After the Honeymoon

Reflections on the Current State of International Criminal Justice

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Abstract

At the turn of the millennium, international criminal justice (ICJ) was in its honeymoon; today it seems that the honeymoon is over. What comes after the honeymoon? By now we have learned that ICJ cannot bypass politics and become an ordinary part of the rule of law. But normality was never a realistic aim for ICJ, which aims at the world's most abnormal crimes. The most important goal of ICJ is a radical one: transforming the world's political imagination to de-sanctify violence committed in the name of state or group, so that it comes to be regarded as mere crime. By this measure, the most important achievement of ICJ is positive complementarity, and the most reactionary is further strengthening of the doctrine of state immunity.

1. Introduction

The editors of this symposium have asked us to reflect on the dismal proposition that 'the momentum for international criminal law seems to be gone and its success story — starting with the creation of the Military Tribunals at Nuremberg and Tokyo and culminating in the adoption of the Rome Statute — has come to a close'.[1] They point to a range of phenomena, or symptoms: the paring back of universal jurisdiction, both criminal and civil; the strong reassertion of official immunity; the diversion of attention and funding to other issues on the world's agenda, notably the financial crisis; the tension between the International Criminal Court (ICC) and Africa; and the growing frustration even among supporters of international criminal justice (ICJ) with its excruciating slowness.

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1 Quoted from the editors' invitation to participate in the symposium.

Journal of International Criminal Justice **11** (2013), 505–515 doi:10.1093/jicj/mqt023

2. Compared with When?

The phenomena are real, and the pattern is disturbing. But how dire the diagnosis is depends on your choice of baseline. The loss of momentum seems undeniable if you pick the year 2000 for comparison. At the turn of the millennium, the ad hoc tribunals were in operation, the *Pinochet* case seemed to presage the end of immunity for criminal leaders, the Rome Statute was in place, the ICC was under construction, and Belgium and Spain were actively practising universal criminal jurisdiction. The Princeton Principles on Universal Jurisdiction were being drafted, clearly in anticipation that robust use of universal jurisdiction was a genuine possibility for the future. Although the first corporate challenges had arisen to the US Alien Tort Statute (ATS), the Supreme Court had not yet shown the lengths it would go to protect multinational corporations from inconvenient human rights lawsuits.

At the turn of the millennium, the international community was digesting the lessons of the Kosovo War. On one plausible interpretation, Kosovo was a humanitarian intervention that manifested the same cosmopolitan values supporting international criminal law. Just a year earlier, Kofi Annan delivered his famous speech on the changing definition of sovereignty,[2] and in 2000 the first R2P document was already being conceptualized. President Clinton had delivered a unique and widely remarked apology for US inaction in the face of the Rwanda genocide. The notion that state sovereignty would provide cover for gross criminality seemed like it might be on the way out.

Furthermore, in the previous decade, South Africa and nations in Eastern Europe and South America had all grappled with transitional justice. Their efforts implanted in the world's political imagination the powerful idea that accountability for past regime crimes is a necessary component of progress in democratizing societies. The anti-cosmopolitan 'different Asian values' debate had lost momentum after the 1997–1998 Asian financial crisis undercut the argument that repressive communitarianism would deliver prosperity. And 9/11 had not posed the security versus rights dilemma that has put human rights advocates in a defensive posture ever since. The United States had not yet discovered its appetite for torture and Middle Eastern wars. For most of the year 2000, peace between Israel and Palestine seemed like a real possibility. The millennial year truly seemed like a cosmopolitan moment.[3]

This was the honeymoon period for ICJ and the cluster of values that support it, and there is little question that 13 years after the honeymoon the romance has faded by comparison. But honeymoons always end, and the bloom of romance transforms into the day-by-day challenges of the long term. Those

2 Secretary General Presents His Annual Report to the General Assembly, Press Release SG/SM/7136, GA/9596, 20 September 1999, available online at www.un.org/News/Press/docs/1999/19990920.sgsm7136.html (visited 9 April 2013).

3 I do not mean to romanticize the millennium. At that time, the Second Congo War was killing millions, and the international community remained oblivious. The subsequent ICC proceedings are hardly commensurate with the magnitude of that terrible war.

everyday marital challenges include counterparts of what ICJ now faces: financial worries, emotional ups and downs, frustration when imperfections that we hoped were temporary do not go away, occasional boredom. But none of this means that love's labour is lost. It *does* mean that nothing can be taken for granted — and that lasting love is, inevitably, labour. If today ICJ has hit a trough, it by no means follows that it will stay there.

What if, instead of the year 2000, we chose a baseline 20 years earlier? In that case, today's situation looks considerably rosier. In 1980, there had not been an international criminal tribunal for more than three decades, and none was in sight. The nearest thing was the *Eichmann* trial of 1961–1962, recognized at the time as wholly unique and hardly precedential. The jurisprudence of the Nuremberg and Tokyo tribunals was studied, if at all, only by military lawyers writing manuals for their own forces. The Latin American dictatorships were in power, and the term 'transitional justice' was not yet invented. Of the two most recent post-dictatorial democracies, Spain opted against accountability while Portugal engaged in chaotic purges with criminal trials only for the old regime's political police.[4] In 1980 the Convention against Torture did not exist, and the United States was still five years away from ratifying the Genocide Convention.

Compared with 1980, the current moment in international criminal law looks awfully good. The idea that presidents and prime ministers, a head of state, and the architect of a genocide would be imprisoned for their crimes by international tribunals was unthinkable in 1980.[5] The prospect that Argentina and Chile would prosecute the perpetrators of their dirty wars, that Guatemala, Iraq, Peru, and Bangladesh would try former leaders under laws modelled on the Nuremberg Charter, that Senegal would prosecute Hissène Habré at the behest of the African Union (AU), or that the AU would consider establishing an African criminal court, were equally unthinkable.[6] Above all, the proposal that there might be a permanent court of ICJ was utopian to the point of fantasy; the idea that states might refer themselves to it was beyond utopia. 'Then felt I like some watcher of the skies/when a new planet swims into his ken …'[7]

4 A.C. Pinto, 'Political Purges and State Crisis in Portugal's Transition to Democracy', 43 *Journal of Contemporary History* (2008) 305–332, at 313–325.

5 The reference, of course, is to Biljana Plavšić, Jean Kambanda, Charles Taylor and Théonaste Bagosora.

6 I do not mean to suggest that the trials of Saddam Hussein or the current convictions entered by the Bangladesh war crimes tribunal are instances of criminal accountability that deserve admiration. I note as well that the subject of the African criminal court did not come up at the most recent African Union summit (January 2013); see AU Echo, Special Edition for the Twentieth AU Summit, 28 January 2013, available online at http://us-cdn.creamermedia.co.za/assets/articles/attachments/43276_key_outcomes_of_the_au_sum-mit_in_au_echoi.pdf (visited 9 April 2013).

7 J. Keats, *On First Looking into Chapman's Homer* (1816).

3. Against Messianic Thinking

What does seem clear from the bumps and pitfalls is that ICJ is not — and can never be — normalized into a global rule of law. Put in other words, it cannot leapfrog over politics. To pretend otherwise is, in the strict sense, messianic thinking.[8]

This should already have been clear when Belgian universal jurisdiction collapsed in the face of US threats to move NATO headquarters out of Brussels.[9] It certainly came into sharp relief when much of Africa and the Arab world rallied around Sudanese President Omar Al Bashir after the ICC indicted him for genocide. At that point, the ICC's weakness, the disparity between yearning for criminal justice and accomplishing it, became obvious. That disparity can be bridged only by politics, and the favourable political winds of 2000 were missing in 2009. Without political support, the Court was powerless to arrest its defendants, or even to induce its own Member States to cooperate. Baltasar Garzón's downfall after he attempted to undo Spain's post-fascist political choice against accountability is another manifestation of the incapacity of criminal justice when political will is lacking. The same may happen in Kenya, where Uhuru Kenyatta has been elected president notwithstanding the ICC indictment.[10]

By saying that ICJ cannot leapfrog over politics, I do not mean that international prosecutors should make decisions on political rather than legal grounds. When ICC Prosecutor Luis Moreno-Ocampo refused to back down from the Bashir indictment in the face of political pressure, he made the right decision. It was the Security Council's job to halt the proceedings if the prosecution genuinely threatened international peace and security, particularly since the Security Council itself put the hot potato into the hands of the ICC. For a prosecutor to drop a genocide charge for political reasons when evidence supports the charge would destroy the court and violate his most fundamental duty.

8 Michael Walzer's recent book on the Hebrew Bible emphasizes that Jewish messianism began as a yearning among the exiles to re-establish the kingdom of Israel and the House of David by direct divine intervention, short-circuiting human political processes; M. Walzer, *In God's Shadow: Politics in the Hebrew Bible* (Yale University Press, 2012), Chapter 10. The messianic yearning emerges out of the lack of political power and material prospects.

9 G. Frankel, 'Belgian War Crimes Law Undone By Its Global Reach; Cases Against Political Figures Sparked Crises', *Washington Post*, 30 September 2003, available online at http://www.globalpolicy.org/component/content/article/163/29408.html (visited 8 May 2013).

10 Here, however, the case is more nuanced because Kenyatta himself has announced that he will cooperate with the ICC. His comments are worth noting: 'I am not saying that international justice doesn't have a purpose.... But if Kenyans do vote for us, it will mean that Kenyans themselves have questioned the process that has landed us at the International Criminal Court. But that does not mean that we will cease to cooperate because as I have said most importantly we understand and recognise the rule of law and we will continue to cooperate as long as we are signatories to the Rome Statute.' Talk to Al Jazeera: 'Not a Banana Republic', *Al Jazeera*, 23 January 2013, available online at www.aljazeera.com/programmes/talktojazeera/2013/01/20131228450568673.html (visited 9 April 2013).

My point is that ICJ will always be an extraordinary institution that perpetually needs to persuade the world of its own legitimacy. It can never proclaim that the realm of accountability is hereby established; it can only nudge the world political system in the direction of accountability. This, of course, was Alexander Hamilton's reminder in *Federalist 78*: judicial institutions have 'no influence over either the sword or the purse', possessing 'neither force nor will, but merely judgment'.

4. The Radical Ambition of International Criminal Law

But international judicial institutions *can* nudge the political system; once created, they can speak law to power.[11] Speaking law to power is, in my view, the major point of ICJ. Its mode of functioning is expressive, and its aim is *norm projection*, the dissemination through trials, punishments and jurisprudence of a set of norms very different from the Machiavellian brutality of the past.

The radical goal of ICJ is a moral transformation of how ordinary men and women regard political violence against civilians. Rather than viewing political violence as the prerogative of states, or as our patriotic duty, we are henceforth to regard it as crime. This amounts to a radical deflation of the state, a *gestalt* switch on a par with re-describing the biblical sacrifice of Isaac as an attempted murder rather than a proof of faith.[12]

The religious analogy is entirely appropriate. After all, the institutions of rule have historically wrapped themselves in the trappings of the sacred, of divine right or the mandate of heaven. Under that guise, they demanded that subjects kill and die for the state. This is no less true in the secular state. When Hobbes described the Leviathan as a 'mortal god', he did not mean only to emphasize Leviathan's mortality.[13] On the contrary, he desired 'to speak more reverently' of a human construction — to emphasize that for all its mortality, the state is still a god and must be obeyed like a god. When Machiavelli wrote to a friend 'I love my native city more than my own soul', he was thinking the same way. He meant that, as a patriot, he would commit damnable crime for the sake of Florence — in other words, that the mortal god had displaced the immortal one in his allegiance.[14] The state, on this view, is not simply an instrument of its inhabitants' security and welfare. It is an end in itself.

11 I borrow the phrase from P.W. Kahn, 'Speaking Law to Power: Popular Sovereignty, Human Rights, and the New International Order', 1 *Chicago Journal of International Law* (2000) 1–18.

12 In the observations that follow, I draw on two of my own articles: D. Luban, 'Fairness to Rightness: Jurisdiction, Legality, and the Legitimacy of International Criminal Law', in S. Besson and J. Tasioulas (eds), *The Philosophy of International Law* (OUP, 2010) 569–588, at 576–578, and 'State Criminality and the Ambition of International Criminal Law', in T. Isaacs and R.C. Vernon (eds), *Accountability for Collective Wrongdoing* (CUP, 2011) 61–91, at 64–77.

13 T. Hobbes and M. Oakeshot (ed.), *Leviathan* (Basil Blackwell, 1957), at 112 (Chapter 17).

14 Machiavelli to Francesco Vettori, 16 April 1527, in Machiavelli, *The Chief Works and Others*, Vol. 2, A. Gilbert (trans.) (Duke University Press, 1965), at 1010.

As such, states, like gods, require sacrifice, of self and others. They demand our willingness to kill and die for their sake. As Paul Kahn has argued, state violence seeks to represent itself as sacred violence.[15] Sovereign violence, on this picture, is beyond good and evil, in the sense that no sovereign can judge another (*par in parem non habet imperium*), and no superior exists to pass judgment on them. *Raison d'état* and *Kriegsraison* are formulas for removing state actions from the realm of moral and legal accountability.

What I have said about sovereign violence holds equally for collective political violence by non-state actors killing and torturing in the name of ethnic or religious identity politics. This violence too takes on a sacred character. It consecrates us as members of a group that is greater than the individual and gives the individual's life meaning.

The time-honoured form of political imagination I have just described is the target of international criminal law. International criminal law uses trials, punishments and forms of law to project a radically different set of norms, one that reclassifies political violence from the domain of the sacred to the domain of ordinary thuggery. What was once called *Kriegsraison* we now label war crime. Massacres and invasions in the name of *raison d'état* are now called crimes against humanity and aggression. In place of sacred violence, we now say 'torture' and 'genocide'.

Earlier I objected to messianic thinking in ICJ, and it might be protested that the goal of moral transformation is equally messianic. That is untrue. Here the aim is not to leapfrog over politics into a global rule of law, but to use the instruments of law to project an alternative vision of politics.

The model is the anti-slavery movement of the 18th and 19th centuries, which brought about an equally momentous moral transformation.[16] The amazing fact is that in a bit more than a century, a practice accepted from the beginnings of recorded history was universally condemned and driven underground. The example of the anti-slavery movement shows that large moral transformations need not be messianic or utopian.

Some might argue that slavery ended only because social and technological changes made its continuation unnecessary. But the same might be true of violence, if Steven Pinker is right that violence is in long-term historical decline.[17] The fact (if it is a fact) that law can do its work of norm projection only under favourable social conditions is only an objection on fantastic assumptions about the autonomy of law. Law is never an autonomous cause of moral change, but it can be an important contributing cause.

15 Here I am drawing on P.W. Kahn, *Sacred Violence: Torture, Terror, and Sovereignty* (University of Michigan Press, 2008), as well as M. Halbertal, *On Sacrifice* (Princeton University Press, 2012). Halbertal makes the illuminating observation that the willingness to kill for the cause often rests on a psychologically plausible fallacy: if the cause is important enough for me to sacrifice my life, it must be objectively valuable. If it is objectively valuable, it is important enough for me to sacrifice your life.

16 See J.S. Martinez, *The Slave Trade and the Origins of International Human Rights Law* (OUP, 2012).

17 S. Pinker, *The Better Angels of Our Nature: Why Violence Has Declined* (Viking, 2012).

For that matter, the alternative picture of sovereign states as pragmatic necessities rather than divinities has credentials just as ancient and respectable as the fetishism of the state. As Michael Walzer demonstrates in his recent study of the Hebrew bible, it contained at least two theories of kingship and two theories of war. The first indeed treated kings as divinely sanctioned and warfare as holy genocide — sacred violence. But the bible also contains an alternative account in which kings are viewed with suspicion, their rule is sanctioned only by popular consent and pragmatic necessity, and in which warfare is limited. To speak very anachronistically, the latter picture is a distant ancestor of Kofi Annan's millennial redefinition of sovereignty.[18]

5. Some Consequences of this Point of View

Viewed in light of an expressive vision of international criminal law as an instrument of moral transformation, perhaps its single most important achievement has been the complementarity built into the ICC's institutional design. To avail themselves of complementarity, states must revise their own criminal codes to mirror the substantive law of the Rome Statute. As they do so, new norms get spliced into the DNA of domestic law. That is norm projection at work. It matters as much, or even more, for changing political imagination than a handful of international trials.[19]

Of course, states will seldom enforce those laws against themselves — that was the lesson of Leipzig that led to the Nuremberg Tribunals. But a parallel logic of positive complementarity suggests that what matters most is not punishing crimes but preventing them, by counting on the fact that (to paraphrase Henkin) most people take most law seriously most of the time. The task is to acculturate people to the law. Even an under-enforced domestic law against war crimes can be effective if it becomes part of military training. It matters too when that law gets built into the process by which operational military lawyers approve operations. A friend in the US Army once gave me a plastic wallet-card carried by all soldiers. It has the ten most basic 'soldier's rules' printed on it — humanitarian law boiled down (not coincidentally) to ten commandments. My friend, a military ethicist, shook his head about 'wallet-card ethics', but wallet-card ethics may be precisely the sign of successful norm projection.

Obviously, a law that is never enforced will fail: the only norms that radical under-enforcement projects are those of impunity and hypocrisy. The point, however, is that the drama of trials and punishments is not the only method of norm projection. The devolution of the norm from international to local institutions is equally important.

18 Walzer, *supra* note 8, Chapters 3 and 4.

19 Prosecutor Luis Moreno-Ocampo sometimes said in speeches that it would not bother him if the ICC had no business, because it would mean that complementarity was doing its work. He surely did not mean it — he knows as well as anyone else that an ICC that literally had no business would soon be out of business. But that was not his point.

Actually, the two devices work in tandem. The vast jurisprudence of international tribunals gives concrete meaning to norms that might otherwise be too vague or abstract. The nearly two decades of jurisprudence, with its subtle exploration of modes of liability, represents an advance in moral learning that now becomes common property of humankind. It would not exist without trials and judgments. But, in its turn, this intellectual byproduct of law enforcement makes it easier to devolve norms to local institutions. Once local institutions absorb them, the need for trials and punishments may lessen. Or so we have reason to hope.

Viewed in the same light — the importance of devolving international norms to local institutions — the current tug of war between the ICC and Libya over who gets to try Abdullah Senussi and Saif Ghaddafi seems like a blunder on the Court's part. It seems plainly more important that Libyans have the experience of transitional justice than that the ICC works its mandate. The tug of war may do some good if it induces Libya to upgrade its justice institutions, but this seems more like an unintended side effect of a turf war that the ICC should not be waging.

6. Universal Jurisdiction and Immunity

Two phenomena that this symposium must address are the demise of universal jurisdiction and the triumph of immunity for states and state actors. Together, they have largely eliminated an important venue for international accountability of state actors: the courts of 'bystander' states.

One can think about universal jurisdiction in two ways. The more conceptual and traditional is that states have a moral interest in repressing the most horrifying crimes — in Grotius's words, 'gross violations of the law of nature and of nations'.[20] But one can also think of universal jurisdiction more practically as a form of international aid, in which a state with a high-functioning judicial system makes it available to victims of conflict who otherwise have no recourse.

As states pare back their universal jurisdiction, it may be that they are no longer inclined to be generous in this way. Other forms of foreign aid are currently shrinking, so why not this as well? But it seems more likely that what doomed universal jurisdiction was the assumption that 'universal jurisdiction'-prosecutions express purely moral interests. Unfortunately, moral interests expressed by states cannot stand clear of politics, and too much of the world found the politics of universal jurisdiction obnoxious.

20 H. Grotius, *The Rights of War and Peace*, A.C. Campbell (trans.) (M. Walter Dunne Publishing, 1901), at 247, bk. II, Chapter 20, § 40. Grotius was cited in this connection in *Prosecutor v. Eichmann,* District Court of Jerusalem, 11 December 1961, § 14. I have defended universal jurisdiction on similar grounds in 'A Theory of Crimes against Humanity', 25 *Yale Journal of International Law* (2004) 85–167.

As the political analyst George Friedman wrote in connection with humanitarian military interventions, there is no such thing as an immaculate intervention: to intervene against one side is to intervene on behalf of the other side. In Friedman's words, humanitarians 'are doing more than simply protecting the weak. They are also defining a nation's history'.[21]

It turns out that there is no immaculate jurisdiction either. Attempts to exercise universal jurisdiction often seemed like heavy-handed efforts by former colonial masters like Belgium and Spain to define their former colonies' history for them — as Congolese Judge Bula-Bula furiously argued in his separate opinion in the *Arrest Warrant* case.[22] On the other side, there was no chance that powerful states and corporations would regard exercises of universal jurisdiction against them as 'immaculate'. Here, one need consider only the thuggish US reaction to Belgium, or the leaked Wikileaks cables reporting US pressure on Spain in the case of the 'Bush Six'.[23] For that matter, serious efforts to crush the US ATS began only when human rights litigators began suing multinational corporations rather than ousted warlords and fugitive hoodlums with no assets to attach.[24] In the end, then, universal jurisdiction has succeeded in antagonizing both weak and strong powers — a recipe for political failure.

The failure of universal criminal jurisdiction will have little practical effect. Maximo Langer's important research shows that out of more than a thousand modern universal jurisdiction complaints, only 32 have ever gone to trial. Excluding three Nazi cases brought in Israel and Australia, all the rest were

21 G. Friedman, 'Immaculate Intervention: The Wars of Humanitarianism', Stratfor.com, 5 April 2011, available online at www.stratfor.com/weekly/20110404-immaculate-intervention-wars-humani-tarianism (visited 9 April 2013).

22 *Case Concerning the Arrest Warrant of 11 April 2000 (DRC v. Belgium)*, 14 February 2002, separate opinion of Judge ad hoc Bula-Bula.

23 C. Rosenberg, 'From Florida to Spain, Intrigue to Stop a Judge', *Miami Herald*, 24 December 2010, available online at www.miamiherald.com/2010/12/24/1988022/from-florida-to-spain-intrigue.html (visited 9 April 2013). The USA has played a negligible role or perhaps an anti-role in the project of international criminal law. The US Congress commemorated the 60th anniversary of the Nuremberg judgment by immunizing US interrogators from war crimes prosecutions. And the Obama administration has been remarkably diligent in shielding CIA torturers and even independent contractors from accountability. High-profile war crimes like the Haditha massacre and the recent video of US troops urinating on Taliban corpses have received trivial sentences.

24 Students of the US Supreme Court's treatment of punitive damages and securities fraud lawsuits know that the Court dislikes big lawsuits against big money. If, as anticipated, the Court limits the ATS to territorial jurisdiction, it will likely invoke a strong territorial presumption that recently emerged in the context of securities litigation. *Morrison v. National Australia Bank*, 130 S.Ct. 2869, 2878 (2010), 561 U.S. _ (2010). The territorial presumption has existed in US law for a long time. See *Blackmer v. United States*, 284 U.S. 421, 437 (1932); *EEOC v. Arabian American Oil Company*, 499 U.S. 244, 248 (1991). But commentators view *Morrison* as an important effort by the current Supreme Court to reassert the presumption in contexts where it is unclear that it should apply.

brought in the courts of just 11 countries in the global North. Five of the tried cases resulted in acquittals and another 10 to acquittals on some charges.[25]

The immunity cases are more significant and ominous. That is because the theory underlying them is a full-bodied judicial assertion that traditional sovereign prerogatives matter more than new-fangled efforts to limit those prerogatives — even when a case concerns *jus cogens* crimes. This judicial reaction amounts to a Counter-Reformation in international law, spearheaded by the European Court of Human Rights in *Al Adsani*, the British House of Lords in *Jones v. Saudi Arabia* and the International Court of Justice in *Arrest Warrant* and *Germany v. Italy*.[26] All these decisions uphold the sanctity of states and extend it to the activities of state agents. One need only read the dissenting opinions in *Al Adsani* and Judge Cançado Trinidade's remarkable dissent in *Germany v. Italy* to see what the stakes are. Cançado Trinidade poses the question sharply: will we continue to have 'State-centric thinking, to the exclusion of human beings' or not?[27] In his view:

> What jeopardizes or destabilizes the international legal order, are the international crimes, and not the individual suits for reparation in the search for justice. What troubles the international legal order, are the cover-up of such international crimes accompanied by the impunity of the perpetrators, and not the victims' search for justice.[28]

In the terms I have framed it, the immunity decisions continue to treat the state as a 'mortal god', and in this way they aim to block the projection of the norms about collective political violence that international criminal law announces. In practice, immunities prevent civil recourse for victims of political violence, leaving the ICC as their sole forum — a job that the ICC is simply too small and constrained to carry out.

7. Concluding Clichés

When the editors asked me to contribute to this symposium on the plight of ICJ, clichés ran through my mind:

'Nobody said it was going to be easy.'

'Rumors of my demise are greatly exaggerated.'

25 M. Langer, 'The Diplomacy of Universal Jurisdiction: The Role of Political Branches in the Transnational Prosecution of International Crimes', 105 *American Journal of International Law* (2011) 1–49. Langer's superb article explores the many political factors that go into the exercise of universal criminal jurisdiction.

26 ECtHR, *Al Adsani v. United Kingdom*, Appl. No. 35763/97, 21 November 2001; UK House of Lords, *Jones v. Saudi Arabia*, 14 June 2006; ICJ, *Arrest Warrant Case*, *supra* note 22; ICJ, *Jurisdictional Immunities of the State (Germany v. Italy)*, 3 February 2012. The ICJ has been particularly assiduous in protecting states and state agents from accountability for major crimes, a predilection witnessed not only by *Arrest Warrant* and *Germany v. Italy* but also by the *Genocide Case* (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*), 26 February 2007.

27 ICJ, *Germany v. Italy*, *supra* note 26, dissenting opinion of Judge Cançado Trinidade, § 163.

28 *Ibid.*, § 305.

Or even:

'Stay the course!'

I have argued that the measure for evaluating ICJ is its success at norm projection, and that is a project that seems well under way even if it is still young. For that reason, the cliché that seems most apt is Zhou En-Lai's famous evaluation of the French Revolution's significance:

It's too soon to tell.