2

The relevance and application of empirical research methods to the study of international crimes emmanouela mylonaki

Introduction

The international criminalization of genocide, crimes against humanity and war crimes has been followed by a vast amount of published work on the legal instruments and institutions dealing with such crimes and the procedural aspects of their prosecution at national and international level. Most of the relevant work relies on secondary data analysis rather than the collection of primary data and the use of criminological research methods. In fact, the discipline of criminology has traditionally excluded violations of international criminal law from its scope,[[1]](#footnote-1) restricting itself to common crime and violence such as homicide, gang crime, domestic violence and other types of ordinary (national) criminal activity.2 It is only recently that criminologists have gradually started paying attention to international crimes and calling for the development of a new sub-branch of criminological research, a so-called international criminology, with the aim of examining crime and justice beyond national boundaries.[[2]](#footnote-2) The examination of international crimes through criminological lenses has resulted in broadening the horizons of the research methods employed in order to fully appreciate the nature of international crimes. This is evident in the various studies conducted to address – on a quantitative level – the prevalence of international crimes, the etiology of

50

offending at a micro and macro level,[[3]](#footnote-3) the impact of the offence on the victim and the legal reaction to international criminality.5

This chapter focuses on the application of criminological empirical research methods to the study of international crimes by providing insights into the different ways in which data can be collected for research thereto. It is not the aim of the chapter to produce a full account of the various social science research methods but only to identify particular problems potentially encountered by anyone conducting research on international crimes, especially as this relates to data collection for qualitative or quantitative analysis. The chapter is divided into two principal sections. The first highlights the relevance of the application of criminological research methods to the study of international crimes and gross violations of human rights and reinforces the arguments for the inclusion of the notion of international crimes within the realm of empirical research. The second demonstrates the practical application of quantitative and qualitative research methods in the study of international crimes and indicates the areas where empirical research is relevant. It should be stressed from the outset that the chapter is concerned with criminological empirical research methods – involving the systematic use of qualitative and quantitative methods – rather than criminological research methodology which refers to a broader theoretical framework.[[4]](#footnote-4)

The relevance of criminological research methods to the study of international crimes

It is true that emanations of violence such as genocide and crimes against humanity establish a variety of interesting prisms; political/international relations,7 legal and, with the plethora of current scientific and social methods, many others. While political science and legal research are mostly concerned with analysing the various institutions and procedures set up to deal with international crimes, such as the creation of international criminal tribunals, the notion of the individual as perpetrator or as victim, the incidence of mass criminality and the number of offences committed are better addressed from a social science methodological perspective. It is only recently that the value of social science research methods has been appreciated for its ability to provide clearer insights into the realm of international crimes. Perhaps the delay is due to the arguments that have traditionally been put forward by criminologists against the inclusion of international crimes within the realm of criminological studies.

The conceptual differences between traditional criminality and international criminality rest at the heart of the arguments against the application of empirical research methods to the study of international crimes. The fact that mass offences against civilians perpetrated in war time are committed on most occasions under governmental command or, at least, some involvement by the state renders them not only an act of the individual perpetrator(s) – who becomes a prescribed deviant8 – but also an act encompassed within the sphere of extraordinary international criminality. This new dimension of criminal activity conflicts with the traditional criminological view whereby the state as legislator prevents and punishes crime. Likewise, it has been argued that the discipline of criminology, which is concerned with the notion of ‘common crime’ as this is clearly defined in various jurisdictions, cannot examine concepts which are either non-defined or contain political elements which make definitions vague.9

These arguments notwithstanding, the concern of the international community with serious international crimes has led to the adoption of several multilateral treaties criminalizing said conduct and providing relevant definitions. By way of illustration, the Regulations attached to Hague Convention IV of 1907 specify which conduct gives rise to war criminality and, in equal manner, Article 2 of the 1948 Genocide Convention defines this offence as consisting of:

any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; [and] forcibly transferring children of the group to another group.

Despite the shortcomings of this articulation of genocide, the mere fact that the particular conduct is prescribed as a crime under the terms of a 8 Smeulers and Haveman, above note 3, at 233–65. 9 Yacoubin, above note 1, at 8. binding treaty supports the argument for its inclusion in the criminological research agenda.[[5]](#footnote-5)

Similarly, the definition of crimes against humanity is codified, among others, in Article 7 of the Rome Statute of the International Criminal Court (ICC). The notion encompasses crimes such as murder, extermination, rape, persecution and all other inhumane acts of a similar character (wilfully causing great suffering, or serious injury to body or to mental or physical health), committed ‘as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack’. The clear reference to murder, rape and violence – even of a large scale – which constitute traditional forms of criminality reinforces the aforementioned argument.

The traditional tools of criminological research have been regarded as inappropriate for the study of international crimes due to the methodological challenges they typically pose.[[6]](#footnote-6) There are several major research tools available to criminologists, namely field research, survey research and experiments.12 The physical dangers inherent in field research and the complex process of survey research have been suggested as the main arguments against the application of social science research in the case of international crimes. As the subsequent sections demonstrate these arguments are not supported by current research practice. Besides the use of experiments, which are not readily relevant to the study of international crimes, the application of qualitative and quantitative research methods – despite the difficulties involved – is not only possible but certainly worthwhile. No doubt, the recognition as to the relevance of criminology to the study of international crimes has encouraged legal scholars and social scientists gradually to employ social science research methodologies to the study of international crimes.[[7]](#footnote-7)

Of course, research on international crimes with particular reference to the measurement of offences has been conducted by epidemiologists using statistical methods to measure the number of casualties. However, as Hagan suggests, the majority of available research is undertaken by public health workers rather than criminologists and evidence that a war crime has been committed is simply a by-product rather than the focus of relevant studies.[[8]](#footnote-8) There might very well be ‘a tendency [among] healthoriented researchers to underreport violent deaths in what these researchers designate as complex humanitarian emergencies’. Therefore, there is a need for legal and criminology scholars to better adapt social science research methods to international crimes in order to synthesize and entrench four particular thematic areas.[[9]](#footnote-9) The first concerns prevalence of crime. Finding out the number of offences committed in a specific region and within a particular time frame is important for estimating the number of victims but also the patterns of offending. Given that not all gross violations of human rights amount to international crimes it is important to investigate a particular case in order to reach the conclusion that genocide has actually taken place. Measuring patterns of violence and the scale of offending leads to an identification of patterns of offending which can satisfy the elements of several international crimes, such as genocide and crimes against humanity. By way of illustration, an investigation in the patterns of sexual violence during conflict can determine the extent to which rape and other forms of sexual violence can be termed widespread or systematic or can be regarded as a deliberate and systematic plan to kill and destroy a group in whole or in part.

In the Akayesu case, the International Criminal Tribunal for Rwanda (ICTR) took the unprecedented step of holding that systematic rape committed with the intent to destroy a particular group is encompassed within the statutory definition of ‘genocide’.[[10]](#footnote-10) Measuring the scale of offending and the nature of the offence leads to an identification of patterns of offending which can be useful for linking offences to perpetrators and thus making effective prosecution possible.17 In fact, anonymous and confidential evidence can be employed in order to establish the scale and pattern of mass rape. Despite the legal objection against the use of survey evidence in international criminal trials due to its hearsay dimension, there is no generally accepted prohibition concerning the use of hearsay evidence. Likewise, hearsay evidence can produce reliable and valid sources of information, which is excluded only where it is assessed as unreliable.

Besides its utility in studying the incidence of international crimes, social research methods can advance our knowledge as to the etiology of offending at a micro level by allowing us to examine the motives of the offender and his or her profile. This can be accomplished by conducting interviews with perpetrators or by using documents such as court files which provide insights on the motives of the perpetrators. Legal reactions or responses to international crimes constitute further areas of study allowing researchers to focus on procedural justice legal processes, legal outcome and the effectiveness of legal interventions.18

It should finally be noted that in the aftermath of an armed conflict the number of individuals involved and the political outcomes usually give rise to demands for an accurate historical record. This process has been found to promote a significant degree of reconciliation.19 One of the key issues is the search for truth, i.e. to bring the facts about past crimes to the surface, or at least as many facts as possible. Reconciliation and truth is also crucial for society as a whole, since it shapes further political and social debates and transformations. Orentlicher argues in favour of ‘the right to truth’ for victims in a manner that gives rise to legal implications.20 Several UN bodies, among others, have concluded that the right to truth about gross or serious human rights violations is an inalienable and autonomous right that is linked to the duty and obligation of the state to protect and guarantee human rights, to conduct effective investigations and to guarantee effective remedies and reparations.21

Researching international crimes

Although the interest of the researcher and the question under investigation are the factors guiding the selection of one’s research method there are two main approaches for researching international crimes and gross violations of human rights from a qualitative and quantitative

1. Ibid.
2. S. Parmentier, ‘Global Justice in the Aftermath of Mass Violence: The Role of the International Criminal Court in Dealing with Political Crimes’, (2003) 41 International Annals of Criminology 203.

20

Report of the Independent Expert to Update the Set of Principles to Combat Impunity (Diane Orentlicher), UN Doc. E/CN.4/2005/102 (18 February 2005). 21

Human Rights Council Res A/HRC/RES/12/12 (12 October 2009) on the right to the truth; Report of the UNHCHR on the Right to Truth, UN Doc. A/HRC/15/33 (28 July 2010); Report of the UNHCHR, Study on the Right to Truth, UN Doc. E/CN.4/2006/91 (8 February 2006).

methodological perspective. Quantitative research aims at establishing the number of offences committed in a certain place and at a specific time and provides numerical data on the distribution of crime through the collection of a representative sample. The sample collection is produced by the use of victimization surveys and the use of data already obtained. In the case of victimization surveys the researcher uses samples in order to draw conclusions in respect of the general population with a view to assessing the incidence of conflict and the number of offences committed. This is commonly used when the researcher is interested in describing particular occurrences of international crimes.

On the other hand, non-statistical methods involve the collection of qualitative data through interviews with persons involved in international crimes whether as victims or perpetrators. The objective of data collection is to determine in the form of a narrative what really happened, who was involved and what were the consequences of one’s involvement. The collection of qualitative data poses particular difficulties, particularly in terms of accessing people in order to conduct the interviews, in addition to the emotive nature of international crimes.[[11]](#footnote-11) Interviews are (typically) structured conversations. Observation, involving an actual examination and breakdown of actions and interactions among people, is an approach to data collection that seems rather straightforward but which is actually a very challenging method for gathering systematic information about individual conduct, social interaction, places and things.[[12]](#footnote-12) Let us now proceed to examine particular research methods that have been used in order to describe and document international human rights violations.

Measuring international crime

As already mentioned, there are many reasons why knowing the precise number of victims is important. From a prosecutorial perspective it determines the classification of the conduct. Although none of the relevant genocide or crime against humanity provisions in the statutes of international tribunals specifies the number or proportion of victims required for a genocide charge, it is generally assumed that the number needs to be significant.

Perhaps more relevant to the study of international crimes in terms of understanding its nature and prevalence is the use of quantitative research methods for assessing victimization. Studying the prevalence of international crimes requires detailed research on the mortality rates, which comprises both direct and indirect mortality, that is, deaths attributable to conditions generated by the conflict, such as breakdown of health services.24 The traditional tools for data collection on crime incidence(s) include official sources, census data, victim surveys or use of secondary data.25 The use of official sources is a common way of data collection in order to measure crime at a national level. This is a method by which data are collected from official bodies such as the police which provide statistical information on crime occurrence. However, not all crimes are recorded by the police. This is known as the dark figure of crime, a term adopted by criminologists to describe the amount of unreported crime.26 The main problem with the dark figure is that it challenges the validity of official statistics. The challenges for recording international criminality are further compounded by the lack of a dedicated reporting body (this role is typically played by the police and dedicated statistical organizations in domestic criminal justice systems) as well as by manipulation through official state reports (typically the territorial state) of relevant events and numbers.[[13]](#footnote-13) In an attempt to escape prosecution for international criminal activity the state’s authorities may play a major role in hiding evidence of killings, rape and other acts of a criminal character.28 This notwithstanding, several commentators have argued that some states are willing to paint an accurate picture,[[14]](#footnote-14) but it is doubtful that this paradigm applies to countries in transition from conflict, particularly where the incumbent government was a party to the conflict. One further way by which the researcher might collect data on the number of persons killed or disappeared is by reference to census data.30 A census is often construed as being opposite to a sample as everyone is surveyed rather than a fraction.31 24 A. Smeulers (ed.), Collective Violence and International Criminal Justice: An Interdisciplinary Approach (Intersentia, 2010) at 283.

25 26

Ibid. Ibid.

The problem is that many countries where gross violations of human rights are taking place do not possess proper census information. However, this is not overly crucial. For example, in a study conducted by Verwimp in 2004 on death and survival during the 1994 genocide in Rwanda,[[15]](#footnote-15) the target group’s situation was compared with data collected in a pre-genocide survey in Rwanda’s Kibuye province. In this manner, the researcher was able to draw a fairly accurate account of the mortality rates in that particular province. Verwimp used a database produced from a house-to-house survey of victims by the organization of genocide survivors, Ibuka. From a total of 59,050 victims of the genocide, data were collected on age, sex, occupation, commune of residence before the genocide, as well as place and date of death.[[16]](#footnote-16)

Likewise, someone trying to estimate the number of people who lost their life as a result of a particular conflict can:

1. start from the size of the population before the conflict;
2. estimate a counterfactual population size after the conflict has ended on the basis of the initial population and a population growth rate; and
3. finally, subtract from that the actual post-conflict population size in order to arrive at an estimate of overall mortality.34

As Bijleveld notes, the problem arises when we lack reliable numbers for the starting population and the final population size, suggesting that the researcher will have to resort to assumptions. According to Bijleveld, one way the researcher might be able to deal with the problem is to avoid fixed point estimates and instead resort to intervals.35 The suggestion – somewhat arbitrarily conceived, according to this author – is that one may use the population data of a neighbouring country in order to estimate the preconflict and post-conflict population of the target nation and hence arrive at a probable mortality rate on account of the war. The final tally will also take into consideration the neighbouring country’s population growth, which will naturally decline in the target state. This method is subject to several limitations, not least the absence of adequate censuses in developing nations, wherein most conflicts take place, as well as the disparity in financial, wellbeing and other indicators even across neighbouring nations. Such a methodology would also not sit well with international criminal tribunals, which would avoid using its results for fear of being labelled illegitimate.

An additional method to estimate physical harm (and implicitly mortality) is through the use of victim surveys which ask people whether they have been the victim of a crime. This method has various advantages. Victimization surveys can obtain information on crimes which have not been reported to the police (or monitored by intergovernmental bodies in the case of international crimes) or which have not been recorded by the authorities. Many studies have examined mortality rates using victim surveys. Victim surveys typically encompass questions on the respondents’ personal victimization as well as that of family members.[[17]](#footnote-17) In a survey with a nationwide character, Deportere reported the findings of a mortality survey in West Darfur, Sudan, for the period between 2003 and 2004, demonstrating that the mortality rates were much higher than the emergency benchmark.[[18]](#footnote-18) The researcher gathered data from four internally displaced persons (IDP) camps in Darfur, namely Zalingei, Murnei, Niertiti and El Geneina by using a two-stage cluster sampling method to identify households within the camp. He then interviewed the head of the household in order to gather information on:

1. deaths that had occurred during the recall period;
2. the age, time of year (month), location, cause of death;
3. month of arrival at the camp;
4. reasons for leaving the village; and
5. the age and sex of the household members.38

By using this sampling strategy the researcher then interviewed the following number of subjects from each camp: 460 households at Zalingei (representing 2,386 people); 912 households in Murnei (representing 4,754 people); 903 households in Niertiti (representing 5,188 people); and 900 households in El Geneina (representing 5,191 people). Once data were collected the researcher carried out two types of analysis:

1. mortality rate: the number of deaths per day, per 10,000 people; and
2. risk of violent death of adult men and women relative to children under fifteen years old.

Surveys such as the above have important and well-described limitations. When mortality rates are high entire households may disappear (survival bias) leading to underestimates. Likewise, survivor bias is a limitation of victim surveys as entire households might have disappeared. In order to overcome this problem the researcher needs to employ a cluster sampling design.[[19]](#footnote-19) Research has shown that it is important to include a large number of clusters.40

Of course, collecting the numbers of casualties might not in itself seem an interesting task for a socio-legal researcher. However, knowing the number of deaths can lead to the conceptualization of a particular case of international criminality by identifying patterns of offending. Likewise, survey research can contribute to the contextualization of international crimes. The research conducted by Hagan and Rymond-Richmond in 2009 is an example of the use of survey data demonstrating how collective action may be incited on racial grounds, confirming that the events in Darfur demonstrate a pattern of genocide, assuming that the victims are found to constitute a distinct racial group, or at least are viewed as such by the perpetrators.[[20]](#footnote-20) In fact, Hagan and Rymond-Richmond’s analysis of the data allowed them to argue that the timing, location and circumstances surrounding attacks on hundreds of thousands of Darfuri villagers since 2003, as well as the specific nature and scale of those attacks, involving killings, rape, other forms of sexual violence, racial insults and confiscation or contamination of property and natural resources, amounted to an intentional state-sponsored genocide.42 For Hagan and Rymond-Richmond, the evidence of collective racial intent is the missing piece for defining the atrocities of Darfur as genocide: the individual and collective (including government) racial intent constitutes genocidal mens rea on the part of the Sudanese government and Janjaweed militia.

Such research can provide the basis for ascertaining traces or fully-fledged evidence of genocide as it occurs, clearing the way for prosecution in the interest of international justice. The main data source was the atrocities documentation survey commission in 2004 by the US Department of State, which interviewed randomly chosen Darfuri refugees in Chad. From interviews with 1,136 refugees – a statistically valid sample of the 2.2 million Darfuris affected by the violence – interviewers coded up to twenty crime incidents per household in sufficient detail to support potential courtroom claims. The atrocities documentation survey (ADS) refugee interviews showed that: 81 per cent of respondents reported that their village was destroyed; 80 per cent that their livestock was stolen; 67 per cent had witnessed or experienced aerial bombing, 61 per cent reported the killing of a family member and 33 per cent reported hearing racial epithets during attacks. Hagan performed a statistical analysis on the ADS interviews. By using research tools standard in sociology and criminology (such as survey research, field research) he extracted and quantified data from the interviews allowing him to identify patterns of violence. By performing hierarchical linear modelling on these statistics the researcher was able to document the nature, timing and circumstances of the attacks and most importantly to determine the intent of the attackers. The statistical analysis revealed that racial epithets were more likely to be heard when government militia leaders were present at the attacks. The identification of intent is central to determining the occurrence of genocide and in the eventual prosecution of those responsible.

The estimation of mortality rates was equally key in the aftermath of the Kosovo conflict. Ball and Asher employed a method known as multiple systems analysis in order to ascertain the number who had died between March and June 1999, at the height of oppression.[[21]](#footnote-21) Their work was in fact part of an effort to determine whether the regime of Slobodan Milosevic had orchestrated the alleged forced migration and killings of ethnic Albanians during the crucial time. The idea was that they would be called in as expert witnesses in the prosecution’s case against the former Yugoslav leader. Their study consisted of a statistical survey measuring patterns of death and migration in relation to NATO airstrikes and the military activities of the Kosovo Liberation Army. This was assessed against similar data from the ethnic Albanian community. The researchers employed multiple system estimation to decipher their data. Much of this was readily available from a plethora of sources, namely:

1. an ABA survey with 1,674 interviews with ethnic Albanian refugees;[[22]](#footnote-22)
2. exhumations carried out on behalf of the International Criminal Tribunal for the former Yugoslavia (ICTY) by multinational forces using the latest forensic technology;
3. surveys by non-governmental organizations (NGOs), again through narrative-based questionnaires whose purpose clearly is not to elicit the kind of information that would be useful to the prosecutorial authorities. A Human Rights Watch survey covered 337 interviews and a total of 1,717 incidents; and
4. surveys by intergovernmental organizations.[[23]](#footnote-23)

Studying perpetrators

Studies on perpetrators attempt to explain why certain people offend, what are their individual characteristics, all with a view to understanding why ordinary people commit gross violations of human rights. Studying the etiology of international crimes can reveal motives and background characteristics of the perpetrators and it is an area where both qualitative and quantitative research may be relevant. In social science research this can be done by conducting offender interviews, or collecting information from court files. For example, Verwimp’s research regarding the profile of perpetrators in Rwanda was a quantitative study of the economic profile of perpetrators based on administrative records and using multivariate analysis techniques.[[24]](#footnote-24)

Qualitative studies are also relevant in researching perpetrators and, despite the difficulties involved in conducting ethnographic research on international crimes, it is a method that has proven to produce valuable results. Ethnographic research means that the researcher ‘gets close’ to people’s everyday experiences ‘through exposure to or involvement in the day-to-day or routine activities of participants in the research setting’.[[25]](#footnote-25)A study conducted by Peters used semi-structured interviews in order to examine child soldiers in Sierra Leone. The researcher lived with his subjects and engaged in activities such as soccer and likewise used a nonquantitative ethnographic research. He conducted interviews in more quiet periods and in areas where the conflict was ongoing, as well as after it had ended.48 This approach provided more details and rich data and as Peters pointed out qualitative data should preferably be gauged against quantitative representative findings if these are available.49 Peters further noted several pitfalls associated with this type of fieldwork, questioning whether the researcher can be certain that the subjects are telling the truth. Quantitative gauging may safeguard against such risks, with a possible option being the technique of triangulation, whereby the sincerity of an informant, even if ultimately prosecuted, is guaranteed by offering him or her complete anonymity using repeat interviewing and covering topics from different angles.50

Qualitative research methods offer the advantage of paying closer attention to dynamic social contexts through the medium of interviews. One challenge is that the findings from qualitative work tend to be less generalizable because they are context specific. In addition, qualitative work may be viewed as untrustworthy because it reflects the normative predispositions of the observer or of the people interviewed by the researcher.51 The difficulties in collecting empirical data in terms of accessing people in order to conduct interviews,52 and the emotive nature of international crimes, have been suggested as the main obstacles in conducting primary research and ultimately relying on qualitative data. Ideological constraints on international crimes research relate to preconceptions rooted in the demonization of international crimes, whereby those committing mass atrocities may be viewed as not being worthy to be heard, under the assumption that they will be disposed to lie and so the argument goes that it is preferable to hear what the government and its representatives, such as the police, have to say. This position is no doubt questioned in that interviews give a voice to real actors, allowing them to speak freely from their own experiences and convey their conceptions in their own words.53 The perpetrators of international crimes may differ in their motives and the roles they play in a particular case. Qualitative research methods may assist in creating a typology of perpetrators, which is a pre-requisite to administering justice fairly and imposing fair sentences that match the blameworthiness of the individual.54 There are 49

K. Peters, Footprints to Reintegration: Armed Conflict, Youth and the Rural Crisis in Sierra Leone (Wageningen University Press, 2006). 50 Ibid.

51 G. Shaffer and T. Ginsburg, ‘The Empirical Turn in International Legal Scholarship’, (2012) 106 American Journal of International Law 3. 52

Kleinman and Copp, above note 22.

53

S. Kvale and S. Brinkmann, Interviews: Learning the Craft of Qualitative Research Interviewing (Sage, 2009).

54

Smeulers and Haveman, above note 3, at 233.

several high profile examples whereby perpetrators such as heads of state, leaders and other notable figures, admitted their guilt and repented their crimes, such as the leader of the Bosnian Serbs, Biljana Plavsic, with such cases being seen as the benchmark for reconciliation offered by international tribunals. In other cases, such as that of Radovan Karadzic, it is possible for the criminal justice process to reveal hidden political agendas and the roles of states in brokering peace deals behind the scenes.[[26]](#footnote-26)

Not surprisingly, in most cases it will be difficult to obtain perpetrator surveys. An alternative may be to rely on research conducted on other persons who have already been prosecuted or arrested and who are largely representative of the object’s characteristics (e.g., members of the same ethnic or other group, similar affiliations, similar age, possibly rank and status). What will obviously be lacking in such comparative analyses are the particular character traits of each perpetrator, but since one’s study is general rather than specific – that is, the aim is not to undertake a psychological analysis – but to assess broader patterns of criminality through the eyes of perpetrators, this is a method that provides some potential. Such a sample, however, has inherent limitations, with size and representativeness being key issues, given that it will not take into consideration those that have yet to be apprehended or those who have escaped. Moreover, it is probably rather optimistic to think that somebody who has been prosecuted will actually speak about the atrocities he or she has committed. It comes as no surprise that no self-report surveys for rape have been obtained in Rwanda as yet. With an estimated 200,000[[27]](#footnote-27) to 800,000[[28]](#footnote-28) surviving perpetrators, and given that the conflict has fizzled out on the territory of Rwanda, at least, selfreporting surveys may be possible – at least for assessing the incidence of rape and other sexual offences – in the form of a tailored format among particular groups. It goes without saying that one-size-fits-all surveys are redundant in field research of this nature and just because contact with a particular group fails to produce any visible results, it does not mean that adaptation of one’s approach and questions to a neighbouring group is also destined to fail. There have been several, admittedly few, cases at the ICTY where the perpetrators were eager to provide a full account of atrocities and their participation therein, principally as a result of a severe sense of guilt and a desire for closure. The case of Erdemović, who confessed in minute detail his role in the Srebrenica massacre, is emblematic of the potential offered by perpetrator surveys.[[29]](#footnote-29)

Conducting qualitative research on perpetrators might be particularly relevant in the context of empirical transitional justice where the perpetrators’ perception of international justice, particularly before international tribunals, contributes to a better understanding of international criminal justice’s pursuit of deterrence and non-recurrence of crimes.[[30]](#footnote-30)The opposite is also true, namely that as international trials progress the initial potency of the perpetrator’s voice becomes increasingly muted as the relevant civilian population become aware of the facts and the atrocities.[[31]](#footnote-31) This was evident in the context of the former Yugoslavia where the initial overwhelming support for the war and the perception of the perpetrators as heroes gave way to an indifference which even culminated in the surrender of the war’s architect, Slobodan Milosevic.

A recent study of perpetrators’ perception as to the legitimacy of international criminal justice demonstrated that in-depth interviews may contribute to our understanding of the impact of transitional justice mechanisms.61 The study used a discourse analysis to interpret the interviews, which used questions centred on the perception of the perpetrators as to their own responsibility for the crimes committed and equally their perception of the trials. The interviews revealed that the respondents perceived themselves as compelled to react to external forces and revealed that the interviewees’ perception of the crimes resonates with uncertainty and chaos, lack of agency and acting within the group, raising challenges to the current assumption about elite participation and the individual’s power and control in genocide and mass violence that underpins international prosecutions. The study followed a qualitative approach in order to demonstrate how the method is set in researching the impact of transitional justice practices. It applied an iterative approach by which the researcher goes back and forth between his own interpretation and the accounts of the respondents in order to develop a holistic and coherent narrative of the interviews. The methodological problems encountered in conducting qualitative research were highlighted by the researcher, including the ethical considerations related to the research impact on the respondents.[[32]](#footnote-32) However, the respondents’ anonymity was crucial to building a trust-based relationship by stating the objectives of the project from the outset. In fact, it has been demonstrated that quantitative research has been more tailored and suitable for the study of international crimes.

It may be said that the goals anticipated from perpetrator surveys may equally be achieved by reference to quasi-judicial processes, such as truth commissions. In fact, the practice of truth commissions during the phase of transitional justice highlights the need to make the most of the perpetrators’ desire to return to normality – at least for the majority of them – without necessarily equating truth commissions with impunity. It is precisely because of the independence of truth commissions from relevant criminal justice processes that the evidence submitted therein may subsequently be used for assessing patterns of criminal behaviour; ultimately, in order to prosecute those not falling within the broader umbrella of amnesties. It has also been shown that truth commissions provide a forum for political discourse because of the absence of a hierarchy (i.e., judges and prosecutors versus defendants) or compulsion; as a result, high-ranking individuals may feel that such commissions are a much better platform within which to communicate a political/personal message as opposed to a courtroom where the daily routine of testimony and cross-examination exhausts the civilian audience, which stops paying attention after a while. This is probably what drove a prominent Sierra Leonian politician, already under trial before the Sierra Leone Special Court, to give evidence to the country’s truth commission, even though this evidence was potentially damning to his criminal trial.[[33]](#footnote-33)

Conclusion

The purpose of this chapter was not to provide an in-depth analysis of how one should conduct an analysis of a particular case involving one or more international crimes; rather, the expectation was that the reader, especially those with few or no insights into social science research methods, would come to realize that non-legal methods have a crucial role to play in our understanding of the context of criminal conduct, particularly criminal conduct committed on a mass scale, while at the same it should become clear that said research methods can assist us in the phases of prosecution as well as in transitional justice. As a result, this author considered it prudent to present a sample of a variety of research methods that are commonly used by criminologists and other social sciences in respect of ordinary crime with a view to demonstrating how these may be applied to international crimes. The idea was to introduce these methods and their potential to the large body of lawyers working in the broader field of international criminal justice. Most defence counsel before international criminal tribunals, especially those appointed for the first time, are confronted with a multiplicity of criminal conduct and perpetrators as well as with an abundance of data, some from NGOs, others from more official sources, without a clear understanding of how such data may be used for the benefit of their clients. The same is equally true for those lawyers working on behalf of the prosecution and to a large extent all have to rely on social scientists to provide clues and directions. The situation is compounded further when no data exist and where there is a need to construct solid patterns of criminality and/or assess why mass conduct occurred one way and not another. There is no substitute for imagination in this work and this chapter has not even begun to touch upon the myriad combinations and possibilities that are open to observation. It must also be highlighted that a study is only as good as its depth, accuracy and the manner by which it eliminates inherent limitations, including ethical, substantial and procedural limitations.

Finally, it should be noted, as the author has hopefully made it clear throughout, that the research methods and ideas presented in this chapter are not only useful to professionals prosecuting or defending persons before domestic and international criminal tribunals. Rather, it is important that researchers engaged in the academic study of international crimes and international criminal law realize the significance of primary research. Whereas a good understanding of the law is important, its application without a solid understanding of context, the perceptions of victims and perpetrators, the numbers of dead, wounded or otherwise victimized and what these patterns actually demonstrate only paints part of the story.

1. G. Yacoubin, ‘The (In)significance of Genocidal Behavior to the Discipline of Criminology’, (2000) 34 Crime, Law & Social Change 7; see also A. Brannigan, ‘Criminology and the Holocaust: Xenophobia, Evolution, and Genocide’, (1998) 44 Crime and Delinquency 257. 2 M. Bosworth and C. Hoyle, What’s Criminology? (Oxford University Press, 2011) at 36. [↑](#footnote-ref-1)
2. A. Smeulers, ‘Criminology in a State of Denial – Towards a Criminology of International Crimes: Supranational Criminology’, in A. Smeulers and R. Haveman, (eds.), Supranational Criminology: Towards a Criminology of International Crimes (Intersentia, 2008) at 3–26; F. Neubacher, ‘How Can it Happen that Horrendous State Crimes are Perpetrated? An Overview of Criminological Theories’, (2006) 4 Journal of International Criminal Justice 787. [↑](#footnote-ref-2)
3. Smeulers and Haveman, above note 3, at 78. 5 Ibid. [↑](#footnote-ref-3)
4. J. Cresswell and P. Clark, Designing and Conducting Mixed Methods Research (London Sage, 2007) at 4; L. Reychler and T. Paffenholz (eds.), Peace-building: A Field Guide (Lynne Rienner Publishers, 2001). 7 Ibid. [↑](#footnote-ref-4)
5. F. Chalk, ‘Definitions of Genocide and their Implications for Prediction and Prevention’, (1989) 2 Holocaust and Genocide Studies 149. [↑](#footnote-ref-5)
6. D. Lisak and P. M. Miller, ‘Repeat Rape and Multiple Offending among Undetected Rapists’, (2002) 17 Violence and Victims 73.

   12 See, generally, R. Taylor, Research Methods in Criminal Justice (McGraw-Hill, 1994). [↑](#footnote-ref-6)
7. A. M. Drumbl, ‘Towards a Criminology of International Crimes’, (2003) 19 Ohio State Journal on Dispute Resolution 263. [↑](#footnote-ref-7)
8. J. Hagan and P. Parker, ‘The Criminology of Genocide: The Death and Rape in Darfur’, (2005) 43 Criminology 525. [↑](#footnote-ref-8)
9. Ibid. [↑](#footnote-ref-9)
10. ICTR Prosecutor v. Akayesu, Trial Judgment (2 September 1998), paras. 688 and 731; ICTY Prosecutor v. Karadzic, amended indictment (28 April 2000), para. 17b; ICTY Prosecutor v. Mladic, indictment (10 October 2002), paras. 25a and 34b. 17 Smeulers and Haveman, above note 3, at 80. [↑](#footnote-ref-10)
11. S. Kleinman and M. Copp, Emotions and Fieldwork (Sage, 1993). [↑](#footnote-ref-11)
12. B. Bruce, Qualitative Research Methods for the Social Sciences (Pearson, 2007). [↑](#footnote-ref-12)
13. A. Brusk, ‘The Politics of Measurement: the Contested Count of the Disappeared in Argentina’, (1994) 16 Human Rights Quarterly 676; R. Goldstein, ‘The Limitations of Using Quantitative Data in Studying Human Rights Abuses’, (1986) 8 Human Rights Quarterly 607.

    28

    Smeulers and Haveman, above note 3, at 82. [↑](#footnote-ref-13)
14. S. Poe, and C. Carey, ‘How are These Pictures Different? A Quantitative Comparison of the US State Department and Amnesty International Human Rights Reports, 1976–1995’, (2001) 23 Human Rights Quarterly 650. 30 31

    Smeulers and Haveman, above note 3, at 83. Ibid. [↑](#footnote-ref-14)
15. D. Verwimp, ‘Death and Survival during the 1994 Genocide in Rwanda’, (2004) 58 Population Studies 233. [↑](#footnote-ref-15)
16. Ibid. 34 Smeulers, above note 24, at 283. 35 Ibid., at 285. [↑](#footnote-ref-16)
17. Smeulers and Haveman, above note 3, at 83. [↑](#footnote-ref-17)
18. E. Deportere, F. Checchi, F. Broillet, S. Gerstl, A. Minetti, O. Gavraud, V. Briet, J. Pahl, I. Defourny, M. Tatay and V. Brown, ‘Violence and Mortality in West Darfur, Sudan (2003–4): Epidemiological Evidence from Four Surveys’, (2004) 364 The Lancet 1315. 38 Ibid. [↑](#footnote-ref-18)
19. Smeulers and Haveman, above note 3, at 83. 40 Ibid. [↑](#footnote-ref-19)
20. R. Matsueda, ‘Toward a New Criminology of Genocide: Theory, Method, and Politics’, (2009) 13 Theoretical Criminology 495. 42 Ibid. [↑](#footnote-ref-20)
21. P. Ball and J. Asher, ‘Statistics and Slobodan: Using Data Analysis and Statistics in the War Crimes Trial of Former President Milosevic’, (2002) 15 Chance 17. [↑](#footnote-ref-21)
22. Refugees were interviewed through a questionnaire allowing a narrative description of events, which allowed the respondents to converse and tell their story rather than simply to respond briefly to standard questions. [↑](#footnote-ref-22)
23. Smeulers and Haveman, above note 3, at 90. [↑](#footnote-ref-23)
24. P. Verwimp, ‘An Economic Profile of Peasant Perpetrators of Genocide: Micro Level Evidence from Rwanda’, (2004) 77 Journal of Development Economics 297. [↑](#footnote-ref-24)
25. S. Schensul, and M. LeCompte, Essential Ethnographic Methods: Observations, Interviews, and Questionnaires (AltaMira Press, 1999). 48 Smeulers, above note 24, at 289. [↑](#footnote-ref-25)
26. ICTY Prosecutor v. Karadzic, Trial Chamber Decision on the Accused’s Holbrooke Agreement Motion (8 July 2009), paras. 1–19, 33–7. [↑](#footnote-ref-26)
27. S. Straus, ‘How Many Perpetrators were there in the Rwandan Genocide? An Estimate’, (2004) 6 Journal of Genocide Research 85. [↑](#footnote-ref-27)
28. R. H. Haveman, ‘Justice for Gacaca’, in A. Smeulers and R. Haveman (eds.), Supranational Criminology: Towards a Criminology of International Crimes, (Intersentia, 2008) at 357–98. [↑](#footnote-ref-28)
29. This case is best known for the applicability of the defence of duress (as a general or partial defence). ICTY Prosecutor v. Erdemović, Appeals Chamber Judgment (7 October 1997). [↑](#footnote-ref-29)
30. M. Rauschenbach, Ways of Knowing Atrocities, available at: http://oxfordtransitionaljustice.wordpress.com/2013/07/13/roundtable-discussion-of-the-esrc-project-ways-ofknowing-atrocity-with-dr-mina-rauschenbach-2/. [↑](#footnote-ref-30)
31. This gives rise to the communicative effect of law to its wider stakeholder audience. See I. Bantekas, ‘The Communication by States of International Law to its Direct Stakeholders’, (2010) 3 Colombian Yearbook of International Law 123. 61 Rauschenbach, above note 59. [↑](#footnote-ref-31)
32. Ibid. [↑](#footnote-ref-32)
33. See SLSC Prosecutor v. Norman, Decision on Appeal by the TRC and Chief Norman against the Decision of Bankole J, delivered on 30 October 2003, to Deny the TRC’s Request to Hold a Public Hearing with Chief Norman (28 November 2003), para. 41. [↑](#footnote-ref-33)