corporate crimes), can therefore be interpreted as the next step in an ongoing process to enhance the enforcement of international criminal law within the region.

However, these developments are accompanied by significant challenges that include, inter alia, the financial feasibility of a regional criminal court in Africa, especially as its establishment may draw away valuable resources that are needed to strengthen the capacity of national courts to prosecute international crimes. Similarly, it is questionable whether African states currently have the political will to follow through on the establishment of a regional criminal court with very broad substantive jurisdictions. The Malabo Protocol has not yet been ratified by any member state of the African Union. Furthermore, once established, the office of the prosecutor of the African Criminal Court will also face the challenge of designing a legally permissible and practically feasible "division of labor" between itself and the office of the prosecutor of the International Criminal Court, given potential overlaps in jurisdiction. It would, for example, have to consider if and to what extent the complementarity principle could be used to facilitate jurisdictional coordination between the two courts.

The panel discussion further highlighted that the emphasis on "regionalization" of the enforcement of international law in Africa is not unique to international criminal law. In the area of human rights, subregional courts such as the East African Court of Justice and the Court of Justice of the Economic Community of West African States have been endowed with, and have exercised, a human rights mandate. Moreover, regional human rights courts can also play an important (indirect) role in the enforcement of international criminal law. This has become apparent in Latin America, where the Inter-American Court of Human Rights is engaged in a fruitful dialogue with countries such as Colombia, which is aimed at strengthening its domestic mechanisms for the prosecution of international crimes. Complaints before the Inter-American Court of Human Rights concern state responsibility for human rights violations and are not as such directed at determining individual criminal responsibility for the perpetration of international crimes. Even so, the emphasis on the need for adequate domestic mechanisms for investigating, and, where necessary, prosecuting human rights violations that would also constitute international crimes, also strengthens the enforcement of international criminal law.

The Shared Goals but Distinct Roles of Criminal and Human Rights Courts

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Most Latin American states have submitted to the jurisdiction of both the International Criminal Court and the Inter-American human rights system, including the Inter-American Court and Inter-American Commission on Human Rights. This allows us to observe and compare the different ways in which a well-institutionalized regional human rights system and an international criminal system work—through different treaties, different interlocutors, and different working methods—toward the same goals. In particular, Colombia and Mexico, both states that are experiencing high levels of violence, allow us to observe the two systems in play at once.

Four insights emerge from the juxtaposition: the human rights courts engage *earlier and in an ongoing way*; they approach problems armed with a broader range of tools; they engage with a

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broader range of state and nonstate actors; and yet they have *a lower profile*. Each of these attributes can, at times, be an advantage in helping states fashion appropriate responses to atrocity crimes.

Decision Density and Ongoing Dialogue

The first observation is that decision density matters. A regional human rights system is always in dialogue with states, and with a large group of civil society actors, over human rights matters. Thus, there is an established set of interlocutors in place at the domestic level, and state and nonstate actors alike have a high awareness of the norms and the system. In the case of Colombia, there are NGO lawyers who identify as experts on the Inter-American System (IAS) and who regularly litigate before the System.

As a result, the human rights norms the Inter-American System upholds already permeate discussion and debate even before there is a case over a particular matter. For example, Colombia's reparations practices already reflect years of interactions with the IAS, through recommendations, judgments, and compliance reports. IAS practice is deeply embedded in the *Consejo Superior del Estado's* practice, just as, some argue, Colombia's practices are reflected in the IAS jurisprudence.[1]

By contrast, when an international criminal court opens a case, it acts more like a *deux ex machina*: the court is an outside actor, stepping in as if from above to fix a problem that local officials have been unable to address. Once the problem is fixed, the court will again leave. Or at least that is how it is supposed to work. In reality, the ICC's work in Colombia lies somewhere in between these two modes of interaction. The ICC does not have an open case in Colombia, but is rather overseeing a preliminary examination, and using the threat of a possible prosecution to pressure Colombia toward accountability. Ten years into the preliminary investigation, the ICC has become a familiar actor in Colombian politics. Even so, it does not have as deep a history with local institutions as does the Inter-American System, and it has not shaped local practices in the same way.

In general, a regional court acts as a continual interlocutor: its body of jurisprudence and established networks embed it locally and create pressure toward compliance. Its influence is already present before the ICC opens a case, and continues after its exit.

A Broader Mandate

The mandate of a regional human rights system extends well beyond criminal accountability for a narrow set of crimes. The American Convention on Human Rights, like other human rights treaties, lists a long set of rights spanning the gamut from fundamental rights, such as the right to life, to cultural rights, educational rights, and reproductive rights.[2] It has also been interpreted to include a right to truth, a right to peace, and a victim's right to participate in the criminal process. Thus, it is able to guide states not just toward prosecution of atrocity crimes, but toward a rich array of accountability and repair measures.

The example of the Colombian peace process is useful here. There has been much focus on the question of criminal accountability and amnesty, and the International Criminal Court's Office of the Prosecutor has been actively involved in setting parameters that the Colombian government must respect. However, in figuring out a transitional justice scheme that includes truth-telling

[1] Enrique Gil Botero, *El principio de reparación integral en Colombia a la luz del Sistema Interamericano de Derechos*, *in* Perspectiva Iberoamericana Sobre la Justicia Penal Internacional 319 (Héctor Olásolo Alonso & Salvador Cuenca Curbello eds., 2012).

[2] Organization of American States, American Convention on Human Rights, Nov. 22, 1969, 1144 UNTS 123.

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and reparation, the Colombian peacemakers have also looked to the Inter-American System. As noted above, the Inter-American Court and the Consejo Superior del Estado have long been engaged in a dialogue about reparations for victims of the armed conflict, yielding a sophisticated system of monetary and nonmonetary reparative measures.

That the Inter-American System has a broader mandate also means that it can draw from a more varied array of tools in fostering accountability for atrocity crimes. For example, when it became apparent that the Mexican government was not adequately responding to the disappearance of forty-three students in Ayotzinapa in 2014, the Inter-American Commission worked with the Mexican government to establish the Interdisciplinary Group of Independent Experts (GIEI) to review the lines of criminal investigation and make recommendations.[3] This was a *sui generis* working method that the Inter-American Commission was able to establish because it has a broad mandate to promote human rights in the region. By contrast, the ICC has, for now, decided that it does not have jurisdiction over the Mexican situation.

A Broader Set of Interlocutors

That the human rights courts engage with a broader set of issues also means that they engage with a greater array of state actors. In Colombia, for example, both the ICC and the Inter-American System engage directly with prosecutors that investigate atrocity crimes committed in the course of the internal armed conflict, as well as with judges that adjudicate them. And both engage with the NGOs that have made such crimes a focus of their work. But the Inter-American System *also* engages with NGOs focused on other political issues, such as LGBTQ rights and indigenous rights, and with state institutions beyond the criminal system, such as the Colombian Supreme Court and the *Consejo Superior del Estado*. As a result, the IAS develops a deeper knowledge about the situation on the ground, and will be better able to work with the state on responses to the victims of the armed conflict.

Lower Profile

Part of the power of the international criminal courts derives from the symbolic weight of the trial and punishment of a powerful individual. The creation of the ICC was viewed as a watershed event, and its every move has been scrutinized and debated in dozens of scholarly and journalistic articles. States often seek to avoid the high-profile intervention of an international court, which gives the ICC power to pressure states to prosecute for themselves, and thereby avoid an international intervention.

By contrast, the human rights courts work rather more under the radar. While the *New York Times* publishes plenty of op-eds about international courts, it has rarely mentioned the Inter-American System in its editorial pages. (This the case even though the United States is a member of the Inter-American System, through the Inter-American Commission, while it is not subject to the ICC.) Of course, the IAS is more well known in Latin America than in the United States. But even in Colombia, one of the states that has most engaged with the IAS through judicial dialogue and judgment density, the debate over amnesty and punishment has been centered on the ICC rather than the IAS.

Overall, this lack of attention can be a problem for a court. But it is also the case, possibly, that it allows the IAS a bit of flexibility. For example, it may be able to resolve more controversial issues without attracting as much notice: the Inter-American Commission may be able to engage with states and victims toward friendly resolutions that suit the victims and resolve the dispute.

[3] See IACHR, *Interdisciplinary Group of Independent Experts (GIEI)*, *at* http://www.oas.org/en/iachr/activities/giei.asp.

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Similarly, the IAS can engage with states in working toward impunity over a long period of time, thereby allowing a different understanding of atrocity crimes to take root, and a different power dynamic to unfold. Many argue that the IAS should have a more public, precedent-setting role. But its low profile does seem at times to allow it a bit of flexibility.

Conclusion

The differences highlighted here tend to show the human rights systems in a positive light given their relative neglect by scholars and journalists. However, it would be a mistake to posit this as a competition. Rather, that the two systems overlap by being involved in the same state and being concerned with the same issues is an opportunity for complementarity. By highlighting the differences in the manner of work of the two systems, we set the stage for thinking about paths toward collaboration and mutual reinforcement.

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