The “Responsibility to Prevent”: Toward an International Crimes Approach to Mass Atrocity Prevention

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“The first goal, as the Outcome Document underlined, should be prevention, prevention, prevention”
- Edward C. Luck, UN Special Adviser on the Responsibility to Protect

“The responsibility to protect applies, until Member States decide otherwise, only to the four specified crimes and violations: genocide, war crimes, ethnic cleansing and crimes against humanity”
- Ban Ki-moon, UN Secretary-General

This paper aims to contribute to the emerging scholarship on the preventive dimension of the responsibility to protect (R2P) by developing a genuine international crimes approach to the prevention of mass atrocities.

There is now widespread agreement amongst policy-makers and academics that prevention is the key constitutive element of the principle of R2P. As leading

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3 Emphasising the preventive aspects of R2P is an integral part of the UN Secretary-General’s strategy for building support for R2P, see, Ban, Implementing the Responsibility to Protect; also Jennifer M. Welsh, ‘Civilian Protection in Libya: Putting Coercion and Controversy Back Into RtoP’, Ethics & International Affairs Vol. 25, No. 3 (2011), p. 6. For scholars stressing the importance of prevention see, for example, Alex J. Bellamy, Global Politics and the Responsibility to Protect: From Words to Deeds (London: Routledge, 2011); Alex J. Bellamy, ‘Mass Atrocities and Armed Conflict: Links, Distinctions, and Implications for the Responsibility to Prevent’, Policy Analysis Brief: The Stanley
R2P advocate Gareth Evans notes, “recognition of these realities – that prevention is the single most important dimension of the responsibility to protect – is at the heart of the 2005 World Summit’s conclusion, as it was of the reports leading up to them”. Moreover, states repeatedly articulated overwhelming support for the R2P’s preventive dimension during the annual R2P debates in the UN General Assembly. And UN Secretary General Ban Ki-moon even declared 2012 the year of prevention. However, despite this widespread rhetorical support for the so-called “responsibility to prevent”, it remains unclear what exactly prevention means and entails in an R2P context. The content of the “responsibility to prevent” remains sketchy and ill-defined.

Much of the existing scholarship on the R2P’s preventive dimension assumes that the prevention of armed conflict is the best means of preventing the commission of the four international crimes associated with R2P (genocide, war crimes, ethnic cleansing, and crimes against humanity). It therefore conceptualizes the “responsibility to prevent” through a more or less traditional “conflict prevention lens”. However, this way of conceptualizing the R2P’s prevention dimension is increasingly challenged, given that R2P is designed to narrowly deal with the prevention of the four aforementioned international crimes and not armed conflict more generally. This paper suggests that the R2P’s narrow focus on four international crimes means that the R2P’s preventive dimension is best conceptualized through a “crimes prevention lens”. Drawing on research into the prevention of crimes from the fields of criminology, supranational criminology, and international criminal law, the

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paper then proceeds to develop a genuine international *crimes* approach to mass atrocity prevention.

In what follows I will argue that approaching the “responsibility to prevent” as international *crimes* prevention challenges some of the conventional assumptions of the current discourse on the R2P’s preventive dimension. In particular, adopting a ‘crimes prevention lens’ demands re-thinking the “responsibility to prevent” in four key dimensions. It forces us to 1) conceptualize prevention around the four crime dimensions of perpetrator, victim, situation, and third party, 2) prioritise more proximate and targeted forms of prevention over more long-term and systemic forms, 3) treat third parties as critical to the crime prevention process, and 4) question consent, impartiality and minimal coercion as key operative principles.

This argument is developed in four parts. To begin, I analyse the way in which much of the scholarship on the “responsibility to prevent” has conceptualized the prevention of mass atrocities, namely as a form of conflict prevention. In the next section, I then discuss why it is more appropriate to conceive of the “responsibility to prevent” as international crimes prevention and thus conceptualize it through a “crimes prevention lens”. The rest of the paper then spells out some of the conceptual and practical consequences of adopting such a crimes approach. To end, I summarize the main findings of my analysis.

**The Conventional Approach**

This section analyses the key assumptions behind much of the existing literature on the “responsibility to prevent”.

The ‘conventional’ approach to the ‘responsibility to prevent’ adopts a conflict prevention framework and maps it on to R2P. This is particularly clear in the 2001 report of the International Commission on Intervention and State Sovereignty
(ICISS), former UNSG Kofi Annan’s “Genocide Prevention Plan”, and the work of R2P advocate Gareth Evans. Moreover, other prominent scholars of R2P, such as Alex Bellamy or Lawrence Woocher, put forward more nuanced and sophisticated accounts of the R2P’s prevention dimension that also draw heavily on conflict prevention ideas and principles. Conflict prevention, however, is a well-established field of research and policy that is based on a series of assumptions and concepts. Even though it is difficult to summarize the rich literature on conflict prevention in a few paragraphs, three core elements of conflict prevention can be identified: (1) the focus on parties to a conflict, (2) the distinction between structural and direct prevention, and (3) the importance of the principles of consent, impartiality and minimal use of force.

First, as former UN Secretary-General Boutros Boutros-Ghali famously explained in his Agenda for Peace, “preventive diplomacy is action to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur”. One aspect that follows from this definition is that conflict prevention focuses on disputes between two or more parties to a conflict. Those parties can either be nations or groups within nations. From a conflict prevention perspective, those parties are seen as equals,

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5 ICISS, The Responsibility to Protect, pp. 19-27; Evans, The Responsibility to Protect, pp. 79-104.
6 See, Bellamy, ‘Mass Atrocities and Armed Conflict’; Woocher, ‘The Responsibility to Prevent’. See also, Madeleine Albright and William Cohen (co-chairs), Preventing Genocide: A Blueprint for U.S. Policymakers (The Report of the Genocide Prevention Task Force, 2008), p. 21. The focus on conflict prevention is justified with the empirical finding that the majority of all cases of mass atrocity crimes occur in context of armed conflict. It is assumed, therefore, that preventing conflict will naturally reduce the frequency of mass atrocity crimes as well. This argument will be discussed in more detail in Chapter 1.
whose conflict can be resolved through a mutual agreement.\textsuperscript{9} Thus, rather than using the value-laden labels of ‘perpetrators’ and ‘victims’, conflict prevention is conceptualized in the more neutral language of equal parties to a conflict.\textsuperscript{10}

Second, conflict prevention is commonly conceptualized in terms of structural prevention and direct prevention.\textsuperscript{11} Structural prevention takes a long-term perspective, and therefore tries to mitigate the so-called root causes of conflict, such as poverty, economic inequality, limited institutional capacity, bad governance, or ethnic divisions.\textsuperscript{12} Its goal is to avoid crises and disputes altogether, by dampening the dynamics that might give rise to them. Inevitably, structural prevention is very broad in scope and targeted at a society as such, involving a variety of different actors (e.g. the World Bank, the IMF, UNDP, UNHCR, UNHCHR, UNICEF, or NGOs) and issue areas (e.g. development, human rights, good governance or disarmament programmes).\textsuperscript{13} Direct prevention, by contrast, deals with more imminent crises and focuses on more concrete issues between disputing parties, for instance through confidence-building measures, monitoring missions, mediation, aid conditionality or preventive deployments.\textsuperscript{14} In short, it seeks to prevent disputes from escalating into full-scale conflicts. Since the early 1990s, scholars of conflict prevention have slowly begun to emphasise the importance of structural prevention – i.e. long-term capacity-

\textsuperscript{12} Carnegie Commission, \textit{Preventing Deadly Conflict}, pp. 69-105.
building in at risk states - over direct prevention,\(^{15}\) not least because it is assumed that structural prevention is less intrusive.\(^{16}\)

Third, conflict prevention is traditionally guided by the principles of consent, impartiality and minimal use of force; those three principles are also known as the ‘holy trinity’ of UN peacekeeping.\(^{17}\) International engagement in conflict prevention usually requires the cooperation and consent of the parties to the conflict. As former UNSG Kofi Annan explains, “if the Government concerned refuses to admit that it has a problem that could lead to violent conflict and rejects offers for assistance, there is very little outside actors, including the United Nations, can do. To be successful, the United Nations must have the consent and cooperation of the Government concerned”.\(^{18}\) Thus, for conflict prevention to be successful, parties need to have a general interest in resolving a conflict peacefully. If preventive engagement is indeed welcomed, it should operate with minimal coercion and with maximal respect for the principles of sovereignty, non-interference, and territorial integrity.\(^{19}\) Bellamy et al. suggest, for instance, that “the ‘ASEAN-way’ of conflict prevention has been based on three central norms: non-interference in the domestic affairs of others, agreements based on the principle of consensus and regional independence”.\(^{20}\) Moreover, as impartiality is a basic ingredient of conflict prevention, it should “avoid obvious favouritism and imbalances” and “oppose the use of force by any side”.\(^{21}\)


\(^{16}\) For a critique of this point, see, Welsh, ‘Implementing the Responsibility to Protect’, p. 7.

\(^{17}\) See, Alex J. Bellamy, Paul D. Williams, Stuart Griffin, *Understanding Peacekeeping* (Cambridge: Polity Press, 2004), pp. 95-96. I acknowledge that those three principles are also challenged from within the conflict prevention community.

\(^{18}\) Annan, *Prevention of Armed Conflict*, p. 87.


\(^{21}\) Lund, ‘Conflict Prevention’, p. 298.
Much of the literature on the R2P’s prevention dimension has adopted those core elements of conflict prevention and applied them to prevention in an R2P context. For instance: In accordance with conflict prevention thinking, the ICISS and Evans conceptualize prevention in terms of structural prevention (long-term and root-cause focused) and direct prevention (short-term). They emphasize the importance of the structural component—long-term capacity-building in at risk states—22—not least because it is assumed that structural prevention is less intrusive.23 Moreover, they believe that the key conflict prevention principles of consent, impartiality, and minimal use of force should also guide mass atrocity prevention.24 For example, both the ICISS and Evans argue that preventive deployments need to have the consent of the governments involved.25 Moreover, Evans argues that,

> It is important to appreciate, in the discussion of different preventive measures that follows, that the primary focus is on what states at risk can do for themselves, by their own national effort and with their own national capacity, and what they can do voluntarily for each other by way of offering support. The prevention of mass atrocities, like the prevention of conflict more generally, should start, and if possible finish, with the minimum of intrusion.26

However, the adequacy of adopting such a conflict prevention approach in the context of R2P is increasingly questioned. A growing number of voices demands drawing a clearer analytical distinction between conflict prevention and the prevention of mass atrocity crimes. As the International Peace Institute notes, “Conflict prevention and RtoP … are not synonymous and may not merit the same

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24 See Evans, The Responsibility to Protect, 86; ICISS, The Responsibility to Protect, 24-25.


26 Evans, The Responsibility to Protect, 86.
approach in all instances … The lack of clarity as to what makes RtoP prevention distinct from conflict prevention is troubling”.

**Why Focus on International Crimes?**

This section highlights why focusing on the prevention of international crimes is the more appropriate approach for the “responsibility to prevent”.

Approaching the ‘responsibility to prevent’ through a crimes prevention lens follows logically from the prominence that the concept of ‘crime’ has gained within the wider R2P discourse.\(^2^8\) When the ICISS first developed the concept of R2P, it defined the R2P’s scope very broadly as “large-scale loss of life”, “large-scale ethnic cleansing”, “man-made crises putting populations at risk”, or “human security threatening situations”.\(^2^9\) The R2P was not confined to particular crimes under international law.\(^3^0\) However, the Outcome Document of the 2005 UN World Summit, which is widely regarded as outlining the authoritative interpretation of the rights and responsibilities associated with R2P,\(^3^1\) restricted the R2P’s scope to the four international crimes of genocide, war crimes, ethnic cleansing, and crimes against humanity.\(^3^2\)

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\(^2^9\) ICISS, *The Responsibility to Protect*, p. XI, XII, 18, 19.
\(^3^0\) See, Woocher, ‘The Responsibility to Prevent’, p. 5.
\(^3^1\) See, for example, Ban, *Implementing the Responsibility to Protect*, p. 4; and Jennifer M. Welsh, ‘Implementing the Responsibility to Protect’, *Policy Brief*, No.1/2009, Oxford Institute for Ethics, Law and Armed Conflict, p. 2.
\(^3^2\) The four R2P crimes are relatively well defined in international law. The 1948 Genocide Convention defines genocide as, “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such”. The concrete acts are listed in Article II of the Convention. What is distinctive about the crime of genocide is the requirement of clear evidence of intent to destroy the abovementioned groups. As the list of protected groups is limited to “national, ethnical, racial or religious groups”, it is contested whether cultural and political extermination campaigns constitute genocide. See, Antonio Cassese, *International Criminal Law*, 2nd edn. (Oxford: Oxford University Press, 2008), p. 137; also Hubert and Blätter, ‘The Responsibility to Protect as International Crimes Prevention’, p. 7. War crimes are defined as “serious violations of customary or
Scholars have argued that limiting the R2P to those four international crimes was critical for gaining political consensus on the R2P and securing its inclusion in the 2005 World Summit Outcome Document. In particular, adopting the precise language of crimes helped to break the opposition of states who feared that defining the R2P’s threshold more broadly in terms of armed conflict or humanitarian emergencies would make it easier to legitimise interference into their domestic affairs. The firm international consensus on a narrow interpretation of R2P came to the fore during the 2008 debate on whether the failure of the government of Burma to provide full access for humanitarian relief in the wake of Cyclone Nargis should trigger the R2P. Throughout that debate, only France argued persistently that R2P could be invoked where a government denied protection to its people following a natural disaster. All other UN member states, as well as the vast majority of policy-makers and academic commentators, were unambiguous in arguing that R2P was
treaty rules belonging to the corpus of the international humanitarian law of armed conflict”, meaning grave breaches of the 1949 Geneva Conventions and its Additional Protocols or violations of customary international humanitarian law. See, Cassese, *International Criminal Law*, p. 81. Crimes against humanity are defined in Article 7 of the Rome Statute as, “any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”. It is widely held that “systematic or widespread” means that acts need to follow governmental policy or at least need to be tolerated by government or de facto authorities. Crimes against humanity can be committed in time of war or peace. See, Cassese, *International Criminal Law*, pp. 98-99. Finally, ethnic cleansing involves removing an identifiable group permanently from some territory. While it is not itself a crime under international law, it is usually interpreted as falling under one of the other three crimes. See, Scheffer, ‘Atrocity Crimes Framing the Responsibility to Protect’, p. 129; also Hubert and Blätter, ‘The Responsibility to Protect as International Crimes Prevention’, p. 19.


36 See, French Embassy in the United Kingdom, ‘Burma – Cyclone Nargis’, available at: http://www.ambafrance-uk.org/Bernard-Kouchner-on-Burma-disaster.html. On Tuesday May 7, 2008, Bernard Kouchner said, “We are seeing at the United Nations whether we can implement the Responsibility to Protect, given that food, boats and relief teams are there, and obtain a United Nations’ resolution which authorizes the delivery (of aid) and imposes this on the Burmese government.”
limited to four specified crimes and that a natural disaster could not trigger its application.\textsuperscript{37} As Luck explained,

\begin{quote}
It would be a misapplication of responsibility to protect principles to apply them at this point to the unfolding tragedy in Myanmar ... the Outcome Document of the 2005 [World] Summit limited their application to four crimes and violations: genocide, crimes against humanity, war crimes and ethnic cleansing. We must focus our efforts on implementing these principles in these four cases, as there is no agreement among the Member States on applying them to other situations, no matter how disturbing and regrettable the circumstances.\textsuperscript{38}
\end{quote}

Put differently, R2P is designed to only deal with halting and preventing the worst forms of human conduct, namely mass atrocities that are outlawed as \emph{crimes}.\textsuperscript{39} As UN member states deliberately excluded conflict prevention from the R2P agenda, by limiting its scope to four crimes under international law,\textsuperscript{40} conflating the ‘responsibility to prevent’ with conflict prevention contradicts the political rationale behind the R2P.\textsuperscript{41}

Furthermore, maintaining a distinction between conflict prevention and the prevention of mass atrocity crimes is important for two further reasons. First, armed conflict and mass atrocities are distinct empirical phenomena. Not all incidences of mass atrocities occur in context of armed conflict.\textsuperscript{42} In fact, around 33\% of all mass atrocity crimes are committed in peacetime\textsuperscript{43}, and others which occur in the context of armed conflict do not have a clear causal link to that conflict, e.g. Hitler’s extermination of Jews during World War II. In fact, most of the recent cases that were most relevant to R2P debates occurred in peacetime, such as Libya, Kenya, Guinea, or

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\item[40] See, Woocher, ‘The Responsibility to Prevent’, p. 11.
\item[41] IPI, ‘Conflict Prevention and the Responsibility to Protect’, p. 1.
\item[42] See, for example, Bellamy, ‘Mass Atrocities and Armed Conflict’, pp. 1-2; IPI, ‘Conflict Prevention and the Responsibility to Protect’, pp. 9-10.
\item[43] This data comes from, Bellamy, ‘Mass Atrocities and Armed Conflict’, p. 2. For more information on Bellamy’s dataset see Appendix 1 to the aforementioned paper, available at: \url{http://www.stanleyfoundation.org/publications/pab/BellmayAppendices22011.pdf}.
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Kyrgyzstan. Second, conflating the ‘responsibility to prevent’ with conflict prevention leads to a very broad agenda that is impossible to distinguish from other prevention-related agendas (development, human rights, good governance etc.). In consequence, the ‘responsibility to prevent’ is rendered operationally irrelevant, as it means everything and nothing at the same time, and the added value of the principle becomes difficult to identify.

**Toward an International Crimes Approach**

This section seeks to spell out how an international crimes prevention approach differs from a conflict prevention approach. For this, I will draw on literature from the fields of criminology, supranational criminology and international criminal law.

The discipline of criminology deals specifically with problems of crime and has produced substantial scholarship on the prevention of crime. Moreover, there are recent attempts to develop a distinct criminology of international crimes - so-called ‘supranational criminology’ - which aims to develop specific strategies for preventing international crimes. Thus, drawing on criminological theory and research helps to illuminate what it means that the R2P focuses narrowly on the prevention of the

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45 Bellamy, *Responsibility to Protect*, pp. 100-102. Note that this is Bellamy’s initial position on the ‘responsibility to prevent’. In his subsequent writings Bellamy advocates a broader approach.
international crimes of genocide, war crimes, ethnic cleansing and crimes against humanity.

Crime prevention is a diverse and contested field. Yet, most crime prevention theorists seem to agree that crimes are complex, multifaceted, and contextual social phenomena that cannot be addressed through “universal, ‘off-the-shelf’ techniques of prevention”.⁴⁹ Different crime scenarios require different interventions, tailor-made to the particular situation.⁵⁰ Contextual knowledge - and therefore a certain amount of contingency - will always be a crucial factor in crimes prevention; there is no magic formula for the prevention of crime. That said, the different (and competing) crime prevention approaches all assume that certain factors are more important than others in causing as well as in preventing crime. Some crime prevention approaches focus on the situational context, others on the criminality of perpetrators, the at-risk victim, the community, or the societal structures at large.⁵¹ For my purposes of deriving a crimes prevention lens, I will particularly draw on two sources. First, I will rely on findings and concepts from the steadily expanding field of ‘supranational criminology’, which explicitly studies international crimes and attempts to develop strategies for their preventing.⁵² Second, I will draw on the popular criminological approach of ‘situational crime prevention’ (SCP), which claims to be the most “realistic” and

⁵² See the different contributions in, Smeulers and Haveman (eds.), Supranational Criminology.
practically oriented crime prevention approach and has gained significant support among practitioners and academics.\textsuperscript{53}

SCP, however, is based on some key assumptions and concepts, which need to be exposed as they are not beyond contestation. Instead of treating distant psychological events and social structures as the causes of crime, SCP places greater emphasis on situational features and the immediate choices and decisions of potential perpetrators.\textsuperscript{54} It borrows from two main theoretical approaches. The first is routine activity theory, which assumes that all crime is characterised by the presence of a “likely offender” and a “suitable target”, as well as the absence of a “capable guardian”.\textsuperscript{55} Routine activity theory focuses almost exclusively on criminal events and ignores the question of who is the person who commits the crime.\textsuperscript{56} In other words, unlike constructivist theories that emphasise and problematize identities and the process of their construction, routine activity theories do not ask where criminals come from. It takes the supply of potential offenders as given.\textsuperscript{57} The second theoretical influence on SCP is rational choice theory, which assumes that crime is a premeditated, purposeful and calculated act.\textsuperscript{58} Criminals offend because crime provides the most effective means of achieving desired ends.\textsuperscript{59} Thus, rational choice theory predicts that “offending will occur when the perceived benefits of offending

\textsuperscript{57} Crawford, ‘Crime Prevention and Community Safety’, p. 877.
\textsuperscript{58} McGuire, \textit{Understanding Psychology and Crime}, p. 35; see also, Crawford, ‘Crime Prevention and Community Safety’, pp. 872-882.
outweigh its perceived costs”.

Put differently, the decision to commit crime is seen as a function of the perceived costs and benefits of the crime. Thereby, rational choice theory assumes that criminal offenders are “normal” in the sense that perceived sanctions and perceived benefits impact on their decision to commit crime. I acknowledge that those theoretical assumptions can be contested, but I agree with SCP that in specific crime situations with a particular category of actors, treating crime as a strategic game is instructive.

In what follows I will show that SCP and ‘supranational criminology’ suggest that approaching the ‘responsibility to prevent’ as international crimes prevention demands four important changes to the current R2P debate: (1) the privileging of immediate prevention over long-term structural prevention, (2) the conceptualization of crime dimensions (perpetrators, victims, situation, third party), (3) the key role of third parties in crime prevention as well as the focus on building third party capacity, and (4) the difficulty of maintaining attachment to impartiality, consent and minimal coercion as guiding principles for third party actors. The rest of this section develops each of those four insights more fully.

A. Immediate vs. Structural Prevention

While some crime prevention approaches focus on the criminal disposition of perpetrators or distant social and economic structures, SCP, environmental

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criminology and ‘crime science’ all argue that immediate situational factors are most important in decisions to commit crime.63

The prominent criminologist Ken Pease argues that, “the routes whereby societal structure may impact upon crime are so various as to defy simple classification”.64 And Ronald Clarke, the mastermind of SCP, argues that focusing on structural root causes is unpromising as “there are too many intermediary links between distant causes and crime to be sure that action directed at these causes will be effective”.65 Furthermore, Lawrence Sherman et al. - pioneering what they call scientific, evidence-based crime prevention - emphasise that there is no evidence for the effectiveness of tackling structural causes of crimes.66 They note that, “while some might say that no program can work until the ‘root causes’ of crime are cured, we find no scientific basis for that conclusion - and substantial evidence against it”.67

In fact, Marcus Felson and Ronald Clarke argue that while some erroneously assume that the earliest and most remote causes are most significant, “the more immediate causes are often more powerful in generating crime”.68 As Gloria Laycock explains, “most people behave as they do not because they are wicked, but because of the situation within which they find themselves … So the immediate situation is important”.69 She further notes that, “there is now a great deal of evidence that changing aspects of the immediate situation leads to measurable and in most cases

68 Felson and Clarke, Opportunity Makes the Thief, p. 3.
permanent reductions in offending”.

In temporal terms, it is argued that structural prevention takes too long before crime reduction effects unfold. Pease and Clarke both note that changing social structures is a long-term strategy that will only reduce crime – if at all - in the distant future. Structural prevention, therefore, is unable to deal with imminent threats of crime. Adjustments in the concrete crime situation, however, can be achieved relatively quickly and results will often show immediately.

Thus, many criminologists do not argue that crime prevention should start by changing child-rearing practices, reducing poverty, or fighting unemployment, but suggest that more immediate prevention promises more tangible results. This essentially means managing or manipulating immediate factors, e.g. by make crime more risky, more difficult or less rewarding. The assumption of actor rationality plays an important role in much immediate crime prevention thinking. It is assumed that potential perpetrators are rational actors that are capable of adjusting and responding to adverse consequences, anticipated or experienced.

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73 Clarke, ‘Seven Misconceptions of Situational Crime Prevention’, p. 56.
74 Clarke, ‘Seven Misconceptions of Situational Crime Prevention’, p. 56; and Pease, ‘Crime Reduction’, p. 949. For a similar argument from the R2P debate, see, Eli Stamnes, ‘Speaking R2P and the Prevention of Mass Atrocities’, Global Responsibility to Protect Vol. 1, No. 1 (2009), p. 76. A further criticism stems from the lack of agreement on how societal reform should look like. This is already contested at the national level and even more so at the international level, thus raising normative questions about the desirability of long-term structural reforms.
The insight that much of the criminological crime prevention thinking focuses on immediate prevention is interesting with regards to the current debate on the R2P’s prevention dimension, which puts much emphasis on more long-term structural prevention, i.e. capacity-building in at risk states. Placing conceptual priority on structural prevention measures stems from and is in line with conflict prevention thinking, but seems to be contrary to much of the criminological crime prevention literature. Thus, one consequence of approaching the ‘responsibility to prevent’ as international crimes prevention is that conceptual priority needs to be shifted from structural prevention to more immediate prevention. This means that prevention strategies do no longer aim at a broad sector of the ‘population’, but more specifically at potential perpetrators and potential victims that can be identified with some clarity.

B. Four Dimensions of Crime

Much of the criminological literature that deals with more immediate crime prevention suggests that crime has four key dimensions around which crime prevention strategies need to be conceptualized. These four dimensions are: perpetrators, victims, situation, and third party.

Routine activity theory, one of the theoretical foundations of SCP, assumes that “crime occurs when a likely offender and suitable target come together in time and place, without a capable guardian present”. This reasoning led to the formulation of the so-called ‘problem analysis triangle’, which combines perpetrators, victims, and

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the crime situation. It is assumed that those three dimensions are critical for thinking about any crime event. “Controllers” are then added to each of the three elements in the triangle, e.g. a “handler” for the perpetrator, “guardian” for the victim, or “manager” for the situation. The main argument is that positive changes within any of the three crime dimensions – initiated by the “controllers” - have the potential to prevent crime.

Crime prevention can therefore attempt to put pressure on – or more generally exert control over - the potential perpetrators so that they do not choose to commit crime. As perpetrators are seen as rational actors this can involve strategies for changing their incentives and cost-benefit analysis or simply reducing their ability to commit crime. However, crime prevention can also focus on reducing the vulnerability of potential victims by providing them with protection, or on changing the permissiveness and opportunities of the crime situation. Thus, the three dimensions that can be targeted for prevention purposes are the perpetrators, the victims and the situation. The fourth element is the third party (controller) who is in charge of the preventive interventions. The following diagram visualizes the ‘problem analysis triangle’.

Diagram 1: The Problem Analysis Triangle

Interestingly, Fred Grünfeld, writing on ‘supranational criminology’, suggests another crime prevention triangle, specifically tailored to international crimes, which focuses on perpetrators, victims, and third parties. What Grünfeld is most interested in is the relationship between third parties and perpetrators/victims respectively. While he does not explicitly emphasise the importance of situational factors, Grünfeld’s ‘atrocity triangle’ is instructive as he highlights the key importance of third parties for international crimes prevention (“controllers” in the ‘problem analysis triangle’), particularly once mass atrocities have reached a certain stage.

Those two crime prevention approaches suggest that crimes have four key dimensions, which are relevant to prevention: (1) perpetrators, (2) victims, (3) situations, and (4) third parties. In the words of Roelof Haveman and Alette Smeulers,

If we know the groups that are most vulnerable to becoming victims of large scale violence like genocide and the reasons for this vulnerability, it may become possible to develop strategies to strengthen their ability to fight against this [victims]. If we know why bystanders, both individuals and states, stay inactive upon seeing atrocities happening, we possibly may develop strategies to intervene in an effective manner [third party]. If we know more about the offenders and why they commit their crimes, we may develop mechanisms to prevent them from becoming war criminals and the like [perpetrators]. If

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we know what exactly turns a specific situation into an ‘atrocity producing situation’ we may be able to prevent those situations from developing in the future [situation].

Accordingly, approaching the ‘responsibility to prevent’ as international crimes prevention requires more refined analysis of those four dimensions. In particular, any preventive framework must contain tools and strategies that third parties can apply to prevent crime in the perpetrator, victim and situation dimension.

C. Third Party Capacity

As should already be clear from much of the above, many criminologists see the role of third parties as critical in the crime prevention process. In both the ‘problem analysis triangle’ and the ‘atrocity triangle’ third parties are responsible for doing the preventive ‘changing’ with regards to either perpetrators (incentives), victims (vulnerability), or crime situation (permissiveness). Put differently, third parties are the “crime preventers”, whose role it is to get actively involved in shaping situations, influencing perpetrators, or protecting victims. Thus, to many criminologists, “the supply of capable guardians is crucial to prevention efforts”. Rather than engaging in the long-term enterprise of trying to change criminal dispositions or social structures, the burden of crime prevention is put on third parties. In particular, it is assumed that in a more immediate stage, crime cannot be prevented without the active engagement of third parties.

For the ‘responsibility to prevent’ this means that key importance needs to be attached to the role of third parties, i.e. representatives of the international community (the UN, regional organizations or national governments). A necessary condition for

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89 Ekblom, ‘How to Police the Future’, p. 45.
third party engagement is the political will to get involved. Beyond this, however, third parties require certain capacities to fulfil their role as “crime preventers”. Thus, approaching R2P as international crimes prevention requires an examination of the capacities required to change incentives and cost-benefit analyses of potential perpetrators, the vulnerability of potential victims, or the permissiveness and opportunities of particular crime situations.  

While focusing on third party capacity is critical for international crime prevention, it is contrary to much of the current literature on the R2P’s prevention dimension. Most accounts of the R2P’s prevention dimension advocate long-term structural prevention, emphasising the importance of building domestic capacity in at-risk states and avoiding putting too much emphasis on an active role of third parties. Put in the language of the R2P’s three pillars, criminological research suggests that instead of limiting debate on the ‘responsibility to prevent’ to pillars one and two (state responsibility and capacity-building), the preventive component of pillar three (which focuses on different kinds of third party interventions) needs to receive the same level of attention. The following diagram captures the role of third parties in the crime prevention process.

**Diagram 2: The Role of Third Parties**

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D. The Nature of Crime and the ‘Holy Trinity’

Finally, the very nature of the category ‘crime’ has implications for the way in which international crimes prevention needs to be conducted. Criminologists often define crime as human behaviour that has been criminalised by the legislator. With regards to international crimes, it is the society of states, rather than a representative of centralized authority, that sets basic and universal behavioural norms and criminalises certain forms of behaviour as international crimes.  

It is widely agreed among criminologists that ‘crime’ is a socially constructed category. At the end of the day, what constitutes criminal behaviour is contingent upon the will of the respective rule-setting authority, e.g. the society of states in the case of international crimes. Criminalisation is essentially a political process with the passing of criminal laws as the end-product (or treaties and conventions for international crimes). While moral considerations can play an important role in deciding which behaviour should be outlawed as criminal; pragmatic and political factors usually play a role as well. Conventional definitions of crime hold that crimes are “acts, which shock the common or collective morality, producing intense moral

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93 Haveman and Smeulers, ‘Criminology in a State of Denial’, p. 6.
outrage among people”.\textsuperscript{94} Thus, an act which is outlawed as criminal carries with it the stigma of violating the agreed upon standard of behaviour. This seems to be particularly true for the four R2P crimes, which carry a particularly strong social stigma. In international law, the prohibition of the four R2P crimes has the status of \textit{jus cogens}, meaning that there is no situation in which derogations are permissible.\textsuperscript{95} Furthermore, the four R2P crimes constitute offenses against the international community as a whole, and perpetrators are seen as ‘enemies of mankind’.\textsuperscript{96} At least in theory, therefore, humanity as a whole is victimised by the perpetration of those four crimes.

What follows from this is that the potential perpetrators and the potential victims of the four R2P crimes should not be treated equally. Crime prevention is not guided by the ‘holy trinity’ of consent, impartiality and minimal coercion, which is at the core of much conflict prevention and conflict resolution thinking. International crimes constitute politically and legally outlawed and socially stigmatised behaviour. Preventing those acts does not necessarily require the consent of the perpetrators, nor the victims. Moreover, international crime prevention measures can be applied partially, in favour and to the advantage of the victims. At the end of the day, preventing international crimes requires choosing sides and making moral judgements.


\textsuperscript{96} On crimes against humanity, see, Yoram Dinstein, ‘Crimes Against Humanity after Tadic’, \textit{Leiden Journal of International Law} Vol. 13, No. 2 (2000), p. 376. The status of ethnic cleansing is the most controversial one, as it is not itself a crime under international law. However, it is usually interpreted as falling under one of the other three crimes.

\textsuperscript{96} Haveman and Smeulers, ‘Criminology in a State of Denial’, p. 16.
Conclusions

This paper has suggested that the R2P’s prevention dimension is best conceptualized and analysed as international crimes prevention. It then argued that approaching the ‘responsibility to prevent’ through a ‘crimes prevention lens’ requires re-thinking some core assumptions of the emerging debate on the R2P’s prevention dimension. In particular, adopting a ‘crimes prevention lens’ demands four key amendments to the ‘conventional’ conflict prevention approach.

First, while some crime prevention approaches focus on the deep-rooted criminal disposition of perpetrators or social and economic structures, many criminologists argue that factors in the immediate crime environment are the most important for decisions to commit crime. Consequently, immediate (direct) prevention needs to be of primary importance for international crimes prevention, whereas structural prevention is only of secondary relevance. This reverses the logic of the contemporary literature on conflict prevention and the responsibility to prevent, which stress the importance of structural prevention and long-term capacity-building.

Second, criminology literature that deals with more immediate crime situations suggests that all crimes have four key dimensions around which crime prevention strategies need to be conceptualized: (1) perpetrators, (2) victims, (3) situation, and

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(4) third parties. Positive changes in any of those four dimensions of crime have preventive potential. The elements to be changed in the respective dimensions are the incentives and cost-benefit analyses of potential perpetrators, the vulnerability of victims, the crime opportunities available in and general permissiveness of particular situations, as well as the political will and capacities of third parties. International crimes prevention, therefore, is broader than conflict prevention, which needs to be considered when designing a strategic framework for international crimes prevention.

Third, many criminologists see the role of third parties as critical in the crime prevention process. Third parties are seen as responsible for doing the preventive ‘changing’ with regards to either the perpetrators (incentives), the victims (vulnerability), or the crime situation (permissiveness). Put differently, third parties are the “crime preventers”, who prevent crime by managing situations, handling perpetrators, or protecting victims. Thus, for the purposes of international crimes prevention, strengthening the preventive capacity of third parties is crucial, i.e. the preventive capacity of international organizations, regional organizations, or national governments. This is different to the ‘conventional’ R2P prevention approach, which stresses the importance of building internal capacity to prevent in at-risk states. The third party role in conflict prevention is to fulfil a facilitating and enabling function –

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by either helping build capacity or assisting conflict parties to negotiate an internal solution - but third parties are not themselves seen as the solution.¹⁰²

Fourth, crimes are socially, politically, and legally stigmatized violations of behavioural norms. Thus, perpetrators and victims of crimes need not be treated equally. In other words, international crimes prevention measures need not be applied in accordance with the ‘holy trinity’ of conflict prevention, namely impartiality, consent, and minimal coercion. On the contrary, preventing R2P crimes may require choosing sides and making moral judgements.

Incorporating these four conceptual distinctions raises a series of implications and dilemmas for international actors seeking to prevent atrocity crimes. In particular, it suggests that atrocity prevention may not always be compatible with other goals of the international community, for instance efforts to negotiate a peace agreement.