

BEYOND THE STATE: THE FUTURE OF INTERNATIONAL CRIMINAL LAW

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ABSTRACT

This work examines the development of international criminal law, and by default the International Criminal Court, towards the protection of the individual. The link to State planning, policy or officialdom appears to be waning and the discourse has shifted from conceptual discussions of the Court's jurisdiction to the best means of protecting individuals. This has naturally involved the cross-pollination of international criminal law by the associated disciplines of international human rights law and international humanitarian law. This has entailed a shift towards prosecuting those who are guilty of mass atrocities regardless of whether they are State officials, with the majority of the defendants before the Court having an affiliation to a rebel group of non-state actors. There are also further investigations in respect of situations which would not traditionally be identified as armed conflicts. Thus international criminal law retains its appeal for academics and further ensconces its place in public international law through the sharing of concepts with international humanitarian law and international human rights law, and it reciprocates through providing a forum for the prosecution of the most serious abuses of individual dignity.

I. INTRODUCTION

It has been eight years since Cesare Romano wrote that the 'season' of international criminal law was coming to an end and invited speculation on what the next 'topic du jour' in international law could be.¹ However interest in international criminal law does not appear to have abated and indeed, this season has continued into an Indian summer. One of the main reasons for this is that the debates on the notion of international criminal law have developed considerably: the initial concerns of the discipline revolved around how to define aggression,² the question of amnesties³ and the refusal of the United States to accede to the treaty.⁴ The paradigm of the discipline, as predicted by Antonio Cassese,⁵ now seems to have shifted into a more pragmatic, focused discussion on how to protect the individual who may suffer such indignity.⁶ This indicates its ability to continue the tradition of post-conflict tribunals, such as those for Rwanda and the former Yugoslavia, to prosecute the perpetrators of atrocities, regardless of how these

¹ C. Romano, '[The seasons of international law](#)', *Opinio Juris*, 18 October 2006.

² See T. Meron, 'Defining aggression for the International Criminal Court', *Suffolk Transnat'l L. Rev.*, 2001-2002, Vol. 25, pp. 1-16.

³ D. Robinson, 'Serving the interests of justice: Amnesties, truth commissions and the International Criminal Court', *EJIL*, 2003, Vol. 14, pp. 481-505; M. Arsanjani, 'International Criminal Court and National Amnesty Laws', *Am. Soc'y Int'l L. Proc.*, 1999, Vol. 93, pp. 65-67.

⁴ M. Zwanenburg, 'The Statute for an International Criminal Court and the United States: Peacekeepers under fire?', *EJIL*, 1999, Vol. 10, pp. 124-143.

⁵ A. Cassese, 'On the current trends towards criminal prosecution and punishment of breaches international humanitarian law', *EJIL*, 1998, Vol. 9, pp. 2-17.

⁶ M. E. O'Connell and M. Niyazmatov, 'What is aggression? Comparing the jus ad bellum and the ICC Statute', *J.I.C.J.*, 2012, Vol. 10, pp. 189-207.

may have occurred. Thus, traditional concerns of international criminal law, specifically a state link to or sponsorship of the violence are no longer pertinent in international criminal law. The aim appears to be to create a system of international criminal justice which has a greater focus on the protection of the rights of the individual and this resonates with the interests of international criminal law which overlap considerably with those of international humanitarian law and international human rights law. It is this attention to the individual that is arguably the driver for the continued interest in and expansion of the discipline of international criminal law.

This research explores the continuing interest in international criminal law in relation to two main strands of reasoning. The first is that the requirement of a State link to the commission has faded. There is no longer the same emphasis on international crimes being committed by officials acting on behalf of States. The growing number of individuals associated with non-state actors who are prosecuted before the International Criminal Court demonstrates the practical reality of this change and these cases will be examined so as to understand why this requirement is no longer as pertinent as it was. The second strand relates to the shared purpose of international human rights law, international humanitarian law and international criminal law. This purpose will be explored as a means of understanding the way in which these three disciplines are being developed in common through the operation and jurisprudence of the International Criminal Court.

II. THE DECLINE OF THE STATE LINK TO SERIOUS VIOLATIONS OF INTERNATIONAL CRIMINAL LAW

The law of the initial international criminal tribunals – those of Nuremberg, Tokyo, Rwanda and the former Yugoslavia - focused on criminal conduct committed by those acting on behalf of States. Even the name of such tribunals gives away their aim: punishing those who have committed crimes while acting in official positions. Only the latter, for the former Yugoslavia, saw fit to sever the link between State policy and war crimes,⁷ rejecting it as legally irrelevant to the definition of the crime. Indeed, the pursuit of ‘furthering’ an armed conflict was seen as much more critical to the assessment of whether a war crime had been carried out. Although this development was not carried forward by the Rome Statute, the prosecutorial direction of its actions appears to have been inspired by the broadening of the concept by the International Criminal Tribunal for the former Yugoslavia, focusing on the crimes committed rather than the actions of States.

⁷ ICTY, *Prosecutor v Kunarac et al.*, Judgment Appeals Chamber, [IT-96-23/1-A](#), 12 June 2002, para. 58.

Not a single defendant convicted or tried by the International Criminal Court to date has been affiliated to a state;⁸ the focus of the Court has shifted to the most serious situations, rather than those linked to acts on behalf of a State or committed by those representing a State. This policy, if it can be termed as such, represents a true departure from the origins of international criminal law in national military tribunals and the internationalised tribunals of Nuremberg and Tokyo. It owes much to the broader approach taken by the later tribunals for Rwanda and the former Yugoslavia, both of which focused on the gravity of the crime rather than the official position of the accused. In the context of the Rome Statute, it is made formally possible through its wording: war crimes are those which are committed as ‘part of a plan or policy or as part of a large-scale commission’⁹ and includes internal armed conflicts between States and armed rebel groups.¹⁰ Similarly, the text on crimes against humanity notes that the crimes are such when committed ‘as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.’¹¹ The Elements of Crimes further expands this definition by noting that it may take place under the mantle of a State or indeed any ‘organizational policy’.¹² The trial of such individuals thus utilises the silence by the Statute on what may constitute an organisation in the context of an ‘organizational policy’, inferring that the Court should naturally have jurisdiction over individuals acting on behalf of rebel groupings. Many international lawyers would read into such provisions the idea that the criminal activity was backed by a State¹³ where the notion of organisational policy is mentioned. However, the definition of what an organisation within the jurisdiction of the Court may be was provided in the Katanga case¹⁴ and relates more to control than specific features of a group.¹⁵ The idea of the bounds of the concept of an organisation is dealt with in more detail by other authors;¹⁶ the pertinent issue here is that there is a lack of direct prosecutions against State officials permitted by the legislative silence of the Statute.

That is not to say that there is no interest in the indictment of Heads of State; arrest warrants have been issued for certain former and current African Heads of State.¹⁷ As such, the idea has

⁸ See the case list of situations under consideration at the International Criminal Court, available [here](#). Charges have been brought against Laurent Gbagbo, former President of the Ivory Coast, but there has been no trial thus far.

⁹ Article 8(1) Rome Statute.

¹⁰ Article 8(2)(f) Rome Statute.

¹¹ Article 7(1) Rome Statute.

¹² Introduction to Article 7(1), Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002 (United Nations publication, Sales No. E.03.V.2 and corrigendum), part II.B., p. 5, para. 3.

¹³ M. Halling, ‘Push the envelope - watch it bend: Removing the policy requirement and extending crimes against humanity’, *LJIL*, 2010, Vol. 23(4), pp. 827-845, p. 832.

¹⁴ ICC, *Le Procureur c Germain Katanga*, Jugement La Chambre de Première Instance II, [ICC-01/04-01/07](#), 7 mars 2014.

¹⁵ ICC, *Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the confirmation of charges, [ICC-01/04-01/07](#), 30 September 2008, para. 500.

¹⁶ M. Holvoet, ‘[The State or organisational policy requirement within the definition of crimes against humanity in the Rome Statute: An appraisal of the emerging jurisprudence and the implementation practice by ICC States Parties](#)’, *International Crimes Database*, October 2013.

¹⁷ Warrants of arrest have been issued for Ahmad Harun, former Minister of the Interior for Sudan; Omar Al-Bashir, President of Sudan and Laurent Gbagbo, former President of the Côte d’Ivoire; see [here](#).

not yet faded into obscurity, but again the focus appears to be on the conduct which justifies the indictment rather than the link between the crime and the State. There remains substantial difficulty, however, in organising such prosecutions. A case in point is that of Laurent Gbagbo: the former President of the Côte d'Ivoire is the first and only Head of State to be detained by the ICC. His arrest warrant was issued in 2011 and initial hearing to confirm the charges was adjourned in June 2013,¹⁸ with the charges against him confirmed only recently in June 2014.¹⁹ In postponing the hearing in 2013, the Court clearly stated that the seriousness of the charges underpinned its decision to give the prosecution more time,²⁰ again indicating that the prosecution of those who have committed serious crimes is a priority for the Court, rather than their link to the apparatus of the State. However, the Court's attempted prosecution of Kenyatta,²¹ President of Kenya, and Al Bashir,²² President of Sudan, highlights the ongoing problems associated with indicting Heads of State. The Prosecution faces serious issues in assembling the cases against both²³ and, in the case of Bashir, bringing him into custody. Invariably it seems that trying Heads of States and central decision-makers who may be the architects of such plans is more complex. However, the resolve of the Court to indict such individuals, and even to issue arrest warrants²⁴ demonstrates its commitment to ensuring that those who do commit crimes under the mantle of the State are still brought to justice. Thus, the focus remains on the seriousness of the crimes rather than the link of the individual to the State.

The number of prosecutions which have been raised against individuals who are part of groups which are non-state actors further indicates a shift away from the traditional focus on the State. All of the cases relating to the situation in the Democratic Republic of Congo,²⁵ Uganda²⁶ and the Central African Republic²⁷ involved only non-state actors typically linked to rebel groupings. The modern form of armed conflict appears to be internal conflicts between weaker States and those who seek to overthrow the regime in place. If the ICC were to reject the extension of its jurisdiction to such groups, there would be very few cases before the Court. There would also be a greater number of victims disenfranchised from the justice that bringing a case before the Court offers. The expansive construction of an organisation proposed by the Katanga case makes this

¹⁸ ICC, *Prosecutor v Laurent Gbagbo*, Decision adjourning the hearing on the confirmation of charges pursuant to article 67(7)(c)(i) of the Rome Statute, [ICC-02/11-01/11](#), 3 June 2013.

¹⁹ ICC, *Prosecutor v Laurent Gbagbo*, Decision on the confirmation of the charges against Laurent Gbagbo, [ICC-02/11-01/11](#), 12 June 2014.

²⁰ ICC, *Prosecutor v Laurent Gbagbo*, *supra* note 18, para. 41.

²¹ ICC, *Prosecutor v Francis Kirimi Muthara, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, Decision on the confirmation of charges pursuant to article 67(7)(c)(i) of the Rome Statute, [ICC-01/09-02/11](#), 23 January 2012.

²² ICC, *Prosecutor v Omar Al Bashir*, Second warrant of arrest for Omar Hassan Ahmad Al Bashir, [ICC-02/05-01/09](#), 12 July 2010.

²³ See '[Kenya President Uhuru Kenyatta's ICC trial collapses](#)', *The Guardian*, 5 September 2014.

²⁴ For the problems associated with this, see P. Gaeta, 'Does President Al Bashir enjoy immunity from arrest?', *JICJ*, 2009, Vol. 7(2), pp. 315-332.

²⁵ See ICC, [cases on the situation in the Democratic Republic of the Congo](#).

²⁶ See ICC, [cases on the situation in Uganda](#).

²⁷ See ICC, [cases on the situation in Central African Republic](#).

possible, acknowledging the changing face of armed conflict in the modern world. Equally, the significance of Katanga is greater because of the unique element of case precedent at the ICC,²⁸ meaning that the Court may take into account previous decisions. Consequently, the discussion undertaken in such cases may be used in order to further the Court's aim of ensuring justice for victims regardless of the perpetrator's association, focusing on the seriousness of the offence rather than linking the individual to a State.

The reduction of the number of States which engaged in armed conflict with one another makes it less likely that States ought to be the central focus of the Court, and that its mission to prevent impunity would be better served by ensuring that those who breach international criminal law and international humanitarian law are prosecuted. The above focus on individuals thus appears to be the best means of serving the interests of international criminal justice, by providing a system of accountability for serious violations of international criminal law, and the related fundamental provisions of international human rights and international humanitarian law. The recent criminal activities of organisations such as Boko Haram²⁹ and ISIS³⁰ have attracted the attention of the United Nations and the international media, both of which have highlighted the breaches committed by both organisations of international humanitarian law, international criminal law and international human rights law. Indeed, the Independent Commission established by the General Assembly to investigate serious breaches of fundamental rights focused far more on the activities of non-state actors than on government forces. Breaches of the fundamental rights protected by each of these disciplines can and ought to be prosecuted before the Court, and the reasoning above, as well as the situations under investigation by the International Criminal Court, suggests that future indictments may well be in respect of non-state actors. The current trend appears to reflect this and an acceptance of the jurisdiction over non-state actors, particularly rebel groups, will prevent the creep of an impunity gap which would otherwise persist.

The pursuit of those accused of war crimes and crimes against humanity without a formal link to State officialdom demonstrates the movement of the International Criminal Court towards a broader protection of fundamental rights. This evolution of purpose was precipitated by the work of the previous international tribunals, all of which enforced the norms of customary international law and, post-1948, international humanitarian law as laid down by the Geneva Conventions.³¹ The focus is invariably on the promotion of international human rights and international humanitarian law by the International Criminal Court through the protection of the most fundamental notions of basic dignity. This protection exists to cement the rights of the individual

²⁸ Article 21(2) Rome Statute.

²⁹ For further analysis see M.E. Badar, E.M.A. Amin and N. Higgins, 'International Criminal Court and the Nigerian Crisis', *I.H.R.L.R.*, 2014, Vol. 29(3), pp. 29-60.

³⁰ See OHCHR, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, [UN Doc. A/HRC/27/60](#), 13 August 2014.

³¹ See Articles 1-3 Statute of the International Criminal Tribunal for the former Yugoslavia, [September 2009](#); Articles 1 and 3 Statute of the International Criminal Tribunal for Rwanda, [January 2010](#).

regardless of issues of statehood, circumstance of the violation or the existence of armed conflict, which was previously a central issue for international humanitarian law. One main benefit of such advancement is the potential to reach beyond the State, if one does exist or function typically, for the enforcement of fundamental rights. The International Criminal Court offers this opportunity for fundamental human rights and basic norms of international humanitarian law to be fully enforced by the international community without relying on the existence or co-operation of the State to guarantee protection for the individual. The creation of the International Criminal Court has allowed the Prosecutor to lead cases against individuals on behalf of the international community where serious violations of international criminal law and international humanitarian law, both of which encompass many norms of international human rights, have been committed. This leads us neatly to the second strand of reasoning: the shared purpose of these disciplines.

III. THE CONVERGENCE OF INTERNATIONAL CRIMINAL LAW, INTERNATIONAL HUMAN RIGHTS LAW AND INTERNATIONAL HUMANITARIAN LAW: A SHARED AIM

In the context of fundamental breaches of international criminal law, the transnational has already met the international at the International Criminal Court.³² The requirement of Statehood appears to be secondary to the promotion and protection of fundamental rights, and the Court's ability to look beyond Statehood demonstrates its self-perception as a promoter of fundamental rights, rather than a distinct branch of law. The weakness of international human rights law is that it requires the rights to be afforded by domestic courts³³ and there are no international courts which enforce international human rights norms outwith regional structures, such as the Inter-American Court of Human Rights and the European Court of Human Rights. This represents a serious barrier for failed and weak States, as those who live in these areas have little hope of accessing their rights through any kind of formal process. They lack the protection that those who live within the regional areas mentioned above take for granted and appear to live in an intractable position: where there is no functioning State, there are no rights. The situations currently under consideration by the International Criminal Court relate to States destabilised and weakened by armed conflict; such States are unable to meet their obligations under international humanitarian law and international criminal law, as well as being unable to afford protection of fundamental human rights. Situations not under investigation by the International Criminal Court, such as where Boko Haram and ISIS are concerned, create further issues for those living in the area. The problem of enforcing basic norms of dignity for the person appears impossible if the traditional reliance on the State as the holder of rights is maintained. Thus the reach of the

³² N. Boister, 'International tribunals for transnational crimes: Towards a transitional criminal court?', *Crim. L.F.*, 2012, Vol. 23, pp. 295-318.

³³ See International Covenant on Civil and Political Rights; a treaty to which the majority of States subscribe but with no formal enforcement mechanism out with the State.

International Criminal Court to such areas creates a degree of jurisdiction which would otherwise be unenforceable.

International humanitarian law is also fading as a distinct discipline: its evolution during the twentieth century foretold this, as it became more focused on the protection of individuals from harm. Prior to the Geneva Conventions, the focus of the laws of war was on the restriction of the use of force against other soldiers and combatants³⁴ in order to humanise battle. However, the Geneva Conventions extended this protection to non-combatants who may be affected by war, protecting those who have both laid down arms and civilians who find themselves caught in the crossfire.³⁵ The focus of the Fourth Geneva Convention is on the protection of civilians' fundamental rights, prohibiting torture, murder and degradation of the person³⁶ among other kinds of ill treatment at the hands of invading forces. The provisions echo the fundamental rights laid down by international human rights documents, such as the International Covenant on Civil and Political Rights, as well as what would be considered a serious violation of international criminal law. Indeed, the International Criminal Tribunal for the former Yugoslavia noted that 'with regard to certain of its aspects, international humanitarian law can be said to have fused with human rights law'³⁷ and gave the lack of precedent in the area of international humanitarian law as part of the reason, where judges would have recourse to human rights law to flesh out certain concepts. This cross-pollination of the disciplines allows for a sharing of concepts and, eventually, a merging of the ideas within both with the aim of providing more effective protection against violations of human dignity.

The reliance on human rights law moves the disciplines closer together and, given their shared aims, this is a most welcome development. The identification of their shared aims is not new, however: the debate on minimum humanitarian standards which began with the work of Theodor Meron in the 1980s³⁸ was fuelled by the inadequacy of the humanitarian standards regime: prior law created a necessity out of the link to armed conflict and, consequently at that time, a requirement of the State link. Meron's work certainly contributed to the Turku Declaration³⁹, which pushed for minimum standards and spoke of the same prohibition on violations of dignity that the Geneva Conventions aim to prevent. However, the declaration extends its coverage to all situations: 'internal disturbances, tensions, and emergencies', regardless of whether a state of emergency has been declared.⁴⁰ This can be analysed, in retrospect, as a means of

³⁴ The Hague Conventions of 1899 and 1907 extended only to those engaged in combat.

³⁵ The fourth Geneva Convention is dedicated to the protection of civilians.

³⁶ Article 3 Geneva Convention IV 1949.

³⁷ ICTY, *Prosecutor v Kunarac et al.*, Judgment Trial Chamber, [IT-96-23-T & IT-96-23/1-T](#), 22 February 2001, para. 467.

³⁸ See T. Meron, 'On the Inadequate Reach of Humanitarian and Human Rights Law and the Need for a New Instrument', *AJIL*, 1983, Vol. 77, pp. 589-606.

³⁹ '[Declaration of Minimum Humanitarian Standards](#)', adopted by an expert meeting convened by the Institute for Human Rights, Åbo Akademi University (Turku/ Åbo Finland), 2 December 1990.

⁴⁰ *Id.*, Article 1.

circumventing the State requirement of protecting the individual. However, hindsight also allows the acknowledgment that a State would still be required to enforce such norms and the failure of a State to function as expected would impede the application of such standards. Indeed the application of the declaration to any of the situations outlined above would create the same issues as the application of international humanitarian law: without the apparatus of the State, which bodies can be relied upon to enforce such norms? It is this function that the International Criminal Court can hope to perform where the State is weak, weaker than its external or internal aggressors, or has failed.

The work of the international criminal tribunals during the last decade of the twentieth century fortuitously pointed the way forward for enforcing and applying such standards, through the instigation of criminal tribunals which could apply normative expressions of fundamental rights. Moreover, an independent international tribunal or court could attribute criminal liability to those who were found in breach. The International Criminal Court remains the only international body which can enforce such norms, indicating a further conflation through the aims of these three branches of international law. As demonstrated, the International Criminal Court is the only enforcing body for any of the three forms of law. The reliance of international human rights law and international humanitarian law on a domestic court for enforcement can be problematic, particularly in situations such as the examples mentioned above, where the State has little or no control over the protection of the civilians within its borders. International criminal law has evolved to fill the vacuum created by States which are failing or which have failed in this respect. Reflecting further on the work of Meron, particularly in later pieces where he challenges the trend of criminalisation in international law,⁴¹ it seems that the use of the International Criminal Court to enforce norms which would otherwise be disregarded by non-state actor was viewed as an international form of corporate liability. In other words, the trend of powerful non-state actors in the mould of ISIS and Boko Haram was not anticipated by authors in this area. It is for this reason that the International Criminal Court is more, and not less, critical as a body: corporations will invariably be held to account in certain jurisdictions, but not those in which the State has failed. It is in the context of failed and weakly governed States that the International Criminal Court's work is most significant.

IV. THE FUTURE: A NORMATIVE PROTECTION

The theory expounded above is thus not one of international criminalisation, but rather one of normative protection. The common purpose of the three branches demonstrates what is truly at the core of public international law: the dignity of the individual. The protection of the individual

⁴¹ T. Meron, 'Is international law moving towards criminalization?', *EJIL*, 1998, Vol. 9, pp. 18-31.

has reached an apex and the commonalities among the disciplines indicate the value of this aim. The legal rules have converged in purpose and it is now a question of enforcement. In an increasingly unstable world, States cannot be relied upon to be the sole dispensers of rights and protectors of individuals. The International Criminal Court is thus the ideal vehicle to achieve the justice required to affirm the dignity of all individuals, regardless of where they may live in the world. Theoretically, it has the potential to enforce the norms common to these three branches of law and thus contribute to the stability of the world by filling the vacuum created by weak, failing and failed States.

The continued interest in international criminal law can be attributed to a change in the focus of the Court, quite independent from the scholarship. Initial scholastic offerings focused on the conceptual issues facing the International Criminal Court and the discipline as a whole, but its practice has tended towards a breakdown of the relationship between States and international criminal law and a greater emphasis on the protection of the fundamental rights of the individual. The initial focus of the discipline, on the prosecution of State officials who had committed or organised mass atrocities has now shifted: the International Criminal Court has never tried or convicted a State official and the majority of its cases concern those who are in charge or part of rebel groupings. The investigation by the International Criminal Court in a number of situations concerning non-state actors indicates that this trend will continue for a sustained period of time: it represents the new paradigm, rather than an exceptional circumstance. The provision in the Rome Statute for such prosecutions is key, but not as central as the initial judgments of the Court, which offer a novel opportunity to use the jurisprudence of the Court to inform and guide future decisions. This can be attributed to the change in focus of the Court, and of the discipline of international criminal law as a whole. This focus on non-state actors demonstrates the potential for a future of enhanced protection against those who choose to act aggressively against civilian populations regardless of whether or not they are linked to a State. It also demonstrates the Court's increasing harmony with the provisions of international humanitarian law and international human rights law. The work of the previous international criminal tribunals, prosecuting serious violations of the laws of war, has come to fruition through the prosecutorial policy of the International Criminal Court.

There is still discourse on the more conceptual and theoretical elements of the Court, but the core of the Court's work appears to rest on bringing individuals to justice where a serious violation of international criminal law has occurred. Naturally, these breaches often mirror the prohibitions found in international humanitarian law and international human rights law. Thus the concepts are often shared and jurisprudence can be identified as belonging to each of the areas: there is a subtle, although perceptible, merging of the disciplines of international human rights law, international humanitarian law and international criminal law. The sharing of concepts bests

serves the dignity of the individual because of the way in which it protects those who are left in the most vulnerable position as a result of serious violations of their dignity. This is particularly critical where the State is unable or unwilling to act on their behalf. The International Criminal Court has thus become the most appropriate vehicle for the protection of individual dignity and to enforce that protection where the State is no longer functioning as it ought to.

International criminal law as a discipline has continued to expand and its expansion inspires a greater focus on individual rights. The most interesting part of this expansion is the realisation that protection trumps the discipline. Thus individuals require protection from the abuse of power, irrespective of by whom that power is wielded. The season of international criminal law is yet to end, and its convergence with the aims of international humanitarian law and international human rights law has ensured that it has developed into a tool for preventing the commission of international crimes with impunity. The sharpest edge of this tool is undoubtedly the International Criminal Court.