

RESEARCH ARTICLE

International criminalization and the historical emergence of international crimes

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Abstract

This article examines international criminalization, the process by which particular acts come to be established as international crimes in world politics. While international legal scholars suggest international criminalization constitutes a legal process that centres on international legal codification, this article argues, by drawing upon the insights of constructivist International Relations scholarship, that it is better conceived as a social process. More specifically, the process of international criminalization involves the development of an international social consensus on international criminality, which takes hold in international society following diplomatic negotiations between social actors. Furthermore, international criminalization embraces a two-stage process that requires, firstly, the emergence of an international criminal norm and secondly, the translation of that norm into an international legal proscription. Using these conceptual insights, the article analyses, through a close analysis of international archival documents, the historical emergence of genocide, in order to demonstrate how its proposed conceptualization of international criminalization can better explain how and why this act was specifically established as an international crime. In doing so, the article offers an alternative account of genocide's criminalization which, unlike the existing literature, goes some way towards uncovering the processes of social construction that informed its establishment as an international crime.

Key words: Constructivism; genocide; international crimes; international criminalization; international criminal law

In 1998, the International Criminal Court (ICC) was established to prosecute and punish individuals responsible for committing 'unimaginable atrocities that deeply shock the conscience of humanity'.¹ Under the contemporary regime of international criminal justice, which the ICC is the institutional expression of, these

¹Rome Statute of the International Criminal Court, preamble, 17 July 1998, 2187 UNTS 90 (Rome Statute).

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atrocities refer specifically to four particular acts: genocide, crimes against humanity, war crimes, and aggression. At present, the jurisdiction of the ICC is limited to these four acts, which are regarded as ‘grave crimes that threaten the peace, security and well-being of the world’.² While the Rome Statute, the ICC’s founding treaty, refers to these four acts as ‘the most serious crimes of concern to the international community as a whole’,³ they are commonly known as ‘international crimes’ in the academic literature as well as under international criminal law.⁴

‘International crimes’ are acts that give rise to universal jurisdiction.⁵ More specifically, they are offences that International Law (IL) permits any state in the world to prosecute, regardless of whether that state has a connection with the crime, its perpetrator, or victim.⁶ International crimes can therefore be described as ‘universal crimes’ or ‘acts of universal criminality’, as they are criminal and punishable no matter where in the world they are committed.⁷ In other words, they are wrongs that properly concern the whole of humanity and as such, their perpetrators are accountable to the international community as a whole, as opposed to a specific domestic political community.⁸ This means that individuals responsible for committing international crimes can be prosecuted by either an organ acting on behalf of the international community (such as an international court or tribunal) or national courts with no nexus or connection to the crime itself.⁹

There is firm consensus that the four aforementioned acts falling within the ICC’s jurisdiction constitute international crimes in the contemporary international legal order.¹⁰ As exceptionally egregious acts, few would disagree that genocide,

²Ibid.

³Ibid.

⁴The branch of public international law that deals with the direct criminal responsibility of individuals for criminal violations of international law (Cryer 2018; Stahn 2019).

⁵Universal jurisdiction is the legal principle that grants every state the jurisdiction to punish offences that are universally condemned and are recognized as being of universal concern, irrespective of the place where the offence was committed or the nationalities of the perpetrator and the victim (Randall 1988; Bassiouni 2001; Reydams 2003). While there is general agreement that international crimes are acts that trigger international punishment (Heller 2017 but for view that there is no agreement on the term’s meaning, see Nouwen 2016; O’Keefe 2015; Bassiouni 2008; Greenawalt 2020 and Decoeur 2018), there are different explanations for why such acts warrant universal jurisdiction. Owing to a certain degree of overlap, these different justifications can be regarded as complementary and indeed, when taken together, they usefully highlight some of the additional features that uniquely characterize international crimes. For instance, it has been argued that international crimes are: acts which, on account of being directly criminalized by the international legal order, generate individual criminal responsibility under international law (Cryer 2008; Werle and Jessberger 2014); acts whose material elements are defined by international law (O’Keefe 2015; Bantekas 2010); acts that international law obligates all states to criminalize (Heller 2017); acts that are triable before international criminal tribunals (Kittichaisaree 2001); acts of extreme evil which, on account of their gravity, scale, or seriousness, constitute harms to humanity as a whole (Drumbl 2007); acts that violate or offend the fundamental values and interests of the international community, such as peace, security, and the well-being of the world (Bassiouni 2008; Werle and Jessberger 2014; Cassese and Gaeta 2013); and acts that involve the systematic or large-scale use of force, typically employed by a state or state-like entity against civilian populations (Boister 2003; Schabas 2009b; Werle and Jessberger 2014; Gaeta 2009).⁶Bassiouni 2008; Schabas 2009b; Cassese and Gaeta 2013.⁷Heller 2017.⁸Chehtman 2020; Renzo 2013.

⁹Ibid.

¹⁰While noting that some scholars also consider torture (Bassiouni 2008; Cassese 2005; Cassese and Gaeta 2013; O’Keefe 2015), terrorism (Cassese 2005; Cassese and Gaeta 2013), and piracy (Bassiouni 2008) as international crimes, the term ‘international crimes’ will be used in this article to refer to the four acts that the ICC is empowered to prosecute and punish.

crimes against humanity, war crimes, and aggression deserve the special label of an ‘international crime’. Nevertheless, considering that a multitude of acts – for instance, murder, rape, assault, kidnapping, and robbery – have been classed as domestic crimes within national legal systems, it is especially intriguing that the category of international crimes has, for now, been exclusively confined to four acts. Moreover, while many other acts attract considerable international condemnation – including modern slavery, human trafficking, international terrorism, and cyber-crime, to name but a few – none of these have been elevated to the special status of an international crime. Why, in other words, are there *only* four international crimes in the contemporary international legal order?

The key to unlocking this puzzle, this article argues, lies with the concept of *international criminalization*. If we wish to fully appreciate how and why only certain acts have come to be recognized as international crimes, a focus on the distinct process by which such acts were criminalized in international society is required. However, international criminalization is a concept that has hitherto received little attention within IL and International Relations (IR) scholarship. As this article will show, existing engagement with the concept is both sparse and underdeveloped, and neither IL nor IR scholars have elucidated what the process of international criminalization specifically entails, how it unfolds, and for what reasons. To address this gap in the literature, this article develops the very first analytical framework aimed at analysing how and why the process of international criminalization occurs in international society.

The article begins by highlighting why the process of international criminalization deserves greater scholarly attention. Thereafter, it critically reviews existing conceptions of international criminalization within IL and IR scholarship, demonstrating, in particular, their principal limitations. To address these shortcomings, the article draws upon historically informed constructivist IR approaches and develops, in the third section, an analytical framework for understanding the process of international criminalization. In the final section, the article employs its analytical framework to analyse how and why genocide was established as an international crime in international society. In doing so, it demonstrates how the analytical framework developed here is able to illuminate important insights about genocide’s criminalization that the existing literature has thus far underemphasized, namely, the social aspects behind the historical construction of international crimes.

Why focus on international criminalization?

The concept of international criminalization deserves greater scholarly attention for four central reasons. Firstly, the concept can elucidate why international crimes are now a firm feature of the contemporary international legal order. Here, it is important to note that international crimes have not always existed in world politics but that their emergence is a distinctly ‘modern phenomenon’.¹¹ Moreover, far from being natural or inevitable, their existence is the consequence of historically contingent factors and processes. What the concept can illuminate, therefore, are the

¹¹Shaw 2017, 289.

reasons why specific acts were criminalized at particular moments in world politics, as well as what specific historical factors enabled this to occur.

Secondly, the concept can illuminate what sets international crimes apart from other categories of criminal conduct, such as domestic crimes¹² and transnational crimes.¹³ In particular, the concept can help explain why only certain acts have been established as international – as opposed to domestic or transnational – crimes, as well as what defined the process that resulted in this distinct outcome. Moreover, if the boundaries between different types of crimes are partly established by the process of international criminalization, then the concept additionally highlights how international criminal law contributes to the reproduction of the boundaries between domestic and international political spaces and by extension, to the reproduction of the rules of the international order, such as sovereignty.

Thirdly, the concept can also explain how and why international crimes are distinct from other types of internationally prohibited conduct, such as global taboos, prohibitory norms or acts subject to global prohibition regimes.¹⁴ Although conducts falling under these categories are prohibited in world politics, they are not additionally regarded as being criminal, as international crimes are. What requires explanation, in particular, is why only certain acts have been criminalized, while others are simply the subject of international taboos or prohibitions. Arguably, there is something distinctive about the processes that culminate in these different outcomes. What the concept can valuably demonstrate is how and why the process that culminates in the establishment of an international crime differs from that which results in the emergence of taboos or prohibitions in world politics.

Finally, the concept can also help with identifying the emergence of new international crimes. Although there are only four international crimes at present, it is not inconceivable that new international crimes may come to be established in the future. And indeed, some scholars have argued acts such as international terrorism and torture deserve to be added to the existing list of international crimes.¹⁵ If new international crimes are indeed in the making, it is important these developments be analytically identified and examined. This is only possible, however, with a conceptual understanding of what international criminalization specifically entails, as well as an analysis of what factors drive or influence this process.

¹²Domestic crimes, such as murder, theft, and arson, are wrongful and illegal acts within domestic legal orders: they are prohibited by domestic criminal laws and are punishable by the state through criminal prosecution (Lacey 2007; Ashworth and Horder 2013).

¹³Transnational crimes are criminal acts that are either committed in more than one state or have substantial effects on multiple states, such as piracy, drug trafficking, migrant smuggling, and money laundering (Boister 2012, 2015). To suppress transnational crimes, states have concluded international treaties, which obligate states to enact a transnational criminal activity as a crime within their domestic legal orders and to enforce their prosecution and punishment in terms of domestic laws (Boister 2003, 2015). Transnational crimes are therefore a unique category of domestic crimes: although established through treaty obligations, they constitute violations of domestic law that are punishable through domestic courts and in terms of domestic criminal laws (Boister 2003, 2015).

¹⁴Price 1997; Tannenwald 2007; Nadelmann 1990; Andreas and Nadelmann 2006; Inal 2013.

¹⁵Cassese 2005; Cassese and Gaeta 2013.

Existing accounts of international criminalization

At present, the concept of international criminalization only features within IL scholarship. However, this body of scholarship is relatively small: there are but a handful of academic articles that directly engage with the concept,¹⁶ while others briefly mention the concept without detailed elaboration.¹⁷ As will be discussed below, these accounts demonstrate that IL scholars primarily understand international criminalization as a legal process. While this valuably highlights what the legal aspects of international criminalization are, it reveals very little about its social dimensions. Turning to IR, although IR scholars have addressed important issues surrounding the politics of international criminal law,¹⁸ the concept of international criminalization has not provoked much at all by way of debate or discussion. However, as this article will show, IR does in fact possess some key intellectual resources with which to understand this concept. In particular, constructivist IR approaches, which focus on the role of norms and the socially constructed nature of world politics,¹⁹ offer the theoretical tools for unpacking what the process of international criminalization entails, as well as how it unfolds. As will be elaborated below, a constructivist account of international criminalization is able to illuminate what IL scholars have underemphasized about this concept, namely, its social dimensions.

International criminalization in international legal scholarship

In IL scholarship, international criminalization is conceived as a legal process that is marked by two critical moments: firstly, the legal establishment of an international crime; and secondly, the legal prosecution of an international crime. Turning to the first of these, an act is legally established as an international crime when it is recognized as such by international law, by virtue of international rules that formally specify an international criminal prohibition. More simply, an international crime is legally established when it is directly criminalized by international law,²⁰ which can occur in one of two ways.

Firstly, an international treaty may explicitly declare an act to be an international crime.²¹ The conclusion of such a treaty therefore marks the formal moment when an international crime comes into legal existence. For example, the adoption on 9 December 1948 of the Genocide Convention,²² which declared genocide to be a ‘crime under international law’,²³ is widely considered as the official moment when genocide was legally established as an international crime.²⁴ An act can also be criminalized through customary international law.²⁵ Customary international rules refer to the practices of states that acquire, as a consequence of

¹⁶Yarnold 1994; Bassiouni 2008; Cryer 2008; Gaeta 2009; Heller 2017; Dempsey 2018.

¹⁷Ocheje 2002; Ambos 2011; Gaeta 2009; Decoeur 2018.

¹⁸For example, see Bass 2000; Leonard 2005; Sikkink 2011; Teitel 2011.

¹⁹Finnemore 1996; Finnemore and Sikkink 1998; Keck and Sikkink 1998; Klotz 1995; Price 2007; Reus-Smit 1999; Tannenwald 2007.

²¹Schabas 2009b; Cryer 2008; O’Keefe 2015.

²²Convention on the Prevention and Punishment of Genocide, 9 December 1948, 78 UNTS 277 (Genocide Convention).

²³Article 1 of Genocide Convention.

²⁴Cassese 2005; Gaeta 2009.

²⁵Cryer 2008; O’Keefe 2015.

behavioural regularity and an acknowledgement of their legality, the obligatory character of legal rules.²⁶ According to legal doctrine, the formation of customary international law requires two elements: widespread and consistent state practice (*usus*) and a belief or conviction on the part of states that such practice is legally required (*opinio juris*).²⁷ When applied to international criminalization, an international crime can be legally established as a consequence of repeated state practices, as well as states' acceptance that such practices constitute an international legal rule. The example of war crimes is instructive in this regard, as since at least the 18th century, states have, through their national military manuals and regulations, punished their soldiers for violating commonly accepted rules governing the conduct of wars.²⁸ Over time, these practices evolved into customary rules that were respected and recognized by states, and were eventually codified into international treaties.²⁹

Once an international crime has been legally established, it will remain a 'crime on the law books' unless it is prosecuted before a court. Legal prosecution is therefore a further critical moment within the overall process of international criminalization, as it transforms an international crime into a 'crime in action'. For example, although genocide was established as an international crime in 1948, it remained an unprosecutable crime until 1961, following the prosecution of Adolf Eichmann by an Israeli court.³⁰ Aside from an international crime's initial prosecutorial moment, subsequent cases of prosecution that are progressively undertaken over time are also of significance, as judicial decisions may clarify the interpretation of legal principles that underpin international crimes, as well as establish new legal precedents in the sphere of international criminal law more generally.³¹ The ensuing case law and jurisprudence that develops on an international crime from different cases of prosecution can also be seen as being part of the wider process of international criminalization.

What IL scholars have valuably demonstrated, then, is that the process of international criminalization centres on an initial *legal act of criminalization* and thereafter, ongoing *legal practices of criminalization*. While the former concerns the legal establishment of an international crime, the latter refers to cases of legal prosecution that unfold within the judicial spaces of courtrooms. However, it is important to note that IL scholars have, in their analyses of international criminalization, tended to focus more on the legal establishment of an international crime, as opposed to its legal prosecution.³² In these accounts, the notion of international criminalization pivots more centrally on the formal moment when an international crime is legally established. Moreover, although IL scholars do recognize that international crimes may be established through the development of international customary law, many regard international treaties as having a more fundamental role within the criminalization process. For instance, when examining the prospect of corruption and terrorism being established as international crimes, IL scholars

²⁶Byers 1999.

²⁷Thirlway 2010; Lepard 2017.

²⁸Gaeta 2009; Cassese and Gaeta 2013.

²⁹Gaeta 2009; Cassese and Gaeta 2013.

³⁰Attorney General of the Government of Israel v Eichmann 36 ILR 5 (Israeli District Court, 1961).

³¹Werle and Jessberger 2014; Armstrong, Farrell and Lambert 2012.

³²Ambos 2011; Yarnold 1994; Bassiouni 2008; Cryer 2008; Gaeta 2009; Ocheje 2002.

have argued this can only occur if states declare them as such in an international treaty.³³

Crucially, this highlights how IL scholars primarily equate international criminalization with the international codification of prohibited conduct in an international treaty. This, in turn, amounts to a positivist view, as primary emphasis is placed upon the role of positive international law within the process of international criminalization. A positivist view valuably highlights the important function that treaties have within the criminalization process. In this regard, the codification of an international crime in an international treaty formally publicizes its establishment, thereby making it difficult to deny or dispute its legal existence. For instance, in declaring that genocide is a 'crime under international law',³⁴ the Genocide Convention makes it unequivocally clear that genocide is an international crime. Moreover, as legally binding agreements between states, international treaties are an important mechanism by which international legal obligations can be established in relation to criminalized conduct. For example, by signing on the Genocide Convention, state undertake the obligation to enact domestic legislation, as well as to provide for effective penalties for persons guilty of genocide.³⁵

It is important to note that the positivist view of international criminalization which prevails within IL scholarship mirrors the way in which criminalization is conventionally understood at the domestic level. According to domestic legal scholars, criminalization is closely associated with the notion of legal regulation and the coercive functions of the criminal law.³⁶ While there are many techniques in the state's toolkit to control social behaviour, criminalization constitutes its most censoring technique, as it involves the regulation of deviant behaviour through coercive means, namely, criminal prosecution and punishment.³⁷ Criminalization thus refers to the legally binding decision to bring certain forms of conduct under the scope of the criminal law, by formally declaring it as a public wrong and placing it under the threat of state punishment, as opposed to other forms of sanction.³⁸ As this requires the legislative promulgation of criminal laws, criminalization in the domestic context is often equated with law-making or law-formation.³⁹ And indeed, given that international treaties are regarded as legislative acts of law-making at the international level, IL scholars have similarly likened international criminalization with law-formation,⁴⁰ with some describing it as an 'international legislative process'⁴¹ and as an international 'process of law-creation'.⁴²

However, this conventional understanding has been criticized for being narrow and distorting. According to criminologists and socio-legal scholars, who begin from the premise that the notion of criminalization is 'hugely encompassing' and embraces 'almost every theoretically interesting question about criminal law, criminal responsibility, criminal justice and punishment',⁴³ the concept cannot simply be equated with law-making.⁴⁴ Rather, it must be seen as a complex social and

³³Ocheje 2002; Ambos 2011.

³⁵Article 5 of Genocide Convention.

³⁷Ashworth and Horder 2013; Duff *et al.* 2010; Tadros 2010; Dubber 2010.

³⁸Nuotio 2010; Dubber 2010; Ashworth and Horder 2013.

³⁹Steiker 2010; Nuotio 2010; Duff *et al.* 2014.

⁴¹Bassiouni 2008, 132.

⁴²Cryer 2008, 119.

⁴³Lacey 2009, 942.

⁴⁴Lacey 1995, 2009; Lacey and Zedner 2012; Duff *et al.* 2010, 2014.

³⁴Article 1 of Genocide Convention.

³⁶Tadros 2010; Lacey 2004.

⁴⁰Cryer 2008; Bassiouni 2008; Decoeur 2018.

political phenomenon that involves a diversity of decisions, practices, and institutions.⁴⁵ Put differently, criminalization does not simply refer to the formal establishment of criminal offences through the enactment of criminal laws ('crimes on the books') but also encompasses the interpretation, implementation, and enforcement of these criminal laws by different actors ('crimes in action').⁴⁶ More specifically, criminalization denotes a wide range of actions that are performed by a variety of actors, including: *prohibition*, in which legislatures prohibit a particular type of conduct, define it as a crime and attach sanctions for engaging in such prohibited conduct; *prosecution*, in which the police and prosecutors, magistrates and juries, and judges respectively charge, convict, and sentence those who engage in such prohibited conduct; and *punishment*, in which prison guards and probation officers carry out punishment that has been sentenced.⁴⁷ When thinking about criminalization, therefore, we ought not simply focus on the formal acts of criminal law-formation but must also attend to the creative, interpretive, and enforcement practices that surround the institutions of criminal justice, all of which contribute to the actual ways in which individual behaviour is converted into, and interpreted as, crimes – that is to say, criminalized.⁴⁸

Criminologists and socio-legal scholars have also argued that because criminalization unfolds within a social context and is shaped by broader social dynamics, it is better understood as a social practice that is intricately connected with broader political, social, and normative processes.⁴⁹ As Zedner explains, criminalization is not what simply occurs on the pages of criminal statute books but also embraces the complex interactions between different societal actors.⁵⁰ Crucially, this means that the decision to render an act as criminal is not exclusively the outcome of legislative processes; rather, it is also influenced by non-legal factors such as cultural sensibilities and prejudices, prevailing social mores, political imperatives, power relations, and religious and moral precepts.⁵¹ This, in turn, highlights how criminalization is not the exclusive privilege of the state, which is responsible for the formal enactment of criminal laws. Rather, other social actors – such as politicians, interest and pressure groups, the media, lawyers, and social activists – emerge as additional participants with an influence upon the criminalization process.⁵²

If criminalization is understood as a legal process that centres on law-making or law-formation, then crimes will inevitably be viewed as legal constructs. And indeed, crimes are commonly defined in the legal literature in purely formal terms, particularly as acts that are subject to the criminal process.⁵³ As one definition illustrates, a crime is 'that which the law and the courts treat as a crime, in that its perpetrator is liable to be subjected to a criminal process and to criminal punishment'.⁵⁴ However, criminologists and socio-legal scholars have argued that crimes are better understood as social constructions.⁵⁵ Instead of viewing crimes as what has been legislatively defined as such on the law books, a more socially attuned understanding would emphasize how crimes are socially constructed

⁴⁵Lacey 2009; Duff *et al.* 2014.

⁴⁶Dempsey 2018; Duff *et al.* 2010; Lacey 2009.

⁴⁷Marshall and Duff 1998; Simester and Von Hirsch 2011; Dempsey 2018; Duff *et al.* 2010, 2014.

⁴⁸Lacey 2009; Lacey and Zedner 2012.

⁴⁹Lacey 2007, 2009; Lacey and Zedner 2012.

⁵⁰Zedner 2011.

⁵¹Zedner 2011; Lacey and Zedner 2012.

⁵²Lacey 1995.

⁵³Lacey and Zedner 2012; Zedner 2011.

⁵⁴Duff *et al.* 2010, 4.

⁵⁵Zedner 2011; Lacey and Zedner 2012.

within domestic legal orders – through, for instance, politics, power dynamics, public opinion, the media, policing, and other criminal justice processes.⁵⁶ This, in turn, exposes the role that non-legal factors, such as political, social, and historical forces, have upon the establishment of crimes, as well as the construction of criminal legal categories.⁵⁷

Although there is some appreciation within domestic legal scholarship of crimes as social constructs and criminalization as a social process, the same cannot be said about contemporary IL scholarship. What goes some way towards explaining this gap is how IL scholars have tended to, when theorizing about international criminal law, rely heavily on domestic theories of criminal law.⁵⁸ As one commentator explains, international lawyers tend to assume that the international criminal justice system functions according to the mechanisms of an idealized national system and consequently, they have generally ‘taken tools out of the [domestic] criminal law toolbox and [applied] them to the international framework’.⁵⁹ For example, although IL scholars have demarcated normative differences between international and domestic crimes, they nevertheless subject both to identical processes.⁶⁰ The positivist view of international criminalization that currently dominates IL is partly attributable, therefore, to IL scholars’ unquestioning acceptance of assumptions within domestic legal scholarship, namely, that crimes and criminalization are essentially legal phenomena.

Importantly, the alternative view of criminologists and socio-legal scholars makes it possible to argue that equating international criminalization exclusively with international legal codification is limited for two principal reasons. Firstly, it dismisses the significance that developments taking place prior to international codification have upon the criminalization process. As this article will show, the legal act of international codification is in fact preceded by non-legal developments, which need to be understood as being a key part of process of international criminalization. Secondly, as the positivist view sees international criminalization as a legal process, international crimes are principally viewed as legal constructs. However, as will be explained below, international criminalization also involves a social process and as a corollary, international crimes are social constructs that embody and express shared understandings concerning the nature of criminality in international society at particular points in time.

International criminalization in IR scholarship

Although there is no literature within IR that directly engages with the concept of international criminalization, it is nevertheless possible to reflect upon how IR’s main theoretical perspectives might account for the advent of international criminalization and the emergence of international crimes in world politics. From a realist perspective, the process of international criminalization would be driven by power and powerful states. Particular instances of criminalization would therefore be understood as reflecting the interests of powerful states: international crimes exist simply because powerful states have found the criminalization of certain acts to be in their interests. Relatedly, the specific form that an act assumes as an

⁵⁶Zedner 2011.

⁵⁷Lacey and Zedner 2012.

⁵⁸Nouwen 2016.

⁵⁹Tallgren 2002, 562.

⁶⁰Drumbl 2008.

international crime would also be strongly influenced by dominant states, who are likely to ensure the definition of an international crime serves their interests. However, a realist perspective too readily assumes powerful states have a pre-existing interest in criminalization. In treating this as a given, realism is unable to explain why powerful states found it in their interest to criminalize certain types of conduct at a particular point in time in world politics. Moreover, as the discussion below on genocide will show, the process of international criminalization may nevertheless occur despite strong opposition from powerful states. Relatedly, the particular form that an international crime eventually assumes may not necessarily embody the version pushed for by powerful states.

Turning to neoliberal institutionalism, international criminalization would be viewed as a functional solution to cooperation problems that are driven by the mutual interests of states.⁶¹ Relatedly, international criminalization would be viewed as another instance of 'legalization' in world politics, whereby international law is utilized to construct international rules, obligations, and procedures to address specific problems posed by international criminality.⁶² What would be central from this perspective are the legal aspects and consequences of international criminalization, such as the nature of international obligations and specificity of legal rules that are established. Nevertheless, this perspective also cannot account for why states turned to criminalization at a particular point in time. Moreover, in treating international criminalization as an instance of legalization, neoliberal institutionalist approaches say very little about what sets international criminalization apart from other international legal processes that similarly entail the creation of legal rules and obligations. As this article seeks to demonstrate, international crimes constitute very particular creations of international law that do not necessarily result from collective efforts to coordinate state behaviour. Instead, international crimes express and embody collectively shared views, which arise at a particular point in time, on what constitutes criminally abhorrent behaviour in international society.

According to solidarist approaches within the English School, international society is not only bound by minimal rules of coexistence, but also by a consensus on common values concerning individual justice.⁶³ Importantly, universal consensus on shared values – such as on human rights,⁶⁴ justice norms,⁶⁵ universal human wrongs,⁶⁶ and a cosmopolitan consciousness based on humanity⁶⁷ – makes the pursuit and realization of international justice possible. From this perspective, international criminalization expresses international society's desire to promote international justice, as well as a more solidarist international order. Moreover, international criminalization reflects a universal consensus on international criminal justice. Drawing on the English School literature, this consensus is based upon common agreement on the following: universal humanitarian values; universal human wrongs that offend humanity; universal jurisdiction; individual criminal accountability; and the role of international criminal courts.⁶⁸ However, existing

⁶¹Keohane and Nye 1977; Keohane 1984; Krasner 1983; Martin and Simmons 2001.

⁶²Goldstein *et al.* 2000; Abbott *et al.* 2000.

⁶³Bull 1977; Reus-Smit 2002.

⁶⁴Vincent 1974; Wheeler 2000.

⁶⁵Birdsall 2007, 2009.

⁶⁶Gallagher 2012, 2013.

⁶⁷Ralph 2005, 2007, 2009.

⁶⁸Birdsall 2009; Ralph 2007, 2009; Gallagher 2013; Roach 2006.

English School analyses do not go as far as explaining exactly how and why such a consensus has developed within, and has come to be shared across, international society. While the existing literature hints that such a consensus rests upon shared views on universal human rights, universal humanitarian values, or universal morality, these claims are not analytically explored in their own right. Yet, it is precisely prior questions such as how and why universal consensus on international crimes exists, as well as how it historically took root within international society, that warrants greater explanation. Yet, this can only be achieved if greater attention is focused on the process of international criminalization.

Constructivism offers two central insights that improve upon realist, neoliberal institutionalist, and English School accounts of international criminalization. Firstly, rather than viewing international criminalization as an international legal process, a constructivist perspective would see it as a social process that is informed by, and which brings into play, existing norms and beliefs in international society on what constitutes a crime at the international level and why. A constructivist approach would therefore be specifically interested in exploring how and why particular ideas and values crystallize into shared understandings about criminally wrongful conduct in international society. Relatedly, international criminalization would not be seen as an inevitable development in world politics. Rather, because a constructivist perspective would emphasize the role of historical contingency, it would therefore be interested in uncovering the particular reasons why international criminalization rose to prominence at a specific point in international society, as well as what historically specific factors enabled it to be regarded as the most acceptable solution to deal with the problem of atrocities.

Secondly, instead of seeing international crimes exclusively as legal constructs, a constructivist perspective would view them as social constructs that reflect shared understandings about the nature of international criminality. From such a perspective, what would be critical to investigate are the particular reasons why an international consensus on criminally wrongful conduct took hold in international society. Moreover, as a constructivist perspective would emphasize the role of non-material factors within the criminalization process, it would therefore be interested in tracing the historical development of ideas, beliefs, and values that culminate in an act being seen as worthy of the label of an international crime. From such a perspective, international crimes represent sites to uncover the development of collective understandings in international society about international criminality.

International criminalization: an analytical framework

This section develops a framework for analysing the process of international criminalization, which will address the following: the definition and features of international criminalization; the particular stages that mark the process of international criminalization; and the factors that drive the process of international criminalization. Although this framework is exclusively concerned with criminalization at the international level, it is nevertheless informed by domestic views of criminalization, particularly those of criminologists and socio-legal scholars that were outlined in the previous section. Drawing upon these views, this article acknowledges that like its domestic counterpart, international criminalization

must similarly be understood as a multi-faceted phenomenon that embraces prohibition, prosecution, and punishment. It therefore accepts that law-formation is but one dimension of the concept and relatedly, that criminalization includes the myriad of decisions and practices surrounding the prosecution and punishment of international crimes. In this respect, this article concurs with the view of IL scholars, who, as mentioned earlier, have usefully drawn a distinction between the initial 'legal act of criminalization' and ongoing 'legal practices of criminalization'.

However, it must be pointed out that the framework below will only focus on the former – in other words, it will not address the prosecution and punishment of international crimes. Admittedly, this exposes this article, as well as its framework, to a significant criticism. Despite concurring with criminologists and socio-legal scholars, it has ultimately not adopted an expansive view of the concept but rather, one that pivots centrally on the law-formation aspects of criminalization. Nonetheless, it is important to stress that the framework's sole focus on the initial act of criminalization should not be read as adherence to, or acceptance of, a narrow interpretation of the concept. Rather, it needs to be appreciated as a necessary consequence resulting from the article's intended aims. As explained earlier, this article seeks to demonstrate how the establishment of an international crime under international law is not simply a legal process, as IL scholars tend to suggest. To do so, it is necessary to exclude, as important as they are, questions relating to the prosecution and punishment of international crimes, in order to devote more attention to unpacking conceptual issues surrounding how, when, and why an international crime is initially established in international society.

International criminalization: definition and features

International criminalization is defined here as the process by which particular acts come to be recognized, following diplomatic negotiations between social actors, as international criminal norms within international society, and are thereby accorded with a formal legal existence under international law as an international crime. As will be discussed below, this definition departs from conventional understandings within IL scholarship in two central ways. Firstly, far from simply amounting to legal constructs, international crimes are also social constructs that embody an international social consensus on an act's international criminality. Secondly, international criminalization does not exclusively amount to a legal process but also embraces a social process that centres on international diplomatic negotiations amongst social actors in international society.

International crimes as social constructs

To be sure, international crimes are legal constructs, in that they are acts that international law specifies as amounting to international criminal conduct. However, they should also be understood as social constructs, particularly in relation to two specific aspects: status and form. Firstly, international crimes exist because conduct falling under their scope has been recognized by social actors within international society, more of which will be said below, as wrongful acts of an international criminal nature. In other words, there is an international social consensus that such conduct deserves the special status of an international crime. This

may be partly attributed to material factors, such as power and interests: for instance, the interests of powerful actors may have a bearing on why some acts, as opposed to others, come to be regarded as deserving of the status of an international crime. However, non-material factors also play a role, namely, the development of collective understandings on what constitutes a crime within international society, as well as why some acts are worthy of this special status.

Secondly, international crimes also possess a specific form. This is evident from their international legal definitions, which specifies their essential features and demarcates their exact scope. Importantly, these legal definitions are neither automatic nor natural. Rather, they reflect an international social consensus on the particular form an act ought to assume as an international crime. In this regard, an international crime assumes the specific form that their legal definitions provide because the social actors involved in their criminalization actively shape and craft these definitions. While this may be influenced by material factors such as power, what comes to be included or excluded from an international crime's definition is also influenced by normative views and choices on the following: who, amongst a range of possible actors, should be the perpetrators and victims of a particular international crime; what acts, amongst a range of possible ones, should fall under the scope of a particular international crime; and what objects, values, and interests, to the exclusions of others, should be protected through the establishment of an international crime.

Having suggested that international crimes are social as well as legal constructs, it is worth clarifying how the ontological relationship between the social and the legal is understood here. In this regard, the social attributes of international crimes are considered to be ontologically prior to their legal qualities – that is to say, the legal construct is dependent on the social construct. This, in turn, leads to two broader theoretical claims about the ontological nature of international crimes: firstly, the defining features of international crimes are their social, as opposed to legal, attributes; and secondly, their legal qualities are not prior to, but rather flow from, their social qualities. This is a radically different perspective to that which prevails within IL scholarship, for according to conventional views, the defining qualities of international crimes centre on their special legal attributes – such as individual criminal responsibility, universal jurisdiction, and the inapplicability of certain defences and immunities. Although IL scholars may differ on exactly which of these constitutes the defining hallmark of an international crime, there is nevertheless agreement that the essence of an international crime is fundamentally legal in nature. By contrast, what is being suggested here is that the essence of an international crime lies not with its legal attributes but rather, its social qualities. This means that international crimes must be understood, first and foremost, as acts that social actors in international society have recognized as wrongful acts of an international criminal nature, and whose definitional elements have been mutually agreed upon by such actors. This is not to dismiss that international crimes possess unique legal attributes but rather, to suggest that these need to be seen as consequences that flow from their ontologically prior social attributes. In other words, international crimes generate the special legal consequences that IL scholars commonly emphasize because of a prior social agreement about their status and form as international criminal acts.

International criminalization as a social process

Rather than exclusively conceiving international criminalization as a legal process, it should also be understood as a social process, and in three specific respects. Firstly, the process of international criminalization involves the development of shared understandings within international society that a particular act deserves to be recognized as an international crime. Simply put, there is international social consensus that an act constitutes criminal, as opposed to merely unlawful or wrongful, behaviour. Importantly, this social consensus takes hold within a particular historical context and it depends, moreover, on historical factors that prevail at a particular point in time. Understanding how and why this social consensus develops within international society therefore needs to be appreciated as being part of the overall process of international criminalization. Downplaying this aspect, as the existing literature does, results in an account of international criminalization that only captures its legal dimensions. Moreover, as this social consensus does not arise instantaneously but evolves historically and develops over time, this illustrates how the initial act of criminalization does not constitute, as IL scholars tend to assume, a single step that centres only on international legal codification.

Secondly, if the process of international criminalization involves the development of a social consensus, then this implies the presence and participation of social actors. Drawing upon the idea of ‘norm entrepreneurs’⁶⁹ that has been advanced in the constructivist literature, it is firstly suggested that given their centrality within international society, we can reasonably expect these social actors to include states. Yet, it is not states in the abstract that is of importance here but rather, the actual individuals with the authority to represent states in international fora. This may include, for example, heads of states or governments, foreign ministers, government envoys, official state delegates, accredited ambassadors, or plenipotentiaries. As the analysis on genocide will show, it was predominantly international diplomats and legal experts representing states within the Sixth (Legal) Committee of the United Nations’ (UN) General Assembly (GA) who were the critical social actors throughout its process of criminalization. Aside from state actors, other social actors may also include individual or collective non-state actors, such as philanthropic or charismatic individuals, transnational activist networks, epistemic communities, local or global social movements, non-governmental organizations, political foundations, groupings of intellectuals, research and advocacy organizations, transnational corporations, and the staff of international bureaucracies or organizations such as the UN Secretary-General, UN Special Rapporteurs, or chairs of multilateral negotiations.⁷⁰ Indeed, it would be reasonable to expect that some of the prominent norm entrepreneurs within the contemporary field of international criminal justice – such as the leading global civil society network, the ‘Coalition of the International Criminal Court’; international human rights and humanitarian non-governmental organizations; international law associations; and global networks of international criminal lawyers or scholars – to be amongst some of the key non-state actors who are likely to participate in current or future cases of international criminalization.

⁶⁹Wunderlich 2020; Johnstone 2007; Nadelmann 1990; Finnemore and Sikkink 1998.

⁷⁰Keck and Sikkink 1998; Wunderlich 2020; Johnstone 2007.

Thirdly, the social consensus that develops amongst social actors arises through a distinctive social process that centres on international diplomatic negotiations. These negotiations take place within international social spaces, such as the organs or specialized agencies of international or regional organizations; permanent or *ad hoc* international courts or tribunals; major multilateral conferences on international criminal law, such as the Rome Conference (1998) or Kampala Conference (2010); or specific international summits or dialogues on international criminal justice convened amongst states and non-state actors. As we will see, diplomatic negotiations on genocide's criminalization took place almost exclusively within specific UN organs and special committees, namely the Sixth (Legal) Committee of the GA; the UN Secretariat; and the Ad Hoc Committee on Genocide. During these international diplomatic negotiations, different – and often contending – ideas are proposed, debated, and discussed until international agreement is reached amongst the various social actors involved. In this additional sense therefore, international criminalization can be understood as a social process.

The process of international criminalization

The process of international criminalization embraces two distinct stages: firstly, the emergence of an international criminal norm; and secondly, the translation of this norm into an international legal proscription. An international crime comes into existence upon completion of these two steps, which are elaborated upon below.

The emergence of an international criminal norm

The first stage of international criminalization sees an international criminal norm coming into existence. Critically, what is being argued here is not only that the process of international criminalization begins with the establishment of an international criminal norm but also, that the process generates a special and unique type of international norm. To appreciate this, it is necessary to briefly review how norms are understood in constructivist IR scholarship. In this regard, norms are expected standards of appropriate behaviour created through mutual expectations in a social setting.⁷¹ Furthermore, norms have a quality of 'oughtness' and are seen as the 'appropriate thing to do'.⁷² In the context of world politics, norms are social prescriptions that have the effect of regulating the behaviour of international actors.⁷³ While some international norms are permissive and refer to shared understandings on permissible behaviour, they can also be prohibitive. Known in the literature as 'prohibitionary norms', this category of norms prohibits international actors from engaging in particular forms of conduct.⁷⁴ In some cases, certain prohibitionary norms may acquire a legalized quality by evolving into formal 'global prohibition regimes', which occurs when an act or behaviour is prohibited through a legally binding international legal document.⁷⁵ The effect of this further delineates 'ordinary' norms from prohibitionary ones: while the infringement of the former amounts to the transgression of shared expectations, the violation of the latter constitutes the violation of a formal international legal prohibition.

⁷¹Finnemore and Sikkink 1998; Brunnée and Toope 2013.

⁷²Sikkink 2011, 11.

⁷³Kowert and Legro 1996.

⁷⁴Nadelmann 1990.

⁷⁵Ibid.

Like prohibitory norms, an international criminal norm embraces the element of prohibition, and it similarly demarcates certain types of conduct as internationally prohibited acts. However, the latter differs from the former in two central respects. Firstly, while prohibitory norms result in the de-legitimization of certain conduct or behaviour as wrongful acts in world politics, there is an additional element of social censure and condemnation at play with international criminal norms. To illustrate this, I draw upon McMillan's socio-legal idea of global harm to suggest the following: an international criminal norm refers to collectively held shared understandings in international society that certain acts constitute exceptionally serious forms of globally significant harm.⁷⁶ As McMillan explains, global harms represent higher and more important harms than other forms of injury and therefore, sit at the top of an implied hierarchy of harms; they occur on a mass or large scale; and they affect and offend a broader international constituency and their interests.⁷⁷ Global harms are therefore perceived as extending, as well as having an impact, beyond their immediate cultural, political, and geographical contexts. This, in turn, generates a second feature about international criminal norms, namely, a concomitant belief that the redress and repudiation of such harms constitutes a matter of global responsibility. More specifically, international criminal norms come with a social expectation that their violation requires an altogether unique global response, namely: retributive legal justice, involving the prosecution and punishment of perpetrators through the enterprise of international criminal justice.⁷⁸

Before an international criminal norm can arise in international society, international agreement on two particular issues is required. There needs to be international consensus, firstly, on the *status* of an act, namely, that it deserves to be specifically recognized an international crime, as opposed to merely an international wrong. Secondly, international consensus is also required on the particular *form* that the act will assume as an international crime, namely, its defining features or elements. It will be recalled that status and form were introduced earlier to illuminate how as social constructs, international crimes embody shared understandings. Status and form are re-introduced here as the two components necessary for the establishment of an international criminal norm.

International agreement on status denotes the development of shared understandings within international society that an act deserves to be recognized as a crime under international law. Put another way, it refers to international consensus that a particular act, once regarded as unobjectionable, now deserves to be specifically categorized as an international crime. This is usually expressed through, and is therefore evident from, a formal international declaration. This may include, for example, resolutions of the GA, formal statements issued by the UN Security Council, or official declarations or statements issued by transnational activist groups or advocacy organizations. Evidence may also be found in international documents, such as the official records of international discussions on international crimes; the voting records of international debates on international crimes; the *travaux préparatoires* of international treaties; the diplomatic statements issued by

⁷⁶McMillan 2020.

⁷⁷Ibid.

⁷⁸Ibid.

states; and the concerns of private individuals or non-state organizations formally issued within international fora.

Agreement over status alone cannot bring an international criminal norm into existence, however, and further international agreement on form is also required. This refers to shared understandings about the particular shape an act ought to assume as an international crime, such as its defining features and qualities. *Prima facie* evidence of international agreement on form can be discerned from the legal definition of an international crime, which is usually expressed in an international treaty. On its own, however, an international legal definition may not reveal very much about how, when, or why international agreement on form was obtained. For this, the *travaux préparatoires* of international treaties – such as the record of formal debates or official position statements issued by states during treaty negotiations on an international crime's definition – would be more revealing and as such, would constitute important sources to examine when analysing the existence of international agreement on form.

Given the centrality of international agreement in the framework proposed here, it may be argued that the reliance placed upon the international documents mentioned above is unreliable indicators of international consensus. And indeed, similar criticisms have been raised in the context of debates concerning the identification of international customary rules. For instance, it has been argued that GA resolutions are symbolic acts that simply indicate states' aspirational goals, as opposed to their true intentions.⁷⁹ Moreover, given the complex motivations behind state behaviour, GA resolutions or the *travaux préparatoires* may not necessarily indicate genuine international consensus over legal norms, especially when compared with the actual practices of states.⁸⁰ However, according to modern approaches to customary international law, which emphasizes its consensual foundations and therefore view international customary law as reflecting a set of shared understandings amongst states,⁸¹ international documents such as GA resolutions represents evidence of *opinio juris*, one of the two components required for the formation of international customary law.⁸² As Kelly explains, the premise of modern approaches to customary international law is that unanimous or near-unanimous resolutions of the GA or other declarations by a majority of states at international fora provide clear evidence of international consensus on legal norms.⁸³ From this perspective, broad international consensus expressed within GA resolutions, for instance, may, in themselves, result in the creation of customary rules.⁸⁴

While it is accepted that the evidentiary sources this proposed framework relies upon may not be perfect indicators of international consensus, modern approaches to customary international law have nevertheless shown that there is some analytical value in turning to such sources. This is not to suggest, however, the mere adoption of GA resolutions or votes during international debates automatically results in the creation of an international crime. Rather, it is simply to say that such international documents can usefully indicate the existence of international agreement on status and form, which is required for an international criminal

⁷⁹Baker 2010; Guzman 2005; Kelly 2000.

⁸⁰Lepard 2010; Kelly 2000; Guzman 2005.

⁸¹Byers 1999.

⁸²Baker 2010; Lepard 2010; Goldsmith and Posner 2000.

⁸³Kelly 2000, 454.

⁸⁴Tesón 2017; Baker 2010.

norm to emerge during the first stage of the process of international criminalization.

Translation into an international legal proscription

Once there is international agreement on status and form, an international criminal norm has developed. However, unless and until the second stage of international criminalization is completed, this norm will not acquire formal legal existence. What is additionally required is for the international criminal norm to be made into a formal provision of international law, through international legal proscription. This results in the following: firstly, it specifically provides the international criminal norm with formal legal existence under international law as an international crime; and secondly, it gives the international criminal norm legal enforceability, thereby allowing the international legal consequences of punishment and prosecution to ensue when the norm is violated.

This second stage embraces the legal aspects of the process of international criminalization that the existing IL literature already accounts for. It is therefore commonly marked by the conclusion of an international treaty on a specific international crime, making it synonymous with international legal codification. What is much rarer, though not inconceivable, is for an international criminal norm to be legally proscribed without an international treaty. In such a case, the legal proscription would instead lie in customary international law, which is to be ascertained from state practice and *opinio juris*.

At this juncture, it would be helpful to summarize how this framework's conceptualization of the process of international criminalization differs the way it has been understood within IL scholarship. Firstly, while international criminalization is conventionally viewed as a legal process centring on the legal establishment of an international crime, either through the conclusion of an international treaty or the development of international customary law, it is seen here as a social process. This is not to deny that a legal dimension is involved but rather, to underscore how this is preceded by a social step. This social dimension centres on the development of an international criminal norm, which arises as a consequence of international diplomatic negotiations between social actors and requires an international social consensus on status and form. Once established, an international criminal norm will only acquire formal legal existence as an international crime if it is then translated into a formal international legal proscription, either through the conclusion of an international treaty or the development of international customary law. This, then, constitutes the legal step that completes the process of international criminalization. Conceiving of the process of international criminalization in this way goes some way towards capturing what existing IL accounts have thus far overlooked, namely, its social dimension. It also helps to show how international criminalization amounts to a process, as opposed to a singular act centring on international legal codification, as is commonly characterized in the IL literature. Aside from embracing a two-stage process, two distinct moments mark the first stage of international criminalization, namely, the moments when international agreement on status and form are respectively obtained.

Secondly, from the perspective of IL scholars, international law constitutes the source of international criminalization: an act is criminalized when an international

treaty or international customary law specifies an act as an international crime. In contrast, it is suggested here that an act is criminalized when an international criminal norm is given formal legal expression under international law. International law thus functions somewhat differently here, in that it constitutes the mechanism by which an international social consensus on status and form is subsequently given formal legal expression. In other words, its role within the process of international criminalization is to confer an international criminal norm with formal legal existence. In the framework presented here, the actual source of international criminalization lies with the international social consensus that emerges between social actors through international diplomatic negotiations. Relatedly, what matters more is whether the international consensus that has arisen is given legal expression, as opposed to the precise form this legal expression takes (treaty or customary rules). While IL scholars tend to focus on whether an international crime has been established by virtue of a treaty or customary rules, what is being suggested here is the analytical focus should rather lie with determining whether an international criminal norm has developed and whether it is subsequently translated into an international legal proscription.

Finally, according to IL scholars, evidence of international criminalization lies with international law itself: we know that an international crime exists if this can be established from an international treaty or customary law. By contrast, the framework proposed here suggests that when conceived as a two-stage process, evidence of the process of international criminalization does not lie exclusively with international law and relatedly, we will also need to understand international law's evidentiary role in a slightly different way. As indicated earlier, evidence for the emergence of an international criminal norm would lie in international archival documents. Where international law becomes relevant as an evidentiary source, it is principally in connection with the second stage of international criminalization. Here, we would turn to either treaties or customary law to determine whether an international criminal norm has come to be legally proscribed and relatedly, whether the process of international criminalization has been completed.

Drivers of international criminalization

Before an act undergoes the process of international criminalization, an external condition catalyses the process into motion. This external condition refers to a pivotal event or a critical juncture within international society, such as the development of new technologies, a global disaster or catastrophe, or the existence of a political shock. In the case of international criminalization, it is the latter that is of most significance and as such, deserves some elaboration. The notion of a *political shock* is similar to that of 'normative shocks', which has been defined as 'tragic situations or events that shock the public conscience into focusing on particular activities or institutions and changing core norms'.⁸⁵ They are, furthermore, significant events or crises that change the way actors see the world, their identities and the norms about appropriate behaviour.⁸⁶ As constructivist IR scholars have shown, political shocks play a role in the evolution of international norms. For instance,

⁸⁵Inal 2013, 9.

⁸⁶Inal 2013.

Florini argues political shocks provide a 'hospitable environment' for the spread of international norms,⁸⁷ while Sikkink suggests shocks often break the grip of a reigning orthodoxy, thereby spurring international actors to seek political alternatives that were otherwise not contemplated.⁸⁸ In similar veins, Kowert and Legro suggest dramatic shocks to the international system contribute to new understandings about how politics must be conducted,⁸⁹ while Finnemore and Sikkink argue world historical events, such as wars or major depressions in the international system, can prompt a search for new ideas and norms.⁹⁰ Drawing on these views, the idea of a political shock is advanced here to demonstrate the broader historical factors that provoke particular instances of international criminalization. As the catalytic external event that sets particular instances of international criminalization into motion, a political shock spurs actors into wanting certain conduct be criminalized, in order to address some of the perceived normative concerns arising from the historical event. However, this is not to suggest that a political shock is a sufficient condition for international criminalization and indeed, as Florini points out, background conditions are necessary, though not sufficient, for the emergence of international norms.⁹¹

A further driving factor is the role of norm entrepreneurs. Motivated by empathy, altruism, or ideational commitment, norm entrepreneurs hold strong ideas about appropriate or desirable conduct and they try to turn their favoured ideas into accepted norms within their social milieu.⁹² By mobilizing popular opinion and political support within a particular issue-area, they function as 'transnational moral entrepreneurs'.⁹³ In the context of international criminalization, norm entrepreneurs, termed here as *agents of criminalization*, play a similar role. International crimes do not suddenly appear but rather, they are actively constructed through the actions of social actors, who, as mentioned earlier, can include both state and non-state actors. During the criminalization process, the agents of criminalization attempt to influence the status and form of an act that are to be criminalized. They not only try to persuade other agents, as well as a wider audience, that a particular act deserves to be recognized as an international crime but in addition, attempt to shape an international crime's form, by influencing the content of its international legal definition. As some agents of criminalization put forward their ideas on status and form, others respond with rival, alternative ideas. What ensues, consequently, is *political contestation* over the legitimacy and validity of these different ideas.

Within the constructivist literature on international norms, contestation features as an integral part of the process of norm development. For Finnemore and Sikkink, contestation occurs at the initial stage of their influential 'life cycle of norms', which depicts a norm's development sequentially in terms of its emergence, diffusion across the international system, and internalization by actors.⁹⁴ As they explain, new norms do not arise in a normative vacuum but instead emerge 'in a highly contested normative space where they must compete with other norms'.⁹⁵ However, contestation also matters, other scholars have demonstrated,

⁸⁷Florini 1996, 384.

⁹⁰Finnemore and Sikkink 1998.

⁹³Nadelmann 1990, 482.

⁸⁸Sikkink 2011.

⁹¹Florini 1996.

⁹⁴Finnemore and Sikkink 1998.

⁸⁹Kowert and Legro 1996.

⁹²Finnemore and Sikkink 1998; Sikkink 2011.

⁹⁵*Ibid.*, 897.

beyond the initial stage of norm emergence. For example, the norm localization literature has shown that the localization of norms in different regional contexts is the result of the contestation, adaptation, and reshaping of international norms on the part of local agents,⁹⁶ while the literature on norm change has demonstrated how contestation over the interpretation of a norm can lead to either norm strengthening or norm weakening.⁹⁷ Meanwhile, according to the norm contestation literature, contestation over the meanings (meanings-in-use) of norms can lead to the creation of intersubjectively accepted meanings and therefore norm legitimacy,⁹⁸ as well as how different types of contestation have an effect on norm robustness.⁹⁹

Drawing on this literature, the notion of political contestation is advanced here to capture the competition of ideas between agents of criminalization. It is helpful to see this as a contest because ultimately, not all ideas will prevail: some are welcomed and will therefore triumph, while others will be rejected and eventually dismissed. This, moreover, is contest of a political kind because what underpins these different ideas are views on what particular political objects, goals, or entities are worthy of being protected through international criminalization. Indeed, the ideas that eventually prevail reflect specific objects, goals and entities that are protected through the criminalization process. Ultimately, this political contestation concerns an ideational struggle over what acts, and which actors, should be deemed as criminal in international society. What, then, determines which ideas succeed in prevailing?

What matters, firstly, is the *degree of compatibility with existing norms*. Within the constructivist literature, this has been examined in relation to the notions of coherence and congruence. No norm exists in a vacuum, Florini explains, and any new norm must fit coherently with other existing norms: a new norm acquires legitimacy when it fits coherently with other prevailing norms accepted members of the international community.¹⁰⁰ Similarly, Price describes the process by which a new norm coheres and resonates with existing norms as ‘grafting’, arguing that ‘the combination of active, manipulative persuasion and the contingency of genealogical heritage’ enables a new norm to fit within established normative terrains.¹⁰¹ Finally, as the literature on norm localization demonstrates, the diffusion and acceptance of international norms within a particular locale requires congruence-building on the part of local agents.¹⁰² As Acharya explains, the congruence of a foreign norm with an existing local normative order is the result of processes of ‘constitutive localization’ undertaken by local actors, who reconstruct foreign norms through discourse, framing, and grafting to ensure their compatibility with local norms.¹⁰³ In the context of international criminalization, a proposed idea about status or form may find acceptability if it is perceived to be compatible with existing norms and practices. This means that we can expect proposals to recognize an act as an international crime to draw upon existing international norms and practices. This may include, for instance, the principles of state sovereignty and

⁹⁶Acharya 2004, 2009; Zwingel 2012; Zimmermann 2017a, 2017b.

⁹⁷Sandholtz and Stiles 2009; Krook and True 2012.

⁹⁹Deitelhoff and Zimmermann 2020.

¹⁰⁰Florini 1996.

¹⁰²Acharya 2004, 2009; Zwingel 2012; Zimmermann 2017a, 2017b.

⁹⁸Wiener 2014, 2018.

¹⁰¹Price 1998, 617.

¹⁰³Acharya 2004, 2009.

non-interference; the fact that similar acts have already been subjected to international outrage; or the fact that other international crimes are already in existence.

However, there may be instances where an idea that is incompatible with existing norms gains traction. Rather than being in conformity with existing norms, the proposed idea that gains acceptability represents a departure from existing norms. In such a case, the novelty or uniqueness of the new idea is emphasized: it is juxtaposed against existing norms, which are viewed as being defective or flawed in some way, and presented as being superior. Often, this is achieved when norm entrepreneurs emphasize the inherent limitations of existing norms and argue that different ones are required in its stead. For constructivist IR scholars, this refers to the perceived failure of existing norms and they have pointed out how dissatisfaction with past approaches or efforts contributes to views on the unacceptability of existing norms.¹⁰⁴ A proposed idea, which fundamentally departs from existing norms, may also gain acceptability if it is seen as remedying the perceived deficiencies of existing norms. In the context of international criminalization, this may involve views on how a new international crime is able to remedy the deficiencies of existing legal categories, rules, or principles.

While the degree of compatibility with existing norms pertains to an idea's inherent quality, a further factor that is likely to influence whether a proposed idea is able to gain traction is the *status of the agents of criminalization*. This brings a material factor – namely, that of power and influence – into the criminalization process. Sometimes, an idea takes hold because its proponent occupies a powerful position – for instance, as a great power or as one of the superpowers in the international system. Power, as Florini explains, may be a significant part of the norm story, in that norms advocated by powerful states have greater opportunities to gain purchase.¹⁰⁵ Similarly, Goertz and Diehl have also explained that when powerful actors lie at the origins of norms, such norms amount to 'hegemonic norms'.¹⁰⁶ In the context of international criminalization, some ideas may gain acceptability because they have been proposed and advocated by agents who occupy a prominent position within international society – for example, the two superpowers during the Cold War or long-standing great powers such as France and Britain.

Not all ideas emanating from the powerful will automatically prevail, however. As constructivist scholars have pointed out, certain ideas may take hold even when powerful states have actively opposed them. For instance, Sikkink has shown how the norm of individual criminal accountability – which she terms the 'justice cascade' – developed even though powerful states did not take a lead and in some cases, opposed its emergence and development.¹⁰⁷ Similarly, Inal has demonstrated how despite Britain's opposition, a prohibitory norm against pillage successfully developed and was codified into an international treaty.¹⁰⁸ In these instances, power alone cannot explain why some ideas put forward by powerful actors may nevertheless be rejected. We can expect to find similar dynamics in the case of international criminalization, which means a non-power-based explanation is required to account for instances when the ideas of the powerful are rejected.

¹⁰⁴Florini 1996; Price 1998; Björkdahl 2002.

¹⁰⁵Florini 1996.

¹⁰⁶Goertz and Diehl 1992, 639.

¹⁰⁷Sikkink 2011.

¹⁰⁸Inal 2013.

While all instances of international criminalization are likely to be marked by a combination of these factors, the relative importance of these are likely to vary in particular instances of international criminalization. This makes it important to examine particular cases of international criminalization individually and with this in mind, the article now turns to an analysis of the criminalization of genocide.

The criminalization of genocide

Owing to space constraints, this article's empirical analysis is limited to a single case study – and it is acknowledged that a singular focus on genocide will not enable this article to fully tease out broader dynamics surrounding the politics of international criminalization. Indeed, this would require a comparative study of two international crimes (genocide and aggression, for instance) or alternatively, a comparison between successful and unsuccessful cases of international criminalization (crimes against humanity and human trafficking, for instance). Nevertheless, a singular focus on genocide remains useful for underscoring some of the central theoretical claims advanced in this article and in doing so, providing a basis for future interdisciplinary IL/IR research on international criminalization, a point that will be taken up later in the conclusion.

The term 'genocide' is of relatively recent origin and as is well-known, was coined by a Polish jurist called Raphael Lemkin in his book about German occupation policy in Europe, *Axis Rule in Occupied Europe: Law of Occupation, Analysis of Government, Proposals for Redress* (1944) (*Axis Rule*). 'New conceptions require new terms', Lemkin wrote, and he arrived at the term 'genocide' by combining the ancient Greek word *genos* (meaning race or tribe) and the Latin suffix *cide* (meaning killing).¹⁰⁹ According to Lemkin, genocide refers to the 'destruction of human groups'¹¹⁰ and denotes 'a coordinated plan of different actions aim[ed] at the destruction of [the] essential foundations of the life of national groups, with the aim of annihilating the groups themselves'.¹¹¹ What is so remarkably striking about genocide is that following a mere 4 years after the publication of *Axis Rule*, genocide transformed from an academic concept into an international crime.

In much of the existing literature on genocide's historical development, this is attributed to the adoption of the Genocide Convention on 9 December 1948.¹¹² As the conventional narrative goes, genocide was criminalized because states agreed in this international treaty to designate genocide as an international crime and to provide for its prosecution and punishment. While the adoption of this international treaty is certainly an important aspect of genocide's criminalization, if we begin from a more socially attuned understanding of the process of international criminalization and also conceive it as embracing two distinct stages, then there is a more complex story to be told about how and why genocide was established as an international crime. As the discussion below will show, genocide's criminalization began, firstly, with development of an international criminal norm against genocide, which was thereafter translated into an international legal proscription through the adoption of the Genocide Convention. Furthermore, a close analysis

¹⁰⁹Lemkin 1944, 79.

¹¹⁰*Ibid.*

¹¹¹Lemkin 1947, 147.

¹¹²Schabas 2009a; Nersessian 2010; Lippman 2002.

of the *travaux préparatoires* of the Genocide Convention highlights how the development of an international criminal norm against genocide was only possible due to an international social consensus on the following: firstly, that genocide deserved the status as an independent international crime in its own right, as opposed to being designated as a subset of an already-existing international crime, crimes against humanity; and secondly, that genocide's form ought to exclude the notion of cultural genocide, which refers to the destruction of cultural groups.

Critically, the analysis of genocide offered here forces us to re-examine common assumptions that prevail in the literature about the process of international criminalization. While it would be reasonable to assume international criminalization to be a state-led process, genocide demonstrates that the actual agents responsible for its criminalization were social actors whose role has generally been neglected and under-examined in the existing literature, namely the state diplomats and legal experts within the GA's Sixth (Legal) Committee. Furthermore, given that international crimes are commonly depicted as acts that shock the conscience of humanity, we may too readily assume genocide was criminalized on the basis of moral outrage. What the case of genocide demonstrates, rather, is that its criminalization unfolded more as the result of shared understandings concerning the perceived deficiencies of already-existing international norms, as well as the perceived incompatibility between new norms and older ones.

The emergence of an international criminal norm against genocide

International agreement on genocide's status as an international crime

Agreement on genocide's status required consensus on two particular issues: firstly, that genocide should be designated as an international crime; and secondly, that genocide ought to be distinguished from crimes against humanity. Importantly, consensus on these two issues was obtained at different points during genocide's historical development, which highlights how international criminalization does not pivot on a single, definitive moment. While genocide was recognized as an international crime on 11 December 1946, it was only designated as a distinct international crime in its own right on 6 October 1948.

Genocide, an 'international' crime. Following the publication of *Axis Rule*, genocide emerged before the recently established UN when three states – Cuba, India, and Panama – tabled a draft resolution on genocide on 2 November 1946.¹¹³ In this resolution, the UN was requested to investigate the possibility of declaring genocide as an international crime.¹¹⁴ This request was subsequently referred to the GA's Sixth Committee,¹¹⁵ where it was debated amongst state diplomats and legal experts.¹¹⁶ Although genocide was firmly characterized as an international crime during these debates, there were different opinions as to why. A close review of

¹¹³UN Doc A/BUR 50.

¹¹⁴Ibid.

¹¹⁵UN Doc A/C.6/64.

¹¹⁶The members of the Sixth Committee included state representatives of the following 48 countries: Argentina, Australia, Belgium, Bolivia, Brazil, Byelorussian Soviet Socialist Republic, Canada, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Honduras, India, Iran, Iraq, Lebanon, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Panama, Peru, Poland, Saudi Arabia, Syria,

these debates demonstrates that genocide was regarded as deserving the status as an international crime for four central reasons: it posed a threat to the peace and stability of the international order¹¹⁷; it should be both punished and prevented in the future¹¹⁸; it violates core notions of human dignity¹¹⁹; and finally, it also violates universal conceptions of morality and law.¹²⁰

This suggests two broad considerations were at play. Firstly, making genocide an international crime was informed by beliefs on what criminalization could achieve: criminalizing genocide would counter potential threats to international stability and also provide for its effective punishment. A second factor centred on the perceived intrinsic wrongfulness of genocide: it represents a violation of human dignity and universal conceptions of morality. While these different justifications can be viewed as complementary, they are important to single out because they centralize how there was not a single, uniform view at this stage on why genocide ought to be recognized as an international crime. Nevertheless, the Sixth Committee was able to unanimously agree that genocide ought to be declared as a crime under international law and in its report to the GA, it recommended the adoption of an international resolution on genocide.¹²¹

Accepting this recommendation, the GA adopted Resolution 96(I)¹²² on 11 December 1946. This resolution stated, firstly, that genocide ‘shocks the conscience of mankind’ and is ‘contrary to moral law and to the spirit and aims of the United Nations’.¹²³ More crucially, it declared that the GA ‘affirms that genocide is a *crime under international law* which the civilized world condemns’.¹²⁴ Resolution 96(I) is significant for two reasons. Firstly, aside from being the first international document that explicitly characterizes genocide as an international crime, it was also the UN’s first official pronouncement on genocide.¹²⁵ Secondly, the resolution was adopted unanimously and without debate by all 55 members of the GA.¹²⁶ This makes it possible to read the resolution as an expression of international consensus on genocide’s status at this time.

Although Resolution 96(I) is mentioned in existing accounts of genocide’s historical development, IL scholars tend not to accord this international resolution with analytical significance. This is attributable to the non-binding nature of GA resolutions: as the GA has no power to create binding international law, its resolutions are not legally binding and can only have persuasive or recommendatory value.¹²⁷ This therefore explains why IL scholars generally portray genocide’s criminalization as beginning with Lemkin’s coining of the term and culminating with

Turkey, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Kingdom, the United States of America, Uruguay, Venezuela, and Yugoslavia.

¹¹⁷UN Doc A/C.6/84. ¹¹⁸Ibid. ¹¹⁹Ibid. ¹²⁰UN Doc A/C.6/96. ¹²¹UN Doc A/231.

¹²²UN Doc A/RES/96(I).

¹²³Ibid.

¹²⁴Ibid. (emphasis added)

¹²⁵Nersessian 2010; Lippman 2002.

¹²⁶The members of the GA included: Afghanistan, Argentina, Australia, Belgium, Bolivia, Brazil, Byelorussian Soviet Socialist Republic, Canada, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Honduras, Iceland, India, Iran, Iraq, Lebanon, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Philippine Republic, Poland, Saudi Arabia, South Africa, Sweden, Syria, Turkey, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, and Yugoslavia.

¹²⁷Nersessian 2010; Shaw 2008.

the conclusion of the Genocide Convention.¹²⁸ What is being argued here, however, is that despite having no binding legal force, Resolution 96(I) needs to be seen as an important marker in genocide's path towards criminalization. More specifically, as it was adopted unanimously by all members of the GA, it represents evidence of the existence of international agreement that genocide deserves the status of an international crime.

Genocide, an international crime distinct from crimes against humanity. Given that Resolution 96(I) was adopted so soon after genocide was first discussed at the UN, it is clear that international agreement on genocide's status was obtained relatively easily and indeed, without much diplomatic controversy. In contrast, reaching consensus on genocide's relationship with crimes against humanity proved to be more contentious and difficult. While debates on this issue commenced in early 1947, the matter was only settled close to 2 years later. Central to these debates was the question of whether genocide should be established as a distinct international crime in its own right or, whether it should be designated as a sub-type of crimes against humanity, an already-existing international crime at the time.

As Resolution 96(I) also invited states to enact the necessary legislation aimed at the prevention and punishment of genocide, the UN Secretary-General was tasked with preparing a draft international treaty.¹²⁹ This draft was completed with the assistance of three legal experts in the field of international criminal law, namely Raphael Lemkin, Donnedieu de Vabres (Professor at the Paris Faculty of Law), and Vespasian Pella (President of the International Association for Penal Law). In this draft, known as the Secretariat Draft, genocide was characterized as a distinct international crime in its own right. As the commentary accompanying the draft made clear, genocide ought to be distinguished from other international crimes or abuses so that the idea of genocide would not overlap with other concepts that it may be related to.¹³⁰

However, when the Secretariat Draft was circulated to state diplomats and legal experts for comment, states were unable to agree on a common position. Consequently, the question was left open, which meant that roughly a year after states first decided genocide deserves to be recognized as an international crime, there remained a real possibility that it might be designated as a type of crime against humanity. Two opposing views emerged during this phase of the negotiations. On the one hand, some diplomats, such as those representing the United Kingdom¹³¹ and France,¹³² viewed genocide as falling within the scope of crimes against humanity. France, in fact, altogether disapproved of the term 'genocide', arguing that the label crimes against humanity be used instead. In contrast, other diplomats, such as those representing Poland,¹³³ the Philippines,¹³⁴ and Norway,¹³⁵ felt genocide ought to be distinguished from crimes against humanity and instead, be established as an autonomous crime.

To appreciate the significance of these opposing positions, it is important to note, firstly, that crimes against humanity was one of the three international crimes

¹²⁸Salter and Eastwood 2013.

¹²⁹UN Doc E/325.

¹³⁰UN Doc E/447.

¹³¹UN Doc A/C.6/SR.59.

¹³²UN Doc A/AC.10/29.

¹³³UN Doc A/C.6/SR.41.

¹³⁴Ibid.

¹³⁵UN Doc A/PV.123.

that the former Nazi officials were prosecuted for before the International Military Tribunal in Nuremberg (Nuremberg Tribunal).¹³⁶ Secondly, for the purposes of these trials, crimes against humanity was defined as specific acts committed against civilian populations – including murder, extermination, enslavement, deportation, and persecution – that had been perpetrated in execution of or in connection with any other crimes within the jurisdiction of the Nuremberg Tribunal.¹³⁷ Crucially, crimes against humanity required a connection with either crimes against peace or war crimes, the other two international crimes that fell within the jurisdiction of the Nuremberg Tribunal. In other words, crimes against humanity was conditioned on the existence of other crimes, meaning that it could only be prosecuted if it had been committed within the context of either aggressive war or war crimes.¹³⁸

This particular feature of crimes against humanity influenced the different positions that state diplomats adopted on the question of the proper relationship between genocide and crimes against humanity. If it were regarded as falling under the scope of crimes against humanity, then a nexus with either aggressive war or war crimes would also be required in the case of genocide. While this was unproblematic for those states who saw genocide as falling under the scope of crimes against humanity, maintaining the nexus requirement was undesirable for those who felt genocide should instead be established as an independent crime in its own right. In particular, it would mean genocide would be subject to the same restrictive requirement that characterized crimes against humanity and would, consequently, amount to an especially narrow international crime. The only way to avoid this was to recognize genocide as an international crime that was both separate and distinct from crimes against humanity.

However, in the next phase of international diplomatic negotiations, which saw an Ad Hoc Committee¹³⁹ being established in order to prepare a second draft of an international treaty on genocide, a much stronger association between genocide and crimes against humanity was made. This was especially evident from two particular provisions of the draft treaty. Firstly, genocide was specifically characterized as a ‘crime against mankind’.¹⁴⁰ Given the similarity of this phrase with the term ‘crimes against humanity’, it satisfied those who wished to maintain an association between the two crimes. Secondly, an explicit reference to the Nuremberg Tribunal was included, in the form of a preambular paragraph that stated that the acts falling under the draft treaty had been punished by the Nuremberg Tribunal, albeit under a ‘different legal description’.¹⁴¹ As the record of the debates demonstrate, state diplomats representing France, the United States, and China argued that since the Nuremberg Tribunal had in fact punished cases of genocide, this ought to be reflected in the Genocide Convention, even though the term genocide was not specifically used during these earlier trials.¹⁴²

¹³⁶Charter of the International Military Tribunal, 8 August 1945, 82 UNTS 279 (Nuremberg Charter).

¹³⁷Article 6(c) of Nuremberg Charter.

¹³⁸Werle and Jessberger 2014; Cassese and Gaeta 2013; Bantekas 2010.

¹³⁹UN Doc E/A.C.7/SR.37; The Ad Hoc Committee was composed of state representative of the following seven states: China, France, Lebanon, Poland, United States of America, Union of Soviet Socialist Republics, and Venezuela.

¹⁴⁰UN Doc E/794.

¹⁴¹Ibid.

¹⁴²UN Doc E/AC.25/SR.23.

The Ad Hoc Committee's intervention proved to be short-lived, however. Following debates within the Sixth Committee, which culminated in agreement on a third and final draft of the Genocide Convention, the link that was made in the Ad Hoc Committee's Draft between genocide and crimes against humanity was severed: the term 'crime against mankind' was deleted and the reference to the Nuremberg Tribunal was also removed.¹⁴³ Prompted by a proposal to this effect by the Venezuelan delegate, a wide grouping of state diplomats, particularly those from Asia and Latin America, expressed support for establishing genocide as an independent crime in its own right, and for two central reasons.

Firstly, there was dissatisfaction with crimes against humanity's nexus with crimes against peace and war crimes, particularly because this meant atrocities committed during peacetime did not fall within crimes against humanity's scope. This was perceived as a significant *lacuna* in international law at the time, which could be remedied by establishing a new international crime that could be committed in both peace and war. As the Brazilian delegate argued, genocide ought to de-linked from crimes against humanity and instead be established as 'an international crime which could also be committed in times of peace'.¹⁴⁴ Put differently, genocide deserved to be established as new and distinct international crime due to the perceived deficiencies of crimes against humanity's scope of application. Secondly, there were reservations, particularly on the part of diplomats representing non-Western states, about the legitimacy of the Nuremberg Tribunal. Here, the Pakistani delegate argued the Nuremberg Trials represented 'the subjection of the vanquished to the will of the victor', while in the view of the El Salvadorian delegate, the Nuremberg Trials had been 'drawn up in special circumstances, which permitted the victorious [Allied] Powers to impose certain standards on the European Axis countries'.¹⁴⁵ This indicates how diplomats of non-Western states were keen to ensure the new international crime of genocide would not be tainted by the controversies that surrounded the Nuremberg Tribunal. In addition, they also wanted to ensure genocide's application would not be dependent upon the specific historical circumstances that brought about the Nuremberg Tribunal in the first place.

Taken together, these two considerations centralize how smaller states found it important to establish a new international crime with universal applicability. This would only be possible if, firstly, genocide embraced both peacetime and wartime atrocities and secondly, it were de-linked from the Nuremberg Tribunal and its controversial legacy. That smaller states successfully pushed for this is remarkable, particularly because this came at the expense of the wishes of the more powerful states at the negotiating table, including France, the Soviet Union, and the United Kingdom. And indeed, when the Venezuelan proposal was put to a vote, it was adopted by an overwhelming majority of 38 votes to 9.¹⁴⁶

Importantly, there was nothing natural or inevitable about genocide being established as a separate and distinct international crime in its own right; rather, it was inextricably linked to prevailing dissatisfaction amongst the majority of diplomats and legal experts about crimes against humanity.

¹⁴³UN Doc A/760.

¹⁴⁴UN Doc A/C.6/SR.63.

¹⁴⁵UN Doc A/C.6/SR.109.

¹⁴⁶Ibid.

To be sure, the influence of crimes against humanity upon genocide's historical development has been noted in the IL literature. For instance, it has been argued that genocide's emergence as an international crime is ultimately 'the story of [its] emancipation from the notion of crimes against humanity'¹⁴⁷ and that genocide functioned to fill a 'perceived void' within international law at the time.¹⁴⁸ In fact, Schabas goes as far as arguing that genocide may not have existed at all were it not for the particular way in which crimes against humanity featured within the Nuremberg Trials. As he writes,

[T]he recognition of genocide as an international crime by the General Assembly of the United Nations in 1946, and its codification in the 1948 Convention, can be understood as a reaction to the narrow approach to crimes against humanity in the Nuremberg judgment of the International Military Tribunal. *It was Nuremberg's failure to recognize the international criminality of atrocities committed in peacetime that prompted the first initiatives at recognizing and defining the crime of genocide. Had Nuremberg affirmed the reach of international criminal law into peacetime atrocities, the Genocide Convention might never have been adopted.* The term "genocide" might then have remained a popular or colloquial label used by journalists, historians, and social scientists but absent from legal discourse'.¹⁴⁹

However, the IL literature generally stops short of according the diplomatic negotiations and the eventual vote within the Sixth Committee on the relationship between genocide and crimes against humanity with analytical significance in their accounts of genocide's criminalization. Instead, it is generally presented as mere historical contextual detail. By contrast, what is being specifically argued here is that these diplomatic debates, as well as the eventual vote on this issue, constitute an important part of genocide's criminalization. This is because they represent the reaching of international agreement on genocide's status as a distinct and independent crime in its own right.

To summarize the discussion thus far, the emergence of an international criminal norm against genocide required international agreement on genocide's status. This not only required consensus on genocide deserving the special status as an international crime but also, consensus that genocide ought to be distinguished from crimes against humanity as a crime that could be committed in both peace and war. Far from being inevitable, these developments were consequence of an international social consensus that culminated, firstly, in the issuing of Resolution 96(I) by the GA and thereafter, the final vote within the Sixth Committee on genocide's relationship with crimes against humanity.

International agreement on genocide's form as an international crime

Genocide has a very particular legal meaning under international law, namely the intentional destruction of a national, ethnical, racial, or religious group.¹⁵⁰ The particular form this destruction may take is furthermore limited to the following acts:

¹⁴⁷Jessberger 2009, 20.

¹⁴⁸Akhavan 2012, 111.

¹⁴⁹Schabas 2010, 128 (emphasis added).

¹⁵⁰Article 2 of Genocide Convention.

killing; serious bodily or mental harm; the deliberate infliction of conditions of life calculated to bring about physical destruction; the imposition of measures intended to prevent births; and the forcible transfer of children.¹⁵¹ In short, genocide can only be committed against four types of human groups and in the aforementioned ways. Importantly, genocide's international legal definition was the outcome of an international social consensus reached through diplomatic negotiations on the particular form that genocide ought to assume as an international crime. Although these negotiations resulted in an international crime with clearly demarcated legal contours, it nevertheless came at the expense of excluding certain human groups from genocide's definition.

One of these exclusions, to be discussed below, concerned cultural groups. This exclusion, which has meant that the destruction of cultural groups can never constitute genocide under international law, was not an automatic development. Rather, it was the result of conscious diplomatic decisions made after protracted debates on whether genocide's legal definition ought to embrace the notion of cultural genocide. This is particularly evident when it is considered how early drafts of the Genocide Convention – the Secretariat's Draft¹⁵² and the Ad Hoc Committee's Draft¹⁵³ – initially included cultural groups as one of the groups to be protected against genocide. To explain why this was eventually reversed, this section analyses how and why cultural genocide was eventually excluded from genocide's legal definition. In doing so, it also argues that this development also needs to be understood as an important part of the first stage of genocide's criminalization.

To begin, it is important to highlight how the destruction of cultural groups was a fundamental element of Raphael Lemkin's conceptualization of genocide in *Axis Rule*. Genocide, as Lemkin wrote, referred to the total destruction of human groups that is effected by 'synchronized attack[s] on different aspects of [the] lives of [human groups]', including the *cultural*, political, social, economic, biological, religious, and moral fields.¹⁵⁴ Lemkin also argued that genocide often begins with acts of cultural destruction: 'Physical and biological genocide are always preceded by cultural genocide or by an attack on the symbols of the group or by violent interference with religious or cultural activities'.¹⁵⁵ Lemkin's role in the drafting of the Genocide Convention helps explain why cultural genocide was included in the Secretariat Draft, despite opposition from the other two legal experts.¹⁵⁶ To some extent, the influence of Lemkin's ideas also extended beyond this initial draft, as the notion of cultural genocide, albeit in a more restricted form, was also included in the Ad Hoc Committee's Draft.

However, when the question of cultural genocide was debated by state diplomats and legal experts within the Sixth Committee, differences that initially emerged at the start of the drafting process coalesced into firmer divisions. On the one hand, a grouping of states, consisting mainly of Latin American states and several Western states, opposed the notion of cultural genocide, and they advanced four central arguments in support of their position. Firstly, the notion of cultural genocide, it was argued, represents a human rights issue. As the Dutch and French representatives respectively maintained, cultural genocide 'touches upon the question of the

¹⁵¹Ibid. ¹⁵²UN Doc E/447. ¹⁵³UN Doc E/794. ¹⁵⁴Lemkin 1944, xi–xii (emphasis added).

¹⁵⁵Lemkin quoted in Moses 2010, 34.

¹⁵⁶Moses 2010; Schabas 2009a.

rights of man¹⁵⁷ and its punishment is 'logically related to the protection of human rights'.¹⁵⁸ Moreover, as cultural genocide was understood as primarily involving the cultural protection of groups, it was perceived as being closely connected with one particular aspect of human rights, namely the protection of the rights of national minorities.¹⁵⁹ The views of the American delegate are instructive in this regard: if the primary object behind cultural genocide is the destruction of the culture of a group, then acts of cultural genocide are, on account of their impact on the rights of a group to freedom of thought and expression, more appropriately dealt with in connection with the protection of minorities.¹⁶⁰ For these delegates, cultural genocide should be addressed in connection with efforts relating to the protection of international human rights, as opposed to genocide. Cultural genocide, as the Canadian delegate argued, is 'wholly and essentially a matter of minority rights and would, as such, best be dealt with in the Covenant on Human Rights'¹⁶¹ that the then UN Commission of Human Rights was in the process of drafting. This view was echoed by the French¹⁶² and Indian¹⁶³ delegates, who similarly argued that cultural genocide should be addressed in the draft international covenant on human rights that was then under preparation.

Secondly, the destruction of cultural groups would, if included within genocide's definition, results in undesirable political consequences. As the Brazilian diplomatic representative argued, it would hamper a state's national assimilation policies, as it would enable minority movements who opposed such policies to accuse such a state of committing cultural genocide.¹⁶⁴ Moreover, as the Danish representative argued, it would create the potential danger of the Genocide Convention being used as a 'tool for political propaganda'.¹⁶⁵ Thirdly, it was argued that the notion of cultural genocide itself was difficult to define. As the Dutch representative put it, '[C]ultural genocide was too vague a concept to admit of precise definition and delimitation for the purpose of inclusion in the convention on genocide'.¹⁶⁶ Similarly, the American delegate argued it would be difficult for states to reach agreement on the definition of cultural genocide, whereas condemnation of the physical destruction of groups was a matter all states could easily reach agreement on.¹⁶⁷ Finally, it was also argued that the notion of cultural genocide unduly extended the concept of genocide.¹⁶⁸ Here, it was repeatedly argued throughout the drafting negotiations that the defining feature of genocide was the physical destruction of extermination of human groups. As the Iranian representative argued, a 'great inherent difference' existed between physical genocide and cultural genocide and it would be better if the physical extermination of human groups was not artificially placed on the same level as its cultural destruction.¹⁶⁹

Meanwhile, supporters of cultural genocide, who formed a broad coalition of non-Western states,¹⁷⁰ argued genocide should not be limited to physical destruction. Cultural and physical genocide, according to the Pakistani representative, are

¹⁵⁷UN Doc E/623/Add.3. ¹⁵⁸UN Doc A/C.6/SR.63. ¹⁵⁹UN Doc A/401; UN Doc A/C.6/SR.83.

¹⁶⁰UN Doc A/401; UN Doc A/C.6/SR.83. ¹⁶¹UN Doc E/SR.218. ¹⁶²UN Doc E/AC.25/SR.5.

¹⁶³UN Doc A/C.6/SR.64. ¹⁶⁴UN Doc A/C.6/SR.63. ¹⁶⁵UN Doc A/C.6/SR.83. ¹⁶⁶Ibid.

¹⁶⁷UN Doc E/A.C.25/SR.5. ¹⁶⁸UN Doc A/C.6/SR.83. ¹⁶⁹Ibid.

¹⁷⁰This included the Soviet Union, Yugoslavia, the Byelorussian Soviet Socialist Republic, China, Czechoslovakia, Ecuador, Egypt, Ethiopia, Lebanon, Mexico, Pakistan, the Philippines, Poland, Saudi Arabia, Syria, and the Ukrainian Soviet Socialist Republic.

'indivisible' and 'complementary', as both are motivated by the similar aim of destroying a human group.¹⁷¹ Moreover, the Czechoslovakian delegate argued, if the purpose of the Genocide Convention was to prevent the destruction of human groups, then it would be both proper and correct to treat cultural genocide in the same way as physical genocide.¹⁷² It was also contended that cultural genocide could not be adequately protected through the framework of international human rights. Here, the Chinese delegate stated that including cultural genocide within genocide's definition would allow binding international obligations to be established with respect to cultural genocide; in contrast, its inclusion within a declaration of human rights would only acquire moral force.¹⁷³ Indeed, the effects of an international treaty on an international crime, as the Pakistani representative argued, were fundamentally different to an international declaration establishing the rights and duties of man and the citizen.¹⁷⁴

Given that states were divided over this issue, the matter was resolved through a vote on 9 December 1948, whereby a majority of 31 states voted against including cultural groups within genocide's definition, while only 14 states were in favour.¹⁷⁵ This vote therefore reversed earlier decisions by the UN Secretariat and the Ad Hoc Committee to include cultural groups within genocide's definition and from the perspective of international criminalization, it represents the moment when international agreement on one particular aspect of genocide's form was obtained.

In the existing literature, explanations for the exclusion of cultural genocide emphasize, firstly, the role of domestic political interests.¹⁷⁶ As Stiller explains, a range of countries and regimes had vested interests in obstructing a broader concept of genocide: 'colonial powers, apartheid states, democratic states with an indigenous minority "problem", and newly decolonized states with the objective of building a homogenous nation all had obvious motives to discourage any move that would have made cultural, political and socioeconomic discrimination or the destruction of minorities [...] an internationally criminal and punishable act'.¹⁷⁷ The Cold War has also been advanced as further explanatory factor, particularly with regards to how ideological considerations and geopolitical interests influenced positions on cultural genocide.¹⁷⁸ For instance, Lippman argues the two superpowers used the Genocide Convention's drafting process to engage in broader ideological battles: while the Soviet Union endorsed cultural genocide in order to solidify its support in the Third World, the United States aligned itself with Western and Northern European democracies.¹⁷⁹

Although compelling, these explanations say very little about the deeper normative commitments behind these interests. This can only be appreciated if greater attention is given to arguments that were advanced during the negotiation process concerning the relationship between cultural genocide and human rights. As discussed earlier, opposition to cultural genocide was, for a grouping of state diplomats, informed by the view that the cultural protection of groups represented a human rights issue and as such, should be addressed in connection with efforts surrounding international human rights, as opposed to the criminalization of

¹⁷¹UN Doc A/C.6/SR.83.

¹⁷²Ibid.

¹⁷³Ibid.

¹⁷⁴Ibid.

¹⁷⁵UN Doc A/PV.179.

¹⁷⁶Kuper 1981; LeBlanc 1991, 2012; Lippman 2012; Lewis 2014; Mako 2012; Moses 2013; Stiller 2012.

¹⁷⁷Stiller 2012, 123.

¹⁷⁸LeBlanc 1991; Mako 2012.

¹⁷⁹Lippman 2012.

genocide. While existing explanations attribute this to either political interests or Cold War dynamics, an alternative explanation is offered here, namely the desire to maintain a fundamental distinction between the notion of an international crime and that of international human rights. Without this distinction, the defining quality of an international crime would have otherwise been diluted. More specifically, it would not be limited to extremely heinous acts considered to be criminal at the international level; rather, it would also embrace internationally prohibited acts of a non-criminal nature. Consequently, international crimes would appear no different to violations of human rights. In order to cement and preserve the distinctiveness of the category of international crimes, it needed to be firmly delineated from the violation of international human rights. Ultimately, this could only be achieved if cultural groups were excluded from genocide's form and relatedly, if genocide were confined to the physical destruction of human groups.

This is rarely emphasized in the existing literature on genocide's historical development, which tends to portray a close connection between genocide and international human rights. In particular, genocide's criminalization is often depicted as an important part of the development of international human rights, and the Genocide Convention is frequently applauded as the first international human rights treaty of the modern era.¹⁸⁰ This conventional view has however been challenged by historians, who have instead suggested that the historical evolution of genocide needs to be understood as a development in world politics that is distinct from that of international human rights. As Mazower explains, the common portrayal in the literature, wherein the Genocide Convention is viewed as part of the UN's broader inaugural commitment to human rights, 'loses sight of what was distinctive and even quixotic about [genocide's] story'.¹⁸¹ Although the Genocide Convention and the Universal Declaration of Human Rights (UDHR) were both passed around the same time – and indeed, it is especially interesting to note that the UDHR was passed on 10 December 1948, 1 day after the Genocide Convention – they do not represent part of a single scheme.¹⁸² Rather, these two developments 'stood for very different approaches to the role of law in international life' at the time.¹⁸³ In order to secure group rights, the Genocide Convention established a legally enforceable regime in which criminal sanction under international law was envisaged as a potential way to intervene in the domestic jurisdiction of states.¹⁸⁴ In contrast, the rationale behind the UDHR centred on the protection of individual human rights but crucially, it gestured towards a much weaker regime, in which the rhetoric of moral aspiration was favoured over real legal enforceability.¹⁸⁵

Similarly, Moyn also cautions against treating genocide and human rights as falling under the same umbrella and being part of a single achievement.¹⁸⁶ According to him, genocide and human rights were both separate and independent in their 1940s invention.¹⁸⁷ Drawing attention to the fact that genocide, including the memory of the Holocaust, went unmentioned across weeks of debate about the UDHR in the GA, as well as how Raphael Lemkin himself understood his campaign against genocide to be at odds with the UN's human rights project, Moyn argues that

¹⁸⁰Lippman 1985, 2002; Schabas 2009a; Smith 2010; Sands 2016.

¹⁸²Mazower 2009, 130.

¹⁸³Ibid.

¹⁸⁴Mazower 2009.

¹⁸⁵Ibid.

¹⁸¹Mazower 2009, 129.

¹⁸⁶Moyn 2010.

¹⁸⁷Ibid.

human rights in the early 1940s was not an idea specifically linked to the criminalization of atrocities.¹⁸⁸ Rather, the introduction of the idea of human rights within the UN in the 1940s reflected its need for public acceptance and legitimacy, and also provided a useful 'idealistic formulation' that could be tapped into as part of the 'rhetorical drive' to distinguish the newly established international organization from its predecessor.¹⁸⁹ In Moyn's view, the symbolic purpose behind human rights in the 1940s therefore explains why its itemization in a declaratory document was prioritized over the enumeration of actual legal rights within a legally enforceable covenant.

These views make it possible to argue that international crimes and international human rights were understood in the 1940s as serving separate and distinct purposes. While the international crime of genocide was aimed at protecting the physical right of groups to exist by criminalizing their intentional physical destruction under international law, international human rights was directed at protecting the fundamental rights and freedoms of individuals through the adoption of a symbolic, albeit universal, declaration on human rights. If it were included within genocide's form, cultural genocide, as a human rights issue connected with the protection of the rights of national minorities, would have established a much closer connection between international crimes and international human rights. This, in turn, would have the effect of collapsing the fundamental distinction between these two concepts, as well as their purposes. The exclusion of cultural genocide was therefore necessary to ensure a clear separation be maintained between international crimes and international human rights and relatedly, to preserve the distinctiveness of these two international regimes, nascent as both were at this particular point in time.

To be sure, both international criminal law and international human rights were but embryonic ideas at this time, and neither had sufficiently developed into the robust international regimes that they are today. Indeed, while international criminal law found little resonance in the practice of states and the community of nations after the conclusion of the Nuremberg Trials, human rights was neither an especially prominent idea nor one with any serious meaning in the 1940s.¹⁹⁰ This makes it possible to suggest, alternatively, that the exclusion of cultural genocide rather reflected the desire to avoid associating the international crime of genocide with the relatively weak and unspecified concept of human rights at the time. Although compelling, such an explanation is not, however, supported by the *travaux préparatoires*. Despite being in their infancy, the record of the debates indicates that both concepts were understood by legal experts as being distinct and independent from one another. The following comment by the Australian representative, made during one of the final plenary sessions before the formal adoption of the Genocide Convention by the UN General Assembly, is especially instructive:

'Genocide was separate from the general question of human rights, and the adoption of a convention on [genocide] should not necessarily be dependent upon work which the United Nations was doing in the field of human rights. The draft Convention on Genocide was far more specific than the draft

¹⁸⁸Moyn 2010, 2014.

¹⁸⁹Moyn 2010, 59.

¹⁹⁰Werle and Jessberger 2014; Moyn 2010.

Declaration of Human Rights; it contained provisions for the implementation of general principles [of international criminal law]'.¹⁹¹

Accordingly, it is suggested here that debates concerning cultural genocide's relationship with human rights constitute an important part of the story of genocide's criminalization. Moreover, understanding the eventual outcome of this debate highlights an important but often neglected feature about the essence of genocide. Genocide is, first and foremost, an international crime and it does not amount to, though it is often portrayed as, a violation of international human rights.

The translation of the international criminal norm against genocide into an international legal proscription

What transformed the international criminal norm against genocide into a legally enforceable international legal proscription was the formal adoption of the Genocide Convention. In this regard, following 4 years of diplomatic negotiations, all 56 state representatives of the GA voted unanimously on 9 December 1948 to adopt the international treaty on genocide.¹⁹² Yet again, it is important to stress that much of the existing literature on genocide's historical development exclusively equates its criminalization with the adoption of this treaty. By contrast, the framework developed here sees the adoption of this treaty as the second step of the process of international criminalization, which can only occur after an international criminal norm has firstly developed. In some respects, the second stage of the process of international criminalization is the less onerous of the two stages, as it simply involves consolidating an international criminal norm into a formal provision of international law – and indeed, this is reflected in the brevity of the discussion here.

Conclusion

If we wish to appreciate why international crimes, which have not always existed in international society, are now a firm feature of the contemporary international legal order, then a deeper understanding of the process of international criminalization is required. This is only possible, this article has suggested, if we move beyond existing IL understandings of the process that see it as an exclusively legal phenomenon and relatedly, if we account for its social dimensions. This article has therefore argued that the process of international criminalization consists of two distinct stages: firstly, the emergence of an international criminal norm and secondly, the translation of this norm into an international legal proscription. It has also suggested that the first stage constitutes a social process for three central reasons. Firstly, the international criminal norm that arises embodies an international social consensus that an act deserves to be recognized as an international crime and furthermore, that it should assume a particular form as an international crime. Secondly, this international social consensus arises through international

¹⁹¹UN Doc E/SR.218.

¹⁹²UN Doc A/PV.179.

diplomatic negotiations between social actors within international society. And finally, these diplomatic negotiations take place within international social spaces. Taken together, this demonstrates how international crimes are not simply legal constructs but rather, social constructs that embody collectively shared understandings on what constitutes an international crime and why.

Conceiving of the process of international criminalization in this way illuminates, as the discussion on genocide has shown, a much richer account of how an international crime comes to be established in international society. Far from simply involving the conclusion of an international treaty, genocide's criminalization was underpinned the emergence of an international criminal norm against genocide. This, in turn, was only possible once social actors reached, following diplomatic negotiations, international agreement on the following: firstly, that as an act which deserves the status of an international crime, genocide ought to be independent of crimes against humanity; and secondly, the particular form that genocide ought to assume as an international crime should exclude cultural groups. Importantly, agreement on these issues were obtained at different points in time, which further underscores how international criminalization constitutes a process marked by multiple critical junctures, as opposed to a singular act or a definitive moment, as is commonly suggested. In this regard, international agreement on genocide's status centred on the issuing of Resolution 95(1) by the GA on 11 December 1946, as well as the outcome of the vote on crimes against humanity within the Sixth Committee on 6 October 1948. Meanwhile, international agreement on genocide's form was obtained following the vote on cultural genocide within the GA's Sixth Committee on 9 December 1948.

The analysis offered here also illuminates several insights about genocide's criminalization that the existing literature has underemphasized. First, the principal social actors involved in, and who influenced, its criminalization were state diplomats and legal experts. This might come across as unsurprising, especially when we know that diplomatic representatives are the main actors involved in multilateral treaty negotiations. And indeed, this largely explains why Raphael Lemkin, who was otherwise vital for introducing the concept of genocide, largely falls off the scene once genocide becomes a matter of multilateral diplomacy. However, the more important point to stress is that the main agents of criminalization in genocide's case were state diplomats and legal experts that came from a somewhat unexpected and – perhaps more crucially – under-examined site of international diplomacy, namely the GA and its Sixth (Legal) Committee. Importantly, these social actors have received little attention in existing IL scholarship on international criminalization, on account of how the GA is not empowered to create binding international law.

By elevating the diplomatic negotiations within the GA and its Sixth Committee as an important part of the process of international criminalization, the analysis here therefore demonstrates how the social actors within these international bodies actually possessed a much greater role and influence within genocide's criminalization process than existing accounts currently acknowledge. Indeed, it is possible to argue that aside from Raphael Lemkin's critical influence, genocide largely represents an international crime that was mainly constructed through the actions of state diplomats and legal experts. This, in turn, raises an important question

concerning historical contingency: might genocide not have been criminalized in the late 1940s if the UN had not been in existence at the time? Although there is no space to explore this here, it remains important to consider how the establishment of the UN in the aftermath of the Second World War provided a necessary international social space for state diplomats and legal experts to physically convene within, in order to discuss the question of genocide's criminalization.

Secondly, contrary to common assumptions, genocide's establishment as an international crime did not fundamentally hinge upon collective views about its inherent wrongfulness or collective moral outrage. This is not to suggest that genocide was not seen as an egregious act but rather, to emphasize how other factors, which had less to do with the shocking of moral sensibilities, were more critical. In this regard, the impetus to criminalize genocide had more to do with collective dissatisfaction with an already-existing international crime – crimes against humanity – and relatedly, reservations over the legitimacy of the Nuremberg Trials. Creating a new international crime of genocide that would extend to peacetime atrocities, that was delinked from the exceptional historical circumstances that brought about the Nuremberg Trial, and that could be applied uniformly to small and powerful alike was seen as an effective way to remedy the limitations that surrounded crimes against humanity. Importantly, this demonstrates how genocide's criminalization was driven more by the perceived need to depart from existing norms and arrangements that were viewed as being defective. Moreover, the fact that this was the position pushed by the diplomatic representatives of smaller states highlights how considerations of power and influence were of little relevance in genocide's case.

This was also the case during diplomatic negotiations over genocide's form, where the desire to exclude cultural groups found roughly equal support from diplomats representing smaller and more powerful states. In the case of cultural groups, the decisive consideration centred on the perceived need to maintain a fundamental distinction between international crimes and international human rights. What enabled this, moreover, were perceived views about the compatibility between the notion of cultural genocide and minority protection: since the protection of cultural groups could be accommodated within the framework of minority protection, there was no need to include it within genocide's definition. Importantly, this was perceived as being attractive as it would ensure the notion of an international crime would be reserved for higher-order transgressions that could not be adequately addressed by existing international norms or arrangements, such as international human rights. The exclusion of cultural groups was therefore driven by its perceived compatibility with the existing norm of minority protection. In contrast, no existing norm under international law at the time specifically afforded national, ethnical, racial, or religious groups with international legal protection from destruction – and indeed, it was this shortcoming that the criminalization of genocide was aimed at remedying.

If an analysis of genocide from the perspective of international criminalization is able to generate richer insights about its historical establishment as an international crime, then this emphasizes the importance of further research on international crimes and international criminalization. Before concluding, three possible areas of further research can be briefly outlined. Firstly, the historical process by which

the other existing international crimes – aggression, crimes against humanity, and war crimes – were criminalized merits greater attention. This would enable a systematic comparison of the similarities between all four existing instances of international criminalization, as well as encourage greater analytical reflection on the principal differences that distinguish what currently amounts to the only four instances of international criminalization in contemporary international society. Secondly, the analysis of why certain transnational crimes, such as human trafficking or piracy, never achieved universal recognition as international crimes can also be undertaken. This would be directed at understanding how and why these acts did not undergo the process of international criminalization. A focus on transnational crimes would, furthermore, present the opportunity to explore, in more theoretical terms, how the process of criminalization in the case of transnational crimes differs from that of international crimes. Finally, further research on international criminalization could also centre on analysing the future emergence of new international crimes. This would be specifically directed at exploring whether acts that are currently the subject of international condemnation – for instance, terrorism or cybercrime – may come to be criminalized in the future and relatedly, what would be required for the process of international criminalization to be fully completed in these cases.

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References

- Abbott, Kenneth W., Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter, and Duncan Snidal. 2000. "The Concept of Legalization." *International Organization* 54 (3): 401–19.
- Acharya, Amitav. 2004. "How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism." *International Organization* 58 (2): 239–75.
- Acharya, Amitav. 2009. *Whose Ideas Matter? Agency and Power in Asian Regionalism*. Ithaca and London: Cornell University Press.
- Akhavan, Payam. 2012. *Reducing Genocide to Law: Definition, Meaning, and the Ultimate Crime*. Cambridge: Cambridge University Press.
- Ambos, Kai. 2011. "Judicial Creativity at the Special Tribunal for Lebanon: Is There a Crime of Terrorism under International Law?" *Leiden Journal of International Law* 24 (3): 655–75.
- Andreas, Peter, and Ethan Nadelmann. 2006. *Policing the Globe: Criminalization and Crime Control in International Relations*. New York: Oxford University Press.
- Armstrong, David, Theo Farrell, and Hélène Lambert. 2012. *International Law and International Relations* (2nd edition). Cambridge: Cambridge University Press.
- Ashworth, Andrew, and Jeremy Horder. 2013. *Principles of Criminal Law* (7th edition). Oxford: Oxford University Press.
- Baker, Roozbeh (Rudy) B. 2010. "Customary International Law in the 21st Century: Old Challenges and New Debates." *European Journal of International Law* 21 (1): 173–204.
- Bantekas, Ilias. 2010. *International Criminal Law* (4th edition). Oxford and Portland: Hart Publishing.
- Bass, Gary. 2000. *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals*. Princeton: Princeton University Press.
- Bassiouni, M. Cherif. 2001. "Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice" *Virginia Journal of International Law* 42 (1): 81–162.

- Bassiouni, M. Cherif. 2008. "International Crimes: The Ratione Materiae of International Criminal Law." In *International Criminal Law (3rd edition), Volume I: Sources, Subjects and Contents*, edited by M. Cherif Bassiouni, 129–203. Leiden: Martinus Nijhoff.
- Birdsall, Andrea. 2007. "Creating a More 'Just' Order: The Ad Hoc International War Crimes Tribunal for the Former Yugoslavia." *Cooperation and Conflict* 42 (4): 397–418.
- Birdsall, Andrea. 2009. *The International Politics of Judicial Intervention: Creating a More Just Order*. London and New York: Routledge.
- Björkdahl, Annika. 2002. "Norms in International Relations: Some Conceptual and Methodological Reflections." *Cambridge Review of International Affairs* 15 (1): 9–23.
- Boister, Neil. 2003. "Transnational Criminal Law?" *European Journal of International Law* 14 (5): 953–76.
- Boister, Neil. 2012. *An Introduction to Transnational Criminal Law*. Oxford: Oxford University Press.
- Boister, Neil. 2015. "The Concept and Nature of Transnational Criminal Law." In *Routledge Handbook of Transnational Criminal Law*, edited by Neil Boister and Robert J. Currie, 11–26. London and New York: Routledge.
- Brunnée, Jutta, and Stephen J. Toope. 2013. *Legitimacy and Legality in International Law: An Interactional Account*. Cambridge: Cambridge University Press.
- Bull, Hedley. 1977. *The Anarchical Society: A Study of Order in World Politics*. New York: Columbia University Press.
- Byers, Michael. 1999. *Custom, Power and the Power of Rules: International Relations and Customary International Law*. Cambridge: Cambridge University Press.
- Cassese, Antonio. 2005. *International Law* (2nd edition). Oxford: Oxford University Press.
- Cassese, Antonio, and Paola Gaeta. 2013. *Cassese's International Criminal Law* (3rd edition). Oxford: Oxford University Press.
- Chehtman, Alejandro. 2020. "A Theory of International Crimes: Conceptual and Normative Issues." In *The Oxford Handbook of International Criminal Law*, edited by Kevin Jon Heller, Frédéric Mégret, Sarah MH Nouwen, Jens David Ohlin, and Darryl Robinson, 317–40. Oxford: Oxford University Press.
- Cryer, Robert. 2008. "The Doctrinal Foundations of International Criminalization." In *International Criminal Law (3rd edition), Volume I: Sources, Subjects and Contents*, edited by M. Cherif Bassiouni, 107–28. Leiden: Martinus Nijhoff.
- Cryer, Robert. 2018. "International Criminal Law." In *International Law* (5th edition), edited by Malcolm Evans, 743–73. Oxford: Oxford University Press.
- Decoer, Henri. 2018. *Confronting the Shadow State: An International Law Perspective on State Organized Crime*. Oxford: Oxford University Press.
- Deitelhoff, Nicole, and Lisbeth Zimmermann. 2020. "Things We Lost in the Fire: How Different Types of Contestation Affect the Robustness of International Norms." *International Studies Review* 22 (1): 51–76.
- Dempsey, Michelle Madden. 2018. "Processes of Criminalization in Domestic and International Law: Considering Sexual Violence." *Criminal Law and Philosophy* 12 (4): 641–56.
- Drumbl, Mark A. 2007. *Atrocity, Punishment and International Law*. Cambridge: Cambridge University Press.
- Drumbl, Mark A. 2008. "A Hard Look at the Soft Theory of International Criminal Law." In *The Theory and Practice of International Criminal Law: Essays in Honour of M. Cherif Bassiouni*, edited by Leila Nadya Sadat and Michael P. Scharf, 1–18. Leiden: Martinus Nijhoff.
- Dubber, Markus. 2010. "Criminal Law between Public and Private Law." In *The Boundaries of the Criminal Law*, edited by R. Antony Duff, Lindsay Farmer, S. E. Marshall, Massimo Renzo, and Victor Tadros, 194–213. Oxford: Oxford University Press.
- Duff, R. Antony, Lindsay Farmer, S. E. Marshall, Massimo Renzo, and Victor Tadros. 2010. "Introduction: The Boundaries of the Criminal Law." In *The Boundaries of the Criminal Law*, edited by R. Antony Duff, Lindsay Farmer, S. E. Marshall, Massimo Renzo, and Victor Tadros, 1–26. Oxford: Oxford University Press.
- Duff, R. Antony, Lindsay Farmer, S. E. Marshall, Massimo Renzo, and Victor Tadros. 2014. "Introduction: Towards a Theory of Criminalization?" In *Criminalization: The Political Morality of the Criminal Law*, edited by R. Antony Duff, Lindsay Farmer, S. E. Marshall, Massimo Renzo, and Victor Tadros, 1–53. Oxford: Oxford University Press.
- Finnemore, Martha. 1996. *National Interests and International Society*. Ithaca: Cornell University Press.

- Finnemore, Martha, and Kathryn Sikkink. 1998. "International Norm Dynamics and Politics Change." *International Organization* 52 (4): 887–917.
- Florini, Ann. 1996. "The Evolution of International Norms." *International Studies Quarterly* 40 (3): 363–89.
- Gaeta, Paola. 2009. "International Criminalization of Prohibited Conduct." In *The Oxford Companion to International Criminal Justice*, edited by Antonio Cassese, 63–74. Oxford: Oxford University Press.
- Gallagher, Adrian. 2012. "A System, Society, and Community Perspective on Genocide." *Genocide Studies and Prevention: An International Journal* 7 (2): 166–83.
- Gallagher, Adrian. 2013. *Genocide and its Threat to Contemporary International Order*. Basingstoke and New York: Palgrave Macmillan.
- Goertz, Gary, and Paul F. Diehl. 1992. "Toward a Theory of International Norms: Some Conceptual and Measurement Issues." *Journal of Conflict Resolution* 36 (4): 634–64.
- Goldsmith, Jack L., and Eric A. Posner. 2000. "Understanding the Resemblance between Modern and Traditional Customary International Law." *Virginia Journal of International Law*, 40 (2): 639–72.
- Goldstein, Judith, Miles Kahler, Robert O. Keohane, and Anne-Marie Slaughter. 2000. "Introduction: Legalization and World Politics." *International Organization* 54 (3): 385–99.
- Greenawalt, Alexander K.A. 2020. "What is an International Crime?" In *The Oxford Handbook of International Criminal Law*, edited by Kevin Jon Heller, Frédéric Mégret, Sarah M. H. Nouwen, Jens David Ohlin, and Darryl Robinson, 293–316. Oxford: Oxford University Press.
- Guzman, Andrew T. 2005. "Saving Customary International Law." *Michigan Journal of International Law*, 27 (1): 115–76.
- Heller, Kevin Jon. 2017. "What is an International Crime? (A Revisionist History)." *Harvard Journal of International Law* 58 (2): 353–420.
- Inal, Tuba. 2013. *Looting and Rape in Wartime: Law and Change in International Relations*. Philadelphia: University of Philadelphia Press.
- Jessberger, Florian. 2009. "The Definition and the Elements of the Crime of Genocide." In *The UN Genocide Convention – A Commentary*, edited by Paola Gaeta, 87–111. Oxford: Oxford University Press.
- Johnstone, Ian. 2007. "The Secretary-General as Norm Entrepreneur." In *Secretary or General? The UN Secretary-General in World Politics*, edited by Simon Chesterman, 123–38. Cambridge: Cambridge University Press.
- Keck, Margaret E., and Kathryn Sikkink. 1998. *Activist Beyond Borders: Advocacy Networks in International Politics*. Ithaca: Cornell University Press.
- Kelly, J. Patrick. 2000. "The Twilight of Customary International Law." *Virginia Journal of International Law* 40 (2): 449–543.
- Keohane, Robert O. 1984. *After Hegemony: Cooperation and Discord in the World Political Autonomy*. Princeton: Princeton University Press.
- Keohane, Robert O., and Joseph S. Nye. 1977. *Power and Interdependence*. New York: Longman.
- Kittichaisaree, Kriangsak. 2001. *International Criminal Law*. Oxford: Oxford University Press.
- Klotz, Audie. 1995. *Norms in International Relations: The Struggle against Apartheid*. Ithaca: Cornell University Press.
- Kowert, Paul, and Jeffrey W. Legro. 1996. "Norms, Identity and their Limits: A Theoretical Reprise." In *The Culture of National Security: Norms and Identity in World Politics*, edited by Peter Katzenstein, 451–97. New York: Columbia University Press.
- Krasner, Stephen D., ed. 1983. *International Regimes*. Ithaca: Cornell University Press.
- Krook, Mona Lena, and Jacqui True. 2012. "Rethinking the Life Cycles of International Norms: The United Nations and the Global Promotion of Gender Equality." *European Journal of International Relations* 18 (1): 103–27.
- Kuper, Leo. 1981. *Genocide: Its Political Use in the Twentieth Century*. New Haven and London: Yale University Press.
- Lacey, Nicola. 2004. "Criminalization as Regulation: The Role of Criminal Law." In *Regulating Law*, edited by Christine Parker, Colin Scott, Nicola Lacey, and John Braithwaite, 144–67. Oxford: Oxford University Press.
- Lacey, Nicola. 1995. "Contingency and Criminalisation." In *The Frontiers of Criminality*, edited by Ian Loveland, 1–27. London: Sweet and Maxwell.
- Lacey, Nicola. 2007. "Legal Constructions of Crime." In *The Oxford Handbook of Criminology* (4th edition), edited by Mike Maguire, Rod Morgan and Robert Reiner, 179–200. Oxford: Oxford University Press.

- Lacey, Nicola. 2009. "Historicising Criminalisation: Conceptual and Empirical Issues." *The Modern Law Review* 72 (6): 936–60.
- Lacey, Nicola, and Lucia Zedner. 2012. "Legal Constructions of Crime." In *The Oxford Handbook of Criminology* (5th edition), edited by Mike Maguire, Rod Morgan and Robert Reiner, 159–81. Oxford: Oxford University Press.
- LeBlanc, Lawrence J. 1991. *The United States and the Genocide Convention*. Durham and London: Duke University Press.
- LeBlanc, Lawrence J. 2012. "The United States and the Genocide Convention: The Sovereignty Package in Perspective." In *The Genocide Convention: The Legacy of 60 Years*, edited by H.G. van der Wilt, J. Vervliet, G.K. Sluiter and J.Th.M. Houwink ten Cate, 173–86. Leiden: Martinus Nijhoff.
- Lemkin, Raphael. 1944. *Axis Rule in Occupied Europe: Law of Occupation, Analysis of Government, Proposals for Redress*. Washington: Carnegie Endowment for International Peace.
- Lemkin, Raphael. 1947. "Genocide as a Crime under International Law." *American Journal of International Law* 41 (1): 145–51.
- Leonard, Eric K. 2005. *The Onset of Global Governance: International Relations Theory and the International Criminal Court*. Aldershot: Ashgate.
- Lepard, Brian D. 2010. *Customary International Law: A New Theory with Practical Applications*. Cambridge: Cambridge University Press.
- Lepard, Brian D. 2017. "Introduction: Why Does Customary International Law Need Reexamining?" In *Reexamining Customary Law*, edited by Brian D. Lepard, 1–44. Cambridge: Cambridge University Press.
- Lewis, Mark. 2014. *The Birth of the New Justice: The Internationalization of Crime and Punishment, 1919–1950*. Oxford: Oxford University Press.
- Lippman, Matthew. 1985. "The Drafting of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide." *Boston University International Law Journal* 3 (1): 1–65.
- Lippman, Matthew. 2002. "A Road Map to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide." *Journal of Genocide Research* 4 (2): 177–95.
- Lippman, Matthew. 2012. "The Drafting and the Development of the 1948 Convention on Genocide and the Politics of International Law." In *The Genocide Convention: The Legacy of 60 Years*, edited by H.G. van der Wilt, J. Vervliet, G.K. Sluiter and J.Th.M. Houwink ten Cate, 15–26. Leiden: Martinus Nijhoff.
- Mako, Shamiran. 2012. "Cultural Genocide and Key International Instruments: Framing the Indigenous Experience." *International Journal on Minority and Group Rights* 19: 175–94.
- Martin, Lisa L., and Beth A. Simmons, eds. 2001. *International Institutions: An International Organization Reader*. Boston: MIT Press.
- Marshall, Sandra, and R. Antony Duff. 1998. "Criminalization and Sharing Wrongs." *Canadian Journal of Law & Jurisprudence* 11 (1): 7–22.
- Mazower, Mark. 2009. *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations*. Princeton and Oxford: Princeton University Press.
- McMillan, Nesam. 2020. *Imagining the International: Crime, Justice and the Promise of Community*. Stanford: Stanford University Press.
- Moses, A. Dirk. 2010. "Raphael Lemkin, Culture and the Concept of Genocide." In *The Oxford Handbook of Genocide Studies*, edited by Donald Bloxham and A. Dirk Moses, 19–41. Oxford: Oxford University Press.
- Moses, A. Dirk. 2013. "Genocide." *Australian Humanities Review* 55: 23–44.
- Moyn, Samuel. 2010. *The Last Utopia: Human Rights in History*. Cambridge and London: Harvard University Press.
- Moyn, Samuel. 2014. *Human Rights and the Uses of History*. London and New York: Verso.
- Nadelmann, Ethan A. 1990. "Global Prohibition Regimes: The Evolution of Norms in International Society." *International Organization* 44 (4): 479–526.
- Nersessian, David L. 2010. *Genocide and Political Groups*. Oxford: Oxford University Press.
- Nouwen, Sarah. 2016. "International Criminal Law: Theory All Over the Place." In *The Oxford Handbook of the Theory of International Law*, edited by Anne Orford and Florian Hoffmann, 738–61. Oxford: Oxford University Press.

- Nuotio, Kimmo. 2010. "Theories of Criminalization and the Limits of Criminal Law: A Legal Cultural Approach." In *The Boundaries of the Criminal Law*, edited by R. A. R. Antony Duff, Lindsay Farmer, S.E. Marshall, Massimo Renzo, and Victor Tadros, 238–62. Oxford: Oxford University Press.
- Ocheje, Paul D. 2002. "Refocusing International Law on the Quest for Accountability in Africa: The Case against the 'Other' Impunity." *Leiden Journal of International Law* 15 (4): 749–79.
- O'Keefe, Roger. 2015. *International Criminal Law*. Oxford: Oxford University Press.
- Price, Richard. 1997. *The Chemical Weapons Taboo*. Ithaca and London: Cornell University Press.
- Price, Richard. 1998. "Reversing the Gun Sights: Transnational Civil Society Targets Land Mines." *International Organization* 52 (3): 613–44.
- Price, Richard. 2007. *The Chemical Weapons Taboo*. Ithaca: Cornell University Press.
- Ralph, Jason. 2005. "International Society, the International Criminal Court and American Foreign Policy." *Review of International Studies* 31 (1): 27–44.
- Ralph, Jason. 2007. *Defending the Society of States: Why America Opposed the International Criminal Court and its Vision of World Society*. Oxford: Oxford University Press.
- Ralph, Jason. 2009. "Anarchy is What Criminal Lawyers and other Actors Make of it: International Criminal Justice as an Institution of International and World Society." In *Governance, Order, and the International Criminal Court: Between Realpolitik and a Cosmopolitan Court*, edited by Steven C. Roach, 133–53. Oxford: Oxford University Press.
- Randall, Kenneth C. 1988. "Universal Jurisdiction under International Law." *Texas Law Review* 66 (4): 785–841.
- Renzo, Massimo. 2013. "Responsibility and Answerability in the Criminal Law." In *The Constitution of the Criminal Law*, edited by R. Antony Duff, Lindsay Farmer, S. E. Marshall, Massimo Renzo, and Victor Tadros, 209–36. Oxford: Oxford University Press.
- Reus-Smit, Christian. 1999. *The Moral Purpose of the State: Culture, Social Identity and Institutional Rationality in International Relations*. Princeton: Princeton University Press.
- Reus-Smit, Christian. 2002. "Imagining Society: Constructivism and the English School." *British Journal of Politics and International Relations* 4 (3): 487–509.
- Reydams, Luc. 2003. *Universal Jurisdiction: International and Municipal Legal Perspectives*. Oxford: Oxford University Press.
- Roach, Steven C. 2006. *Politicizing the International Criminal Court: The Convergence of Politics, Ethics, and Law*. Lanham: Rowman and Littlefield.
- Salter, Michael, and Maggi Eastwood. 2013. "Establishing the Foundations for the International Criminalisation of Acts of Genocide." In *Elements of Genocide*, edited by Paul Behrens and Ralph Henham, 20–50. Abingdon and New York: Routledge.
- Sandholtz, Wayne, and Kendall W. Stiles. 2009. *International Norms and Cycles of Change*. Oxford: Oxford University Press.
- Sands, Philippe. 2016. *East West Street: On the Origins of Genocide and Crimes against Humanity*. London: Weidenfeld & Nicolson.
- Schabas, William A. 2009a. *Genocide in International Law: The Crime of Crimes* (2nd edition). Cambridge: Cambridge University Press.
- Schabas, William A. 2009b. "International Crimes." In *Routledge Handbook of International Law*, edited by David Armstrong, 268–80. Abingdon and New York: Routledge.
- Schabas, William A. 2010. "The Law and Genocide." In *The Oxford Handbook of Genocide Studies*, edited by Donald Bloxham and A. Dirk Moses, 123–41. Oxford: Oxford University Press.
- Shaw, Malcolm N. 2008. *International Law* (6th edition). Cambridge: Cambridge University Press.
- Shaw, Malcolm N. 2017. *International Law* (8th edition). Cambridge: Cambridge University Press.
- Sikkink, Kathryn. 2011. *The Justice Cascade: How Human Rights Prosecutions are Changing World Politics*. New York: WW Norton & Company.
- Simester, Andrew, and von Hirsh, Andreas. 2011. *Crimes, Harms and Wrongs: On the Principles of Criminalisation*. Oxford and Portland: Hart Publishing.
- Smith, Karen E. 2010. *Genocide and the Europeans*. Cambridge: Cambridge University Press.
- Stahn, Carsten. 2019. *A Critical Introduction to International Criminal Law*. Cambridge: Cambridge University Press.
- Steiker, Carol S. 2010. "Criminalization and the Criminal Process: Prudential Mercy as a Limit on Penal Sanctions in an Era of Mass Incarceration." In *The Boundaries of the Criminal Law*, edited by R.

- Antony Duff, Lindsay Farmer, S. E. Marshall, Massimo Renzo, and Victor Tadros, 27–58. Oxford: Oxford University Press.
- Stiller, Alexa. 2012. “Semantics of Extermination: The Use of the New Term Genocide in the Nuremberg Trials and the Genesis of a Master Narrative.” In *Reassessing the Nuremberg Military Tribunals: Transitional Justice, Trial Narratives, and Historiography*, edited by Kim C. Priemel and Alexa Stiller, 104–33. New York and Oxford: Berghahn Books.
- Tadros, Victor. 2010. “Criminalization and Regulation.” In *The Boundaries of the Criminal Law*, edited by R. Antony Duff, Lindsay Farmer, S. E. Marshall, Massimo Renzo, and Victor Tadros, 163–90. Oxford: Oxford University Press.
- Tallgren, Immi. 2002. “The Sense and Sensibility of International Criminal Law.” *European Journal of International Law* 13 (3): 561–95.
- Tannenwald, Nina. 2007. *The Nuclear Taboo: The United States and the Non-Use of Nuclear Weapons since 1945*. Cambridge: Cambridge University Press.
- Teitel, Ruti. 2011. *Humanity’s Law*. Oxford: Oxford University Press.
- Tesón, Fernando R. 2017. “Fake Custom.” In *Reexamining Customary Law*, edited by Brian D. Lepard, 86–110. Cambridge: Cambridge University Press.
- Thirlway, Hugh. 2010. “The Sources of International Law.” In *International Law*, edited by Malcolm D. Evans, 95–121. Oxford: Oxford University Press.
- Vincent, Raymond John. 1974. *Nonintervention and International Order*. Princeton: Princeton University Press.
- Wiener, Antje. 2014. *A Theory of Contestation*. Heidelberg: Springer.
- Wiener, Antje. 2018. *Contestation and Constitution of Norms in Global International Relations*. Cambridge: Cambridge University Press.
- Werle, Gerhard, and Florian Jessberger. 2014. *Principles of International Criminal Law* (3rd edition). Oxford: Oxford University Press.
- Wheeler, Nicholas J. 2000. *Saving Strangers: Humanitarian Intervention in International Society*. Oxford: Oxford University Press.
- Wunderlich, Carmen. 2020. *Rogue States as Norm Entrepreneurs: Black Sheep or Sheep in Wolves’ Clothing?* Cham: Springer.
- Yarnold, Barbara. 1994. “Doctrinal Basis for the International Criminalization Process.” *Temple International and Comparative Law Journal* 8 (1): 85–115.
- Zedner, Lucia. 2011. “Putting Crime Back on the Criminological Agenda.” In *What Is Criminology?*, edited by Mary Bosworth and Carolyn Hoyle, 271–85. Oxford: Oxford University Press.
- Zimmermann, Lisbeth. 2017a. *Global Norms with a Local Face: Rule-of-Law Promotion and Norm Translation*. Cambridge: Cambridge University Press.
- Zimmermann, Lisbeth. 2017b. “More for Less: The Interactive Translation of Global Norms in Postconflict Guatemala.” *International Studies Quarterly* 61 (4): 774–85.