There are currently only four “core” international crimes, namely, genocide, war crimes, crimes against humanity, and aggression. RtoP covers all of them with the notable exception of the crime of aggression. Throughout this article the umbrella term “atrocities crimes” will be used to refer to the four specific acts at the heart of RtoP.
- <sup>3</sup> John Hagan and Wenona Rymond-Richmond, “Criminology Confronts Genocide: Whose Side Are You On?” *Theoretical Criminology* 13, no. 4 (2009), p. 504.
- <sup>4</sup> On the promises of applying domestic criminology to the international level, see Paul Roberts and Nesam McMillan, “For Criminology in International Criminal Justice,” *Journal of International Criminal Justice* 1, no. 2 (2003), pp. 331–32. It should also be noted that the main crime prevention approaches in domestic criminology have been successfully applied to and tested in the context of transnational crimes, such as corruption, terrorism, sex crimes, and organized crime. While transnational crimes are distinct from international crimes, they both have in common the international context. See Ronald Clarke and Graeme Newman, *Outsmarting the Terrorists* (Westport: Praeger Security International, 2006); Angela Gorta, “Minimising Corruption: Applying Lessons from the Crime Prevention Literature,” *Crime, Law and Social Change* 30, no. 1 (1998), pp. 67–87; Karen Bullock, Ronald Clarke, and Nick Tilley, eds., *Situational Prevention of Organised Crime* (Cullompton, Devon: Willan, 2010).
- <sup>5</sup> The responsibility to prevent tends to be perceived through a conflict prevention lens. For examples, see International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), pp. 19–27; Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* (Washington, D.C.: Brookings Institution Press, 2008), pp. 79–104; Kofi Annan, “Action Plan to Prevent Genocide,” Press Release, SG/SM/9197 AFR/893 HR/CN/1077, April 7, 2004; William Zartman, Mark Anstey, and Paul Meerts, eds., *The Slippery Slope to Genocide: Reducing Identity Conflicts and Preventing Mass Murder* (New York: Oxford University Press, 2012). For more nuanced approaches that have advanced the debate in important respects and acknowledge pieces of the argument made in this article, see Alex J. Bellamy, “Mass Atrocities and Armed Conflict: Links, Distinctions, and Implications for the Responsibility to Prevent,” Stanley Foundation Policy Analysis Brief, January 2011; Lawrence Woocher, “The Responsibility to Prevent: Toward a Strategy,” in W. Andy Knight and Frazer Egerton, eds., *Routledge Handbook of the Responsibility to Protect* (Abingdon, U.K.: Routledge, 2012); Ruben Reike, Serena Sharma, and Jennifer Welsh, “The Responsibility to Prevent: A Strategic Framework for Atrocity Prevention,” in Welsh and Sharma, eds., *The Responsibility to Prevent: Overcoming the Challenges of Mass Atrocity Prevention* (Oxford: Oxford University Press, forthcoming).
- <sup>6</sup> The “three-pillar” implementation framework for RtoP (state responsibility; international assistance and capacity-building; and timely and decisive response) was officially introduced by UN Secretary-General Ban in his 2009 report on RtoP; see Ban Ki-moon, *Implementing the Responsibility to Protect, Report of the Secretary-General, A/63/677*, January 12, 2009. Informally, Ban and his former Special Adviser on RtoP Edward Luck had already introduced the “three-pillar” language in mid-2008; see Ban Ki-moon, “On Responsible Sovereignty: International Cooperation for a Changed World,” SG/SM11701, Berlin, July 15, 2008; and Edward C. Luck, “The United Nations and the Responsibility to Protect,” Stanley Foundation Policy Analysis Brief, August 2008.
- <sup>7</sup> Jean-Paul Brodeur and Geneviève Ouellet, “What is a Crime? A Secular Answer,” in Law Commission of Canada, ed., *What Is a Crime? Defining Criminal Conduct in Contemporary Society* (Vancouver: UBC Press, 2004); also Roelof Haveman and Alette Smeulers, “Criminology in a State of Denial—Towards a Criminology of International Crimes,” in Smeulers and Haveman, eds., *Supranational Criminology: Towards a Criminology of International Crimes* (Antwerp, Belgium: Intersentia, 2008), p. 6.
- <sup>8</sup> See the classical piece by Paul Tappan, “Who is the Criminal?” *American Sociological Review* 12, no. 1 (1947), p. 100; and John Muncie, “Editor’s Introduction,” in Muncie, ed., *Criminology: The Meaning of Crime*, vol. 1 (London: SAGE, 2006), p. xvi.
- <sup>9</sup> Ruti Teitel, *Humanity’s Law* (New York: Oxford University Press, 2011), pp. 199–201; Nathalie Des Rosiers and Steven Bittle, “Introduction,” in Law Commission of Canada, *What Is a Crime?*
- <sup>10</sup> Muncie, “Editor’s Introduction,” in *Meaning of Crime*, p. xxiii.
- <sup>11</sup> *Ibid.*, p. xxvi.
- <sup>12</sup> William Schabas, *Unimaginable Atrocities: Justice, Politics, and Rights at the War Crimes Tribunals* (Oxford: Oxford University Press, 2012); Schabas, “International Crimes,” in David Armstrong, ed., *Routledge Handbook of International Law* (Abingdon, U.K.: Routledge, 2009), p. 268.
- <sup>13</sup> Antonio Cassese, *International Criminal Law*, 2nd ed. (New York: Oxford University Press, 2008), p. 11; also Teitel, *Humanity’s Law*, pp. 199–201.
- <sup>14</sup> Schabas, “International Crimes,” p. 269.

- <sup>15</sup> Ibid., p. 271.
- <sup>16</sup> Ibid., p. 272.
- <sup>17</sup> “Preamble” of the Rome Statute of the International Criminal Court.
- <sup>18</sup> Cassese, *International Criminal Law*, p. 8; Alette Smeulers, “Perpetrators of International Crimes: Towards a Typology,” in Smeulers and Haveman, *Supranational Criminology*, p. 265.
- <sup>19</sup> Cassese, *International Criminal Law*, p. 33; Gabriella Blum, “The Individualization of War: From War to Policing in the Regulation of Armed Conflicts,” in Austin Sarat, Lawrence Douglas, and Martha Merrill Umphrey, eds., *Law and War* (Stanford, Calif: Stanford University Press, 2014), pp. 67–69; Kirsten Ainley, “Individual Agency and Responsibility for Atrocity,” in Renée Jeffery, ed., *Confronting Evil in International Relations* (New York: Palgrave Macmillan, 2008), pp. 2, 27.
- <sup>20</sup> Cassese, *International Criminal Law*, p. 33; Ainley, “Individual Agency and Responsibility for Atrocity,” p. 10. The primacy of the individual is deeply embedded in both domestic and international criminal law.
- <sup>21</sup> Telford Taylor, “Judgment of the Tribunal,” *American Journal of International Law* 41 (1947), p. 172.
- <sup>22</sup> Haveman and Smeulers, “Criminology in a State of Denial,” p. 16.
- <sup>23</sup> Teitel, *Humanity’s Law*, pp. 199–201.
- <sup>24</sup> Teitel, *Humanity’s Law*, pp. 200–201; also Ainley, “Individual Agency and Responsibility for Atrocity,” p. 2.
- <sup>25</sup> Cassese, *International Criminal Law*, p. 3.
- <sup>26</sup> Muncie, “Editor’s Introduction,” in *Meaning of Crime*, p. xviii.
- <sup>27</sup> Fred Grünfeld, “The Role of Bystanders in Rwanda and Srebrenica: Lessons Learned,” in Smeulers and Haveman, *Supranational Criminology*, p. 485.
- <sup>28</sup> See Jacob Bercovitch and Richard Jackson, *Conflict Resolution in the Twenty-First Century: Principles, Methods, and Approaches* (Ann Arbor, Mich.: University of Michigan Press, 2009), p. 20; William Wilmot and Joyce Hocker, *Interpersonal Conflict*, 8th ed. (New York: McGraw-Hill, 2011).
- <sup>29</sup> See Woocher, “The Responsibility to Prevent,” pp. 27–28; Zartman and Anstey, “The Problem: Preventing Identity Conflicts and Genocide,” in Zartman, Anstey, and Meerts, *The Slippery Slope to Genocide*, p. 16. Note that some violent conflict has been outlawed as the crime of aggression. Even though the ICC does not yet have jurisdiction over the crime of aggression, the 2010 Review Conference of the Rome Statute in Kampala, Uganda has seen states parties to the ICC agree on a substantive definition and jurisdictional prerequisites of the crime of aggression. At the earliest, this could become operational in 2017.
- <sup>30</sup> Bercovitch and Jackson, *Conflict Resolution in the Twenty-First Century*, pp. 7–10.
- <sup>31</sup> In his 1999 report on Srebrenica, former UN Secretary-General Annan encouraged UN member states to rethink the “institutional ideology of impartiality even when confronted with attempted genocide.” The 2000 Brahimi report also acknowledged that impartiality can lead to complicity with evil if interpreted as equidistant neutrality. See Kofi Annan, *Report of the Secretary-General Pursuant to General Assembly Resolution 53/55: The Fall of Srebrenica*, A/54/549, November 15, 1999, p. 111; and *Report of the Panel on United Nations Peace Operations*, A/55/305-S/2000/809, August 21, 2000. For scholarship on the “responsibility to prevent” that acknowledges this argument, see Bellamy, “Mass Atrocities and Armed Conflict,” pp. 1, 7; Reike, Sharma, and Welsh, “The Responsibility to Prevent.”
- <sup>32</sup> Muncie, “Editor’s Introduction,” in Muncie, ed., *Criminology: The Causes of Crime*, vol. 2 (London: SAGE, 2006), pp. vii–xix.
- <sup>33</sup> Muncie, “Editor’s Introduction,” in *Causes of Crime*, pp. vii–xix.
- <sup>34</sup> Mangai Natarajan, “Introduction,” in Natarajan, ed., *Crime Opportunity Theories: Routine Activity, Rational Choice and their Variants* (Farnham, U.K.: Ashgate, 2011), p. xxiii; Alex Piquero and Stephen Tibbetts, eds., *Rational Choice and Criminal Behavior: Recent Research and Future Challenges* (New York: Routledge, 2002); Graeme Newman, Ronald Clarke, and Giora Shoham, eds., *Rational Choice and Situational Crime Prevention: Theoretical Foundations* (Aldershot, U.K.: Ashgate, 1997); Derek Cornish and Ronald Clarke, eds., *The Reasoning Criminal: Rational Choice Perspectives on Offending* (New York: Springer-Verlag, 1986).
- <sup>35</sup> Natarajan, “Introduction,” p. xxiii. This approach of “bounded” rational choice avoids much of the criticism that is often directed at rational choice approaches. Importantly, moreover, these assumptions have been tested in the empirical study of hard cases, such as intoxicated crime or predatory sex offences.
- <sup>36</sup> Natarajan, “Introduction,” pp. xix–xxvii.
- <sup>37</sup> See UN Economic and Social Council (ECOSOC), Annex to ECOSOC Resolution 2002/13, “United Nations Guidelines for the Prevention of Crime,” July 24, 2002, [http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/resolution\\_2002-13.pdf](http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/resolution_2002-13.pdf); Mike Maguire, Rod Morgan, and Robert

- Reiner, eds., *The Oxford Handbook of Criminology*, 5th ed. (Oxford: Oxford University Press, 2012); Brandon Welsh and David Farrington, eds., *The Oxford Handbook of Crime Prevention* (New York: Oxford University Press, 2012); and Shlomo G. Shoham, Paul Knepper, and Martin Kett, eds., *International Handbook of Criminology* (Boca Raton, Fla.: CRC Press, 2010).
- <sup>38</sup> Adam Crawford and Karen Evans, "Crime Prevention and Community Safety," in Maguire, Morgan, and Reiner, *Oxford Handbook of Criminology*, p. 781.
- <sup>39</sup> See Ronald Clarke, "'Situational' Crime Prevention: Theory and Practice," *British Journal of Criminology* 20, no. 2 (1980), pp. 139–43; and Daniel R. Lee, "Understanding and Applying Situational Crime Prevention Strategies," *Criminal Justice Policy Review* 21, no. 3 (2010), p. 264.
- <sup>40</sup> Gloria Laycock, "Defining Crime Science," in Melissa Smith and Nick Tilley, eds., *Crime Science: New Approaches to Preventing and Detecting Crime* (Cullompton, Devon: Willan, 2005), p. 14; Natarajan, "Introduction," p. xxx.
- <sup>41</sup> Rossella Selmini, "The European Experience of Crime Prevention," in Shoham, Knepper, and Kett, *International Handbook of Criminology*, pp. 528–35.
- <sup>42</sup> Natarajan, "Introduction," p. xv.
- <sup>43</sup> Ronald Clarke, "Crime Prevention in an International Context," in Natarajan, ed., *International Crime and Justice* (New York: Cambridge University Press, 2011); Ken Pease, "Crime Reduction," in M. Maguire, R. Morgan and R. Reiner, eds., *The Oxford Handbook of Criminology*, 3rd ed. (Oxford: Oxford University Press, 2002), p. 949.
- <sup>44</sup> Ronald Clarke, "Seven Misconceptions of Situational Crime Prevention," in Nick Tilley, ed., *Handbook of Crime Prevention and Community Safety* (Cullompton, Devon: Willan, 2005), p. 56.
- <sup>45</sup> Pease, "Crime Reduction," p. 953.
- <sup>46</sup> Lawrence Sherman *et al.*, "Preventing Crime," in Lawrence Sherman *et al.*, eds., *Evidence-Based Crime Prevention* (London: Routledge, 2002), p. 4.
- <sup>47</sup> Laycock, "Defining Crime Science," p. 14; also Rick Linden, "Situational Crime Prevention: Its Role in Comprehensive Prevention Initiatives," *ICP Review* 1 (March 2007), p. 149.
- <sup>48</sup> Marcus Felson and Ronald Clarke, *Opportunity Makes the Thief: Practical Theory for Crime Prevention* (London: Home Office, Policing and Reducing Crime Unit, Policy Research Series Paper 98, 1998), p. 3.
- <sup>49</sup> Clarke, "Seven Misconceptions of Situational Crime Prevention," p. 56; and Pease, "Crime Reduction," p. 949. For a similar argument from the RtoP debate, see Eli Stamnes, "'Speaking RtoP' and the Prevention of Mass Atrocities," *Global Responsibility to Protect* 1, no. 1 (2009), p. 76.
- <sup>50</sup> See Michael Mann, *The Dark Side of Democracy: Explaining Ethnic Cleansing* (Cambridge: Cambridge University Press, 2004); Edward Mansfield and Jack Snyder, "Democratization and the Danger of War," *International Security* 20, no. 1 (1995); and Jonas Claes, "Atrocity Prevention at the State Level: Security Sector Reform and Horizontal Equality," *USIP Peacebrief* 144, April 23, 2013, pp. 2–4.
- <sup>51</sup> Crawford and Evans, "Crime Prevention and Community Safety," pp. 772–73.
- <sup>52</sup> For good recent examples, see Ban Ki-moon, *Responsibility to Protect: State Responsibility and Prevention, Report of the Secretary-General, A/67/929-S/2013/399*, July 9, 2013; Alex J. Bellamy, *Global Politics and the Responsibility to Protect: From Words to Deeds* (Abingdon, U.K.: Routledge, 2011), p. 119.
- <sup>53</sup> Ban, *Responsibility to Protect: State Responsibility and Prevention*, p. 2. It is telling that the only UN Secretary-General report on RtoP that has prevention in the title focuses primarily on building resilient societies. See also Bellamy, *Global Politics and the Responsibility to Protect*, p. 119; Woocher, "The Responsibility to Prevent," in Knight and Egerton, *Routledge Handbook of the Responsibility to Protect*.
- <sup>54</sup> Bellamy, *Global Politics and the Responsibility to Protect*, p. 95.
- <sup>55</sup> See Crawford and Evans, "Crime Prevention and Community Safety," in Maguire, Morgan, and Reiner, *The Oxford Handbook of Criminology*, p. 877 (emphasis added by the author).
- <sup>56</sup> Pease, "Crime Reduction," pp. 949–50. For information on the problem analysis triangle, see also the website of the Centre for Problem-Oriented Policing: <http://www.popcenter.org/about/?p=triangle>.
- <sup>57</sup> Haveman and Smeulers, "Criminology in a State of Denial," pp. 14–15; see also Smeulers and Grünfeld, *International Crimes and Other Gross Human Rights Violations* (Leiden, Neth.: Martinus Nijhoff Publishers, 2011), emphasis added by the author.
- <sup>58</sup> Grünfeld, "The Role of Bystanders in Rwanda and Srebrenica: Lessons Learned," in Smeulers and Haveman, *Supranational Criminology*, p. 485.
- <sup>59</sup> Crawford and Evans, "Crime Prevention and Community Safety," p. 877.
- <sup>60</sup> John Eck, "Preventing Crime at Places," in Sherman *et al.*, *Evidence-Based Crime Prevention*, p. 242.
- <sup>61</sup> On third-party policing, see Lorraine Mazerolle and Janet Ransley, *Third Party Policing* (New York: Cambridge University Press, 2006); Julie Ayling, Peter Grabosky, and Clifford Shearing, *Lengthening the Arm of the Law: Enhancing Police Resources in the Twenty-First Century* (Cambridge: Cambridge University Press, 2009).



- <sup>62</sup> For an effort to draw lessons from the 2011 Libya crisis, see Ruben Reike, "Libya and the Prevention of Atrocity Crimes: A Controversial 'Success' Story," in Welsh and Sharma, eds., *The Responsibility to Prevent: Overcoming the Challenges of Mass Atrocity Prevention* (Oxford: Oxford University Press, forthcoming); and Reike, "Libya and the Responsibility to Protect: Lessons for the Prevention of Mass Atrocities," *St Antony's International Review* 8, no. 1 (2012).
- <sup>63</sup> See Ban, *Responsibility to Protect: State Responsibility and Prevention*; Bellamy, *Global Politics and the Responsibility to Protect*, pp. 93–121; Bellamy, "Mass Atrocities and Armed Conflict," pp. 1, 7. Bellamy argues, for example, that new capacities at the international level are not required and that it suffices to utilize existing capacities in a tailored way.
- <sup>64</sup> Kai Ambos, "Criminologically Explained Reality of Genocide, Structure of the Offence and the 'Intent to Destroy' Requirement," in Alette Smeulers, ed., *Collective Violence and International Criminal Justice* (Antwerp: Intersentia, 2010), p. 163; Smeulers, "Perpetrators of International Crimes," in Smeulers and Haveman, *Supranational Criminology*; Mark Drumbl, *Atrocity, Punishment, and International Law* (Cambridge: Cambridge University Press, 2007), p. 25; Sara Liwerant, "Mass Murder: Discussing Criminological Perspectives," *Journal of International Criminal Justice* 5, no. 4 (2007), p. 927.
- <sup>65</sup> For scholarship that stresses the strategic nature of atrocity crimes, see Benjamin Valentino, "Final Solution: The Causes of Mass Killing and Genocide," *Security Studies* 9, no. 3 (2000), p. 3; Benjamin Valentino, Paul Huth, and Dylan Balch-Lindsay, "Draining the Sea: Mass Killing and Guerrilla Warfare," *International Organization* 58, no. 2 (2004), pp. 375–407; Manus I. Midlarsky, *The Killing Trap: Genocide in the Twentieth Century* (New York: Cambridge University Press, 2005), especially ch. 5; René Lemarchand, "Rwanda: The Rationality of Genocide," *Issue: A Journal of Opinion* 23, no. 2 (1995), pp. 8–11; Matthew Krain, "State-Sponsored Mass Murder: The Onset and Severity of Genocides and Politicides," *Journal of Conflict Resolution* 41, no. 3 (1997), pp. 331–60; Bellamy, *Global Politics and the Responsibility to Protect*, p. 96.
- <sup>66</sup> Alette Smeulers and Barbora Hola, "ICTY and the Culpability of Different Types of Perpetrators," in Smeulers, *Collective Violence and International Criminal Justice*, pp. 180–81.
- <sup>67</sup> Drumbl, *Atrocity, Punishment, and International Law*, p. 25.
- <sup>68</sup> See Smeulers, "Perpetrators of International Crimes," in Smeulers and Haveman, *Supranational Criminology*, p. 247; also Scott Straus, *The Order of Genocide: Race, Power, and War in Rwanda* (Ithaca: Cornell University Press, 2006), p. 114.
- <sup>69</sup> Smeulers, "Perpetrators of International Crimes," p. 247; Drumbl, *Atrocity, Punishment, and International Law*, p. 26.
- <sup>70</sup> See Paul Roth, "Social Psychology and Genocide," in Donald Bloxham and A. Dirk Moses, eds., *The Oxford Handbook of Genocide Studies* (New York: Oxford University Press, 2010), p. 199; Stanley Milgram, *Obedience to Authority* (New York: Harper & Row, 1974); Philip Zimbardo, "A Situationist Perspective on the Psychology of Evil: Understanding How Good People Are Transformed Into Perpetrators," in Arthur Miller, ed., *The Social Psychology of Good and Evil* (New York: Guilford Press, 2004).
- <sup>71</sup> Milgram, *Obedience to Authority*, p. 205; Zimbardo, "A Situationist Perspective on the Psychology of Evil," p. 40.
- <sup>72</sup> Smeulers and Grünfeld, *International Crimes and Other Gross Human Rights Violations*, p. 232.
- <sup>73</sup> Ambos, "Criminologically Explained Reality of Genocide," p. 166.
- <sup>74</sup> David M. Kennedy, *Deterrence and Crime Prevention: Reconsidering the Prospect of Sanction* (New York: Routledge, 2009), p. 15; Marie Tillyer and David M. Kennedy, "Locating Focused Deterrence Approaches Within a Situational Crime Prevention Framework," *Crime Prevention & Community Safety* 10, no. 2 (2008). For skeptical views on the effectiveness of deterrence on the international level, see Donald Bloxham and Devin Pendas, "Punishment as Prevention? The Politics of Prosecuting Génocidaires," in Bloxham and Moses, *The Oxford Handbook of Genocide Studies*, p. 633; Sheri Rosenberg, "Responsibility to Protect: A Framework for Prevention," *Global Responsibility to Protect* 1, no. 4 (2009), pp. 442–77; and Drumbl, *Atrocity, Punishment, and International Law*, pp. 169–73.
- <sup>75</sup> Andrew Ashworth and Julian Roberts, "Deterrence," in Andrew Ashworth, Andrew von Hirsch, and Julian Roberts, eds., *Principled Sentencing: Readings on Theory and Policy*, 3rd ed. (Portland, Ore.: Hart, 2009), p. 44; see also Kennedy, *Deterrence and Crime Prevention*, p. 23.
- <sup>76</sup> Ashworth and Roberts, "Deterrence," p. 45; Andrew von Hirsch et al., "Deterrent Sentencing as a Crime Prevention Strategy," in Ashworth, von Hirsch, and Roberts, *Principled Sentencing*, pp. 58–59.
- <sup>77</sup> There are consistent and significant negative correlations between certainty of punishment and crime rates. See Ashworth and Roberts, "Deterrence," p. 40; von Hirsch et al., "Deterrent Sentencing as a Crime Prevention Strategy," p. 60.
- <sup>78</sup> Von Hirsch et al., "Deterrent Sentencing as a Crime Prevention Strategy," p. 60.

- <sup>79</sup> See Cherif Bassiouni, "Advancing the Responsibility to Protect Through International Criminal Justice," in Richard Cooper and Juliette Voinov Kohler, eds., *Responsibility to Protect: The Global Moral Compact for the 21<sup>st</sup> Century* (New York: Palgrave Macmillan, 2009), p. 33; Robert Rotberg, "Deterring Mass Atrocity Crimes: The Cause of Our Era," in Robert Rotberg, ed., *Mass Atrocity Crimes: Preventing Future Outrages* (Washington D.C.: Brookings Institution Press, 2010); Ban, *Implementing the Responsibility to Protect*, pp. 12, 16.
- <sup>80</sup> Asia-Pacific Centre for the Responsibility to Protect, *The Responsibility to Prevent: Opportunities, Challenges and Strategies for Operationalisation* (Brisbane: The University of Queensland, 2010), p. 32.
- <sup>81</sup> Doris MacKenzie, "Reducing the Criminal Activities of Known Offenders and Delinquents," in Sherman et al., *Evidence-Based Crime Prevention*, p. 330; Andrew von Hirsch, "Incapacitation," in Ashworth, von Hirsch, and Roberts, *Principled Sentencing*, p. 75.
- <sup>82</sup> Simon Green, "Crime, Victimization and Vulnerability," in Sandra Walklate, ed., *Handbook of Victims and Victimology* (Cullompton, Devon: Willan, 2007), p. 92.
- <sup>83</sup> See Derek Cornish and Ronald Clarke, "Opportunities, Precipitators and Criminal Decisions: A Reply to Wortley's Critique of Situational Crime Prevention," in Martha Smith and Derek Cornish, eds., *Theory for Practice in Situational Crime Prevention* (New York: Criminal Justice Press, 2003); Clarke and Newman, *Outsmarting the Terrorists*, pp. 190–93.
- <sup>84</sup> See Drumbl, *Atrocity, Punishment, and International Law*, p. 41; William Schabas, "Hate Speech in Rwanda: The Road to Genocide," *McGill Law Journal* 141, no. 46 (2000); Frank Chalk, "Monitoring African Governments' Domestic Media to Predict and Prevent Mass Atrocities: Opportunities and Obstacles," in Rotberg, *Mass Atrocity Crimes*, p. 220.
- <sup>85</sup> Cornish and Clarke, "Opportunities, Precipitators and Criminal Decisions"; Clarke and Newman, *Outsmarting the Terrorists*, pp. 190–93.
- <sup>86</sup> Brian Barbour and Brian Gorlick, "Embracing the 'Responsibility to Protect': A Repertoire of Measures Including Asylum for Potential Victims," *International Journal of Refugee Law* 20, no. 4 (2008), pp. 562, 565; see also Benjamin Valentino, *Final Solutions: Mass Killing and Genocide in the 20<sup>th</sup> Century* (Ithaca, N.Y.: Cornell University Press, 2004), p. 249; Asia-Pacific Centre, *The Responsibility to Prevent*, p. 42.
- <sup>87</sup> Clarke and Newman, *Outsmarting the Terrorists*, pp. 190–93.
- <sup>88</sup> Clarke, "Seven Misconceptions of Situational Crime Prevention"; Pease, "Crime Reduction," p. 953.
- <sup>89</sup> Smeulers and Grünfeld, *International Crimes and Other Gross Human Rights Violations*, p. 240; also Roberts and McMillan, "For Criminology in International Criminal Justice," p. 324. War zones are a particularly permissive environment for the commission of widespread crime. While armed conflict and atrocity crimes are not the same phenomenon, and many atrocity campaigns occur in the absence of armed conflict, Bellamy shows that historically 67 percent of all atrocity crimes have occurred in the context of armed conflict. See Bellamy, "Mass Atrocities and Armed Conflict," p. 3.
- <sup>90</sup> Dan Kuwali, "Old Crimes, New Paradigms: Preventing Mass Atrocity Crimes," in Rotberg, *Mass Atrocity Crimes*, p. 33.
- <sup>91</sup> See Kate Painter and Nick Tilley, "Seeing and Being Seen to Prevent Crime," in Painter and Tilley, eds., *Surveillance of Public Space: CCTV, Street Lighting and Crime Prevention* (Monsey, N.Y.: Criminal Justice Press, 1999), p. 4; Pease, "Crime Reduction," p. 953; or Sherman and Eck, "Policing for Crime Prevention," in Sherman et al., *Evidence-Based Crime Prevention*.
- <sup>92</sup> See Sarah Kreps, "Social Networks and Technology in the Prevention of Crimes against Humanity," in Rotberg, *Mass Atrocity Crimes*, pp. 178–82.
- <sup>93</sup> Crawford and Evans, "Crime Prevention and Community Safety," p. 873.
- <sup>94</sup> See Francis Deng, "JISB Interview: The Responsibility to Protect," *Journal of Intervention and State Building* 4, no. 1 (2010), p. 85; Jennifer Welsh, "A Normative Case for Pluralism: Reassessing Vincent's Views on Humanitarian Intervention," *International Affairs* 87, no. 5 (2011), p. 1201.