

**SUPRANATIONAL CRIMINOLOGY:  
TOWARDS A CRIMINOLOGY OF  
INTERNATIONAL CRIMES**

Alette SMEULERS and Roelof HAVEMAN (eds.)



intersentia

Antwerp – Oxford – Portland

*Distribution for the UK:*

Hart Publishing Ltd.

16C Worcester Place

Oxford OX1 2JW

UK

Tel: +44 1865 51 75 30

Fax: +44 1865 51 07 10

*Distribution for the USA and Canada:*

International Specialized Book Services

920 NE 58th Ave Suite 300

Portland, OR 97213

USA

Tel: +1 800 944 6190 (toll free)

Tel: +1 503 287 3093

Fax: +1 503 280 8832

Email: info@isbs.com

*Distribution for Switzerland and  
Germany:*

Schulthess Verlag

Zwingliplatz 2

CH-8022 Zürich

Switzerland

Tel: +41 1 251 93 36

Fax: +41 1 261 63 94

*Distribution for other countries:*

Intersentia Publishers

Groenstraat 31

BE-2640 Mortsel

Belgium

Tel: +32 3 680 15 50

Fax: +32 3 658 71 21

This research project was financed by the Netherlands Organisation for Scientific Research (NWO – Veni Vernieuwingsimpuls), the Faculty of Law of the VU University Amsterdam and the Maastricht Centre for Human Rights.



Netherlands Organisation for Scientific Research



Maastricht Centre for Human Rights

vrije Universiteit amsterdam



Supranational Criminology: Towards a Criminology of International Crimes  
Alette Smeulers and Roelof Haveman (eds.)

© 2008 Intersentia

Antwerp – Oxford – Portland

<http://www.intersentia.com>

ISBN 978-90-5095-791-5

D/2008/7849/41

NUR 825

No part of this book may be reproduced in any form, by print, photoprint, microfilm or any other means, without written permission from the publisher.

# TABLE OF CONTENTS

PREFACE ..... 1

**I. CRIMINOLOGY IN A STATE OF DENIAL – TOWARDS A  
CRIMINOLOGY OF INTERNATIONAL CRIMES: SUPRANATIONAL  
CRIMINOLOGY**

Roelof HAVEMAN and Alette SMEULERS ..... 3

1. Introduction ..... 3

2. The Harvest of a Century ..... 4

3. Pros, Cons and Denial. .... 6

4. Tentative Demarcation of the Field of Study of Supranational  
Criminology ..... 15

5. Outline of the Book ..... 18

5.1. Defining and Conceptualising International Crimes ..... 18

5.2. Quantifying and Mapping Crimes ..... 20

5.3. The Aetiology of International Crimes. .... 21

5.4. The Response to Crime ..... 23

5.5. Victimology ..... 25

5.6. Preventive Strategies ..... 25

6. Conclusion ..... 26

***PART I. DEFINE AND CONCEPTUALIZE INTERNATIONAL CRIMES  
AND STATE CRIME***

**II. TOWARDS A CRIMINOLOGY OF INTERNATIONAL CRIMES:  
PRODUCING A CONCEPTUAL AND CONTEXTUAL FRAMEWORK**

David O. FRIEDRICHS ..... 29

1. Introduction: Criminology post-Maastricht ..... 29

2. Criminology in Transition ..... 30

3. International Crime and Supranational Criminology: Terminological  
Confusion ..... 32

4. Crime, Social Harm and Supranational Criminology ..... 33

5.	A Provisional Genealogy for a Supranational Criminology. . . . .	34
6.	A Criminology of Genocide, War and Humanitarian Intervention . . . .	36
7.	Supranational Criminology and Related Concerns . . . . .	38
8.	On Context: Globalisation, a Postmodern World and the American Empire . . . . .	42
9.	The Global Justice Movement and Supranational Crime . . . . .	44
10.	International Crime and Global Governance . . . . .	45
11.	In Conclusion: An Agenda for a Supranational Criminology . . . . .	49

**III. TOWARDS AN INTEGRATIVE STUDY OF INTERNATIONAL  
CRIMES AND STATE-CORPORATE CRIMINALITY: A RECIPROCAL  
APPROACH TO GROSS HUMAN RIGHTS VIOLATIONS**

Gregg BARAK . . . . .	51
-----------------------	----

1.	Introduction . . . . .	51
2.	Political Economy and Nation-State Neutrality . . . . .	52
3.	A Critical Taxonomy of International Crimes and State Criminality. . .	57
4.	Supranational Criminology: An Integrative Perspective . . . . .	64
5.	Peacemaking, Non-violence and Social Change. . . . .	70
6.	Conclusion . . . . .	73

***PART II. MEASURE AND MAP INTERNATIONAL CRIMES: RESEARCH  
METHODOLOGY***

**IV. MISSING PIECES. SOME THOUGHTS ON THE METHODOLOGY  
OF THE EMPIRICAL STUDY OF INTERNATIONAL CRIMES AND  
OTHER GROSS HUMAN RIGHTS VIOLATIONS**

Catrien BIJLEVELD . . . . .	77
-----------------------------	----

1.	Introduction . . . . .	77
2.	For Studying International Crimes. . . . .	79
3.	Particularities and a Research Methodology for International Crimes . .	82
3.1.	The Doubly-Dark Number . . . . .	82
3.2.	Baseline Data . . . . .	83
3.3.	Victim Surveys . . . . .	83
3.4.	Security Issues . . . . .	84
3.5.	Underreporting/Non-Response . . . . .	84
3.6.	Use of Secondary Data . . . . .	85
3.7.	Collating Information from Other Sources. . . . .	86

4.	Examples . . . . .	88
4.1.	Using Capture-Recapture Methods for Studying Prevalence (Number of Victims) . . . . .	88
4.2.	Integrating Meso and Micro Perspectives through Multilevel Analysis . . . . .	93
5.	Discussion and a Research Agenda . . . . .	96

**V. THE UNACCOUNTABLE GENOCIDE. A CASE STUDY OF THE ROLES OF THE U.S. STATE DEPARTMENT AND U.S. GOVERNMENT ACCOUNTABILITY OFFICE IN CALCULATING THE DARFUR DEATH TOLL**

	John HAGAN . . . . .	99
1.	Genocide Accountability . . . . .	99
2.	'Complex Humanitarian Emergencies' and the Population Health Paradigm . . . . .	100
3.	The Humanitarian Strategic Embrace . . . . .	105
4.	The Atrocities Documentation Survey . . . . .	107
5.	Early Findings from the World Health Organization Surveys. . . . .	109
6.	A Gathering Consensus . . . . .	111
7.	The Consensus Breaks. . . . .	112
8.	The Osama Bin Laden Connection . . . . .	114
9.	State's New View of Death in Darfur . . . . .	116
10.	Re-examining the Surveys . . . . .	118
11.	A Complimentary and Combined Approach . . . . .	123
12.	The Unaccountability of the Government Accountability Office . . . . .	124
13.	A New and Alternative Approach . . . . .	128
14.	Some Conclusions . . . . .	130

**PART III. INVESTIGATE THE CAUSES OF INTERNATIONAL CRIMES**

**VI. GENOCIDE, WAR CRIMES AND CRIMES AGAINST HUMANITY IN CENTRAL AFRICA: A CRIMINOLOGICAL EXPLORATION**

	Dawn L. ROTHE and Christopher W. MULLINS . . . . .	135
1.	Introduction . . . . .	135
2.	Literature Review: State Crime, Crimes of Globalization and State- Corporate Crime Studies . . . . .	136

3.	An Integrated Theory of Supranational Crimes .....	137
4.	The Social Context and Typical Elements of the Crimes. ....	143
4.1.	Global Economics .....	143
4.2.	Social Disorder .....	145
4.3.	Militias.....	150
5.	Conclusion .....	158

## VII. STATE CRIME, THE COLONIAL QUESTION AND INDIGENOUS PEOPLES

	Chris CUNNEEN .....	159
1.	Introduction: Colonialism and State Crime .....	159
2.	Genocide and Mass Murder .....	160
3.	The Forced Removal of Indigenous Children .....	163
4.	The ‘Stolen Generations’ Inquiry.....	165
4.1.	Deprivation of Liberty.....	165
4.2.	Deprivation of Parental Rights .....	165
4.3.	Abuses of Power .....	166
4.4.	Breach of Duty of Care and Guardianship Duties .....	166
4.5.	Violation of International Human Rights Standards.....	167
5.	Institutional Racism as a Foundational Harm .....	168
6.	Forced Labour and Government Fraud .....	169
7.	Loss of Civil and Political Rights .....	171
8.	After State Crime: The Struggle for Reconciliation and Reparation ...	173
8.1.	Principles of Reparations .....	174
8.2.	Acknowledgment and Apology.....	176
8.3.	Guarantee against Repetition .....	176
8.4.	Measures of Restitution and Rehabilitation .....	177
8.5.	Monetary Compensation .....	177
9.	Conclusion .....	178

## VIII. CORPORATIONS AND INTERNATIONAL CRIMES

	Wim HUISMAN.....	181
1.	Introduction .....	181
2.	Conceptualisation .....	182
2.1.	Corporate Crime .....	182
2.2.	State-Corporate Crime .....	183

2.3.	International Crimes . . . . .	184
2.3.1.	International Crime and International law . . . . .	185
2.3.2.	Corporate Accountability for International Crimes . . . . .	188
2.4.	Discussion . . . . .	192
3.	Forms of Involvement . . . . .	194
4.	Explanations . . . . .	197
4.1.	Corporate Crime Theory . . . . .	197
4.2.	Motivation and Neutralisation . . . . .	199
4.2.	The Role of the State . . . . .	202
4.3.	Globalisation . . . . .	206
5.	Conclusion . . . . .	209

## **IX. DESTRUCTIVE BELIEFS: GENOCIDE AND THE ROLE OF IDEOLOGY**

	Alex ALVAREZ . . . . .	213
1.	Introduction . . . . .	213
2.	Typology of Genocide . . . . .	214
3.	Defining Ideology . . . . .	216
3.1.	Nationalism . . . . .	220
3.2.	Past Victimization . . . . .	222
3.3.	Dehumanization . . . . .	223
3.4.	Scapegoating . . . . .	225
3.5.	Absolutist Worldview . . . . .	226
3.6.	Utopianism . . . . .	228
4.	Conclusions . . . . .	229

## **X. PERPETRATORS OF INTERNATIONAL CRIMES: TOWARDS A TYPOLOGY**

	Alette SMEULERS . . . . .	233
1.	Introduction . . . . .	233
2.	Ordinary People within Extraordinary Circumstances: Setting the Context . . . . .	234
2.1.	Consequences and Effects of a Period of Collective Violence . . . . .	235
2.2.	Towards a Typology . . . . .	240
3.	The Types . . . . .	243
3.1.	The Criminal Mastermind . . . . .	244
3.2.	The Fanatic . . . . .	246

3.3.	The Criminal/Sadist .....	247
3.4.	The Profiteer .....	249
3.5.	The Careerist.....	250
3.6.	The Devoted Warrior.....	252
3.7.	Followers and Conformists .....	254
3.8.	The Compromised Perpetrator .....	257
3.9.	The Professional.....	258
4.	How Do the Perpetrators Look Back? .....	260
5.	Common Features and Concluding Remarks.....	263

**XI. A SOCIOLOGY OF TORTURE**

	Martha K. HUGGINS.....	267
1.	Introduction .....	267
2.	Predicting Torture.....	268
3.	Torture 101: A Criminological Model?.....	270
3.1.	Mislabelling .....	270
3.2.	Ideology.....	271
3.3.	Ad-hoc legalism .....	271
3.4.	Systemic.....	273
3.5.	Multiple Actors.....	274
3.6.	Division of Labour/ Diffusion of Responsibility.....	275
3.7.	Insularity and Secrecy.....	276
3.8.	Competition Rages .....	277
3.9.	Evidence Ignored.....	279
3.10.	Impunity is Widespread .....	279
4.	Torture and Criminology.....	280
4.1.	Conducting On-Line Research .....	280
4.2.	Triangulating Data Sources .....	281
4.2.1.	Library Catalogues .....	281
4.2.2.	Criminal Justice Journals and Organizations.....	284
4.2.3.	Teaching Torture.....	285
5.	Summarizing Findings.....	288
5.1.	On-Line Books and Journals, Library Catalogues and On-Line Criminology Journals .....	288
5.2.	On-Line Criminology-of-Practice Web Sites .....	289
5.3.	Academic Courses.....	289
6.	Conclusion: Criminology and Torture.....	289



<b>XII. MILITARIZING POWER IN THE WAR ON TERROR: UNLAWFUL ENEMY COMBATANTS AND THE MILITARY COMMISSIONS ACT</b>	
Michael WELCH .....	293
1. Introduction .....	293
2. Monarchical Power in the Classical Age .....	295
3. From Penal Reform to Counter-law .....	296
4. Militarized Penal Power in the War on Terror .....	298
5. The MCA: Military Commissions Act of 2006 .....	299
6. Recentralizing the Economy of Penal Power .....	303
7. Conclusion .....	305
<b>PART IV. DEFINE AND ANALYZE WAYS OF DEALING WITH INTERNATIONAL CRIMES</b>	
<b>XIII. DEALING WITH INTERNATIONAL CRIMES: TOWARDS A CONCEPTUAL MODEL OF ACCOUNTABILITY AND JUSTICE</b>	
Jennifer BALINT .....	311
1. Introduction .....	311
2. 'In the Name of the State'. International Crime and Its Parameters . . .	312
3. Individuals and Institutions. Legal Approaches to International Crime	315
4. Civic Liability. Considering Institutional Accountability .....	323
5. A Typology of International Crime? Matching Legal Redress to Specific Crimes .....	327
6. Reconstruction and Prevention. Justice as Social Justice? .....	331
7. Conclusion .....	333
<b>XIV. DEALING WITH THE LEGACY OF MASS VIOLENCE: CHANGING LENSES TO RESTORATIVE JUSTICE</b>	
Stephan PARMENTIER, Kris VANSPAUWEN and Elmar WEITEKAMP . . .	335
1. Introduction .....	335
2. The Dominant Approach: Retributive Justice .....	338
2.1. Strengths and Weaknesses of Retributive Justice .....	338
2.2. The Triptych of Criminal Prosecutions .....	341
3. Changing Lenses to Restorative Justice .....	342
3.1. Understanding Mass Violence through Restorative Justice .....	343

3.2.	Truth Commissions as Possible Forms of Restorative Mechanisms .....	345
4.	Mass Violence and Post-Conflict Justice through a Restorative Lens. . .	346
4.1.	Searching for Truth .....	346
4.2.	Ensuring Accountability of the Perpetrators .....	348
4.3.	Providing Reparation to the Victims .....	350
4.4.	Promoting Reconciliation .....	352
5.	Conclusion .....	355

## XV. DOING JUSTICE TO GACACA

	Roelof HAVEMAN .....	357
1.	<i>A Gacaca</i> .....	357
2.	A Research Question .....	358
3.	A History of the Genocide .....	360
4.	Some Numbers of the Genocide .....	364
5.	<i>Gacaca</i> : Criminal Law and Criminal Procedure .....	367
5.1.	The Establishment of <i>Gacaca</i> .....	367
5.2.	Substantive Criminal Law .....	369
5.2.1.	Genocide and Crimes against Humanity: Three Categories .....	369
5.2.2.	Three Punishments .....	371
5.3.	Criminal Procedure .....	373
5.3.1.	Three Levels, Three Phases .....	373
5.3.2.	Three Remedies .....	375
5.3.3.	Hearing and Judgment .....	375
5.3.4.	Confession, Guilty Plea, Repentance, Apology .....	377
5.4.	Participative Lay Justice .....	378
6.	Judging <i>Gacaca</i> .....	380
6.1.	Time and Place Specific .....	382
6.2.	Work under Construction .....	384
6.3.	Reality versus Theory .....	386
6.4.	Rethinking Human Rights .....	387
6.5.	A Comparative Approach .....	389
6.6.	Goals .....	391
6.7.	You're Damned if You Do, You're Damned if You Don't .....	395
7.	Epilogue .....	397

<b>XVI. 'REASON' AND 'TRUTH' IN INTERNATIONAL CRIMINAL JUSTICE – A CRIMINOLOGICAL PERSPECTIVE ON THE CONSTRUCTION OF EVIDENCE IN INTERNATIONAL TRIALS</b>	
Uwe EWALD.....	399
1. Introduction: Reason and Evidence in International Criminal Justice .	399
1.1. Why Should We Understand International Evidence Criminologically?.....	399
1.2. Reason and Evidence – Historical Continuity and Current Differences .....	403
2. Baselines of a Conceptual Framework: International Criminal Justice as Part of Public Discourse – ‘Truth’ and International Evidence .....	407
2.1. Historical Truth and Evidence in International Criminal Justice.	407
2.2. New Global Security Discourse, Hegemonic Knowledge and Evidence.....	412
2.3. ‘Regime of Truth’ – Modelling the Operational Practice of International Criminal Justice.....	417
3. Origin of Evidence – Explorative Empirical Findings.....	420
3.1. Evidence, Analysis and Judicial Reasoning .....	420
3.2. Institutional Originators of (Potential) Evidentiary Information .	423
3.3. Personal Originators: Witnesses and ‘Judicial Truth’ .....	427
4. Conclusions.....	431
 <b>PART V. VICTIMOLOGY</b>	
 <b>XVII. VICTIMISATION AND SUPRANATIONAL CRIMINOLOGY</b>	
David KAUZLARICH.....	435
1. Introduction .....	435
2. Critical Criminology, State Crime and Supranational Criminology ...	436
3. Types of Victims.....	439
3.1. Direct and Indirect Victims.....	439
3.2. Victims of Forced Obedience.....	442
3.3. Victims of Crimes of Omission.....	444
4. Victim Redress.....	446
5. Conclusion .....	451

**PART VI. DEVELOP PREVENTIVE STRATEGIES IN ORDER TO PREVENT INTERNATIONAL CRIMES**

**XVIII. THE ROLE OF BYSTANDERS IN RWANDA AND SREBRENICA: LESSONS LEARNED**

Fred GRÜNFELD .....	457
1. Introduction .....	457
2. The Importance of the Bystander's Role. ....	458
3. Knowledge, Ignorance and Indifference .....	460
3.1. Indifferent Onlookers .....	461
3.2. Excluded Ignorance. ....	462
4. Early warning .....	464
4.1. Early Warning in Rwanda .....	465
4.2. Early Warning in Srebrenica .....	467
5. Military Strength and Rules of Engagement for Peacekeepers. ....	470
5.1. Rwanda with UNAMIR .....	471
5.2. Srebrenica with UNPROFOR. ....	475
5.2.1. Nordbat .....	478
5.2.2. Dutchbat .....	479
5.2.3. No Change of Perception .....	480
6. Right to Protect .....	481
7. Guidelines for Preventive Strategy .....	484
Annex 1: Scheme "HURIVIC," Human Rights Violations and Conflict .....	485

**XIX. INTERNATIONAL CRIMES AND CRIMINOLOGY: AN AGENDA FOR FUTURE RESEARCH**

Alette SMEULERS and Roelof HAVEMAN .....	487
1. Introduction .....	487
2. Conceptual and Theoretical Framework .....	488
3. Methodological Clarity and Soundness. ....	491
4. Studying International Crimes through a Criminological Framework .	492
4.1. The Perpetrator. ....	493
4.2. Groups, Organisations and States. ....	497
4.3. The International Community. ....	499
5. Dealing with the Past .....	502
5.1. International Criminal Law and International Criminal Justice. .	503
5.2. Sentencing and Sanctioning. ....	505

5.3. The Role of the Victims and Victimology .....	508
5.4. Alternative Means to Deal with the Past .....	509
6. Epilogue.....	510
<b>BIBLIOGRAPHY .....</b>	<b>513</b>
<b>CONTRIBUTORS AND EDITORS .....</b>	<b>587</b>

