

# The Law and Practice of the International Criminal Court

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# Completion, Legacy, and Complementarity at the ICC

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## 49.1 Introduction

Ten years after the ICC opened its doors, the tribunals which preceded it in the modern era of international criminal justice have had to wrestle with how they will finish up their work and close their doors. Although addressing this question was left until relatively late in the game, the SCSL and the ad hoc ICTY and ICTR developed ‘completion strategies’ to guide the winding down of their activities.<sup>1</sup> These strategies address not only the immediate issue of completing case work and trials, but also how so-called residual issues will be addressed. That is, how any ongoing obligations such as the protection of witnesses or the revision of sentences will be handled. Importantly, they also address how the legacy of the tribunals will be consolidated in the communities affected by the crimes within their jurisdiction.<sup>2</sup>

As a permanent court, the ICC may seem at first to be immune to questions about its own completion strategies. Indeed, the Rome Statute<sup>3</sup>, while offering detailed guidance as to the criteria governing the opening of investigations, does not prescribe a legal mechanism for closing an investigation. That is, there is no apparent limit on the number of cases that can be brought in an ICC situation, usually understood as the specific set of incidents in a given country.<sup>4</sup> This is not to say that the prosecutor’s

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<sup>1</sup> Report on the SCSL: Activities, Achievements, and Completion of its Mandate, Annex to Letter dated 5 October 2012 from the Permanent Representative of Canada to the United Nations addressed to the President of the Security Council, UN Doc S/2012/741 (5 October 2012); UNSC Res 1503 (28 August 2003) UN Doc S/RES/1503; UNSC Res 1534 (26 March 2004) UN Doc S/RES/1534.

<sup>2</sup> See K Heller, ‘Completion’ in L Reydams et al. (eds), *International Prosecutors* (Oxford: Oxford University Press 2012) 887 (identifying completion issues, residual mechanisms, and legacy projects as three distinct components of completion strategies).

<sup>3</sup> Rome Statute of the ICC (signed 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3 (‘ICC Statute’).

<sup>4</sup> The Prosecutor may take a decision not to prosecute under Art 53 ICC Statute once an investigation is open, but this is a decision that may be revisited by the Prosecutor at any point and appears to relate primarily to a decision regarding the prosecution of a specific case, that is, a specific charge or charges against a specific individual or individuals. As the Court affirmed in a 2013 report: ‘the ICC’s legal framework does not foresee any limit on the number of cases that the OTP may bring before the Court—this is a matter of prosecutorial discretion.... [The absence of a statute of limitations for the crimes under the Court’s jurisdiction] is a distinct strength of the ICC in the sense that individuals subject to outstanding arrest warrants cannot expect their cases to lapse and disappear.’ Report of the Court on Complementarity: Completion of ICC Activities in a Situation Country, ICC-ASP/12/32, 15 October 2013 (Twelfth Session of the ASP), paras 11, 12, and 15.

ability to open new cases in a situation country is entirely without its limits. New cases will need to fall within the temporal and territorial limits of the situation, defined either by the scope of the referral to the Court or by the decision of the ICC Pre-Trial Chamber authorizing investigations.<sup>5</sup> Jurisprudence from the Court's Pre-Trial Chamber in the *Mburashimana* case suggests that even where a State Party referral is, on the face of it, open-ended, additional cases in that country may require the opening of a new situation if there is an insufficient link with the referral initially triggering the Court's jurisdiction.<sup>6</sup>

Even with these limits, however, the Court's jurisdiction is more open-ended than that of its predecessor tribunals, particularly given that with regard to States Parties, the ICC prosecutor can seek to open a new situation *proprio motu* in an existing situation country without relying on a mandate from either that state or the United Nations Security Council.<sup>7</sup> This is an important advantage when it comes to completion strategies. As discussed later in the chapter, completion strategies at other tribunals have been developed in the shadow of prospective and sometimes premature closure. Deficits in these strategies, or in their implementation, can undermine a tribunal's delivery of justice and its legacy, a topic Kevin Jon Heller has explored comprehensively in his study of completion.<sup>8</sup>

In practice, however, the ICC's work will, at some point, come to a conclusion as existing judicial proceedings are completed and additional cases are not pursued by the prosecutor. The ICC cannot stay in a particular situation in perpetuity.<sup>9</sup> While avoiding arbitrarily imposed timelines, there are several reasons that Court officials and States Parties need to enter new situations with their eyes already firmly trained on how the ICC will responsibly complete its work when the time comes.

First, ignoring that there will eventually be a closure to ICC situations would dilute the need for the ICC and its States Parties to think clearly and responsibly about the ICC's legacy, that is, to consider the overall impact of the Court on affected populations in terms of ending impunity, ensuring accountability and redress, strengthening the rule of law, and contributing to sustainable peace. These are elements that make the most sense only when contemplated in the

<sup>5</sup> Arts 1, 15, and 17 ICC Statute.

<sup>6</sup> See discussion of the *Mburashimana* jurisprudence in R Rastan, 'The Jurisdictional Scope of Situations before the International Criminal Court' (2012) 1 *Criminal Law Forum* 23, 1, 2–20.

<sup>7</sup> See Art 15(1) ICC Statute; see also Arts 1, 18, and 19 Statute of the ICTY, UNSC Res 827 (25 May 1993) UN Doc S/RES/827, Annex ('ICTY Statute') and Arts 1, 18, and 19 Statute of the ICTR, UNSC Res 955 (8 November 1994) UN Doc S/RES/955, Annex ('ICTR Statute').

<sup>8</sup> See Heller (n 2). Heller's analysis of completion strategies includes a range of other international or internationalized tribunals beyond the ICTY, the ICTR, and the SCSL, namely the Nuremberg Military Tribunals, the Bosnian War Crimes Chamber, the STL, the IMT, the IMT for the Far East, the Special Panels for Serious Crimes in East Timor, and Regulation 64 panels in Kosovo.

<sup>9</sup> Cf. S Bibas and W Burke-White, 'International Idealism Meets Domestic-Criminal-Procedure Realism' (2010) 59 *Duke Law Journal* 637, 680. According to Bibas and Burke-White, '[t]he idealistic desire to do justice collides with the reality of limited time and money'. As a result, international criminal justice has just recently begun to heed to systematic issues of case management. Because of limited resources, these authors argue, the system must do a better job at screening cases including through "proactive complementarity".

context of the ICC's eventual conclusion of work and departure from any particular country.

Avoiding the inevitable because it may be unpredictable would risk missing real opportunities to consolidate this legacy in *existing* ICC situation countries. For example, focusing on the Court's eventual completion of its activities from the outset is likely to highlight the desirability of the Court's ability to transfer some responsibilities to national authorities. This, in turn, could engender an orientation in the Court's activities towards ensuring there is capacity domestically to take up those responsibilities after the ICC has completed its work. While this will assist the Court in concluding its activities, enhancing national capacity would also benefit the Court's contributions to national jurisdictions. It would help put in place some of the elements necessary for national authorities to conduct additional investigations and prosecutions in order to bring fuller accountability than the ICC is likely to yield acting on its own. This could have real benefits for the ICC's legacy and contribution to national jurisdictions.<sup>10</sup>

Second, there are also opportunity costs for the ICC in terms of prospective *new* ICC situation countries. If the ICC's permanence and potential global reach are among its greatest strengths and innovations, they also create a real dilemma regarding how many situations and cases the Court, as a single institution with finite resources, can be expected to handle simultaneously.<sup>11</sup> States Parties should be willing to ensure the Court has the resources needed to increase the depth and reach of its work, but a clear sense of how to define the Court's mission in a given situation country and a strategy for completing that mission will enable the Court to increase its ability to respond to the high demand for justice.

Third, having one eye on the 'end game' is also important from the perspective of the populations affected by conflict. While justice cannot be rushed, there should come a time when the bulk of the accountability work can be considered to be done, so that it does not drag on forever. If the ICC is clear and up-front about when it considers its contribution to accountability has concluded, this will enable local populations to identify what still needs to be done by the national system and also enable them to feel a sense of closure of at least part of the accountability process. Great care should be taken to ensure that the ICC is not asked to move on prematurely before its work is completed in a given situation—a risk the Court has already encountered, as discussed later. But defining what that 'end' should look like and how the Court should arrive there responsibly so as to ensure its ongoing obligations are met and its legacy is consolidated, are key questions that the ICC, like its predecessor tribunals, needs to face.

<sup>10</sup> Report of the Court on Complementarity: Completion of ICC Activities in a Situation Country, ICC-ASP/12/32, 15 October 2013 (Twelfth Session of the ASP) ('ASP Report of the Court on Complementarity'), paras 27–37; Report of the Bureau on Complementarity, ICC-ASP/11/24, 7 November 2012 (Eleventh Session of the ASP), paras 16–20.

<sup>11</sup> See generally Bibas and Burke-White (n 9) discussing potential methods for better case management systems.

The need for real attention to completion strategies of international tribunals, and, in particular, to ensure that these strategies are legacy-sensitive, has been a matter of consensus for some time. As early as 2004, the UN Secretary-General reported that 'it is essential that, from the moment any future international or hybrid tribunal is established, consideration be given, as a priority, to the ultimate exit strategy and intended legacy in the country concerned'.<sup>12</sup> In spite of this, the ICC's first decade passed largely without any real forward momentum in a strategic consideration of these issues. There are positive signs that this is now changing and that a real discussion is finally emerging at the Court and among States Parties regarding the need for completion strategies.

Since the Kampala Review Conference in 2010, the ICC's ASP has had a dedicated 'facilitation' on 'complementarity' within its Bureau.<sup>13</sup> The facilitation has focused on so-called positive complementarity, that is, how international assistance to national jurisdictions can be enhanced in order to strengthen the willingness and ability of those jurisdictions to conduct the investigation and prosecution of ICC crimes.<sup>14</sup> In 2012 the ASP's Resolution on complementarity explicitly recognized that 'greater consideration should be given to how the Court will complete its activities in a situation country and that such exit strategies could provide guidance on how a situation country can be assisted in carrying on national proceedings when the Court completes its activities in a given situation'.<sup>15</sup> In its 2013 report to the ASP on complementarity, referenced earlier, the Court, in turn, set out initial observations on completion within the context of the ICC, lessons learned from other international or internationalized tribunals, and the role of the Court's field operations in completion strategies.<sup>16</sup>

Several of the issues raised here overlap with those identified by the Court in this 2013 report and this chapter seeks to make a contribution to pushing forward this important work. This chapter will first examine some of the key questions the Court and its States Parties will need to address to adapt and define the concept of 'completion' for the ICC. While recognizing that completion in the ICC context will have a number of unique features, this chapter will then go on to describe some of the lessons learned from the completion strategies of other international or internationalized tribunals in three key areas: capacity building, outreach, and archive management. Finally, as indicated, at the heart of a successful completion strategy will be an overriding concern to consolidate the Court's legacy in its situation countries. For this reason, this chapter will argue that realizing a connection between completion and positive complementarity, while not without

<sup>12</sup> The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, Report of the Secretary-General, UN Doc S/2011/634 (24 August 2004), para. 46; see also Heller (n 2) 887, 917–20 (noting that the OTPs of tribunals which have pursued a 'global' completion strategy, that is, a strategy developed prior to the creation of a tribunal, have been largely more successful than those which have adopted a 'situational' strategy, adopted after the tribunal is already established and operational).

<sup>13</sup> ASP Report of the Court on Complementarity (n 10) para. 47.

<sup>14</sup> *Ibid.*, paras 13–14.

<sup>15</sup> Preamble of the Complementarity Resolution, ICC-ASP/11/Res.6, 21 November 2012 (Eighth Plenary Meeting of the ASP).

<sup>16</sup> ASP Report of the Court on Complementarity (n 10).

its challenges, could focus States Parties' discussions, including on the role of the Court, and achieving a correct understanding of the role of the Court, when it comes to complementarity.

## 49.2 Adapting the Concept of 'Completion' to the ICC

The ICC can benefit from the experience of the SCSL, ICTY, and the ICTR in the development of completion strategies. These experiences, however, cannot be borrowed nor the solutions adopted wholesale, given the differences between these institutions and the ICC, including in its length of operations, its mandate, and its structure. We identify here some of the key questions the ICC may face in contemplating its completion strategies.

### 49.2.1 Avoiding restrictions on the ICC's mandate

It is important to understand that the development of completion strategies for the ICTY, ICTR, and SCSL did not take place *sua sponte*, nor were they initially motivated by a primary concern for safeguarding legacy. Instead, completion strategies were developed as a direct by-product of the pressure on these tribunals—largely budgetary—to accelerate their conclusion.<sup>17</sup> Completion strategies went hand in hand with other measures to wrap up work, including, at the ICTY and ICTR, greater selectivity in the choice of cases, forced by the requirement in United Nations Security Council Resolution 1534 that the ICTY and ICTR focus on 'the most senior leaders'.<sup>18</sup>

Indeed, as Heller notes, even beyond Resolution 1534, completion deadlines and corresponding changes in procedures had a direct impact on prosecutorial decisions and, he argues, impaired prosecutorial independence as well as opened up impunity gaps and limited the effectiveness of legacy projects. These include ICTY rule changes permitting Trial Chambers to direct the prosecutor to select on which counts to proceed and to limit the prosecution's presentation of its case in chief, as well as giving the decision to refer a case to national jurisdictions under Rule 11*bis* to the Trial Chamber at both the ICTY and the ICTR.<sup>19</sup> Additionally, Rule 28 of the

<sup>17</sup> See generally D Raab, 'Evaluating the ICTY and its Completion Strategy—Efforts to Achieve Accountability for War Criminals and their Tribunals' (2005) 3 *Journal of International Criminal Justice* 82, 84–8; citing President Claude Jorda's first Press release in 2000, where he was struck with completion concerns: 'What time-frame does the Tribunal set itself for fulfilling its mission?' Since then, ICTY Presidents and Officials have continuously responded to timeline concerns; F Donlon, 'The Transition of Responsibilities from the Special Court to the Residual Special Court for Sierra Leone—Challenges and Lessons Learned for Other International Tribunals' (2013) 11 *Journal of Criminal Justice* 857, 860–2; E Møse, 'The ICTR's Completion Strategy—Challenges and Possible Solutions' (2008) 6 *Journal of International Criminal Justice* 667, 668–9.

<sup>18</sup> Heller (n 2) 908; UNSC Res 1534 (26 March 2004) UN Doc S/RES/1534.

<sup>19</sup> *Ibid.*, 906–9; Rule 11*bis* of the Rules of Procedure and Evidence of the SCSL (adopted 16 January 2002, as amended 27 May 2008) ('SCSL RPE'); Rule 11*bis* of the Rules of Procedure and Evidence of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (adopted 11 February 1994, as amended 22 May 2013) UN Doc IT/32/Rev. 49 ('ICTY RPE'); Rule 11*bis* of the Rules of Procedure and Evidence of the ICTR (adopted 29 June 1995, as amended 10 April 2013) ('ICTR RPE').



ICTY Rules of Procedure and Evidence was amended to allow for additional review and scrutiny of indictments.<sup>20</sup> Anticipated closure created pressures that led to a reduction in the number of cases and increased the use of plea bargaining to expedite proceedings, leading to more lenient sentencing.<sup>21</sup> Closure also meant insufficient time to invest in domestic capacity building to close remaining impunity gaps at the national level.<sup>22</sup>

The ICC, as a permanent institution, can avoid some of the pitfalls associated with 'closure' in that it should be able to define for itself 'completion', permitting a fuller execution of its mandate. It is important that discussions of completion within the ICC context avoid imposing similar restrictions on the mandate of the Court's OTP or the Court as a whole. As discussed, given the more open-ended nature of the Court's jurisdiction and the permanence of the institution, the ICC prosecutor has a freer hand to stay longer and do more. Importantly, where possible within the defined limits of the situation open before the Court, the ICC prosecutor can also intervene again where there may be renewed violence without seeking a new mandate. This flexibility can be essential for responding to crisis situations, where early interventions can save lives and limit damage to property, making post-conflict or post-violence reconstruction quicker. Preparation for the point at which investigations and prosecutions will be complete should not be permitted to devolve into pressure to bring these possibilities to a premature end.<sup>23</sup>

Planning ahead will increase the likelihood that the Office and the Court as a whole will find ways to wind down activities in a manner that contributes to—rather than detracts from—its legacy. Indeed, an increased institutional focus on completion could have a positive effect. It could encourage the Office to undertake a much-needed

<sup>20</sup> Rule 28 of the Rules of Procedure and Evidence of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (adopted 11 February 1994, as amended 12 November 1997), UN Doc IT/32/Rev.44.

<sup>21</sup> See Raab (n 17) at 89–91. According to Raab, the use of plea bargains have significantly facilitated the accomplishment of the ICTY's mandate, and should be regarded as 'a sound development at the ICTY'. However, case management developments at the ICTY have not come without criticism. As Raab explains, Complaints of lenient sentencing were heard in the *Banović* case. In *Banović*, a prison guard pleaded guilty to killing five inmates and beating many more, and was sentenced to eight years in prison. Presiding Judge Robinson dissented, believing that the sentence was too lenient. Raab notes that the sentences handed down in Darko Mrdja and Biljana Plavšić were criticized for the same reason; Sentencing Judgment, *Predrag Banović*, IT-02-65/1-S, TC, ICTY, 28 October 2003.

<sup>22</sup> Heller (n 2) at 900–6; see also A Chehtman, 'Developing Local Capacity for War Crimes Trials: Insights from BiH, Sierra Leone, and Colombia' (2013) 49 *Stanford Journal of International Law* 297, 300–4, noting the weaknesses of national legal systems in post-conflict situations.

<sup>23</sup> It is important to note that 'completion' will not be a straightforward progression in most situations. Cases are likely to face a number of stumbling blocks and delays, particularly given the real challenges the ICC has faced so far in securing the assistance necessary for investigations and arrests in several situations. Investigations in situations where crimes are ongoing or where impunity is deep and pervasive—again a majority of ICC situations, given its role as a court of last resort—mean that the Court will need to conduct more than just a handful of cases. For this reason, it is important to underscore once again that no artificial timelines should be imposed on the Court's work in a given situation once it opens investigations.



evaluation of its existing situations, and, going forward, from the outset in any new situations to assess just what will be needed—whether there are additional cases, or clearly communicated and reasoned decisions not to prosecute—in order to complete its work.<sup>24</sup>

#### 49.2.2 Timeliness of devising and implementing completion strategies

The argument that the OTP is under no obligation to ‘complete’ its work in any strict sense—nor should it be—has been offered as a reason it is premature to develop completion strategies at the ICC, as compared to the closures squarely faced by the SCSL and ad hoc tribunals. Here, however, the ICC has more, rather than less in common with the SCSL and ad hoc tribunals, and cannot afford to wait.

First, this is clear from the experiences of the ad hocs and, to a lesser extent, the SCSL. The ICTY began discussions on its exit strategy in 2000.<sup>25</sup> This came about because of the desire to transfer cases to national jurisdictions in states that had made up the former Yugoslavia. Previously, this was not considered possible because those states had been neither willing nor able to conduct investigations and prosecutions themselves.<sup>26</sup> The lack of a clear mandate and development of the completion strategy meant that there were uncertainties regarding the ICTY’s mandate and how it would operate, challenges with respect to witness protection especially in domestic jurisdictions, and difficulties planning for maximizing the ICTY’s legacy, which likewise had received little attention during the first ten years of the ICTY’s existence.<sup>27</sup> While the end date for the ICTY’s closure was pushed back many times, the focus in the early 2000s on issues of completion and legacy undoubtedly had a strong and positive impact on how the ICTY carried out its work, both in terms of case selection (and case referral) and on how it viewed itself vis-à-vis the populations in the States making up the former Yugoslavia.<sup>28</sup> The completion strategy of the SCSL was first presented to the Management Committee in 2005, less than three years after the SCSL opened its doors.<sup>29</sup> Issues of legacy were built into

<sup>24</sup> Heller (n 2) 918: ‘A global [completion] strategy facilitates the creation of a coherent prosecutorial programme. It is almost impossible for an OTP to develop such a programme if it has no idea how long it will operate, particularly when its mandate extends to a large number of suspects.’

<sup>25</sup> T Pittman, ‘The Road to Establishment of the International Residual Mechanisms for Criminal Tribunals, From Completion to Continuation’ (2011) 9 *Journal of International Criminal Justice* 797, 799. The first formal mention of closure of the ICTY or ICTR was in 2000, in a letter from the ICTY President, Judge Claude Jorda, to the UN Secretary-General. Raab (n 17) at 84.

<sup>26</sup> Letter dated 10 June 2002 from the President of the ICTY addressed to the Secretary-General, Annex to the Letter dated 17 June 2002 from the Secretary-General addressed to the President of the Security Council, UN Doc S/2002/678 (19 June 2002).

<sup>27</sup> Eleventh ASP to the ICC: NPWJ convenes side event on ‘Developing a Comprehensive Completion Strategy for the ICC, No Peace without Justice, 17 November 2012 <<http://www.npwj.org/node/5747>> accessed 6 November 2013.

<sup>28</sup> For example, outreach efforts intensified during this period, as the ICTY had a greater focus on legacy, which by definition requires the engagement of local communities. See also ‘Conclusions and the Way Ahead’, First Annual Report of the President of the SCSL for the Period 2 December 2002–1 December 2003, 31.

<sup>29</sup> Completion Strategy, SCSL (2009), para. 2.

the fabric of the SCSL from the start and constituted the vision that informed how the SCSL built itself as an institution and carried out its work.<sup>30</sup> This, alongside the limitations on the SCSL's jurisdiction to 'those who bear the greatest responsibility' and the limited budget with which the SCSL had to operate, has undoubtedly contributed to the extremely positive impact of the SCSL in the country and the region. It is the first of the international courts and tribunals to have closed its doors at the end of 2013.

Second, even within the ICC context, there is already some pressure from States Parties on the ICC to develop 'exit' or 'completion strategies'. While discussions have taken on increasing substance over the past year, this initially stemmed from what appeared to be at least primarily, if not exclusively budgetary interests, that is, an interest in managing the Court's expanding workload within 'existing resources' by seeking to shuffle around resources.<sup>31</sup>

In fact, a kind of 'exit' or at least a 'transition' is already happening. The ICC may have eight open situations, but there has been a transfer of resources out of the Darfur and Uganda situations, for example, in redeploying outreach staff and scaling back on field presences.<sup>32</sup> This transfer of resources can be justified with reference to a lack of judicial activities given the failure to arrest suspects in cases arising out of these situations, and the need, in the absence of significant new resources from ICC States Parties, to stretch to new situations. Although arrests in cases in these situations will require a scaling back up of court activities, what to do about situations where proceedings have stalled due to non-cooperation could be an important feature in any discussion about completion or transition strategies, a challenge the Court already faces. A desire to get out ahead of these pressures and address them in a responsible fashion should argue in favour of developing appropriate strategies now.

Third, and most fundamentally, completion is not just about activities that need to take place before the ICC can wrap up its work and move on. It is equally about the spirit with which the Court carries out all of its work in a situation country, which is a lesson that should be well learned from the SCSL. In addition, the timeline necessary

<sup>30</sup> See generally Donlon (n 17). Art 23 of the SCSL Agreement states that upon completion of judicial activities of the Special Court, the agreement shall be terminated. As Donlon explains, The SCSL agreement did not set down residual factors, nor indicate how completion would be managed in the future. Officials began to tackle completion and closure issues at the 2008 Freetown Conference. The SCSL recruited Donlon as adviser to prepare a report to analyse various residual institutional options for the Special Court. The Report noted several obligations that would survive on completion of all trials and appeals. See also Art 23 Agreement between the United Nations and the Government for Sierra Leone on the Establishment of a Special Court for Sierra Leone, UN Doc S/2002/246 (16 January 2002), Appendix II; F. Donlon, Consultant, Report on the Residual Functions and Residual Institution Options for the Special Court of Sierra Leone, December 2008.

<sup>31</sup> As an indication of the link between budgetary Pressure on the court to hold down growth and a push to develop completion strategies, see Report of the Committee on Budget and Finance on the Work of its Seventeenth Session, ICC-ASP/10/15, 18 November 2011 (Tenth Session of the ASP), para. 18 (warning that there are limits to the degree to which new court activities can be absorbed within existing resources, and suggesting the need to give further consideration to how the court will complete its activities in a situation country, including as one measure to permit the redeployment of existing resources).

<sup>32</sup> ASP Report of the Court on Complementarity (n 10) para. 42.

to lay the groundwork for responsible completion is so extensive that completion activities can be started as soon as an investigation is opened, without fear of jeopardizing the Court's independent exercise of its own mandate. This is particularly true of activities aimed at enhancing domestic capacity to take over certain responsibilities and to conduct additional investigations and prosecutions as part of consolidating the ICC's legacy, as discussed in section 49.3, which are likely to encounter challenges with regard to the willingness of authorities to put measures in place at the national level.<sup>33</sup>

### 49.2.3 Defining completion at the ICC

In defining 'completion', the ICC should benefit from wide consultation in affected communities and with national authorities. This is a lesson learned both by the ad hocs and the Special Court, the experiences of which stress the importance of broad national consultation to embed completion work in local populations and ensure the sustainability of completion plans.<sup>34</sup> How do these core constituents understand the completion of the ICC's work? How can strategies be devised to match or inform expectations about completion? How can completion strategies be developed to ensure they will be sustainable and carried on by the local populations, which is particularly important for ensuring the ICC's lasting legacy? How can the political willingness of national authorities to take over responsibilities or to conduct additional investigations and prosecutions be gauged and bolstered, and with what consequence for the timeline for implementation of completion strategies? Throughout the various activities that can be undertaken to consolidate legacy and ensure a smooth completion, it is critical that the ICC engage with local communities and authorities to make sure that whatever their strategy, it is one that actually can work.

A clear and unique challenge for the ICC, then, is that its same officials will be required to devise and implement completion strategies that may vary markedly from situation to situation. The Court is likely to need a working definition and model of completion, to be adapted to the specifics of a given situation based on the wide consultation suggested here. In our view, completion should be defined with respect to whether the Court has achieved its mandate and under what conditions the Court will be able to say it has done so. This will primarily relate to whether the Court has delivered impartial, independent, and meaningful justice. However, a definition of completion should also consider fulfilment of the Court's mandate as turning also on whether the domestic jurisdiction is ready to take over the Court's ongoing responsibilities in

<sup>33</sup> Heller (n 2) 901 ('Flawed strategies have often undermined the efforts of hybrid and internationalized tribunals to build domestic judicial capacity, limiting the ability of national jurisdictions to prosecute international crimes after the tribunals close').

<sup>34</sup> *Ibid.*, 911 (terming the failure to consult with victims regarding the ICTR's closure as 'a critical oversight, even if the victim's desires would not have affected the completion strategy: although victim satisfaction may not be a sufficient condition of a tribunal's legitimacy, it is certainly one of its necessary conditions. A tribunal that is not seen as legitimate by the victims of a conflict is unlikely to be seen as legitimate by anyone else').

the situation and resume their primary responsibilities to investigate and prosecute ICC crimes.

This is likely to be a controversial definition of what it means to complete the ICC's mandate. The ICC is a court of last resort and not a development agency. By definition this means it is stepping in where there is either a lack of capacity to try serious crimes under international law, or a lack of political will to do so, or both. Shifting the landscape to a point where national authorities are able and willing to assume the responsibility, for example, of protecting ICC witnesses, let alone carrying out investigations and prosecutions that may continue to run counter to politically powerful interests, will often be an uphill battle.<sup>35</sup> It may even be an unwinnable battle. Indeed, in the broader context of 'positive complementarity', actors have been slow to come to terms with the degree to which political will is far more dispositive—and far more difficult to generate—than technical assistance.

Insisting on this as a dimension of the Court's mandate, however, is the approach most consistent with a sense of completion that is alive to consolidating the Court's legacy. That is, as defined earlier, its long-term contribution to ending impunity and reasserting the rule of law in the countries in which it acts. It is also most consistent with recognizing that the ICC is likely to have sustained engagement with situation countries over significant periods of time in challenging and transitional circumstances, and the potential impact on national jurisdictions that its work can bring about should not be underestimated.<sup>36</sup> It is not to suggest that this is a role exclusively for the ICC alone; rather, it makes particularly relevant States Parties' discussions on 'positive complementarity,' as examined later in the chapter.<sup>37</sup> Nor is it meant to suggest that the ICC and States Parties should be held hostage where it proves, in spite of concerted effort and sustained attention, impossible to fully realize this goal. In those cases, it may be necessary to recognize that more modest measurements of completion will be necessary. However, it should be considered as a feature of completion at the outset.

It is also worth emphasizing that while the completion strategy timelines and benchmarks will have to be driven by the OTP, there is a need for the entire Court to be involved, since the entire Court will be required to implement the strategy. In addition, it will be imperative to involve not only local populations and authorities but also the ICC's States Parties, international organizations, civil society, and others who may be called upon at different times to play a part in implementing the completion strategy along the way.

<sup>35</sup> See Chehtman (n 22) 300, noting the unreliability of witness support and protection mechanisms in national post-conflict jurisdictions. Post-conflict areas tend to have great difficulty in providing support for victims, a lack of institutional framework, know-how, and resources.

<sup>36</sup> See F Pocar, 'Completion or Continuation Strategy? Appraising Problems and Possible Developments in Building the Legacy of the ICTY' (2008) 6 *Journal of International Criminal Justice* 655. Pocar notes the rich heritage of the ICTY and its impact on the region as well as other international criminal tribunals.

<sup>37</sup> See section 49.4.

### 49.3 Lessons Learned for Capacity Building, Outreach, and Archive Management

As indicated in the previous section, the completion strategies of international tribunals are generally understood to have three components: completion issues, residual functions, and legacy issues. The ICC has set out the following definitions:

- i. Completion issues: core judicial and administrative work performed before completion or closing dates, including planning for residual issues;
- ii. Residual functions: a range of core judicial and administrative tasks that must be performed post-completion, since a criminal court's mandate is not complete with the final rendering of decisions; and
- iii. Legacy issues (long-term post-completion projects, which begin prior to the institution's closure, such as outreach and institutional and capacity-building efforts, aimed at leaving a lasting positive impact on affected communities and their criminal justice systems).<sup>38</sup>

Unlike the SCSL and ad hocs, all of which required the setting-up of special mechanisms to deal with this second category—residual issues—the ICC as a permanent institution will have capacity to address enforcement of sentences, revisions of convictions or sentences, protection of witnesses, management of archives, and other similar activities. These activities still remain relevant to the development of ICC completion strategies, in that planning and resources will be needed for the ICC to carry out what would otherwise have been issues delegated to the residual mechanisms of the SCSL and ad hocs. Such functions include assistance with implementation of reparations awards and oversight of the enforcement of sentences, both of which are critical functions that will need to be budgeted for, both financially and in terms of human resources, as part of a situation-specific ICC completion strategy. Perhaps even more critically, a focus in completion strategies on bolstering national capacity to take over residual functions is likely to benefit 'legacy issues', in that enhanced national capacity is likely to promote additional investigations and prosecutions and leave 'a lasting positive impact on affected communities and their criminal justice systems'.<sup>39</sup>

This section focuses on aspects of completion where there is greater potential for overlap between the strategies of the SCSL and ad hocs, and those of the ICC, and therefore for drawing on lessons learned. Some of the key elements that should feature in ICC completion strategies in this respect are outlined here: capacity building, outreach, and archive management. All the various courts and tribunals, including the ICC, could benefit from cooperation with one another, to reduce the need for any of them to reinvent the wheel.

<sup>38</sup> ASP Report of the Court on Complementarity (n 10) para. 17.

<sup>39</sup> *Id.*; see also Pocar (n 36) 661–2. As Pocar explains, One of the underlying principles in the ICTY completion strategy is building the region more generally. The ICTY has paved the way for domestic adjudication of international crimes. Judge Pocar argues that the Tribunal's legacy will not just be about its efficiency, but reinforcing the principles of its establishment.

Again, it is worth highlighting that completion and legacy are not just about specific activities that can usefully be carried out to prepare for the time when the ICC will depart, and to enhance the impact the ICC can have on local populations and on the rule of law and human rights in its situation countries. In many ways, the preparations for completion lie in how things are done, which should be informed by the difference it is foreseen the Court will make in its situation countries once its work is completed. The SCSL's legacy, for example, first had its own discrete section in the very first Annual Report of the Court, speaking about the development of the Court complex, including the buildings, as a legacy of the Court's presence; the development of skills of Sierra Leonean staff also as a means to have a lasting impact on the country's development; and a process of information and education being carried out across the country, led by the Outreach Section.<sup>40</sup> All of this work, from the very early days of the Court, was done as a means to build the foundations for leaving a legacy of accountability and contributing to legal reform in Sierra Leone.<sup>41</sup> The ICTY, with the assistance of the Organization for Security and Co-operation in Europe (OSCE), has conducted assessments in its outreach activities, training, and identification of best practices in order to ensure a lasting impact in the former Yugoslavia.<sup>42</sup> This is the kind of vision that the ICC and its States Parties need to develop prior to the ICC's entry into a situation country if it is to work most effectively and efficiently to achieve its goals. For those countries where the ICC is already carrying out activities, it is critical that this vision be identified as soon as possible.

### 49.3.1 Capacity building

Technical assistance and transfer of knowledge should be pillars of a completion strategy to facilitate the transfer of responsibilities to national authorities. Responsibilities that can be appropriately transferred to situation countries are likely to include investigation and prosecution of outstanding cases, whether arrest warrants or summons to appear have been sought by the ICC or not, and witness protection.

In the case of the SCSL, its Rules of Procedure and Evidence were amended in 2008 to allow for the possibility of referral of its cases to a national jurisdiction, much as the ICTY and ICTR's Rules were amended to facilitate implementation of its completion strategy.<sup>43</sup> While there is only one fugitive remaining at the SCSL, Johnny Paul Koroma, it is possible that there will be contempt cases. The SCSL has made it abundantly clear that any interference with witnesses will be dealt with swiftly and severely by the Residual Special Court.<sup>44</sup> Such cases could be dealt with either by the Residual Special Court or by national courts.<sup>45</sup>

<sup>40</sup> For an overview of legacy activities of the SCSL see <<http://scsl-legacy.ictj.org/>> accessed 29 October 2013.

<sup>41</sup> Ibid. <sup>42</sup> Pocar (n 38) 663.

<sup>43</sup> Rule 11*bis* SCSL RPE; Rule 11*bis* ICTY RPE; Rule 11*bis* ICTR RPE; Rule 28 ICTY RPE (as amended 12 November 1997). See nn 20–1.

<sup>44</sup> 'Prosecutor Hollis Welcomes the Historic Final Judgment in the Charles Taylor Case', *African Press Organization*, 26 September 2013 <<http://appablog.wordpress.com/2013/09/26/special-court-for-sierra-leone-scsl-prosecutor-hollis-welcomes-the-historic-final-judgment-in-the-charles-taylor-case/>> accessed 17 July 2014.

<sup>45</sup> Regarding prosecution of Koroma see Donlon (n 17) 862–3; Art 1(2) SCSL Agreement (Ratification) Act, 2011 <<http://www.rscsl.org/Documents/RSCSL-Act.pdf>> accessed 16 July 2014 ('RSCSL Statute'). If



In terms of witness protection, ongoing responsibilities will include arranging protection and support in residual trials, appeals, and review proceedings; providing a contact point for protected victims and witnesses to inform them of the release of relevant convicted persons; monitoring and assessing threats to ensure that protective measures are effective and respected; and revising protective measures if necessary, as well as assisting victims and witnesses in their relocation to another State if required.<sup>46</sup> This is a wide array of responsibilities that will remain on the shoulders of the ICC, as it remains on the shoulders of the residual mechanisms for the ad hocs and the SCSL. The ICC has asked witnesses to testify and invited victims to participate; the responsibility for ensuring their safety and security will remain with the ICC long after the trials have concluded.

That said, witness protection is one area where it makes sense to have the tasks and duties carried out by the national authorities, where it is appropriate to do so and under the overall oversight of the ICC itself. This, for example, is what will happen with the Residual Special Court: its obligation towards the protection of victims and witnesses is continuing, in collaboration with the Sierra Leonean Police, through its support in the creation of a special Witnesses Protection and Assistance Unit whose work will be overseen by witness protection officers of the Residual Special Court.<sup>47</sup> This kind of cooperation, without abdicating responsibility, is a way in which the ICC could work in the future, which would both ensure a positive legacy through strengthening national witness protection programmes while at the same time reducing the financial burden on the ICC, which would need to oversee the national witness protection scheme but not need to have a fully functional witness protection unit working on a situation that has already closed.

### 49.3.2 Outreach

Outreach activities are needed to raise understanding about the institution, its mechanisms, and procedures. A survey conducted in 2012 by No Peace without Justice and its partners on the impact and the legacy of the SCSL both in Sierra Leone and in Liberia showed that a high awareness of the SCSL, its purposes, and work is evident in both countries.<sup>48</sup> In general, perceptions in Sierra Leone were

Koroma is not referred to a competent national jurisdiction, the Residual Special Court shall have authority to try him.

<sup>46</sup> See generally, e.g. Arts 1, 18 RSCSL Statute; Arts 1, 2, and 20 Statute of the International Residual Mechanism for Criminal Tribunals, UNSC Res 1966 (22 December 2010) UN Doc S/RES/1966, Annex 1 ('IRMCT Statute'); G Acquavida, "'Best Before Date Shown": Residual Mechanisms at the ICTY' in B Swart et al. (eds), *The Legacy of the International Criminal Tribunal for the Former Yugoslavia* (Oxford: Oxford University Press 2011) 8, citing Report of the Secretary-General on the Administrative and budgetary aspects of the ICTY and the ICTR and the Seat of Residual Mechanism(s) for the Tribunal, UN Doc S/2009/258 (21 May 2009).

<sup>47</sup> See 'Legacy: Completing the Work of the Special Court for Sierra Leon,' Open Society Justice Initiative (2011), pp. 12–13; see also description of national witness protection programme available at <http://www.rscsl.org/legacy.html>

<sup>48</sup> 'Making Justice Count: Assessing the Impact and Legacy of the Special Court for Sierra Leone in Sierra Leone and Liberia,' Special Court for Sierra Leone and No Peace without Justice (2012).



more positive than in Liberia and more people had heard of the SCSL in Sierra Leone than in Liberia.<sup>49</sup> This comes down to two things: first, the SCSL was based in Sierra Leone and not in Liberia. Second, outreach began much earlier in Sierra Leone than in Liberia and was able to have a broader reach, in part due to the establishment of outreach offices in every district of Sierra Leone from an early stage. There can be no doubt that there is a direct correlation between the outreach activities of the SCSL and strengthening its legacy and the positive contributions it has made to peace and justice. In the later years of the Court's life, SCSL outreach also began to focus on its closure and the establishment of the Residual Special Court, which is an important way to consolidate the SCSL's early gains and to promote acceptance by the populations both of the SCSL's closure and of the work of the Residual Special Court.

Similarly, the ICC will need to do outreach around its completion and closure in any given situation. For this reason, it will be critical that the ICC has a clear vision of what completion will mean, particularly in terms of the conditions that need to be realized in order to say the Court has completed its mandate. In part, this will—or should—also be dependent on what the local population has to say about this issue: while the OTP has to be independent in determining when it can say it has completed its work, as discussed earlier, there is a need to be responsive to what local populations think on the matter, otherwise irrespective of the excellent work the ICC may do, its departure risks leaving a bitter taste in too many mouths. This is one reason it is critical to undertake wide-ranging consultations, encompassing a variety of sectors of society and ensuring broad geographic reach, to minimize the risk of that happening. Involvement that was missing in the case of the ICTY was that of Serbian civil society actors as opposed to civil society from Croatia and Bosnia. The effects are evident: the situation now is that Bosnia is fully going ahead with national prosecutions; Croatia is moving forward but on a regional level; and Serbia has not shown any interest in national trials.<sup>50</sup>

### 49.3.3 Archives

There are two aspects to the archives of the ICC. On the one hand, there is a residual function—that of management of the ICC's archives—that clearly belongs with and can be carried out by the ICC itself. Indeed, there is an argument that the material produced by the ICC belongs to the ICC and should be retained by it and shared pursuant to the rules established in its archival policy. However, there is also an argument to be made that the archives of the ICC, at least insofar as they are not confidential, 'belong' in a non-technical and non-legal sense to the populations where the crimes that were investigated and prosecuted were actually carried out. While of course the ICC cannot write the country's history, and nor should it attempt to do so, it can make an important contribution at least to filling in parts of that history through the adjudication of contested facts and the attribution of individual criminal responsibility. As

<sup>49</sup> *Id.* <sup>50</sup> See Raab (n 17) at 92–5.

such, the archives of the ICC form, or should form, part of the history of its situation countries.<sup>51</sup> For the ICTY, for example, 90% of the ICTY's public archives are co-held with the Humanitarian Law Centre, which makes those records available for research and perusal by people from the region.<sup>52</sup> The public archives of the SCSL will likewise be available in Sierra Leone.<sup>53</sup>

Indeed, the issuance of judgments could be a milestone or a starting point for a population, which could lead to national reconciliation. It is important that local actors have access to materials. The success of the Peace Museum project in Sierra Leone, which involved a national body and trained local actors to deal with the Special Court's expertise, materials, and proceedings, is an example of this.<sup>54</sup>

It will be important for the ICC to build into its completion plans how it will share its archives with the situation country and which original items, such as exhibits whose owner cannot be found, should be provided to the situation country, for example for use in a museum or other memorial.<sup>55</sup> This is also important to avoid charges of the ICC 'stealing' both memories and property from its situation countries, which is a useful lesson learned from the ad hocs and the SCSL.<sup>56</sup>

#### 49.4 A Role for the Court and the ASP

At the Kampala review conference, the ICC's ASP succeeded in putting the discussion of 'complementarity' on the map. More specifically, as indicated above, the ASP and individual States Parties have attempted to push forward discussion of 'positive complementarity', that is, how international assistance can be directed towards the strengthening of national jurisdictions in the investigation and

<sup>51</sup> See observations regarding the SCSL archives in Donlon (n 17) at 867–9.

<sup>52</sup> See Fond za Humanitarno Pravo ('Humanitarian Law Centre') <[http://www.hlc-rdc.org/?page\\_id=17468&lang=de](http://www.hlc-rdc.org/?page_id=17468&lang=de)> accessed 6 November 2013.

<sup>53</sup> Art 7 RSCSL Statute; see also Donlon (n 17) at 867–9.

<sup>54</sup> Donlon (n 17). As Donlon explains, The SCSL in cooperation with national stakeholders developed the Sierra Leone Peace Museum with the objective of establishing a memorial in Freetown which will include archives, a memorial, and exhibitions of war-related material. The Sierra Leone Human Rights Commission decided to house the archives of the Truth and Reconciliation Commission alongside the copy of the SCSL public records in the Peace Museum. Greater public education on the end of impunity and responses to grave human rights abuses will result as public records from various transitional justice institutions and will be available in one location.

<sup>55</sup> See generally G Frisso, 'Winding Down the ICTY: The Impact of the Completion Strategy and the Residual Mechanism on Victims' (2011) 3 *Goettingen Journal of International Law* 1093, 1118, 1119. Frisso argues that Archives are particularly important, as they offer a historical record and information about the circumstances in which atrocities were committed. It becomes part of a people's national heritage and should be preserved. It offers victims a collective right to know and may help contextualize victims' experiences, thereby facilitating the healing of wounds.

<sup>56</sup> See generally P Manning, 'Governing Memory: Justice, Reconciliation and Outreach at the Extraordinary Chambers in the Courts of Cambodia' (2012) 5 *Memory Studies* 165, 166. Manning brings to light criticisms of the ECCC's contributions to reconciliation. He argues that the ECCC's mandate provides a 'selective memory' of events: particular events are recalled through narrow factual and legal lenses rather than a broader historical context, placing memory in neat positions between guilt and innocence.

prosecution of ICC crimes.<sup>57</sup> Since the review conference, the ASP, which has mandated annually facilitators and now ad hoc country focal points, to lead its work in this area, has sought out a strong role in pushing forward discussion with other important actors, particularly in the development and rule-of-law communities.<sup>58</sup> Experience since has shown that capacity building on investigation and prosecution of ICC crimes is no easy task, topped perhaps only by the challenge of securing the willingness of authorities to permit independent judicial activities to go forward without interference.<sup>59</sup> Nonetheless, the ASP's efforts to keep this issue front-and-centre for States Parties and to serve as an ambassador for complementarity with the development community hold potential for real contributions to seeing the principle of complementarity put increasingly into practice. The Court, however, has largely been sidelined by States Parties in discussions on complementarity. Particularly as discussions on positive complementarity were first undertaken within the ASP, some States Parties argued strenuously that the ICC has no role to play on positive complementarity. For some of these states, this was a mandate issue—they did not see positive complementarity in the Rome Statute. For other states, it has clearly been driven by a concern to keep the Court's budget down, fearing that complementarity efforts on the part of the Court would require additional resources.<sup>60</sup>

Given that ICC completion strategies will, as outlined, have a significant component related to capacity building, a consequence of State Party pressure on the Court to avoid its own role in complementarity may have contributed to stymied progress on discussion of such strategies. Court officials and staff will have specific expertise when it comes to identifying needs for capacity building in situations under investigation, and this expertise could be very useful to catalyse necessary complementarity efforts by other actors in these situation countries.<sup>61</sup> While capacity building directed to activities that support the transfer of ICC responsibilities represents a smaller basket than the long list of possible assistance that can support complementarity, it nonetheless includes a number of functions that are also essential to national investigations and prosecutions, including—perhaps most clearly of all—witness protection and support.<sup>62</sup>

<sup>57</sup> See e.g. Report of the Bureau on Complementarity, ICC-ASP/12/31, 15 October 2013, (Twelfth Session of the ASP); Report of the Bureau on Complementarity, ICC-ASP/11/24, 7 November 2012 (Eleventh Session of the ASP).

<sup>58</sup> Id. <sup>59</sup> Chehtman (n 22) 300–4.

<sup>60</sup> Authors' observations of State Party consultations on complementarity.

<sup>61</sup> 'Making Kampala Count: Advancing the Global Fight against Impunity at the ICC Review Conference', Human Rights Watch (2010), 46–9.

<sup>62</sup> For an overview of the kinds of assistance necessary to support national prosecutions and investigations, see Report of the Court on Complementarity, ICC-ASP/11/39, 16 October 2012 (Eleventh Session of the ASP); Joint Staff Document on Advancing the Principle of Complementarity, High Representative of the European Union for Foreign Affairs and Security Policy (2013); E Witte et al., *International Crimes, Local Justice: A Handbook for Rule-of-Law Policymakers, Donors, and Implementers* (New York: Open Society Foundations 2011); Chehtman (n 22) 309–15.

Resurgent interest at the Court and among States Parties on completion strategies could midwife this kind of meaningful collaboration between court officials and States Parties on complementarity. Once completion strategies are conceived and given the time it will take to build capacity in these areas, it would be preferable for these strategies to be developed almost from the outset of the opening of a situation. It could become a clear roadmap for the Assembly, as part of its role and the role of its secretariat to facilitate information exchanges on complementarity, to then broker international assistance towards these ends. Focusing on delivering the national capacity to support the Court's completion would provide a useful clarity of purpose to the efforts of the ASP, which otherwise would have seemed to cast about quite broadly for appropriate inroads on complementarity. States may want to resist a role for the Court—or even for themselves—in complementarity, but bringing complementarity discussions closer to emerging discussions on completion, as indeed reports produced for the twelfth ASP session have done, will contribute to a vision of the Court at the core of which there is a concern for legacy and impact.<sup>63</sup>

## 49.5 Conclusion

As the ICC enters its second decade, focused discussion on how the ICC will responsibly complete its activities in situations under investigation is long overdue. While there remains substantial work for the ICC to do in each of its current situations, a clear lesson learned from other international tribunals is that it is never early enough to begin preparing for eventual completion. This is important not only to ensure proper planning and implementation of completion strategies, but also because a focus on the 'end game' is likely to influence significantly how the ICC carries out its activities from the outset, increasing the Court's orientation, and that of its States Parties, towards its legacy and impact.

Recent progress made in directing Court and State Party attention towards completion should be capitalized upon, and urgently. In devising completion strategies, the ICC will need a working model of what 'completion' will look like, and to develop methods, including consultation with affected communities and national authorities, to adapt that model to a given situation country.

It is clear, however, that a second lesson learned is that capacity building of national jurisdictions should be a pillar of completion strategies across the Court's situations. Strengthened national jurisdictions can facilitate the Court's completion of its activities in that responsibilities can be turned over to local authorities. It will also help to put in place the building blocks necessary to promote additional investigations and prosecutions nationally, provided it goes hand in hand with efforts to promote the willingness of those authorities to permit independent judicial activities to go

<sup>63</sup> ASP Report of the Court on Complementarity (n 10); ASP Report of the Bureau on Complementarity (n 57).

forward. This will afford broader accountability than the ICC acting alone and contribute to the Court's legacy: it should be considered a key dimension of any definition of the Court's completion of its mandate. Indeed, the ICC is uniquely positioned as compared to the other tribunals to harness the existing discussions of its member states on 'positive complementarity' to this end. It is an opportunity that should not be squandered.