

# International Crimes and Transitional Justice: where does organised crime fit?

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## **Riassunto**

Negli ultimi venti anni, a partire dalla caduta del muro di Berlino nel 1989, più di 120 conflitti sono scoppiati nel mondo e centinaia di migliaia di persone sono state uccise, mutilate, sono scomparse o versano in condizioni di grave sofferenza.

I conflitti danno luogo a frequenti violazioni dei diritti umani così come al compimento di numerosi crimini, i quali sono spesso molto seri, coinvolgono molteplici vittime e sono stati oggetto dell'attenzione di differenti discipline e studiosi, incluso sociologi e politologi nonché avvocati (penali).

L'autore sostiene tuttavia che la criminologia, quale disciplina accademica, fino a non molto tempo fa, non è stata eccessivamente interessata allo studio dei crimini internazionali.

Al fine di capire le motivazioni alla base di ciò, l'autore, innanzi tutto, traccia il background del concetto di crimini internazionali e lo compara con la nozione di crimini politici ed anche con quella di gravi violazioni dei diritti umani. In seguito, i crimini internazionali vengono situati all'interno del contesto politico della giustizia transizionale e vengono altresì analizzati i suoi legami con la criminalità organizzata.

## **Résumé**

Dans les vingt dernières années, à partir de la chute du mur de Berlin, en 1989, plus de 120 conflits sont déclenchés dans le monde et des centaines de milliers de personnes ont été tuées, mutilées, ont disparu ou se trouvent dans une situation de détresse.

Les conflits donnent lieu à de fréquentes violations des droits de l'homme et à nombreux crimes. Ces derniers sont souvent très graves, ils font beaucoup de victimes civiles et ils ont fait l'objet de l'attention de différentes disciplines et de plusieurs catégories de chercheurs, dont des sociologues, des politologues et des avocats (en droit pénal).

L'auteur soutient toutefois que la criminologie, en tant que discipline académique, ne s'intéresse à l'étude des crimes internationaux que depuis peu.

Afin de comprendre le pourquoi, l'auteur esquisse tout d'abord le background du concept de crimes internationaux et en fait une comparaison avec la notion de crimes politiques et celle de graves violations des droits de l'homme. Après quoi, les crimes internationaux sont situés dans le contexte politique de la justice transitionnelle, et ses liens avec la criminalité organisée sont également analysés.

## **Abstract**

The last twenty years, since the fall of the Berlin wall in 1989, more than 120 violent conflicts waged across the globe and hundreds of thousands of people killed, disappeared, handicapped or left in distress.

Violent conflicts involve frequent human rights violations as well as many crimes. These kinds of crimes are usually very serious and tend to involve many victims, and have attracted attention from a variety of disciplines, including social and political scientists and (criminal) lawyers.

Therefore, the author argues that criminology as an academic discipline has until recently hardly been interested in studying international crimes.

In order to understand this, the author is firstly interested in sketching the background of the concept of international crimes and comparing it with the notion of political crimes and also with that of serious human rights violations. Secondly, international crimes will be situated in their political context of transitional justice and its links with organized crime will be explored.

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## Introduction.

More than 120 violent conflicts and hundreds of thousands of people killed, disappeared, handicapped or left in distress: this is the grim but realistic toll of the last twenty years, since the fall of the Berlin wall in 1989<sup>1</sup>. Examples abound but it may suffice to mention the armed conflict in ex-Yugoslavia, the consecutive wars in the eastern Congo and the ongoing troubles in Israel-Palestine region as well as in Colombia. More detailed numbers are quite difficult to give and of course heavily depend on the interpretations given to violent conflicts and to the damage caused by them. But even in the absence of exact figures it goes without saying that violent conflicts not only put an end to situations of peace, but also involve frequent human rights violations as well as many crimes.

Reflections about the nature of abusive acts committed during violent conflicts have strongly evolved over the years. While the post-world war II terminology predominantly talks about violations of human rights, the last two decades have witnessed a gradual shift towards crimes of an international nature. It is clear that these concepts are not just abstract constructs but they also have very far-reaching consequences: to call an act a human rights violation entails the responsibility of states under international law, while to call it a crime leads to the responsibility of individuals under criminal law, and in fact both qualifications can be used at the same time<sup>2</sup>.

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<sup>1</sup> Harbom L., Wallensteen P., "Armed Conflict, 1989-2006", *Journal of Peace Research*, 44, 2005, pp. 623-634.

<sup>2</sup> Parmentier S., Weitekamp E., "Political Crimes and Serious Violations of Human Rights: Towards a Criminology of International Crimes", in Parmentier S., Weitekamp E. (eds.), *Crime and Human Rights*, Series in Sociology of Crime, Law and Deviance, vol. 9,

The crimes discussed are usually very serious and tend to involve many victims, and have attracted attention from a variety of disciplines, including social and political scientists<sup>3</sup> and (criminal) lawyers<sup>4</sup>. But, strange as it may sound, criminology as an academic discipline has until recently hardly been interested in studying international crimes. Because this contribution has a focus on criminology it will take international crimes as its point of departure. In doing so, it is firstly interested in sketching the background of this concept and comparing it with the notion of political crimes and also with that of serious human rights violations. Secondly, international crimes will be situated in their political context of transitional justice and its links with organized crime will be explored.

### 1. Defining the crimes: what is in a name?

17 July 1998 will forever remain associated with the notion of international crimes, because that day in Rome the Statute of the International Criminal Court (ICC) was adopted by a large number of countries. The following years saw a dense campaign for ratification of the Statute, which finally entered into force on 1 July 2002 and thus led to the immediate establishment of the ICC itself. The Rome Statute encompasses four subcategories of crimes ([www.icc-cpi.int](http://www.icc-cpi.int)): (1) genocide, meaning "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group" (Article 6), (2) crimes against humanity, meaning "acts when committed

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Elsevier/JAI Press, Amsterdam/Oxford, 2007, pp. 109-144.

<sup>3</sup> Reychler L., Paffenholz T. (Eds.), *Peace-building. A Field Guide*, Lynne Rienner Publishers, Boulder CO, 2001.

<sup>4</sup> Bassiouni C. (Ed.), *Post-Conflict Justice*, Transnational Publishers, Ardsley, 2002.

as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”, i.a. murder, deportation, torture, sexual crimes, enforced disappearance, etc (Article 7); (3) war crimes, “in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes”, including grave breaches of the Geneva Conventions, of other laws and customs applicable in international armed conflict, and of laws applicable to non-international conflicts (Article 8); and (4) the crime of aggression, which still lacks a clear definition in the Rome Statute and is up for discussion at the upcoming review conference in 2010 (Article 5,d). All these developments illustrate the tendency to move away, at least at the international level, from a ‘culture of impunity’ to a ‘culture of accountability’, and the connections between justice, peace and development.

### 1.1. International and political crimes.

It goes without saying that international crimes were not invented in Rome but that they have several antecedents in international law. Already during the Second World War, the Polish-Jewish scholar Lemkin coined the notion of ‘genocide’, referring to the physical and non-physical harm inflicted upon particular groups of people with a view to destroy them in the long run (Lemkin 1944). This notion became incorporated in the post-war Convention on the Prevention and the Suppression of the Crime of Genocide adopted by the United Nations General Assembly in December 1948. A second major boost for the category of international crimes came with the establishment in the early 1990s of a number of international criminal justice institutions to deal

with massive atrocities. The most important ones are the so-called two *ad hoc*s to deal with serious violations of humanitarian law, i.c. the International Criminal Tribunal for the former Yugoslavia (ICTY, established in 1993) and the International Criminal Tribunal for Rwanda (ICTR, established in 1994, and also competent to deal with acts of genocide).

For most of its history, criminology has remained at a far distance from crimes of this nature and has therefore missed enormous opportunities to expand its knowledge base. We have argued elsewhere that not until the last decade some criminologists have started to pay some attention to some international crimes, in particular the crime of genocide<sup>5</sup>. Day and Vandiver<sup>6</sup>, e.g., have reinterpreted older socio-psychological theories of crime causation through the angle of genocide and mass killings in Bosnia and Rwanda. Neubacher<sup>7</sup> from his side has studied how the theory of neutralization techniques perfectly applies to the field of state crimes and to macro crimes in general and Cohen<sup>8</sup> has focused on the technique of denial. Also Woolford<sup>9</sup> has strongly argued in

<sup>5</sup> Parmentier S., Weitekamp E., “Political Crimes and Serious Violations of Human Rights: Towards a Criminology of International Crimes”, in Parmentier S., Weitekamp E. (eds.), *Crime and Human Rights*, Series in Sociology of Crime, Law and Deviance, vol. 9, Elsevier/JAI Press, Amsterdam/Oxford, 2007, pp. 109-144.

<sup>6</sup> Day L. E., Vandiver M., “Criminology and genocide studies: Notes on what might have been and what still could be”, *Crime, Law & Social Change*, 34, 2000, pp. 43-59.

<sup>7</sup> Neubacher F., “How Can it Happen that Horrendous State Crimes are Perpetrated? An Overview of Criminological Theories”, *Journal of International Criminal Justice*, Symposium Nuremberg Revisited 60 Years on, 4, 2006, pp. 787-799.

<sup>8</sup> Cohen S., *States of Denial: knowing about atrocities and suffering*, Polity Press, Cambridge, 2001.

<sup>9</sup> Woolford A., “Making Genocide Unthinkable: three guidelines for a critical criminology of genocide”, *Critical Criminology*, 2006, pp. 87-106.

favour of a 'critical criminology of genocide', not by simply applying the existing criminological frameworks and notions but by developing a reflexive, critical and responsive criminological approach. Alvarez<sup>10</sup> before them had analyzed the complex dynamics between official authorities and ordinary citizens when it comes to explaining heinous crimes such as genocides around the world. More recently, Smeulders and Haveman (2008) have proposed to develop a 'supranational criminology' that encompasses international crimes and other gross human rights violations, and pays particular attention to 'crimes of obedience' whereby law-abiding citizens serve a deviant state and just follow the law. These approaches are also gaining ground in the larger criminological community, witness the 2009 Stockholm Prize for Criminology awarded to Hagan and Zaffaroni for "their groundbreaking theories and models explaining the causes and motivations of genocides" in Darfur and other parts of the world ([www.criminologyprize.com](http://www.criminologyprize.com)). Parallel to an increasing attention for the crimes themselves there is also a growing attention for the criminal justice institutions at the international level. The 'criminology of international criminal justice' that Roberts and McMillan<sup>11</sup> have advocated is in fact a combination of two aspects, first the analysis of international crimes in their various aspects, the other being to look for other types of legitimacy in criminal justice systems and to expand the individual attribution of guilt into the organizational contexts. By combining the

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<sup>10</sup> Alvarez A., *Governments, Citizens and Genocide: A Comparative and Interdisciplinary Analysis*, Indiana University Press, Bloomington, 2001.

<sup>11</sup> Roberts P., McMillan N., "For Criminology in International Criminal Justice", *Journal of International Criminal Justice*, 1, 2003, pp. 315-338.

theoretical and policy-oriented perspectives they also wish to include lawyers and political scientists in these endeavors.

The fairly recent notion of international crimes bears some resemblance to the older notion of political crimes, but many differences continue to exist. 'Political crimes' or 'political offenses' appear in various international and national legal instruments as a separation from 'common' or 'traditional' crimes and to create a higher level of protection for the persons committing them<sup>12</sup>. Examples include judging political crimes not before ordinary criminal tribunals with professional judges but before specially established courts with lay judges (Constitution of Belgium), prohibiting the extradition to other states of persons having committed political offences as determined by the requested state (Council of Europe Convention on Extradition), and granting amnesty to persons having confessed to political crimes (South African Truth and Reconciliation Commission). In other cases, such as asylum procedures, the commission of political offenses, such as crimes against peace or against humanity, may lead to a lesser protection, such as the denial of the refugee status (Geneva Convention). In order to determine if crimes are political or not, it is nowadays widely accepted to adopt a two-prong approach by checking two aspects, namely the subjective one (the intent or the motivation of the offender) and the objective aspect (the context of the act and the

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<sup>12</sup> Parmentier S., Weitekamp E., "Political Crimes and Serious Violations of Human Rights: Towards a Criminology of International Crimes", in Parmentier S., Weitekamp E. (eds.), *Crime and Human Rights*, Series in Sociology of Crime, Law and Deviance, vol. 9, Elsevier/JAI Press, Amsterdam/Oxford, 2007, pp. 109-144.

outcome of the consequences as observed by the outside world)<sup>13</sup>.

According to Ross<sup>14</sup> some political crimes are non-violent, such as subversion, treason and corruption, while others are violent, including terrorism, assassinations, widespread torture and genocide. In our view, the latter type of crimes usually display two main features, namely extreme violence, which often goes back to deeply rooted conflicts in a given society, and mass victimization, which is the result of large numbers of direct and indirect victims<sup>15</sup>. Mass victimization in this context could be conceived as “victimisation directed at, or affecting, not only individuals but also whole groups”, which sometimes can be diffuse and whose members can be unrelated, but at other times can be a special population (Fattah 1991).

When it comes to assessing the attention of criminology for political crimes the same conclusion as before comes up, namely that the discipline has hardly been concerned with this category of crimes. Turk<sup>16</sup> was among the first writers to pay attention to it, making the distinction between crimes aimed at defying the (political) authorities on the one hand and on the other hand crimes to defend them. This distinction was echoed in the work of Hagan<sup>17</sup>, opposing ‘crime by government’ and ‘crime against government’, and later of Ross<sup>18</sup>, with his ‘crimes against the state’

(or ‘oppositional crimes’) and ‘crimes by the state’ (‘non-oppositional crimes’ or ‘state crimes’)<sup>19</sup>. Kautzlarich<sup>20</sup> has refined the last category by constructing a continuum ranging from state crimes of commission (through direct, overt and purposeful action), state crimes of negligence (by disregarding unsafe and dangerous conditions, when the state has a clear mandate and responsibility to make a situation or context safe), and state crimes by omission (through tacit support for organizations whose activities lead to social injury). Chambliss<sup>21</sup> for his part has consistently focused on the crimes of the powerful, both as individual offenders but also as part of the political and economic complex in any given society, hence his key notions like ‘the political economy of crime’ and ‘state-organized crime’. Next to these general writings on political crimes, some paid particular attention to the one crime of terrorism<sup>22</sup>. It is noteworthy that very few, if any, authors have paid attention to the organized element in the field of international and political crimes. Not only can such crimes hardly be planned and carried out without intense preparations or without the active and passive assistance of many persons and groups. Also the very legal definition of genocide and crimes against humanity includes the widespread and systematic nature of the attacks based on specific

<sup>13</sup> Van den Wyngaert C., *The Political Offence Exception to Extradition*, Kluwer, Antwerp, 1980; Norgaard principles, reproduced in the South African *Government Gazette* of 7 November 1990.

<sup>14</sup> Ross J. I., *The Dynamics of Political Crime*, Sage, New York, 2003.

<sup>15</sup> Parmentier S., Weitekamp E., *op. cit.*, 2007.

<sup>16</sup> Turk A., *Political Criminality. The Defiance and Defense of Authority*, Sage, Beverly Hills/London, 1982.

<sup>17</sup> Hagan F., *Political Crime: Ideology and Criminality*, Allyn and Bacon, Boston MA, 1997.

<sup>18</sup> Ross J. I., *op. cit.*, 2003.

<sup>19</sup> See also Friedrichs D. (Ed.), *State Crime*, 2 vols., Ashgate/Dartmouth, Aldershot, 1998.

<sup>20</sup> Kautzlarich D., “Political Crimes of the State”, in Wright R., Miller J. M. (Eds.), *Encyclopedia of Criminology*, 3 vols, Routledge: New York/London, 2005, pp. 1231-1234.

<sup>21</sup> Chambliss W., “Towards a political economy of crime”, in Henry S., Einstadter W. (Eds.), *The Criminology Theory Reader*, New York University Press, New York/London, 1998, pp. 346-362.

<sup>22</sup> Laqueur W., *Terrorism*, Weidenfeld and Nicolson, London, 1978; Rapoport D. (Ed.), *Terrorism. Critical Concepts in Political Science*, 4 vols, Routledge, London, 2006.

plans or policies. It is therefore argued that the literature on organized crime could be an interesting source of inspiration to better understand the types of crimes discussed. Paoli<sup>23</sup> has listed two main features of the widely accepted notion of ‘organized crime’, namely the provision of illegal goods and services, and a criminal organization.

### 1.2. Serious violations of human rights.

Although they are frequently used interchangeably, concepts such as international crimes, political crimes and serious human rights violations tend to be used in one breath, both by policy-makers and academics alike. Yet they display at least two major differences<sup>24</sup>: one relates to the degree of seriousness of the crime, with international crimes and serious human rights violations obviously describing more violent crimes, while political crimes can be violent but also include non-violent crimes; the second major difference goes back to legal framework, because a ‘crime’ constitutes a breach of criminal law and entails the responsibility of individuals, while a ‘violation of human rights’ implies a transgression of human rights law and thus involves the responsibility of states.

It should be mentioned that the notion of ‘serious human rights violations’ is hardly found in international law and international human rights law; instead the adjectives ‘gross’ or ‘systematic’ violations are frequently used and mostly in the context of the United Nations. The UN Commission of Human Rights and other bodies,

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<sup>23</sup> Paoli L., *Mafia Brotherhoods. Organised Crime, Italian Style*, Oxford University Press, New York, 2000; Paoli L. (ed.), *Oxford Handbook of Organised Crime*, Oxford University Press, Oxford (forthcoming).

as well as a number of international treaties (i.a. the Convention against Torture of 1984), have included these terms but without further clear definitions. In the eyes of Medina<sup>25</sup> gross and systematic violations imply four elements: (a) quantity (amount of violations), (b) time (present over a longer period of time), (c) quality (type of the rights violated, character of the violations, and status of the victim), and (d) planning. When it comes to reparations for victims, we have defined ‘gross and systematic violations’ elsewhere as “those violations of human rights, perpetrated in such a quantity and in such a manner as to create a situation in which the life, the personal integrity or the personal liberty of large numbers of individuals are structurally threatened”<sup>26</sup>. Despite the lack of a common definition the types of violations referred to share a number of common characteristics: “revulsion and moral stigma, infringement of supreme values, intensity of the breach, gravity of the consequences for the victims, deliberate will to breach a norm and flagrant character of the breach”<sup>27</sup>.

Human rights violations of such type have virtually been absent altogether from criminological research. They have come in indirectly, by reference to war crimes, which –as mentioned above in relation to the Rome Statute-

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<sup>24</sup> Parmentier S., Weitekamp E., *op. cit.*, 2007.

<sup>25</sup> Medina Quiroga C., *The Battle of Human Rights. Gross, Systematic Violations and the Inter-American System*, Martinus Nijhoff, The Hague, 1988.

<sup>26</sup> Rombouts H. et al., “The Right to Reparation for Victims of Gross and Systematic Violations of Human Rights”, in De Feyter K., Parmentier S., Bossuyt M., Lemmens P. (Eds.), *Out of the Ashes. Reparation for Victims of Gross and Systematic Human Rights Violations*, Intersentia, Antwerp, 2005, p. 351.

<sup>27</sup> Sardaro P., *Serious Human Rights Violations and Remedies in International Human Rights Adjudication*, Doctoral dissertation in Law, Faculty of Law, K.U. Leuven, Leuven, 2007.

can simultaneously be seen as violations of international humanitarian law. The work of Jamieson (2003), intended to sketch the reality of war and its sequellae, is very instructive in this regard.

## **2. The context of transitional justice.**

The above makes clear that the notions of international crimes, political crimes, and serious human rights violations are slowly but gradually gaining ground in the criminological literature around the world. One of the crucial aspects that tend to be downplayed, however, is the general political and social context within which these crimes are committed and in which the discussions about dealing with them become prominent. Referring to the notion of “transitional justice” is useful to highlight some of the most salient elements and try to indicate the link with the issue of organized crime.

Debates about what to do about international crimes committed in the past usually start during times of political transition, which is when societies are moving away from an autocratic regime in the direction of more democratic forms of government. At that time, the new elites are openly confronted with the fundamental question on how to address the heavy burden of their dark past. A fairly recent and authoritative definition of transitional justice is found in a United Nations report, that defines it as “*the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation*” (United Nations 2004: 4). This definition of transitional justice is much broader than other and previous definitions with a strong emphasis on political transitions (i.a. Siegel

1998). By leaving out the political element, the UN definition also allows large-scale human rights abuses in the western world (like violence against indigenous peoples in Canada or Australia) to come within its purview. In this contribution it is used as a synonym to “post-conflict justice”<sup>28</sup>, despite the different aspects attached to either.

While political science and legal research are mostly concerned with analyzing the various institutions and procedures set up to deal with international crimes, it is equally relevant to look at some aspects that the political and legal elites have to address in such contexts. In other publications we have argued that the incumbent elites will sooner or later be confronted with some key issues in their pursuit of justice after violent conflict, and that four of these are: to search the truth about the past, to ensure accountability for the acts committed, to provide reparation to victims, and to promote reconciliation in society<sup>29</sup>.

### 2.1. To search the truth about the past.

One of the key issues is the search for truth, i.e. to bring the facts about the crimes of the past to the surface, or at least as many facts as possible. This is an important endeavour for the victims, who usually want to know what has really happened, in order to find closure and to receive some form of acknowledgement for their suffering. But it is also crucial for society as a whole, since it shapes further political and social debates and may lead

<sup>28</sup> Bassiouni C. (Ed.), *Post-Conflict Justice*, Transnational Publishers, Ardsley, 2002.

<sup>29</sup> Parmentier S., “Global Justice in the Aftermath of Mass Violence. The Role of the International Criminal Court in Dealing with Political Crimes”, *International Annals of Criminology*, 41, 2003, pp. 203-224; Parmentier S., Weitekamp E., *op. cit.*, 2007.

to some form of collective memory. At the same time, truth seeking is a very complex exercise, since the truth is never unequivocal and always multifaceted: even if the naked facts about certain crimes come to be known, the interpretations on the how and the why may continue to differ. UN expert Orentlicher, building on the work of her predecessor Joinet, argues in favor of “the right to truth” for victims that also has legal implications<sup>30</sup>.

The role that criminology can play in this process should not be underestimated. It can contribute to understanding various notions of truth, e.g. by developing new techniques and interpretations of forensic procedures, by creating social forums in which victims can discuss their experiences, and by exploring the possibilities of bringing victims and offenders together to confront their painful past. At a more analytical level, criminology can contribute to mapping the crimes of the past and particularly their origins. The rich body of existing criminological theories about the sociological, the psychological and even the biological causes of crime can be revisited and their applicability tested for the category of international crimes. Moreover, criminology can explore new frontiers by developing new theoretical frameworks to better understand such international and political crimes, as well as the core characteristics of perpetrators and offenders of such crimes.

How can truth seeking be possibly linked with organised crime? As mentioned above, a number of international crimes necessarily entail aspects of organised crime, because they require a certain level

of organisation to be committed or because they are committed by organised crime groups themselves, and sometimes in connection with state institutions. In fact, it also happens that former policemen, military or security personnel, join the organised crime rings after the transitions to democracy, making use of their wide experience and networks to develop new and classical criminal activities such as trade in arms, drugs, human beings, etc. Moreover, organised crime groups tend to be among the first actors to oppose efforts by the police and the judiciary to dig up facts of the past and to reveal the truth. Their opposition may take various forms, from silence and lack of cooperation with the new authorities (a sort of ‘omerta’ intended to protect the other members of the group), to more active forms of resistance like threatening or even killing investigators. Depending on the power structures under the new regime, organised crime groups may be strongly tackled by the authorities or they may be left untouched and continue to keep their strength in the shadow of the official world. In the latter case, the power of organised crime groups may become problematic for the new regime in the long run.

## 2.2. To ensure accountability of offenders.

Another key issue in a transitional or post-conflict situation is how to ensure that the offenders can be called to account for the international crimes committed. Also the aspect of accountability of the perpetrators is an important one for new regimes who receive many pleas that ‘justice be done’, not the least from victim groups. Holding perpetrators accountable is also important for political reasons, i.e. to reaffirm the ideals of the rule of law and human rights and thereby to strengthen the fragile democracy. Both elements

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<sup>30</sup> Orentlicher D., *Report of the Independent Expert to Update the Set of Principles to Combat Impunity*, New York, United Nations, Commission on Human Rights, E/CN.4/2005/102 of 18 February 2005.



contribute to the paradigm shift from a 'culture of impunity' to a 'culture of accountability'<sup>31</sup> and Orentlicher in this context talks about "the right to justice"<sup>32</sup>. For decades the handling of international crimes was left to the discretion of the political and the criminal justice authorities of the country where they had taken place but over the last two decades two important shifts have taken place. One is the development of universal jurisdiction legislation allowing third countries to prosecute suspects of international crimes committed elsewhere<sup>33</sup>, the other relates to the establishment of criminal justice institutions at the international level, e.g. the two *ad hoc* tribunals (ICTY and ICTR) and the mixed tribunals in Sierra Leone, East Timor, Kosovo and Cambodia. Together they make up a sort of 'triptych' of criminal justice.

The role of criminology is even more important in this field, given its extensive experience with understanding reactions –preventive and repressive- to ordinary crime. Criminology and its sister field criminal justice studies can first of all study the strengths and weaknesses of systems of criminal justice administration –national and international- and particularly of those bodies dealing with international crimes such as the police, the prosecutor's services, the trial judges and the execution of sentences. Criminal prosecutions are never without many problems, such as the lack of capacity of judicial systems, the lack of judicial independence and the risk for

the new democracy if old elites are targeted<sup>34</sup>. Moreover, criminology can bring in new ideas about other forms of accountability than purely criminal law and criminal justice, and enlarge the spectrum into accountability before civil courts or accountability of an administrative nature like lustration or vetting<sup>35</sup>. Other forms of accountability quickly leads to a third issue, namely to rethink circles of persons who may bear some responsibility for the crimes of the past. The material or direct perpetrators, those who pulled the trigger to kill a person, constitute only a small category of offenders. Also indirect perpetrators, those who gave the orders or were involved in planning the crimes, may bear a serious responsibility for the crimes. And what to think of the bystanders and the beneficiaries, who were never actively involved in the crimes but did nothing to resist or even benefited from the consequences: for such questions of involvement, complicity and accountability criminology can open up new routes<sup>36</sup>.

Organised crime is again present in this discussion. Many organised crime groups tend to have a strong division of labour, sometimes in a hierarchical system, with some members primarily involved in material issues and others in intellectual matters, in other words with direct and

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<sup>31</sup> Minow M., *Between Vengeance and Forgiveness. Facing History after Genocide and Mass Violence*, Beacon Press, Boston MA, 1998.

<sup>32</sup> Orentlicher D., *op. cit.*, 2005.

<sup>33</sup> Reydams L., *Universal Jurisdiction: International and Municipal Legal Perspectives*, Oxford University Press, Oxford, 2004.

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<sup>34</sup> Huyse L., "Justice after Transition: On The Choices Successor Elites Make in Dealing with the Past", in Jongman A. (Ed.), *Contemporary Genocides*, PIOOM, Leiden, 1996, pp. 187-214.

<sup>35</sup> Mayer-Rieckh A., De Greiff P. (eds.), *Justice as Prevention. Vetting Public Employees in Transitional Societies*, Social Science Research Council, New York, 2007

<sup>36</sup> Balint J., "Dealing with international crimes: towards a conceptual model of accountability and justice", in Smeulers A., Haveman R. (eds.), *Supranational Criminology: Towards a Criminology of International Crimes*, Intersentia, Antwerp/Oxford, 2007, pp. 311-334.

indirect offenders. In transitional justice societies it is quite a challenge to bring the indirect offenders before a criminal judge, sometimes because they remain unknown, sometimes because they remain untouchable. It may therefore be interesting to think for this category of offenders of other forms of accountability outside of the realm of criminal law, but into that of civil law (e.g. damages) or administrative law (vetting).

### 2.3. To provide reparation for victims.

Probably the issue that has gained most attention over the last years is that of reparation to victims for the harm inflicted upon them by the international crimes or during the periods of violent conflict. The idea of ‘reparative justice’<sup>37</sup> has permeated many efforts to address, and even to undo, some of the injustices of the past<sup>38</sup>. New legal documents, mostly non-binding, recognize “the right to reparation” for victims<sup>39</sup> and explain the scope and the forms of reparations for victims<sup>40</sup>. Reparation nowadays is understood to encompass more than the restitution of goods and the monetary compensation for the damage, but extends into rehabilitation through social and medical measures, satisfaction and symbolic measures, and even guarantees of non-repetition of

the crimes committed. All of these measures can be individual or collective<sup>41</sup>.

For the discipline of criminology reparations for victims of international crimes pose new challenges. It can study and evaluate the existing national and international reparation schemes, some through ordinary tribunals and others through general government programmes, and recommend improvements<sup>42</sup>. Elsewhere, we have argued in favour of reparatory schemes that seek to attain a new balance and that will allow victims to cope with the past and the future alike, and we have proposed a process-oriented approach to reparation to that effect<sup>43</sup>. Furthermore, criminology can enrich the current epistemological approaches by not only paying attention to the viewpoints of elites but also to do surveys of the opinions and attitudes of the population at large and the victims in particular of the harm they have experienced<sup>44</sup>. In a more sociological sense, criminology may also want to study the social competition among victims and their associations for the scarce resources that are available in post-conflict societies at a given moment<sup>45</sup>.

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<sup>37</sup> Mani R., *Beyond Retribution. Seeking Justice in the Shadows of War*, Polity Press, Cambridge, 2002.

<sup>38</sup> De Greiff P. (Ed.), *The Handbook of Reparations*, Oxford University Press, Oxford, 2006.

<sup>39</sup> Orentlicher D., *op. cit.*, 2005.

<sup>40</sup> *United Nations, General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly, 24 October 2005, A/C.3/60/L.24.*

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<sup>41</sup> De Feyter K., Parmentier S. et al. (Eds.), *Out of the Ashes. Reparation for Victims of Gross and Systematic Human Rights Violations*, Intersentia, Antwerp, 2005.

<sup>42</sup> Rombouts H., *Victim organisations and the politics of reparation: a case study on Rwanda*, Intersentia, Antwerp/Oxford, 2004.

<sup>43</sup> Rombouts H., Parmentier S., “The International Criminal Court and its Trust Fund are Coming of Age: Towards a Process Approach for the Reparation of Victims, Special Issue on Victim Reparation and the International Criminal Court”, edited by Jo-Anne Wemmers, *International Review of Victimology*, 16(2), 2009, pp. 149-182.

<sup>44</sup> Parmentier S. et al., “How to Repair the Harm After Violent Conflict in Bosnia? Results of a Population-Based Survey”, *27/1 Netherlands Quarterly of Human Rights*, 2009, pp. 27-44.

<sup>45</sup> Chaumont J., *La concurrence des victimes*, Edition de la Découverte, Paris, 1997.

Strange at it may sound organized crime is also of relevance to this aspect of transitional justice, in two main ways. First, organized crime groups can be responsible for inflicting various types of harm, not limiting themselves to physical assaults or threats but also causing material damage to property and, not to forget, emotional harm through their policies of generalized terror. Moreover, they can act as bystanders to the harm inflicted by others, such as the police or the military. It therefore goes without saying that reparation policies for victims also need to address these various forms of harm and in various ways. If the destruction of material goods or of life and limb can generally not be undone, monetary compensation becomes a valid alternative and organized crime groups can contribute to such compensatory measures, willingly or by imposing sanctions upon them. In such way organized crime groups can be seen as duty-bearers of the right to reparation of victims.

#### 2.4. To promote reconciliation in society.

Finally, another major issue in post-conflict settings relates to the reconciliation of the various communities and sectors of society that have been part of the conflict, in order to reconstruct the previously existing relationships or to construct new ones if necessary. The question thus is how a country or a society, that have been conflict-ridden for a long time and have produced numerous victims, can regain some form of social cohesion, which is absolutely essential for its future development, economic, political, and cultural? The issue of reconciliation after violent conflict is a very tough nut to crack, since it requires a wide number of strategies to address the crimes of the past. Theory and practice of reconciliation have rapidly expanded over the last fifteen years, mostly in the

aftermath of the experiences with the South African Truth and Reconciliation Commission<sup>46</sup>. A real 'right to reconciliation' has not been identified, however.

How can the issue of reconciliation be relevant for criminology is an often asked question? The answer is very straightforward, namely that criminology also deals with the aftermath of a crime, including the possibility that victims and offenders may meet one another and may come up with some form of common understanding or even an agreement between them. It can therefore study and evaluate the existing initiatives and practices of restorative justice to this effect, whether process oriented or outcome oriented<sup>47</sup>. But even if international crimes do not lead to interpersonal forms of reconciliation, it is relevant to consider other levels, community and national<sup>48</sup>. Even more so, criminology can disentangle the various dimensions of reconciliation to include also political and social elements as part of this process to reconstruct war-torn societies<sup>49</sup>. Furthermore, critical criminology has a role to play in deconstructing the ideology of reconciliation in the aftermath of international

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<sup>46</sup> Bloomfield D., Barnes T. & Huyse L. (Eds.), *Reconciliation After Violent Conflict. A Handbook*, International IDEA, Stockholm, 2003; Daly E., Sarkin J., *Reconciliation in Divided Societies. Finding Common Ground*, University of Pennsylvania Press, Philadelphia, 2006.

<sup>47</sup> Braithwaite J., *Restorative Justice and Responsive Regulation*, Oxford University Press, Oxford, 2002; Zehr H., *Changing Lenses. A New Focus for Crime and Justice*, Herald Press, Scottsdale PA, 1990.

<sup>48</sup> Parmentier S. et al., "Dealing with the legacy of mass violence. Changing lenses to restorative justice", in Smeulers A., Haveman R. (eds.), *Supranational Criminology: Towards a Criminology of International Crimes*, Intersentia, Antwerp/Oxford, 2008, pp. 335-356.

<sup>49</sup> Stovel L., *Long Road Home. Building Reconciliation and Trust in Post-War Sierra Leone*, volume 2 of the Series on Transitional Justice, under the direction of general editors S. Parmentier, J. Sarkin & E.

crimes, e.g. when reconciliation is sometimes imposed on the population at large or specific groups<sup>50</sup>.

Probably contrary to popular belief organized crime can also play out in the case of reconciliation. Even if democratic governments succeed in making organized crime groups accountable, through criminal or other procedures, most if not all persons convicted will leave prison after shorter or longer periods of time or they will be reintegrated in society in another way. These questions of reinsertion and resocialisation, and even reconciliation, of former convicts is indeed very relevant in the context of international crimes and it provides a unique opportunity to think of a new relationship between the government and criminal groups. Furthermore, strange as it may sound, it is not impossible that victims express their willingness to meet some of the organized crime members, to be provided with more information about the crimes committed or simply to see the person(s) who did the atrocious things. Such processes can draw on the experience of restorative justice for common crimes, sometimes very serious ones<sup>51</sup>.

### **Concluding Remarks: Towards A Criminology of International Crimes.**

The attention for international crimes is growing in the fields of criminal justice and criminal law

around the world. Although criminology portrays itself as the main academic discipline to describe and to explain all forms of crime, it is striking that the overwhelming majority of its work is concentrated on crimes called common or traditional. In this contribution we have first of all tried to understand the object of international crimes, and compared it with political crimes and serious violations of human rights. Our conclusion is that each of these categories displays specific features that separate them, but also features that unite them. Among the latter is the fact that the acts tend to be very serious and that they produce massive numbers of victims, sometimes through the involvement of many perpetrators, direct and indirect. All in all, acts of this type have a very strong impact on individuals and on society alike.

To understand international crimes in their context we have focused on the issue of transitional justice, in its various interpretations. It was argued that wherever large-scale human rights abuses have taken place the political elites are challenged to deal with some fundamental issues surrounding truth, accountability, reparation and reconciliation. Each of these issues is very relevant for the discipline of criminology and the latter can also make an important contribution. Moreover, clear links with organized crime can be identified, either because the crimes have been committed by organized crime groups or because they can be held accountable and liable for further legal and social actions. There is no doubt that criminology, with its unique interdisciplinary approach to criminalization, criminal behavior, and criminal policies and institutions, is very well fit to explore these many new issues of political and international crimes.

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Weitekamp, Intersentia Publishers, Antwerp/Oxford, 2010.

<sup>50</sup> Parmentier S., "Global Justice in the Aftermath of Mass Violence. The Role of the International Criminal Court in Dealing with Political Crimes", *International Annals of Criminology*, 41, 2003, pp. 203-224.

<sup>51</sup> Umbreit M. et al., "Victim-Offender Dialogue in violent cases: a multi-site study in the United States", in Van der Spuy E., Parmentier S., Dissel A. (eds.), *Restorative Justice: Politics, Policies and Prospects*, Special Issue of *Acta Juridica* (University of Cape Town Journal of Law and Justice), 2007, pp. 22-39.

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