

Moral touchstone, not general deterrence: The role of international criminal justice in fostering compliance with international humanitarian law

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This article contends that international criminal justice provides minimal general deterrence of future violations of international humanitarian law (IHL). Arguments that international courts and tribunals deter future violations – and that such deterrence is a primary objective – assume an internally inconsistent burden that the processes cannot bear, in essence setting international criminal justice up for failure. Moreover, the inherently limited number of proceedings, the length of time required, the dense opinions generated, the relatively light sentences² and the robust confinement conditions³ all erode whatever limited

1 See e.g. Kate Cronin-Furman, “Managing Expectations: International Criminal Trials and the Prospects for Deterrence of Mass Atrocity”, *International Journal of Transitional Justice*, 2013, pp. 1–21; Michael Broache, “The International Criminal Court and Atrocities in DRC: A Case Study of the RCD-Goma (Nkunda Faction)/CNDP/M23 Rebel Group”, September 2014, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2434703; Geoff Dancy, Bridget Marchesi, Florencia Montal and Kathryn Sikkinck, “The ICC’s Deterrent Impact – What the Evidence Shows”, *Open Democracy*, 3 February 2015, available at: www.opendemocracy.net/openglobalrights/geoff-dancy-bridget-marchesi-florencia-montal-kathryn-sikkinck/icc%E2%80%99s-deterrent-impac (all internet references were accessed in June 2015).

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2 Relative at least compared to the United States. See Jens David Ohlin, “Towards a Unique Theory of International Criminal Sentencing”, in Göran Sluiter and Sergey Vasiliev (eds), *International Criminal Procedure: Towards a Coherent Body of Law*, Cameron May, UK, 2009, p. 373: “When compared against sentences handed down in the United States for regular crimes, the sentences of international criminal tribunals are typically far lower, even though the crimes at these tribunals are far greater in both moral depravity and legal significance.”

3 See Doreen Carvajal, “Accused of War Crimes, and Living with Perks”, *New York Times*, 3 June 2010, available at: www.nytimes.com/2010/06/04/world/europe/04iht-hague.html?pagewanted=all&_r=0, describing pre-trial confinement conditions at the International Criminal Court (ICC).

general deterrence international criminal justice might otherwise provide. Bluntly stated, thousands of pages of multiple *Tadić* decisions have not factored into any service member's decision-making on whether to comply with IHL.

International criminal justice can play many roles,⁴ including fostering compliance with IHL, but not through general deterrence and the threat of punishment. Adherence to IHL is an indirect byproduct of international criminal justice as a moral statement, an explication of how the international community views certain actions in armed conflict. This statement, often translated by military legal advisers and conveyed to service members by military leaders through personal example, briefings, training exercises, and military manuals and regulations, reinforces behavioural norms of how to conduct oneself in the most immoral of circumstances: armed conflict. International criminal justice's moral statement aids service members in navigating the moral abyss which results from a State lawfully ordering them to intentionally direct lethal force against fellow human beings.⁵ The result is service members who, in the aftermath of armed conflict, can live with themselves and the decisions they made during armed conflict. In the process, and in part as an indirect result of international criminal justice, the arc of service members' behaviour tends towards complying with IHL.⁶

This article first clarifies what is meant by "general deterrence" before reviewing how the claim that international criminal justice provides such deterrence is relatively new and stems from misunderstandings of what the International Criminal Court (ICC) can achieve. From there, the article explains how general deterrence is a challenging proposition for any criminal justice system and amounts to an unbearable burden at the international level. I then describe the indirect role that international criminal justice plays in providing if not moral clarity, then at a minimum, less moral ambiguity in defining by exception the bounds of permissible conduct during armed conflict.

General deterrence?

The focus of this article is on general deterrence, understood as the theory that criminally punishing an offender for violating the law dissuades others from similar violations. I recognize that some commentators, to varying degrees, reject general deterrence in the context of international criminal justice.⁷ Others claim

4 These roles include, but are certainly not limited to, contributing to peace and reconciliation and, as discussed in this note, derivatively and minimally providing general deterrence through active or positive complementarity.

5 On this point, see also Geoffrey S. Corn, "Contemplating the True Nature of the Notion of 'Responsibility' in Responsible Command", in this issue of the *Review*.

6 See American Public Media, "'Moral Injury': An Invisible Wound of War", available at: www.wbur.org/series/moral-injury, detailing the moral challenges veterans face in returning home after having "been a part of something that betrays their sense of right and wrong" during combat.

7 See Jens David Ohlin's claim that deterrence is only partially relevant to international criminal justice and Mark Drumbl's argument that it is irrelevant. J. D. Ohlin, above note 2; Mark Drumbl, "Collective Violence and Individual Punishment: The Criminality of Mass Atrocity", *Northwestern Law Review*, Vol. 99, No. 2, 2005, p. 590.

that what is problematic is not general deterrence *per se*, but attempting to “ascribe deterrent aims to (or judge deterrence in the context of) single international criminal courts or tribunals”.⁸ I don’t disagree. My point is that, as explained below, many influential figures began promoting international criminal justice’s general deterrent effects twenty years ago. They have not only retrospectively discovered general deterrent effects, but also claim these effects are the primary goal of international criminal law. Since this reconceptualization occurred in the mid-1990s, commentators – and international courts – have attempted to fit the square peg of general deterrence into the round hole of international criminal justice.⁹

Obviously, general deterrence is distinct from individual or specific deterrence – the theory that punishing an offender deters that particular offender from a future violation. Relatively speaking, the efficacy of a criminal justice system providing specific deterrence is easier to evaluate: it can be seen in the number of specific individuals who, having been punished for violating IHL, do or do not re-offend. Yet there is considerable debate on how well international criminal justice provides even specific deterrence.¹⁰ That there is debate on the specific deterrence aspects of international criminal justice is (or should be) a harbinger of the system’s inability to provide the more abstract general deterrence.¹¹ If opponents of international criminal justice were behind the claims that the system provides general deterrence, the argument would be viewed as a straw man. Yet the unbearable burden of deterrent effect derives not from critics of international criminal justice but, as discussed below, from supporters.

8 See Guido Acquaviva’s response to this piece, “International Criminal Courts and Tribunals as Actors of General Deterrence? Perceptions and Misperceptions”, in this issue of the *Review*.

9 See Barbara Hola, “Sentencing of International Crimes at the ICTY and ICTR: Consistency of Sentencing Case Law”, *Amsterdam Law Forum*, Vol. 4, No. 4, 2012, explaining that at least in terms of the ICTY and ICTR, “judges clearly found inspiration in classic ‘domestic’ penal theories”, and that “[i]n general, deterrence and retribution are emphasized in the majority of cases”; Geoff Dancy and Florencia Montal, “Unintended Positive Complementarity: Why International Criminal Court Investigations Increase Domestic Human Rights Prosecutions”, paper presented to the American Society of International Law Research Forum, 20 January 2015, discussing how the ICC may be achieving positive complimentary but “of a sort initially unintended by the Court”; Hyeran Jo and Beth A. Simmons, “Can the International Criminal Court Deter Atrocity?”, Working Paper Series, 18 December 2014, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2552820, describing how the ICC may indirectly bolster prosecutorial deterrence at the national level.

10 Nick Grono and Anna de Courcy Wheeler, “The Deterrent Effect of the ICC on the Commission of International Crimes by Government Leaders”, Presentation, *International Crisis Group*, 5 October 2012, available at: www.crisisgroup.org/en/publication-type/speeches/2012/grono-the-deterrent-effect-of-the-icc.aspx. Grono and Wheeler, while defending the idea that the ICC has deterred commission of crimes, concede that the ICC involves “the very situations where prosecutions are most unlikely to deter”.

11 Philipp Kastner, “Armed Conflicts and Referrals to the International Criminal Court: From Measuring Impact to Emerging Legal Obligations”, *Journal of International Criminal Justice*, Vol. 12, No. 3, 2014, p. 472. Helena Cobban called deterrence the “false hope of international justice”. See Helena Cobban, “Think Again: International Courts”, *Foreign Policy*, February 2006, available at: www.foreignpolicy.com/articles/2006/02/17/think_again_international_courts. Yet others claim that international criminal justice does provide a deterrent effect. See Payam Akhavan, “Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?”, *American Journal of International Law*, Vol. 95, No. 1, 2001, arguing that there is such a deterrent effect; Theodor Meron, “From Nuremberg to The Hague”, *Military Law Review*, Vol. 149, 1995, p. 110, arguing that if war crimes trials were “made a consistent reality, deterrence would be taken more seriously”.

Establishing that criminal prosecutions, at any level, generally deter others from committing the same or similar offences is challenging. It requires proving a negative: that the prosecution of person X for violating IHL deterred Y and Z in the future from similar violations. When Y and Z are not violating IHL, there is debate over the negative causation – proving why Y and Z are not committing violations. Rarely will individuals acknowledge general deterrence.¹² And when Y and Z do violate IHL in a manner similar to X, it would seem to present more straightforward evidence of the lack of general deterrence. Despite these challenges, or perhaps because of them, the idea that international criminal justice provides meaningful general deterrence is a relatively recent phenomenon.

General deterrence and international criminal justice

Contemporary international criminal justice relies in large part on the International Military Tribunal (IMT) at Nuremberg following World War II. Yet the IMT's primary purpose was punitive – the “just and prompt trial and punishment of the major war criminals of the European Axis”.¹³ The primary purpose of international criminal justice remained punitive up to and through the creation of the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR). As one commentator notes, the UN Security Council resolutions establishing the ICTY and ICTR were focused on

incapacitating specific offenders by removing them from the field of combat and preventing them from maintaining political power ... there is no clear language suggesting that the establishment of the ad hoc tribunals was intended to serve the purpose of preventing the commission of war crimes by potential offenders. *General deterrence does not seem to have been a primary goal of the architects of the ad hoc tribunals.*¹⁴

12 There are exceptions to that general proposition, however. For example, according to a UN official, the ICC convicting Thomas Lubanga for conscripting child soldiers has deterred others: “Let me that say that from my own experience the Prosecution and trials of the ICC are followed with great interest in the field. The deterrent effect of these proceedings is already being felt with regard to a large number of armed groups engaging with the United Nations to release children from their ranks and to cease all new recruitment.” ICC, *Prosecutor v. Thomas Lubanga Dyilo, Situation in the Democratic Republic of the Congo*, Transcript, ICC-01/04–01/06-T-223-ENG, 7 January 2010, paras 9–10. See also H. Jo and B. A. Simmons, above note 9, discussing the fear of ICC prosecution expressed by former Colombian president Andres Pastrana as well as by Colombian paramilitary leaders.

13 K. Cronin-Furman, above note 1.

14 *Ibid.*, p. 436 (emphasis added, internal citations omitted). Cronin-Furman contends that several years passed after the establishment of the ICTY and the ICTR before scholars began attributing to the tribunals the effect of general deterrence. This was around the same time that the international community created the Rome Statute and the ICC; *ibid.*, pp. 436 ff. See also Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Charter of the International Military Tribunal (IMT), 8 August 1945, UN Doc. A/CN.4/5, Art. 6, available at: <http://avalon.law.yale.edu/imt/imtconst.asp>, stating that the Allies established the IMT “for the trial and punishment of the major war criminals of the European Axis countries”.

Not until the “international epiphany”¹⁵ of the 1998 Rome Statute did the international community formally embrace the idea that international criminal justice provided general deterrence. The Rome Statute itself reflects that the States Parties were “[d]etermined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the *prevention* of such crimes”, as they “threaten the peace, security and the well-being of the world”.¹⁶ Ending impunity for perpetrators is specific or individual deterrence, but preventing others from committing crimes in the future is general deterrence. Indeed, general deterrence is “the most important goal of the ICC”.¹⁷ The former president of the ICC claimed that “[b]y putting potential perpetrators on notice that they may be tried before the Court, the ICC is intended to contribute to the deterrence of these crimes”.¹⁸

While the States Parties adopted the Rome Statute in 1998, preparatory work began in 1995.¹⁹ The idea that the ICC would generally deter the commission of atrocity crimes in the future “became a major selling point among advocates for the ICC’s establishment and ratification”.²⁰ At the same time as the Preparatory Committee for the ICC was drafting early versions of what would become the Rome Statute, scholars began to reassess the *ad hoc* tribunals in terms of general deterrence despite that not having been a focus at their inception.²¹ In 1996, Cherif Bassiouni outlined a view which was later adopted prospectively in terms of the ICC and retrospectively for the *ad hoc* tribunals. Bassiouni argued that “[t]he relevance of prosecution and other accountability measures to the pursuit of peace is that through their effective application they serve as deterrence, and thus prevent further victimization”.²² General deterrence’s migration from the ICC to the *ad hoc* tribunals continued and expanded such that by 2004, prosecutors from the ICC, the ICTY, the ICTR and the Special Court for Sierra Leone had issued a joint statement expressing their commitment to general deterrence in preventing future atrocities.²³

15 John Washburn, “The Negotiation of the Rome Statute for the International Criminal Court and International Law Making in the 21st Century”, *Pace International Law Review*, Vol. 11, No. 2, 1999.

16 Rome Statute of the International Criminal Court, 17 July 1998 (entered into force 1 July 2002), UN Doc. A/CONF.183/9, Preamble (emphasis added).

17 David Hoile, *Justice Denied: The Reality of the International Criminal Court*, Africa Research Centre, 2014, p. 228, quoting both the first Prosecutor of the ICC, Luis Moreno Ocampo, and Christine Chung, the first senior trial attorney in the ICC’s Office of the Prosecutor.

18 Howard Salter (ed.), “Mr. Philippe Kirsch: President and Chief Judge of the ICC”, *Global Solutions Quarterly: The Newsletter of Citizens for Global Solutions*, Fall 2005, p. 2, available at: globalsolutions.org/files/public/documents/Newsletter-2005-fall.pdf.

19 See J. Washburn, above note 15.

20 K. Cronin-Furman, above note 1, p. 438, quoting Diane F. Orentlicher, “Judging Global Justice: Assessing the International Criminal Court”, *Wisconsin International Law Journal*, Vol. 21, No. 3, 2003, p. 498.

21 K. Cronin-Furman, above note 1, p. 436, note 13, referring to Payam Akhavan, “Justice in The Hague, Peace in the Former Yugoslavia”, *Human Rights Quarterly*, Vol. 20, No. 4, 1998, pp. 737–816, and David Wippman, “Atrocities, Deterrence, and the Limits of International Justice”, *Fordham International Law Journal*, Vol. 23, No. 2, 1999, pp. 473–478.

22 M. Cherif Bassiouni, “Searching for Peace and Achieving Justice: The Need for Accountability”, *Law and Contemporary Problems*, Vol. 59, No. 4, 1996, p. 18.

23 Louis Moreno Ocampo, Carla Del Ponte, Hassan Bubacar Jallow and David Crane, *Joint Statement of the Prosecutors of the International Criminal Court, the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, and the Special Court for Sierra Leone*, 27 November 2004, available at: www.iccnw.org/documents/JointDeclarationProsecutors26Nov04.pdf.

General deterrence as an unbearable burden for international criminal justice

While providing (and proving) general deterrence is a challenge for any criminal justice system, the challenge is much greater in the international context given the limited jurisdiction of the ICC and the *ad hoc* tribunals. These fora have limited mandates and resources, which understandably results in their only prosecuting some of the most serious offenders. Yet current research indicates that it is the certainty of punishment which is most likely to produce general deterrence.²⁴ By definition, international criminal justice cannot offer anything close to certainty of punishment.²⁵

Whatever vestige of general deterrence international criminal justice might claim dissipates along a spectrum of the inexorable time and length required. The greater the temporal gap between the offence and issuing the trial judgment, and the greater the length and opaqueness of that judgment, the less the deterrent effect. The case of Momcilo Perišić is, unfortunately, instructive on both points. Perišić allegedly violated IHL in 1995. The ICTY announced criminal charges against him in 2005. The ICTY then began the trial in 2008, yielding a trial judgment in 2011 requiring over 600 pages. In 2013, an appeals chamber granted Perišić's appeal, reversing the trial judgment and leaving the elements of aiding and abiding liability either in doubt or at least in confusion. Imagine a military legal adviser preparing to talk to senior military leaders and explain the "so what?" takeaway or lesson(s) learned from *Perišić*. What bright line, articulable rule or principle could the legal adviser say *Perišić* established or clarified? What actions does the *Perišić* judgment deter other senior leaders from taking?

I contend that military legal advisers would not even raise *Perišić* because they either (1) have not read the judgment, given its length and/or lack of clarity, (2) do not understand the judgment if they have read it (this barb is directed at the ICTY and not the military legal advisers), or (3) have read and understood the judgment but recognize that it cannot be meaningfully translated into anything resembling helpful legal advice. For the judgment to have even the potential of general deterrence, a military legal adviser would need to be able to finish the following sentence "Sir/Ma'am, in light of *Perišić*, you should avoid the following actions...". That a military legal adviser cannot do so means the judgment cannot possibly deter others. It is fine to speak of law in terms of expressive value and signalling effects, but at some point, to be of practical utility, the law must be able to be clearly articulated, distilled and conveyed to the category of individuals that the international community seeks to influence.

24 Valerie Wright, "Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment", Report, The Sentencing Project, Washington, DC, November 2010.

25 One study claims that the ICTR "might eventually prosecute approximately 0.005% of the pool of the likely humanitarian offenders" in the Rwandan genocide. Thus the ICTR would prosecute approximately half of one percent of offenders, or stated in the alternative, not prosecute 99.5% of the offenders. Julian Ku and Jide Nzebile, "Do International Criminal Tribunals Deter or Exacerbate Humanitarian Atrocities?", *Washington University Law Review*, Vol. 84, No. 4, 2006, p. 808.

Thus, despite all the time, effort and resources that it entailed, *Perišić* confuses more than clarifies the law, precluding even *de minimus* general deterrence. Most international criminal justice cases do play a role in fostering compliance with IHL, but it's neither accurate nor helpful to think of that role in general deterrence terms.

For international criminal justice to generally deter IHL violations, there would need to be exponentially more cases and more easily understandable judgments issued closer in time to the underlying IHL violations. And that is fully at odds with the nature of international criminal justice. The idea of general deterrence is even more problematic at the ICC, as increasing the number of cases at the international level is at cross purposes from what should be the primary measure of the Court's effectiveness – domestic criminal justice capacity-building – rendering the Court if not unnecessary then seldom used.²⁶

Arguing that international criminal justice provides general deterrence is akin to the tale of Sisyphus, who in Greek mythology was sentenced by the Gods to perpetually roll a boulder up a hill without ever being able to reach the top – only in this context it is worse, as proponents of general deterrence are seeking out the boulder.

International criminal justice as a moral touchstone

Yet regardless of how long the process takes and how convoluted the judgments may be, international criminal justice constitutes a moral statement – the international community's expectations of how belligerents are to conduct themselves during armed conflict. Ultimately this leads to greater IHL compliance, but not because of the unbelievably remote prospect of being in the dock at an international criminal proceeding. Rather, international criminal justice fosters compliance because it aids leaders in their efforts to protect service members' morality, their ability to live with the emotional consequences of knowing they have killed other human beings. IHL, along with the international criminal justice institutions interpreting it, provides a moral touchstone, the significance of which should not be understated – or miscast as deterrence.

As Telford Taylor reminds us, “[w]ar is not a license at all, but *an obligation to kill* for reasons of state”.²⁷ We know that “most soldiers have a phobia-like resistance to using force and need to be specifically trained to kill”.²⁸ Thus a

26 See Election of the Prosecutor, Statement by Mr Moreno Ocampo, ICC-OTP-20030502-10 22, 22 April 2003, stating that “[t]he efficiency of the International Criminal Court should not be measured by the number of cases that reach the court or by the content of its decisions. Quite on the contrary, because of the exceptional character of this institution, the absence of trials led by this court as a consequence of the regular functioning of national institutions, would be its major success.”

27 Telford Taylor, *Nuremberg and Vietnam: An American Tragedy*, Quadrangle Books, Chicago, IL, 1970, pp. 40–41 (emphasis added).

28 Geoffrey S. Corn, Laurie L. Blank, Chris Jenks and Eric Talbot Jensen, “Belligerent Targeting and the Invalidity of a Least Harmful Means Rule”, *International Law Studies*, Vol. 89, p. 623, note 254, referencing Dave Grossman, *On Killing: The Psychological Cost of Learning to Kill in War and Society*, Little, Brown & Co., Boston, MA, 1995.

significant part of military training does just that – it breaks down the natural human instinct against killing a fellow human being. Overcoming the instinct against killing is but one half of the challenge, however; doing so within the bounds of IHL is the other.

Conclusion

“War is, at its very core, the absence of order, and the absence of order leads very easily to the absence of morality...”²⁹ The absence of order is so profound that even delayed, long, and convoluted international criminal judgments are navigational lights, however dim, for service members traversing the moral abyss of armed conflict. The idea of international criminal law as a series of faint waypoints in a deep moral fog is distinct from its role (if it even has one) in providing general deterrence.

International criminal law in general deterrence terms essentially means that a soldier would avoid doing as, say, Tadić did because the punishment Tadić received had deterred the soldier. This simply doesn’t happen.³⁰ Instead, international criminal justice is a tether, an anchor in the good sense, which helps military leaders develop and preserve the good order and discipline necessary to be an effective fighting force. There is an exceedingly remote chance that a service member will face international criminal justice for violating IHL, but there is a 100% chance that a service member will have to live with the consequences of what they do in armed conflict.³¹

29 James R. McDonough, *Platoon Leader: A Memoir of Command in Combat*, Ballantine Publishing Group, New York, 1985, p. 78.

30 See J. D. Ohlin, above note 2, pp. 385–386, stating: “Those who kill and rape civilians are motivated by a variety of factors – genocidal hatred, war-induced rage, etc. – and most of these are not the types of motivations that can be altered by the knowledge that, possibly, just possibly, one might face criminal liability at an *ad hoc* or permanent international tribunal.”

31 For an example of the moral consequences of armed conflict, consider U.S. Army paratrooper Staff Sergeant Tom Blakely, who parachuted into France as part of Operation Overlord, the Allied forces’ invasion of Nazi-controlled Europe in World War II. Blakely’s unit was behind enemy lines and ordered to seize and hold a bridge to prevent the German military from reinforcing its positions at Normandy beach. While in defensive positions, Blakely’s platoon leader ordered each US soldier to identify not a direction to fire, but a specific German soldier. Blakely, now a docent at the World War II Museum in New Orleans, said: “I picked one out. I picked him out, got a site, hand on the trigger, and pulled it. I could see when the bullet hit him. He jumped up in the air, raised his arms above his head, and dropped his rifle and fell backwards.” This engagement was fully in compliance with IHL, but it nonetheless took a moral toll on Blakely. The German soldier he shot and killed haunted him: “He came to me from that day on every so often There was never any rhyme or reason when he came and when he left. Sometimes he would do that three or four times, sometimes he’d only do it once. But it was always somethin’. He was always there. And he came vividly in my mind often.” And this is a case where the service member followed IHL. The external validation and reinforcement that indirectly flows from international criminal justice that one’s actions in combat were permissible and legitimate is of significant utility. It is just not general deterrence. See CBS News, “A ‘Living Artifact’ of WWII Shares His Story”, 26 May 2013, available at: www.cbsnews.com/news/a-living-artifact-of-wwii-shares-his-story/.

A US Army officer writing on his experience as a small-unit leader during the Vietnam war acknowledged that:

I had to do more than keep them alive. I had to preserve their human dignity. I was making them kill, forcing them to commit the most uncivilized of acts, but at the same time I had to keep them civilized. That was my duty as their leader. ... War gives the appearance of condoning almost everything, but men must live with their actions for a long time afterward. A leader has to help them understand that there are lines they must not cross. He is their link to normalcy, to order, to humanity.³²

International criminal justice can help reinforce that link and, in so doing, indirectly fosters IHL compliance. It does so by disseminating societal norms by exception: from knowing how service members may not act, we indirectly reinforce how they should act in hostilities. This happens not necessarily because of the fear of a potential future international criminal prosecution that statistically speaking will almost never occur, but by helping to foster and maintain a moral sense of self with which the soldier can live, both during and in the years after armed conflict. However, we do international criminal justice a disservice by imposing the concept of general deterrence. International criminal justice cannot, and need not, bear the burden.

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International criminal courts and tribunals as actors of general deterrence? Perceptions and misperceptions

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32 J. R. McDonough, above note 29, pp. 77–78.

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