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The ICC and the Prevention of Atrocities: Criminological Perspectives

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Abstract One of the founding principles of the International Criminal Court (ICC) is the prevention of atrocities by punishing those most responsible for them. This paper builds on the literature that has both hailed and critiqued the prospects of the ICC's ability to deter future atrocities, adding insights from criminology and psychology to enhance the understanding of the ICC's deterrent capabilities. This will allow for a more careful analysis of how the deterrence process exactly works. The paper then uses these insights to examine the ICC's experiences over the past 14 years with deterring offenders. The main findings are that, although the ICC can constructively contribute to a normative shift toward accountability and a change in international rules of legitimacy, its prospects for the direct and meaningful deterrence of future atrocities are slim. The current practice of relying on the ICC as a crisis management tool is therefore both unwise and unfair.

Keywords Deterrence · International Criminal Court (ICC) · Criminology · Atrocities · Conflict management

In the preamble to the Rome Statute of 1998, which led to the establishment of the International Criminal Court (ICC) on July 1, 2002, the signatories declared that they

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were "determined to put an end to impunity for the perpetrators of [the most serious] crimes and thus to contribute to the prevention of such crimes."[1] The statement reflects the hope of international criminal justice supporters that this permanent, potentially universal Court could deter future atrocities (Bosco 2011),[2] a hope which has permeated justifications of and discussions on the ICC. Many of those who work with the ICC assume that punishing offenders can prevent crimes, a belief shared by many human rights organizations and NGOs (Bensouda 2012; Bosco 2011; Mullins and Rothe 2010a). For example, in February 2015, the Coalition for the International Criminal Court asked the Ukrainian government to ratify the Rome Statute in order to "deter grave crimes" (Coalition for the International Criminal Court 2015). In 2014, the UK and France, supported by the US government and major NGOs, jointly pushed for a UN Security Council Resolution to refer the civil war in Syria to the ICC, asserting a need to help end the atrocities (Benedict 2013; Lynch 2014; Sands 2013). For the Court itself, its assumed deterrent capabilities are an essential element of its legitimization. Indeed, they were an important factor leading to its foundation (Pikis 2010) and are "the central utilitarian argument in support" of it (Akhavan 2009, p. 628) that "gives [it] its distinctive rationale" (Ku and Nzelibe 2006, p. 789).

It is clear that some of these hopes have gone unmet. Fourteen years after the ICC first started operations, the world still holds many dictators and rebel groups who frequently commit atrocities. A few examples from 2015 are illustrative. Syria is witnessing ongoing mass human rights violations by both government troops and rebels in its 5-year-old civil war (Independent International Commission of Inquiry on the Syrian Arab Republic 2015). The Central African Republic once again experienced massive human rights violations (Amnesty International 2015). And, Boko Haram was on a carnage in Nigeria, where government troops have themselves been accused of atrocities (Human Rights Watch 2015). These examples do not necessarily mean that the ICC has had no deterrent effect. Deterrence, by its very nature, is difficult to measure as we have to observe something that does not happen (Akhavan 2011). In addition, the ICC was never meant to deter every possible violator. We can, however, observe the failure of deterrence, in which those who commit atrocities have not found the threat of legal sanctions by the ICC credible enough to be dissuaded from engaging in heinous crimes. The persistence of the use of atrocities, especially in the Central African Republic where the ICC was already active when atrocities were once again committed, begs the question of why the threat of ICC prosecution did not deter future violence.

Prima facie, the belief that the ICC can deter future crimes might seem harmless. One could argue that the ICC only has to *contribute* to deterrence and is not solely responsible for it (Akhavan 2013). If the Court saves at least some lives, it will still have an aggregate positive effect for affected populations. But, the problem is that the ICC—and international criminal justice more widely—is sometimes used as a

[1] See the Preamble of the Rome Statute for the International Criminal Court (1998). In fact, according to Meernik (2013), all founding documents of the international tribunals established so far stress the belief in the deterrent effect of legal sanctions.

[2] In this article, the term "atrocities" is used to refer to crimes that fall under the ICC's jurisdiction, namely crimes against humanity, war crimes, and genocide.

relatively "cheap" instrument to substitute for more robust interventions, such as military action (Sikkink 2011; Vinjamuri 2010). For instance, the UN Security Council was criticized because it appeared to use the ICC in Sudan as an alternative to more serious involvement (Rodman 2008). In such circumstances, and despite its positive contributions in other aspects, the Court is seen to have failed because supporters inflate hopes and expectations about the Court's usefulness as a conflict management tool. In this context, Akhavan (2013, p. 530) noted that "the ICC […] has been decoupled from more effective measures to halt ongoing atrocities" and that "we [should not] plac[e] a burden on international criminal justice that it cannot bear, by making it a substitute for, rather than a complement to, preventive action." This is all the more problematic because the short-term failure of justice to deliver an end to hostilities might negatively affect perceptions about the independent value of justice in the long term (Kastner 2014). Because of these important policy implications, it is of great relevance to assess the claims made by Court supporters that threats of legal sanctions can deter future atrocities.

Criminology, as a discipline studying criminal—or deviant—behavior, is well placed to assess the impact of ICC legal sanction threats on potential criminals. It is surprising therefore that the ICC has not always given much weight to the findings of criminology (Mullins and Rothe 2010a) and that criminologists in general have not devoted much time to the study of atrocities; one assessment from 2008 claimed that the discipline was in "a state of denial" about the importance of studying state crime (Haveman and Smeulers 2008). Although various scholarly contributions (Mullins et al. 2004; Rothe and Mullins 2006; Mullins and Rothe 2008; Mullins and Rothe 2010a, b; Rothe 2010; Rothe and Collins 2013) have since then applied criminological insights on legal deterrence to the ICC, the topic remains an understudied one and could use a more thorough, and in some cases more nuanced, approach.

The aim of this paper is therefore to offer a more structured, comprehensive, and nuanced account of criminological factors that are relevant for the study of the ICC's deterrence potential, with a particular focus on the offender's decision-making process. Specifically, I add insights on perceptual deterrence theory, the experiential effect, risk sensitivity, and a refined understanding of the place of extralegal sanctions. I begin, in the first chapter, with an overview of relevant criminological insights, subsequently applying these insights to the ICC in the second chapter. In the third chapter, I discuss some ways in which the ICC can improve its potential deterrent effect. I conclude that the prospects for legal deterrence by the ICC are limited but that hope for the prevention of atrocities by the ICC through more indirect means is nonetheless warranted.

Insights from Criminology

In this chapter, I give an account of criminological findings particularly relevant to the analysis of the potential deterrent impact of the ICC. First, I discuss deterrence theory, the basis for the general assumption that criminal justice systems are able to prevent crime with legal sanction threats. Second, I discuss the influence of extralegal sanction

threats on the criminal decision-making process, with a particular focus on the context of mass atrocities.

Legal Sanction Threats

The assumption that the ICC can deter future atrocities by prosecuting and punishing those responsible for previous atrocities has its roots in theories on legal deterrence on the national level. Taking a utilitarian approach to offending—an approach that goes back to the theories of Beccaria (1764[1986]), Bentham (1789[1988]), and von Feuerbach (1799)—these theories assume that the decision to commit a crime is based on some sort of rational cost-benefit calculation. Accordingly, a potential offender will commit a crime only when the expected benefits are higher than the expected costs (Bonanno 2006; Lilly et al. 2011; Paternoster 2010). By sufficiently increasing these expected costs, a legal sanction threat can therefore deter crime (Bonanno 2006; Paternoster 2010).

This core assumption can be broken down into two sub-assumptions. The first is that individuals make decisions based on a rational cost-benefit calculation. The second is that punishment by the legal system (such as fines, prison sentences, and capital punishment) can influence this cost-benefit analysis. I will assess both assumptions below.

Humans as Rational Decision-Makers

In recent decades, rational choice theory, deriving from neoclassical economics, has made its way into a large number of scientific disciplines (Lilly et al. 2011). At the same time, a "widely held skepticism" remains as to its accuracy and comprehensiveness (Kroneberg and Kalter 2012, p. 74). Neoclassical economists would see a choice as rational when the person making that choice has consciously considered all the costs and benefits and then decided what is best for him in an objective manner, adhering to basic rules of logic and probability theory and remaining uninfluenced by immaterial factors such as emotions or mode of presentation (Shafir and LeBoeuf 2002). According to Thaler and Sunstein (2008, p. 6), however, to meet these requirements, one would have to "think like Albert Einstein, store as much memory as IBM's Big Blue, and exercise the willpower of Mahatma Gandhi." Most individuals do not qualify for this. Instead, a considerable amount of psychological research has shown that most choices are both flawed and biased, rather than the result of any neoclassical decision-making process. Computational difficulties, heuristics ("mental rules of thumb"), emotions, and individual differences, among others, significantly impair or shortcut rational decision-making processes (Bouffard 2002; Greifeneder et al. 2011; Kahneman 2012; Loewenstein 1996; Nagin and Paternoster 1993; Pogarsky 2007; Shafir and LeBoeuf 2002).

As an alternative, rational choice scholars have proposed models of *bounded rationality* or *instrumental rationality* (Kroneberg and Kalter 2012). These assert that human behavior is still goal-driven and attempts to achieve desirable outcomes, while avoiding undesirable ones (Pogarsky 2009). As such, human behavior certainly does respond to incentives and disincentives, though in different ways and not always in the

way that we expect them to (Paternoster 2010).[3] Additionally, Archer (2000), who has criticized rational choice economists for giving insufficient attention to non-instrumental human behavior, has argued for including identity as an important source for assigning value to particular incentives and disincentives. These observations put in perspective the assumption that people should be seen as guided by predictable, rational decision-making processes. To some extent, this also explains why some potential offenders do not respond in the expected way to the threat of international legal sanctions. They are not necessarily making their decisions based on the cost-benefit calculations that the above assumption expects.

Legal Punishment Deters Future Offenders

The second assumption of deterrence theory is that the threat of legal punishment can be a significant disincentive to those who consider committing a crime. Deterrence is achieved when the potential offender perceives the disincentive of the legal sanction threat to be so strong that it outweighs the incentives of the crime under consideration (Bonanno 2006; Paternoster 2010). Deterrence scholars have identified three characteristics of the potential punishment that are important in this context: the punishment's certainty, severity, and celerity (swiftness), all of which are thought to have an inverse relation to crime. Thus, the line of reasoning goes, when legal sanction threats are more certain, more severe and/or more swift, fewer crimes will be committed (Apel 2013; Pogarsky 2009).

Despite the intuitive appeal for this line of reasoning, strong empirical evidence does not exist. Research on the relationship between the objective properties of punishment and crime rates has delivered extremely mixed results (Paternoster 2010). This can be partially explained by the observation that it is not the objective properties of the legal sanction threat that matter but rather how the potential criminal perceives them. Criminologists have shown that the objective properties of punishment rarely correlate with the way these properties are perceived: People generally do a poor job of assessing the chance of being apprehended, the severity of punishment they may receive, or the swiftness with which the punishment might arrive (Kleck et al. 2005). Perceptual deterrence theorists therefore emphasize the importance of focusing on the perceived properties of legal sanction threats. Taking perceptions into account, their research has delivered some evidence for a deterrent effect of the legal sanction's perceived certainty but not for its perceived severity and swiftness (Nagin and Pogarsky 2001).[4]

Another part of the explanation lies in the importance of individual differences as determinants of behavior: Different individuals respond to legal sanction threats in different ways (Nagin and Paternoster 1993; Nagin and Pogarsky 2001). Economic analyses of offender's choice have usually disregarded the influence of personal differences on offender decision-making (Bonanno 2006). Criminologists have nevertheless shown that some individuals are more "deterrable" than others, meaning that

[3] On a side note, as Jacobs (2010) explains, the human brain is always seeking to explain the events that occur and the things that we do. Therefore, we tend to rationalize them and seek explanations that justify our actions. However, this "retrospective rationality" does not mean that the decisions that preceded these actions were always based on a rational decision-making process. They "are not necessarily reflective of [the] thought process in situ" (p. 424).

[4] Although even the effect of certainty has been judged to be "modest to negligible" (Lilly et al. 2011, p. 347).

there is variability in an "offender's capacity and/or willingness" to respond to sanction threats (Jacobs 2010, p. 417). Deterrable offenders are those who are responsive to sanction threats because they are "neither strongly committed to crime nor unwaveringly conformist" (Nagin and Paternoster 1993, p. 471). A similar argument, advanced by Cronin-Furman (2013) and Jo and Simmons (2016), emphasizes the importance of motivations to assess the impact of legal sanction threats on potential offenders. Whereas Cronin-Furman looks at the effect of "overriding interests," Jo and Simmons differentiate potential offenders by whether they seek legitimacy.

Another important way in which individuals differ in their deterrability is what is known as *risk sensitivity*, the extent to which an offender is aware of the risk of being caught and takes measures to minimize it (Jacobs 2010). Individuals who score high on risk sensitivity would fall squarely into the category of deterrable offenders, because they are willing to commit crimes and make instrumental calculations about whether and how to commit them. This means that they will not engage in criminal acts for which the level of risk is unacceptably high. However, for offenders who are committed to crime, their risk sensitivity will make them particularly difficult to deter because they decrease the perceived certainty of the legal sanction by constantly employing new tactics, changing targets, minimizing evidence, or avoiding areas that are frequently patrolled by law enforcement agencies to avoid detection or apprehension.

Last, criminologists have shown that potential offenders learn from their experiences with the criminal justice system, as well as from those of their peers. When individuals have engaged in crimes before and have gotten away with it, or when their peers commit crimes with impunity, they will perceive the legal sanction to be less certain. Similarly, when individuals and/or their peers have consistently been apprehended and punished for a certain crime, they will perceive the legal sanction to be more certain. Horney and Marshall (1992) have dubbed this effect as the *experiential effect*.

In short, the criminal justice system has a limited capability to deter crimes. The empirical evidence for a deterrent effect of legal sanctions is weak, and perceived legal sanction threats are not always sufficient to dissuade potential offenders. This has led Paternoster (2010, p. 821), in his review of the deterrence literature, to conclude that the criminal justice system might not be the best way to prevent crime: The gains of crime are often immediate, whereas legal costs are usually "uncertain [and] far in the future." In contrast, extralegal sanctions are in many cases more effective in guiding the offender's decision-making process. In the following section, I therefore discuss the ways in which these extralegal sanction threats influence the decision to commit crimes.

Extralegal Sanction Threats

Essentially, extralegal sanctions are all the negative consequences of behavior that fall outside of the scope of the legal system (Paternoster 2010). They are usually grouped into two categories: social censure and self-disapproval. Social censure can take not only the form of social isolation, loss of interpersonal contacts, or a lowering of community respect, but also more violent forms, such as corporal punishment or even death (Williams and Hawkins 1986). Self-disapproval comes when an act elicits a negative feeling, such as shame, within the person. More specifically, self-disapproval is defined as "the personal dissonance from having violated an internalized behavioural

norm" (Nagin and Pogarsky 2001, p. 869). It is important to note that extralegal sanction threats do not necessarily prevent crime. Both the group norm and the internalized norm can either reject crime or promote it (Kroneberg et al. 2010). Therefore, although in some social circles murder leads to extreme social censure and self-disapproval, in others—such as street gangs, terrorist organizations, and, as shown later, the situations in which atrocities generally take place—it does not.

The threat of extralegal sanctions has a significant impact on people's behavior. It has been shown to play a much larger role in deterring the general population from criminal conduct than the threat of legal sanctions (Paternoster 2010). Crucially, there is evidence that indicates that the effects of extralegal sanction threats vis-à-vis legal ones are increased when the rule of law or the trust in and legitimacy of formal sanctioning mechanisms is generally weak (Tittle et al. 2011). Because sanctioning institutions that are not perceived as legitimate are not seen as a "proper restriction of behavior" (Rothe and Collins 2013, p. 197), extralegal sanctioning mechanisms become even more important for controlling crime. Potential offenders will therefore have to be deterred by social disapproval and moral norms. In situations where the group norm elicits violence, this further undermines the already limited deterrent effect of criminal justice systems in such contexts.

Extralegal norms can also interact with legal ones. Prosecuting and punishing those responsible for unacceptable behavior can signal the values of a broader community (Kahan 1997). Consistent punishment for specific acts may furthermore change a potential offender's perceptions of what behavior his peers deem acceptable (Williams and Hawkins 1986). Although consistent effects are far from certain, legal institutions can therefore strengthen individual and group norms against violence by changing the normative context in which potential offenders operate.

In conclusion, when studying the potential of the ICC to effectively deter future crimes, it is important to understand the effects of both legal and extralegal influences on the decision-making process.

A Preliminary Framework for Understanding the ICC's Deterrent Effect

In this section, I will bring together the above findings to come to a preliminary framework for understanding the behavior of conflict actors and how the ICC can influence it.[5] While making assessments of how various factors can influence the decision-making process (see Table 1), it is important to note that, as I have described the previous sections, this process should not be seen as some sort of fully rational cost-benefit calculation.

That being said, the criminological literature reviewed here expects that the ICC's legal deterrent effect is most likely to work when a calculating potential offender, say a head of state or rebel commander, is considering to commit atrocities, but perceives the ICC's sanction threat to be very credible. He is not yet committed to a criminal line of actions and is highly sensitive to the risk of being indicted or apprehended. He has not yet had any experiences with the ICC or other criminal justice systems where he

[5] This framework might additionally have some predictive value. I hesitate to make this claim too forcefully, however. More empirical and experimental research would be needed to bear out the applicability of the assumptions and theories stipulated here in real-life conflict situations.

Table 1 Expectations from the criminological literature

	Most important findings	Expected effect
Rationality	Decisions are often biased and have important other sources of motivation	Individuals do not necessarily behave instrumentally or predictably
Deterrence theory	The certainty of the sanction has the largest effect in deterring crime	If sanctions are not credible, they are unlikely to deter crime
Perceptual deterrence theory	Perceptions of the sanction properties are more important than their objective characteristics	To achieve deterrence, individuals' perceptions need to be influenced
Deterrability	Individuals differ in how "deterrable" they are	Different individuals will respond in different ways to legal sanction threats
Risk sensitivity	Most individuals are sensitive to risk and take measures to decrease that risk	Some individuals will be dissuaded from crime, while some others decrease the perceived costs of crime by taking measures to reduce the risk of detection or apprehension
Experiential effect	Individuals update their perceptions about the legal sanction threat with information from their own experiences, as well as those of their peers	Persistent impunity will reduce the credibility of the legal sanction threat, while consistent accountability will do the opposite
Extralegal sanctions	Extralegal sanctions are often found to be more important than legal sanctions. In atrocity situations, powerful group norms can demand violence which means that extralegal sanctions are applied when no violence is committed	Individuals can be deterred from *not* committing the crime

committed crimes and got away with it, nor have his peers. Furthermore, the society in which he lives does not feature strong (group) norms that demand violence.

It is least likely that the ICC's legal sanction threat will deter atrocities, when the deterrable potential offender is considering atrocities and does not perceive the ICC threat to be credible. He is sensitive to the risk of being apprehended but either is already committed to a criminal path (having committed atrocities before or having overriding interests to do so) or is confident in his ability to avoid detection or apprehension. He has gotten away with committing atrocities before, and so have his peers. Last, there is a dominant (group) norm that elicits atrocities.

These two options should be seen as the far ends of a continuum, with many different possible options in between. There will likely be a large multitude of other factors that are important in understanding the behavior of specific individuals in specific contexts. However, the framework presented here will help in at least partially understanding the reaction of conflict actors to the ICC's deterrent effect. In the following chapter, I apply this framework to the experiences of the ICC in deterring potential offenders.

What Does This Mean for the ICC? Applying Findings of Criminology to the Practicalities of International Criminal Justice

The hope that the ICC can deter future atrocities is, as noted, an important element of its justification. In addition, referring states, the international community, and global civil society have seen in the ICC a way to halt mass atrocities and bring peace to a country. It seems fair to say, however, that these hopes and expectations have gone largely unmet. To more comprehensively study the reasons for this, I apply the findings presented in the first chapter to the specific characteristics of the ICC's legal sanction threat.

Legal Sanction Threats

The first assumption of deterrence theory is that the criminal decision-making process is the product of some sort of cost-benefit calculation. Several scholars have doubted that perpetrators of ICC crimes are really engaging in such calculations (Drumbl 2007; Mennecke 2007; Rothe and Collins 2013; Wippman 1999). Drumbl (2007, p. 171), for example, asks whether "genocidal fanatics, industrialized into well-oiled machineries of death, make cost-benefit analyses prior to beginning work." The brutality and sheer horror of some crimes might indeed prompt these arguments and invites pundits to claim that these man and women must be "evil" or "crazy." And indeed, Valentino (2014, p. 91), in his review of the political science literature on political violence, argues that it was once a "widely held view that large-scale violence against civilian populations was irrational, random, or the result of ancient hatreds between ethnic groups." However, he now finds a consensus that violence against civilians is not the result of ancient hatreds or essentially irrational but instead the result of a "deliberate strategy of belligerent groups" (p. 91). Additionally, Waller (2002), who has analyzed the mass participation in atrocities, comes to the conclusion that it is

statistically and diagnostically impossible that all these perpetrators had some sort of psychological deficiency that explains their acts.

It must be noted that the factors that influence on-the-ground perpetrators of atrocities are somewhat different from those affecting the planners and organizers (Mullins and Rothe 2010a). With reference to on-the-ground perpetrators, scholars have found several factors that shortcut rational considerations in situations of group violence, such as inebriation or intoxication, obedience to authority, visceral factors, and a plethora of other social psychological factors that is too exhaustive to fully mention here (Milgram 1974; Mullins and Rothe 2010a; Neubacher 2006; Smeulers and Grünfeld 2011; Staub 1989; Waller 2002).[6] The ICC rarely targets these perpetrators, however. Like other international criminal courts before it, the ICC has the mandate to prosecute only those most responsible for serious international crimes, which in international criminal law has usually meant those who ordered, organized, or planned them. The extent of planning and organization that goes into most genocidal activities suggests that their behavior does at least conform to the bounded or instrumental rationality models. Still, as I argued in the previous chapter, an oversimplified analysis which sees them as making these decisions on the basis of rational cost-benefit calculations is insufficient to account for their actions. They will rarely respond in the way that we expect them to, and the differences in their identities will (at least partially) determine the value and weight they assign to particular incentives and disincentives.

To deter a potential offender, the disincentive of the legal sanction threat needs to counter the incentives of the crime. Atrocities can offer what perpetrators see as important benefits. Problematically, these expected benefits are often more effective in guiding behavior because they are, for the potential offenders, more clearly present than the distant threat of arrest or prosecution.[7] The following categories of incentives can be discerned. First, leaders of groups that commit atrocities usually allow or order the crimes to gain power or maintain it (Rodman 2008; Snyder 2000; Wippman 1999). Unscrupulous leaders create a shared enemy and direct violence against it to increase in-group cohesion. This often means that when leaders are threatened by international prosecution, the alternatives are either to surrender and be sentenced or to continue the violence through which they maintain their hold on power.[8] It is not surprising that most leaders choose the latter. Similarly, Cronin-Furman (2013), who studied the motives of potential offenders, emphasizes that the individual's perception of the necessity of the crime moderates the ICC's deterrent effect, resulting in different outcomes per individual. Second, hatred and prejudice can play an important role. Often, those who engage in mass atrocities are supported by an ideology (or at least a belief) that is based on feelings of some sort of superiority (Alvarez 2008). In such ideologies, members of the out-group—the other racial, tribal, ethnic, ideological,

[6] It must be emphasized that these authors do not suggest that all group violence is essentially irrational or that all these perpetrators were "genocidal fanatics." Rather, they explain the mass participation in atrocities by pointing at factors that affect the considerations of these on-the-ground perpetrators, usually concluding that even a "normal" person is capable of such heinous acts if put in the right circumstances.

[7] According to Tversky and Kahneman (1973)'s availability heuristic, such easily retrievable pieces of information have a disproportionate effect on a decision-making process.

[8] Indeed, Ku and Nzelibe (2006) stress that most of those who order atrocities often face death when they fail to hold on to power. Thus, the disincentive that the ICC delivers to stop committing atrocities is far weaker than the disincentive of abandoning power, which possibly results in death.

political, or religious group—are dehumanized and their murder or abuse is justified and encouraged. Fulfilling the goals of these ideologies can be an important incentive. Third, incentives for atrocities can be of a more banal nature. Some order or participate in atrocities for material gain or personal satisfaction or sometimes even perceived self-defense.[9] It is important to not lose sight of the powerful incentives that potential offenders can have while studying the effect of the potential disincentive the ICC can deliver.

I noted that the most important characteristic of a legal sanction threat is its perceived certainty. Some studies using criminological findings to analyze the ICC have identified the low certainty of its legal sanction threat as a core explanation of why it does not effectively deter (Mullins and Rothe 2010a). Although the certainty of prosecution for those who commit atrocities has increased since the establishment of the ICC, the Court has a number of built-in weaknesses, which lie outside the Court's responsibility, but nevertheless severely undermine the credibility of the ICC's legal sanction threat. First, the ICC has a limited capacity, which allows it to manage only two to three cases per year (Akhavan 2013). Second, the ICC, by conscious design, does not have its own police force and is fully reliant on the cooperation of states for the apprehension of suspects it does prosecute (Chung 2008). Recent experience has shown that states are often simply unable to apprehend rebel leaders and that sitting heads of state have been able to avoid prosecution because external actors do not want to intervene for geostrategic, economic, or political reasons (Hawkins 2008; Meernik 2013). For instance, Omar al-Bashir, the president of Sudan indicted by the ICC in 2008 for alleged crimes in Darfur, has long been able to travel widely in Africa because some powerful countries view him as a strategic ally in the region. Third, the ICC is influenced by considerations of politics, which do not only shape the cooperation it can obtain from states but to some extent also the decisions it makes on which situations to investigate and who to prosecute (Bosco 2014; Tiemessen 2014). This has important repercussions for perceptions of the credibility of the ICC's legal sanction threat, especially for state agents, who are in a better position to manipulate political considerations.

Importantly though, raising the objective chance of being arrested for ICC crimes is not necessarily enough to increase the chances for deterrence. The perception of the certainty of the punishment must also be raised. If every indictment would unfailingly result in an arrest, the perception of certainty would of course be positively affected, but this situation seems largely unrealistic. That the perceived certainty of the ICC's legal sanction threat is likely to be limited points to the relevance of the experiential effect. The experiences of potential offenders with the international criminal justice system, as well as the information they receive from their peers' experiences, will generally suggest minimal chances of being prosecuted or apprehended. Although the ICC has made progress in countering the culture of impunity, the world is still rife with leaders who commit atrocities and get away with it. Recent developments have exacerbated these effects. In December 2014, the ICC Prosecutor publicly dropped her case against Kenyan President Uhuru Kenyatta because the Kenyan government actively countered

[9] In fact, Straus (2008) and Verwimp (2013) argue that the perpetrators of the 1994 genocide in Rwanda were primarily driven by such incentives. Although this research has focused more on the lower and middle-level perpetrators, its points are probably relevant across cases and for a broader category of perpetrators.

her attempts to garner enough evidence to build a case (Bowcott 2014). She also suspended prosecutorial activities against al-Bashir, citing a lack of international support (BBC News 2014). Potential offenders may feel that they will be rewarded with a moratorium on their prosecution when they obstruct the ICC for long enough. Al-Bashir and Kenyatta certainly felt vindicated and claimed a victory over the Court.

Further affecting the perceived certainty of the ICC's legal sanction threat is that many of the potential offenders are highly risk sensitive in the sense that they recognize the risk of prosecution and take measures to limit this risk. In some cases, this means that they see the risk as too high and decide not to engage in particular crimes. Yet, when they are committed to a criminal path, as these leaders often are, they will minimize their detection or apprehension risk. Examples abound of perpetrators who adapt their tactics, complicate the collection of evidence, avoid high-risk areas, or use proxies (Alvarez 2006; Jamieson and McEvoy 2005). Joseph Kony, when indicted by the Court, did not stop his crimes but instead intensified his efforts to conceal his presence and evade capture (Green 2008). Kony has managed to stay out of the hands of the Court for almost 10 years despite intense efforts by pursuing Ugandan, Congolese, UN, and other forces to apprehend him. Additionally, al-Bashir used the Janjaweed militias as proxies to target civilians in Darfur and has only traveled to countries that will not extradite him (Rodman 2008), while the Kenyan government actively countered ICC efforts to collect evidence. Although their risk sensitivity puts these offenders in the category of deterrables, they are in fact among the most difficult to deter because they believe in their ability to elude law enforcement agencies. In conclusion, the deterrent impact of ICC sanctions seems to be limited, both in theory and in practice.[10]

Extralegal Sanctions

As explained earlier, extralegal sanction threats usually play a more important role in the decision-making process than legal sanction threats. The large majority of the population refrains from crimes because of the strong social and internal disapproval that would follow. The reliance on extralegal sanction threats for crime prevention is increased in situations where formal sanctioning institutions have little perceived legitimacy and the rule of law is lacking. Interestingly, the situations being considered by the ICC have generally taken place in such contexts.[11] Atrocity situations are often characterized by an "inversion of morality," in which the murder, torture, and other cruel treatments of the victims are both accepted and encouraged. The crime is

[10] A fairly recent strain in the political science literature seems to counter the skepticism about deterrence that criminology elicits. An important representative recent example is the study by Jo and Simmons (2016). They present empirical data to argue for a significant impact of both prosecutorial and social deterrence factors on the number of civilians killed. Although some of their claims are addressed in further detail below, it is worth considering that their study scrutinizes the impact of the ICC on violence levels within civil war-affected countries, not the micro-level dynamics of deterrence (what an individual's reaction is likely to be), which are the focus of this study. Accordingly, although Jo and Simmons (and the strand in political science they represent) make a praiseworthy contribution to the debate, they do not necessarily contradict the claims made here. The focus of their study is different, and the implications of their conclusions are limited.

[11] The ICC's complementarity regime, which only allows the ICC to act when states have been found to be either unwilling or unable to hold prosecutions themselves, would have prevented the ICC from intervening if perpetrators were consistently held to account.

legitimized by telling the perpetrators that the victims "deserve to die," that they are not human beings or that the killing is needed to serve some sort of higher purpose, such as the fulfillment of ideological goals (Bhavnani 2006; Rothe and Collins 2013). In this context of inverted moral norms, self-disapproval and (particularly) social censure do not come into play when the potential offender commits a crime, but rather when he does not. The deviant behavior is not participation in criminal behavior but rather a refusal to do so. Given the impact of extralegal sanction threats on the decision-making process, one could say that the potential offender is deterred from *not* committing the crime.

While the above is especially true for on-the-ground perpetrators, it is also relevant to senior leadership figures. They often see violence as the only way to further their ideological goals and maintain power. Once a society has transformed into one where violence is encouraged, leaders might fear a relative loss in social standing if they do not order or allow their subordinates to carry out atrocities. A failure to fulfill ideological goals can also result in disapproval by their peers. At the international level, however, extralegal sanction threats will more likely be applied when leaders do use atrocities. Naming and shaming is a particularly popular tactic to embarrass individuals in multilateral settings. Findings on its effectiveness have been mixed. Krain (2012) has for example found that naming and shaming will reduce the severity of genocide and politicide, while Hafner-Burton (2008) found that it negatively affects human rights because leaders will increase terror to strengthen their grip on power. Another way in which extralegal sanctions are applied in this context is the stigmatization and social isolation that often follow an indictment by the International Criminal Court. Even if al-Bashir is still able to travel abroad, his June 2015 visit to South Africa, where he had to flee the country before he would be apprehended (Tladi 2015), shows that his indictment is leading to a form of social isolation. At the same time, history shows that the application of extralegal sanctions against leaders who use atrocities is far from consistent. When powerful countries see these leaders as economic or political partners, they might refrain from open and/or strong criticism.

Thus, many crimes prosecuted by the ICC are committed in situations where the disincentive that the ICC seeks to deliver has to face incentives that are at least as strong, as well as extralegal sanction threats that compel individuals to engage in criminal behavior. In the next chapter, I discuss some ways in which the ICC can nevertheless seek to enhance its role in discouraging potential offenders from committing atrocities.

Opportunities for the ICC

The above chapters concluded that the ICC has a limited capacity to deter crimes through its legal sanction threats. Largely, this is due to built-in weaknesses and geopolitical realities which lie beyond its control. However, there are opportunities for the ICC to improve and make more effective use of opportunities to prevent the outbreak of violence, albeit in more indirect ways.

First, the ICC can make use of the findings of perceptual deterrence theory, namely that the perception the potential offender has of the certainty of the legal sanction is more important than its objective certainty. The Court can influence these perceptions

by clearly signaling its intentions to those who are considering ICC crimes. Bosco (2011), for example, recommends that the ICC uses its Outreach section in a more conscious way to prevent crime. Such a strategy seems to have been responsible for claims of (provisional) success in Colombia and during the 2013 Kenya elections. In Colombia, the ICC delivered targeted communications to key parties in the civil war to raise the possibility of an OTP investigation. This seems to have catalyzed right-wing paramilitary groups to demobilize and left-wing guerilla groups to encourage damage limitation measures (Cantor and Engstrom 2011). In Kenya, the ICC signaled that it was monitoring the 2013 elections for the commission of ICC crimes, which allegedly contributed to the prevention of these crimes (Mueller 2014). Definitive conclusions are still lacking, but if these arguments hold true, they illustrate the observation that the objective certainty of the sanction threat is less important than the potential perpetrator's perception of it. Such arguments are, however, more likely to hold true for individuals with a limited awareness of the Court: Those who know of its current limitations will still be likely to disregard ICC communications.

Second, although the experiential effect now seems to lead to decreased perceptions of certainty, that it will eventually contribute to the ICC's deterrent effect in a positive way seems likely. Justice and accountability are increasingly becoming part of the discourse. International and internal pressures make it more difficult for negotiators to strike peace deals that do not address these issues in some way (Kastner 2014). The combination of positive complementarity (through which the ICC seeks to help states investigate and prosecute atrocities domestically) and international criminal trials could mean that potential offenders will look around them, see that their peers who commit atrocities are prosecuted, and as a result increase their perceived costs of offending.[12] The ICC can make use of this development by more strongly asserting its relevance in conflicts that could fall within its jurisdiction, standing with the large majority of the international community in demanding that peace deals include transitional justice measures, through the ICC if need be. As Kastner (2014, p. 490) concludes: "This emerging normatization in the form of process-related and not primarily outcome-based commitments is considerable, and we can expect it to have positive effects on the peaceful resolution of armed conflicts."

Third, some scholars have argued that the ICC can counter the norms prevalent in atrocity situations by explicitly and actively challenging them. Those who advocate for an "expressionist" role for international criminal tribunals maintain that the Court should communicate clear normative messages to the world population about the norms that everyone should adhere to (Glasius 2013; Sloane 2007). If this is done consistently, these norms can be integrated into people's value sets, effectively creating self-regulating communities (see also Rothe and Mullins 2006). As the above discussion on group norms prevalent during atrocity situations indicates, however, such norm diffusion faces important obstacles and is unlikely to be sufficient to counter an escalation of violence by itself. These obstacles notwithstanding, the ICC also has potential for what Jo and Simmons (2016, p. 16) call "social deterrence": Because the ICC is a global court, it has a "broader ability to mobilize extralegal pressures" and "shapes social expectations about what constitutes justice more broadly". Indeed, their empirical analysis finds support for a

[12] This argument is reminiscent of the idea of a "justice cascade," proposed by Sikkink (2011).

"conditional impact" of the ICC's social deterrence effects on the number of civilians some governments and rebel groups kill.

Conclusion

With this paper, I intended to make a more comprehensive study of the ICC's potential deterrent effect from a criminological perspective, focusing on the offender's decision-making process. As has been shown above, the potential for the ICC to deter future atrocities is limited. From a criminological perspective, it faces obstacles in ensuring the certainty of its legal sanctions and needs to counter extralegal sanction threats that sometimes encourage criminal behavior. At the same time, however, it can contribute to the prevention of atrocities by focusing on the long-term, transformative process that can lead to the internalization of norms and the creation of self-regulating communities.

However, assessing the Court's effectiveness solely by studying its impact on ongoing conflicts is both unwise and unfair. Legal sanction threats are not appropriate for this role, nor does the Court have a strong enough mandate or sufficient institutional powers to amend the problems it faces. As mentioned, hopes that the ICC can deter atrocities are sometimes problematic because they can preclude wider and potentially more effective international engagement. Some states, furthermore, refer situations to the ICC in the hope of an immediate and measurable impact. Such parties pin unrealistic hopes on the ICC. It is important that the Court's supporters, as well as the international community at large, recognize this and do not seek to overstate its deterrent potential or use it as a conflict management tool. Rather, international leaders should continue to seek for more effective mechanisms to prevent conflict. In the meantime, it would be wise for the ICC, NGOs, and the international community in general to manage expectations. Adjusting its rhetoric to instead point to the useful longer term contributions the ICC *can* deliver to the world, reduces the risk that the Court is set up to fail by expectations it cannot deliver on.

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References

Akhavan P (2009) Are International Criminal Tribunals a Disincentive to Peace?: Reconciling Judicial Romanticism with Political Realism. Hum Rights Quart 31: 624–654. doi: 10.1353/hrq.0.0096

Akhavan P (2011) Preventing Genocide: Measuring Success by What Does Not Happen. Criminal Law Forum 22: 1–33. doi: 10.1007/s10609-011-9130-8

Akhavan P (2013) The Rise, and Fall, and Rise, of International Criminal Justice. Journal of International Criminal Justice 11: 527–536. doi: 10.1093/jicj/mqt028

Alvarez A (2006) Militias and Genocide. War Crimes, Genocide & Crimes Against Humanity 2: 1–33

Alvarez A (2008) Destructive Beliefs: Genocide and the Role of Ideology. In Smeulers A, Haveman R (eds) Supranational Criminology: Towards a Criminology of International Crimes. Springer, Berlin, pp. 213–231

Amnesty International (2015) The State of the World's Human Rights: Report 2014/2015. Amnesty International, London
Apel R (2013) Sanctions, Perceptions, and Crime: Implications for Criminal Deterrence. J Quant Criminol 29: 67–101. doi: 10.1007/s10940-012-9170-1
Archer MS (2000) Being human: The problem of agency. Cambridge University Press, Cambridge
BBC News (2014) Sudan President Bashir Hails 'Victory' over ICC Charges. BBC News. http://www.bbc.com/news/world-africa-30467167. Accessed 20 May 2016
Beccaria C (1764[1986]) On Crimes and Punishments. Trans. David Young. Hackett Publishing Company, Cambridge, MA
Benedict K (2013) The Countries That Support Referring Syria to the International Criminal Court and Some Absent 'Friends'. Amnesty International. http://www.amnesty.org.uk/blogs/campaigns/syria-icc-international-criminal-court. Accessed 20 May 2016
Bensouda F (2012) Keynote Address: Setting the Record Straight: The ICC's New Prosecutor Responds to African Concerns. Institute for Security Studies. http://www.issafrica.org/uploads/10Oct2012ICCKeyNoteAddress. Accessed 20 May 2016
Bentham J (1789[1988]) The Principles of Morals and Legislation. Prometheus Books, Amherst
Bhavnani R (2006) Ethnic Norms and Interethnic Violence: Accounting for Mass Participation in the Rwandan Genocide. J Peace Res 43: 651–669
Bonanno A (2006) The Economic Analysis of Offender's Choice: Old and New Insights. Rivista Internazionale Di Scienze Economiche E Commerciali 53: 193–224
Bosco DL (2011) The International Criminal Court and Crime Prevention: Byproduct or Conscious Goal? Michigan State University College of Law Journal of International Law 19: 163–200
Bosco DL (2014) Rough Justice: The International Criminal Court in a World of Power Politics. Oxford University Press, Oxford
Bouffard JA (2002) The Influence of Emotion on Rational Decision Making in Sexual Aggression. J Crim Just 30: 121–134
Bowcott O (2014) ICC Drops Murder and Rape Charges against Kenyan President. The Guardian. http://www.theguardian.com/world/2014/dec/05/crimes-humanity-charges-kenya-president-dropped-uhuru-kenyatta. Accessed 20 May 2016
Cantor D, Engstrom P (2011) In the Shadow of the ICC: Colombia and International Criminal Justice. Human Rights Consortium, University of London. http://www.academia.edu/1383204/In_the_Shadow_of_the_ICC_Colombia_and_International_Criminal_Justice. Accessed 20 May 2016
Chung CH (2008) The Punishment and Prevention of Genocide: The International Criminal Court as a Benchmark of Progress and Need. Case West R J Int L 40: 227–242
Coalition for the International Criminal Court (2015) Ukraine: Deter Grave Crimes by Joining ICC. #GlobalJustice Blog of the Coalition of the International Criminal Court. https://ciccglobaljustice.wordpress.com/2015/02/20/ukraine-deter-grave-crimes-by-joining-icc/. Accessed 20 May 2016
Cronin-Furman K (2013) Managing Expectations: International Criminal Trials and the Prospects for Deterrence of Mass Atrocity. International Journal of Transitional Justice 7: 434–454. doi: 10.1093/ijtj/ijt016
Drumbl MA (2007) Atrocity, Punishment and International Law. Cambridge University Press, Cambridge
Glasius M (2013) Too Much Law, Not Enough Justice? The Dominant Role of the Legal Discourse in Transitional Justice. Paper presented at the conference *Making Peace and Justice: Images, Histories, Memories*, Utrecht, the Netherlands
Green M (2008) The Wizard of the Nile: The Hunt for Africa's Most Wanted. Portobello Books, London
Greifeneder R, Bless H, Pham MT (2011) When Do People Rely on Affective and Cognitive Feelings in Judgment? A Review. Personal and Social Psychology Review 15: 107–141. doi: 10.1177/1088868310367640
Hafner-Burton EM (2008) Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem. Int Organ 62: 689–716. doi: 10.1017/S0020818308080247
Haveman R, Smeulers A (2008) Criminology in a State of Denial—Towards a Criminology of International Crimes: Supranational Criminology. In Smeulers A, Haveman R (eds) Supranational Criminology: Towards a Criminology of International Crimes. Springer, Berlin, pp. 3–26
Hawkins D (2008) Power and Interests at the International Criminal Court. SAIS Rev 28: 107–119. doi: 10.1353/sais.0.0014
Horney J, Marshall IH (1992) Risk Perceptions Among Serious Offenders: The Role of Crime and Punishment. Criminology 30: 575–594
Human Rights Watch (2015) West Africa: Regional Boko Haram Offensive. Human Rights Watch. http://www.hrw.org/news/2015/02/11/west-africa-regional-boko-haram-offensive. Accessed 20 May 2016

Independent International Commission of Inquiry on the Syrian Arab Republic (2015) 10th Report of Commission of Inquiry on Syria. United Nations Office of the High Commissioner on Human Rights. http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_48_ENG.doc. Accessed 20 May 2016

Jacobs BA (2010) Deterrence and Deterrability. Criminology 48: 417–441. doi: 10.1111/j.1745-9125.2010.00191.x

Jamieson R, McEvoy K (2005) State Crime by Proxy and Juridical Othering. Brit J Criminol 45: 504-527

Jo H, Simmons BA (2016) Can the International Criminal Court Deter Atrocity? Int Organ. Forthcoming

Kahan DM (1997) Social Influence, Social Meaning, and Deterrence. VA Law Rev 83: 349–395

Kahneman D (2012) Thinking, Fast and Slow. Penguin Books Ltd., London

Kastner P (2014) Armed Conflicts and Referrals to the International Criminal Court: From Measuring Impact to Emerging Legal Obligations. Journal of International Criminal Justice 12: 471–490. doi: 10.1093/jicj/mqu036

Kleck G et al. (2005) The Missing Link in General Deterrence Research. Criminology 43: 623–660

Krain M (2012) J'accuse! Does Naming and Shaming Perpetrators Reduce the Severity of Genocides or Politicides? Int Stud Quart 56: 574–589. doi: 10.1111/j.1468-2478.2012.00732.x

Kroneberg C, Heintze I, Mehlkop G (2010) The Interplay of Moral Norms and Instrumental Incentives in Crime Causation. Criminology 48: 259–294. doi: 10.1111/j.1745-9125.2010.00187.x

Kroneberg C, Kalter F (2012) Rational Choice Theory and Empirical Research: Methodological and Theoretical Contributions in Europe. Annu Rev Sociol 38: 73–92. doi: 10.1146/annurev-soc-071811-145441

Ku J, Nzelibe J (2006) Do International Criminal Tribunals Deter or Exacerbate Humanitarian Atrocities? Washington University Law Review 84: 777–833

Lilly JR, Cullen FT, Ball RA (2011) Criminological Theory: Context and Consequences, 5th edn. Sage Publications, Thousand Oaks, CA

Loewenstein G (1996) Out of Control: Visceral Influences on Behavior. Organ Behav Hum Dec 65: 272–292

Lynch C (2014) Exclusive: U.S. to Support ICC War Crimes Prosecution in Syria. Foreign Policy. http://foreignpolicy.com/2014/05/07/exclusive-u-s-to-support-icc-war-crimes-prosecution-in-syria/. Accessed 20 May 2016

Meernik J (2013) Justice, Power and Peace: Conflicting Interests and the Apprehension of ICC Suspects. International Criminal Law Review 13: 169–190. doi: 10.1163/15718123-01301005

Mennecke M (2007) Punishing Genocidaires: A Deterrent Effect or Not? Hum Rights Rev 8: 319–339. doi: 10.1007/s12142-007-0017-3

Milgram S (1974) Obedience to Authority: An Experimental View. Harper & Row, New York

Mueller SD (2014) Kenya and the International Criminal Court (ICC): Politics, the Election and the Law. J East Afr Stud 8: 25–42. doi: 10.1080/17531055.2013.874142

Mullins CW, Kauzlarich D, Rothe D (2004) The International Criminal Court and the Control of State Crime: Prospects and Problems. Critical Criminology 12: 285–308

Mullins CW, Rothe D (2008) Blood, Power, and Bedlam: Violations of International Criminal Law in Post-Colonial Africa. Peter Lang, New York

Mullins CW, Rothe DL (2010a) The Ability of the International Criminal Court to Deter Violations of International Criminal Law: A Theoretical Assessment. International Criminal Law Review 10: 771–786. doi: 10.1163/157181210X528414

Mullins C, Rothe D (2010b) Beyond the Juristic Orientation of International Criminal Justice: The Relevance of Criminological Insight to International Criminal Law and Its Control: A Commentary. International Criminal Law Review 10: 97–110. doi: 10.1163/157181209X1258456267089

Nagin DS, Paternoster R (1993) Enduring Individual Differences and Rational Choice Theories of Crime. Law and Society Review 27: 467–496

Nagin DS, Pogarsky G (2001) Integrating Celerity, Impulsivity, and Extralegal Sanction Threats Into a Model of General Deterrence: Theory and Evidence. Criminology 39: 865–892

Neubacher F (2006) How Can It Happen That Horrendous State Crimes Are Perpetrated? An Overview of Criminological Theories. Journal of International Criminal Justice 4: 787–799. doi: 10.1093/jicj/mql047

Paternoster R (2010) How Much Do We Really Know About Criminal Deterrence? J Crim Law Crim 100: 765–823

Pikis GM (2010) The Rome Statute for the International Criminal Court. Analysis of the Statute, the Rules of Procedure and Evidence, the Regulations of the Court and Supplementary Instruments. Martinus Nijhoff, Leiden

Pogarsky G (2007) Deterrence and Individual Differences Among Convicted Offenders. J Quant Criminol 23: 59–74. doi: 10.1007/s10940-006-9019-6

Pogarsky G (2009) Deterrence and Decision Making: Research Questions and Theoretical Refinements. In Krohn MD, Lizotte AJ, Hall GP (eds) Handbook on Crime and Deviance. Springer New York, New York, pp. 241–258
Rodman KA (2008) Darfur and the Limits of Legal Deterrence. Hum Rights Quart 30: 529–560. doi: 10.1353/hrq.0.0012
Rothe DL (2010) Shedding the Blanket of Immunity: A Commentary on the Global Principle of Ending Impunity, Realpolitik, and Legal Precedent. Crime Law Social Ch 53: 397–412. doi: 10.1007/s10611-009-9229-6
Rothe DL, Collins VE (2013) The International Criminal Court: A Pipe Dream to End Impunity? International Criminal Law Review 13: 191–206. doi: 10.1163/15718123-01301006
Rothe DL, Mullins CW (2006) Symbolic Gestures and the Generation of International Social Control: The International Criminal Court. Lexington Books, Plymouth, UK
Sands P (2013) Referring Syria to the International Criminal Court Is a Justified Gamble. The Guardian. http://www.theguardian.com/commentisfree/2013/jan/16/syria-international-criminal-court-justified-gamble. Accessed 20 May 2016
Shafir E, LeBoeuf RA (2002) Rationality. Annu Rev Psychol 53: 491–517
Sikkink K (2011) The Justice Cascade: How Human Rights Prosecutions are Changing World Politics. W.W. Norton, New York
Sloane RD (2007) The Expressive Capacity of International Punishment: The Limits of National Law Analogy and the Potential of International Criminal Law. Stanford J Int Law 43: 39–94
Smeulers A, Grünfeld F (2011) International Crimes and Other Gross Human Rights Violations: A Multi- and Interdisciplinary Textbook. Martinus Nijhoff, Leiden
Snyder J (2000) From Voting to Violence: Democratization and Nationalist Conflict. W.W. Norton, London
Staub E (1989) The Roots of Evil: The Origins of Genocide and Other Group Violence. Cambridge University Press, New York
Straus S (2008) The Order of Genocide: Race, Power and War in Rwanda. Cornell University Press, Ithaca, NY
Thaler RH, Sunstein CR (2008) Nudge: Improving Decisions About Health, Wealth, and Happiness. Yale University Press, New Haven and London
Tiemessen A (2014) The International Criminal Court and the politics of prosecutions. The International Journal of Human Rights 18: 444–461. doi: 10.1080/13642987.2014.901310
Tittle CR, Botchkovar EV, Antonaccio O (2011) Criminal Contemplation, National Context, and Deterrence. J Quant Criminol 27: 225–249. doi: 10.1007/s10940-010-9104-8
Tladi D (2015) The Duty on South Africa to Arrest and Surrender President Al-Bashir under South African and International Law: A Perspective from International Law. Journal of International Criminal Justice 13: 1027–1047. doi: 10.1093/jicj/mqv057
Tversky A, Kahneman D (1973) Availability: A Heuristic for Judging Frequency and Probability. Cognitive Psychol 5: 207–232
Valentino BA (2014) Why We Kill: The Political Science of Political Violence against Civilians. Annu Rev Politi Sci 17: 89–103. doi: 10.1146/annurev-polisci-082112-141937
Verwimp P (2013) Peasants in Power: The Political Economy of Development and Genocide in Rwanda. Springer, Dordrecht and New York
Vinjamuri L (2010) Deterrence, Democracy, and the Pursuit of International Justice. Ethics and International Affairs 24: 191–211. doi: 10.1111/j.1747-7093.2010.00256.x
Von Feuerbach PJA (1799) Revision der Grundsätze und Grundbegriffe des positive peinlichen Rechts I. Henningsche Buchhandlung, Erfurt
Waller J (2002) Becoming Evil: How Ordinary People Commit Genocide and Mass Killing. Oxford University Press, Oxford
Williams KR, Hawkins R (1986) Perceptional Research on General Deterrence: A Critical Review. Law and Society Review 20: 545–572
Wippman D (1999) Atrocities, Deterrence, and the Limits of International Justice. Fordham International Law Journal 23: 473–488