INTernational criminal law: Past and Future

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1. Introduction

Just a few years ago, any discussion of international criminal law would have indeed been brief. It would speak of the historic Nuremberg and Tokyo Tribunals which followed World War II, making various comments regarding their groundbreaking nature and some of the criticisms related thereto, e.g., "victor's justice." Perhaps there would be some discussion of the trials that followed the Nuremberg Military Tribunal ("NMT") in which judges from the victorious powers participated. There might follow an overview of the developments in international humanitarian law, particularly the adoption of the Genocide Convention, the 1949 Geneva Conventions, and related treaties, as well as passing references to domestic prosecutions that applied this law. One might even make reference to the distant dream of some type of permanent international criminal court. Thus, if this article had been penned at the fifteenth anniversary of this journal's life, it would have not only been necessarily short but it also would have painted a dismal picture of massive atrocities without any individual accountability for these crimes on the international level. It would have been fair to say that international criminal law, with a few notable exceptions, existed only in theory.

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While "international criminal law" is generally understood to mean the body of rules that prohibit international crimes, the term is used here in its broadest sense, with a focus on the development of mechanisms to apply and enforce this body of law on the international level.
Over the last fifteen years, however, the picture has changed dramatically. The Nuremberg and Tokyo trials, while still important from an historical perspective, are now a much smaller part of the story, following the creation of ad hoc international criminal tribunals for the former Yugoslavia ("ICTY") and Rwanda ("ICTR") in the 1990s, which have tried hundreds of individuals for war crimes, grave breaches of the Geneva Conventions, crimes against humanity, and genocide. Their work has spawned other internationalized courts and tribunals (often referred to as hybrid courts because they use a combination of international and national judges, prosecutors, and staff), such as those constituted in Sierra Leone, Cambodia, East Timor, and Kosovo. Even more significantly, many governments from throughout the world came together in 1998 to negotiate and adopt the Treaty of Rome, which established the International Criminal Court ("ICC"), a permanent treaty-based court, with much wider jurisdiction than other international tribunals over war crimes, crimes against humanity, genocide, and (in theory) the crime of aggression. The ICC is now up and running, with four situations under investigation and trials set to begin in 2009.

These are remarkable achievements in a relatively short period of time, but as these courts and tribunals have grown and their practices have developed, difficult issues have naturally arisen. Some of these are technical in nature and are hardly unexpected, such as issues relating to what procedures are to be followed both during investigations and in trial. However, there are also a number of other issues with broad implications that are likely to impact the ICC and possibly other international courts and tribunals over the long-term. These include the emerging "peace versus justice" debate, which posits that in certain circumstances the pursuit of justice can undermine efforts to create the conditions for peace.

These debates play out in a political context that harkens back to the "victor's justice" argument, in that, thus far, the work of international courts and tribunals has focused on crimes in the developing world, primarily in Africa (all four of the ICC situations are in this continent). As a result, one hears more voices

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2 I have not added the Special Tribunal for Lebanon to this list, because as it is not applying international humanitarian law. The interesting case of the State Court of Bosnia-Herzegovina, which is a hybrid national court trying war crimes, does not seem to fit into this category either.
criticizing the disparate treatment of similar crimes and neo-colonialism. These are important matters in themselves and warrant discussion. They may also imply important practical difficulties, as the ICC and other international courts and tribunals have no coercive powers of their own and depend primarily on the cooperation of states to obtain evidence, conduct investigations, and make arrests. These tensions, and how they are resolved or not resolved, will play an important role in the efficacy of international criminal law in the future. Intertwined with these issues, and a possible solution to some of the problems that are currently being faced, is the question of what the exact relationship between international and domestic courts should be. In other words, using the language of the ICC Statute, what does “complementarity” really mean?

These are some of the critical issues that the ICC (and international criminal law generally) faces today, and its response to these challenges will be crucial as we enter the next phase of development in this field. Will international criminal law see consolidation of its rapid development over the past fifteen years? Or, will we see possible retrenchment and another period, no doubt less extreme than the long gap between the NMT and the establishment of the ICTY, where these institutions and international criminal law take a back seat and fail to live up to their promise?

This is the landscape with which practitioners and interested parties in the field of international criminal law must grapple in the coming years.

2. THE PAST: DISTANT AND RECENT

2.1 From Nuremberg to the ICTY

As noted above, international criminal law has developed at a rapid rate over the last fifteen years. Prior to the establishment of the ICTY in 1993, there were few developments on the international plane in the application of that law in the wake of the

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3 See Rome Statute of the International Criminal Court, arts. 1, 17(1)(a), July 17, 1998, 2187 U.N.T.S. 90 (stating that the ICC is intended to “complement” national jurisdictions, and “a case is inadmissible [before the ICC] where [t]he case is being investigated or prosecuted by a state which has jurisdiction over it, unless the state is unwilling or unable genuinely to carry out the investigation or prosecution”).
Nuremberg and Tokyo Tribunals. However, it is worth noting that these tribunals, particularly the NMT,\(^4\) were a major breakthrough in that senior political and military leaders were brought to justice, in proceedings that were largely seen as fair and in accordance with applicable standards, for atrocities that they had ordered, directed, or committed. In addition, important legal principles were enunciated either in their founding documents (as was the case with the London Charter) or by the tribunals themselves, including establishing crimes against humanity, which became a cornerstone of international humanitarian law, and striking down the defense of superior orders.

Thus, these prosecutions and related proceedings under Control Council Order No. 10, in which international judges and prosecutors participated in otherwise national trials, represented a significant step forward in creating a framework of international criminal law, particularly given past efforts that failed in this regard (such as the Versailles Treaty which provided for the prosecution of Kaiser Wilhelm II). However, these efforts were subject to a number of criticisms as well. These trials were decried by some as “victor’s justice,” in that the crimes of those who lost the wars were adjudged by representatives of those who won, with American, French, British, and Russian judges sitting in judgment of German officers, but no one from the victorious allies was subject to any similar justice mechanisms. Another criticism was that \textit{ex post facto} laws and legal principles were applied at Nuremberg and Tokyo in that, for example, “crimes against humanity” did not exist as a binding legal concept prior to the adoption of the London Charter.

While these and other criticisms have at least some validity, nonetheless the achievements of Nuremberg were tangible and important. The trials showed that leaders could be held to account for their lawless acts and that, at least in the face of mass atrocities the international community could establish judicial mechanisms that were seen as fair in themselves. This was a result far superior to either looking the other way or simply executing these leaders as Winston Churchill, among others, advocated.

\footnote{For a variety of reasons, the Tokyo Tribunal is subject to more sustained and justified criticism than its counterpart. See, e.g., R. John Pritchard, \textit{The International Military Tribunal for the Far East and Its Contemporary Resonances}, 149 Mil. L. Rev. 25 (1995) (comparing the IMT for the Far East with other international courts).}
Despite the work of the NMT, the following almost fifty years did not see any establishment of further international criminal tribunals or courts. There were important developments in the law, which included the adoption of the Geneva and Genocide Conventions as well as a number of other groundbreaking treaties, including, the Torture Convention, and there were some scattered domestic prosecutions based on these laws and principles, such as, the Adolph Eichmann trial. In the 1980s and 1990s, a number of countries, primarily in Latin America but also in South Africa, employed non-judicial mechanisms, in the form of Truth and Reconciliation Commissions, to address accountability issues. While these mechanisms varied in terms of their procedures, they did not attribute criminal responsibility, so they are technically outside the scope of international criminal law. Nonetheless, they did represent a growing public movement and awareness that mass atrocities in any society must be addressed, and can not simply be swept under the proverbial carpet and ignored. In this sense, these mechanisms are important in setting the stage for the next developments in international criminal law.

This next stage came with the creation of the ICTY in 1993 by the United Nations Security Council.

2.2. The ad hoc Tribunals and other Internationalized Courts

During the early 1990s, a series of wars broke out in what was the unraveling country of Yugoslavia. The savagery of these wars was on full display on international television stations, such as CNN, giving immediacy to the numerous atrocities committed during the conflicts. The United Nations and the European Union struggled to deal with the unfolding humanitarian disaster and to bring an end to the conflicts, which only stopped in 1995 with the Dayton Accords (the Kosovo conflict was to emerge in 1999 and another conflict in Macedonia in 2001). In the midst of the conflict, the United Nations Security Council decided to create the ICTY the first international tribunal since Nuremberg and Tokyo.

The Security Council acted pursuant to its powers under Chapter VII of the United Nations Charter, which provides it with mandatory and legally binding powers to take steps to ensure peace and security. By acting in this manner, the Security Council,

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5 It should be noted that in South Africa, there was a judicial effect in that amnesty was granted in exchange for truthful testimony.
at least in legal theory, clothed the ICTY with mandatory and binding legal powers. Moreover, in the ICTY Statute, the Security Council provided that the ICTY had primacy over national courts; that is, national prosecutorial authorities had to give way to the ICTY when the latter decided to exercise its jurisdiction. The ICTY was also given a broad mandate over all war crimes, crimes against humanity, and genocide (but not aggression) in the territory of the former Yugoslavia from 1991 forward. The court itself is currently located in The Hague, Netherlands.

The establishment of the ICTY was a revolutionary development, not only due to the sweeping powers it was given over national authorities, but also because the Tribunal was a truly international court: created by the United Nations, with judges, prosecutors, and staff recruited from all parts of the world. This latter approach addressed, at least in part, the past arguments of "victor's justice." However, a new argument, arose: Why Yugoslavia and not other countries? Should not other perpetrators be subject to justice? Was a fundamental principle of justice being ignored by the limitation of the Tribunal to a specific country and a specific time period?

Even from a more practical level, the ICTY faced enormous obstacles. While it had significant powers on paper, it was not clear how it was to conduct investigations and make arrests in a war zone, particularly when it had no police force or means of coercion. This reality became starker when Tribunal officials found the Security Council unwilling to take more than perfunctory steps to enforce its orders and requests. Given these realities, many viewed the ICTY as simply a "fig leaf" for the Security Council's failure to act to stop the conflict.

Shortly after the creation of the ICTY, genocide occurred in Rwanda where some 800,000 Tutsis and moderate Hutus were killed in a few short months in 1994. The Security Council acted again pursuant to its powers under Chapter VII of the United Nations Charter and created the ICTR, which has a similar mandate and structure as ICTY, with jurisdiction limited to Rwanda in 1994. It is currently located in Arusha, Tanzania. It faced many of the same issues as the ICTY in terms of lack of coercive powers, albeit in a different context.

These ad hoc Tribunals have had real achievements; where many individuals have been brought to justice, and they have been able to overcome many obstacles. For example, the ICTY has been able to arrest or otherwise dispose of the cases of all but two of the
161 individuals it indicted. The trials conducted have been seen to be fair, and many victims have felt a measure of justice. The tribunals have also been able to make international criminal law into a tangible area of international law and have created a strong cadre of practitioners in this emerging field of law.

On the other hand, the tribunals have been subject to a myriad of criticisms. Perhaps the most telling of these is that they are expensive and slow and have no real connection to the affected communities, because they are far away from the locations where the crimes have been committed. Moreover, their impact on, and support of, the development of local judicial infrastructure has been limited.

In response to these criticisms, which clearly have at least some merit, the United Nations has taken a different approach when mass atrocities have occurred in other contexts by creating hybrid tribunals or courts that are located in situ. In Sierra Leone, the United Nations and the Government of Sierra Leone established a hybrid court in Freetown that applied not only international humanitarian law but also the domestic criminal law of Sierra Leone. In Cambodia, a similar model was followed to try the crimes of the Khmer Rouge, although the U.N. position is much less robust than in Sierra Leone. Moreover, U.N. transitional authorities in East Timor and Kosovo also followed the hybrid model by utilizing international judges and prosecutors working together with national judges and prosecutors; in the case of Bosnia-Herzegovina, the national authorities took a similar course working closely with the Office of the High Representative.

While each of these tribunals and courts have positive and negative attributes, it is clear that the arrangements regarding hybrid courts were intended to address the problem of distance by placing the court in the country where the crimes were committed. This allowed greater access by the affected public to the proceedings and also allowed victims to feel closer to the proceedings. The costs were also substantially reduced by employing national staff and in lower cost environments than The Hague. Finally, the hybrid model was an attempt to leverage the skills and knowledge of international judges and prosecutors to the benefit of their national counterparts via skills and capacity building.

Thus, putting the ICC to one side for a moment, a patchwork of international and internationalized hybrid courts and judicial institutions have emerged over the last fifteen years. In some
cases, they have sat alongside Truth and Reconciliation Commissions (i.e., Sierra Leone). Of course, such a patchwork of courts does not answer the critics’ argument that justice is selective and disparate, but the record of these institutions shows that justice can be done in a wide range of specific cases. These courts and tribunals have tried high-ranking senior leaders for violations of international criminal law, a development that would have been unimaginable just a few years ago. Thus, presidents (Taylor, Milosevic, Karadzic) and prime ministers (Kambanda), previously thought to be immune, have been or are being tried for mass crimes. Moreover, following the Pinochet case in the United Kingdom, it is also clear that doctrines providing for the immunity of heads of state have been consigned to the dustbin. Therefore, between these international and internationalized courts and the application of the laws in some states providing for universal jurisdiction over certain crimes (e.g., genocide, crimes against humanity), international criminal law is now an essential part of the fabric of international law and applied by various international and domestic courts.

3. The ICC and the Future of International Criminal Law

While all of the courts and tribunals discussed above have played an important role in establishing and enforcing international criminal law, the most significant development in the field has been the creation of the ICC. The negotiation of the Rome Statute took a number of years to come to fruition and can fairly be seen as a post-Cold War phenomenon. It clearly could not have been established during the Cold War, and, similarly, it would have been much more difficult for the ICC Treaty to have been negotiated even a few years later in the post-September 11 environment. The Rome Statute arose during a period of post-Cold War optimism and renewed faith in international institutions. Moreover, the pioneering work of the ad hoc Tribunals must also be recognized, as their work, while fraught with difficulty, had shown that such institutions could work and conduct fair trials in a truly international context.

In many respects, the Rome Statute is a conservative document, and the powers of the court and the prosecutor are much more circumscribed than in the ad hoc Tribunals. The ICC prosecutor is subject to substantial judicial supervision and the court has no jurisdiction at all unless the domestic authorities are “unwilling or
unable" to prosecute the crimes, which is referred to as the "complementarity" principle. Therefore, the ICC is the reverse of the situation of the ICTY and ICTR, which have primacy over local jurisdictions. Moreover, while the ICC may obtain jurisdiction in several ways, including by Security Council referral, State Party referral, or by an investigation by the prosecutor pursuant to his or her limited *propter motu* powers in certain circumstances, the Security Council is in a position to call a temporary halt to these proceedings should it deem it necessary for reasons of peace and security. There are a number of other restrictions on the prosecutor's and the court's ability to mount investigations and proceedings as well, which are in any event limited to nationals of State Parties to the Rome Treaty or to crimes committed in those countries' territory (except in the case of a Security Council referral).

The ICC Statute was overwhelmingly adopted in Rome in 1998, and it quickly won sufficient approval to come into force as of July 1998. This was a remarkable achievement. However, despite its widespread acceptance, the ICC was actively opposed by the United States, which after President Clinton initially signed the treaty, then (under the Bush Administration) "unsigned" the treaty and launched an ideological and shameful campaign to undermine and attack the court. Fortunately, over time U.S. policy appears to have gradually shifted to an unstated tolerance for the ICC, with the United States playing a neutral or positive role in the Security Council's referral of the Darfur situation to the ICC and the subsequent issues related to the referral. We can hope that a more positive approach will emerge with the Obama administration and that at some point the United States itself will join the ICC.

As the ICC developed as an institution, it has faced, is facing, and will face a number of difficult issues in the future. These difficulties seem to fall into three general categories: (1) cooperation issues; (2) the Peace versus Justice debate and questions of selection of prosecutions; and (3) applying complementarity and the relationship between the ICC and national judicial authorities. Obviously, the ICC operates in a complex political and judicial environment, but these are the issues that strike me as the primary ones. Given that the ICC is or will be, with the impending closure of the ICTY and ICTR, the primary mechanism for the application of international criminal law for the foreseeable future, we can also say these will, ipso facto, be the
principal issues (foreseeable at the moment) that will arise in the field of international criminal law.

In terms of cooperation, the ICC, like the ad hoc Tribunals, has no means of coercion at its disposal. Therefore, it must rely on the cooperation of states and international organizations, for assistance in carrying out its investigations and making arrests. Without cooperation from the relevant states, its work can be stymied. One area where there have already been issues is the handling of confidential information from the United Nations and other sources that had been provided to the prosecution but not to the defense in the Lubanga case, leading the trial chamber to threaten dismissal of the case. This crisis has now been averted, but such technical issues involving cooperation are likely to arise again. However, in my view, such problems can be worked through and are part of the difficulties that international courts dealing with establishing cases against senior military and political leaders will always face.

A more serious problem occurs when the national authorities in the place the crimes were committed refuse cooperation and/or refuse to make arrests. The ICTY faced this situation with respect to Serbia and to a lesser extent with Croatia. For much of its life, the ICTY had a long list of fugitives, including many senior leaders, but over time this has been whittled away, primarily as a result of political and economic pressure exerted by the European Union. In the cases of both Croatia and Serbia, the benefits of joining the European Union and the drawbacks of not joining were sufficient to win cooperation, particularly on the issue of arrests.

The ICC is in a more difficult situation: all of its current cases are in Africa, which does not have a regional set of institutions in any way comparable to the European Union. It is being stonewalled in Darfur by the Government of Sudan. These types of non-cooperation issues will always plague the ICC; they will require patience and cunning on the part of the ICC as well as innovative tactics and strategy.

One strategy that the ICC has embraced in the face of such non-cooperation is the concept of self-referral—allowing states to refer their own situations to the ICC. Thus, in the case of Uganda, it referred the situation regarding the Lord’s Resistance Army in its territory to the ICC. This was then followed by similar self-referrals by the Democratic Republic of Congo and the Central African Republic.
While the attraction of self-referrals is clear in terms of cooperation, as the referring state is obviously planning to cooperate with ICC if it is willing to refer itself, this process has been severely criticized on several fronts. First, self-referrals were not the intention of the state referral process established in the Rome Statute, which provides for one state to refer another state. More importantly, it is argued that such self-referral turns complementarity on its head, as the state rather than the court determines whether it is in a position to prosecute. In the Uganda situation, it is not that the Ugandan courts lack the requisite capacity—the test in the Rome Statute, but rather that the government could not effect an arrest, which the ICC was not created to handle. The ICC thus allows such governments to establish the court’s priorities rather than following the norms established in the Rome Statute. Finally, it is argued that the self-referring government is, in essence, pointing the finger at rebel groups and thus trying to avoid an investigation itself and that the ICC is caught in this web by agreeing to such self-referrals.

Regardless of whether one accepts these arguments, it is clear that state cooperation problems have led to the novel approach of self-referrals and that issues of cooperation or non-cooperation will continue to significantly impact the ICC.

A second set of issues arises out of the “Peace versus Justice” debate, which has emerged from the Uganda and Darfur situations pending before the ICC. In essence, it is argued that by insisting on the primacy of ICC investigations, peaceful resolutions of disputes can be discouraged, as leaders facing war crimes investigations or charges are unlikely to agree to make peace, because they have little incentive to do so. Thus, in this construction, peace, along with innocent people and peacekeepers, can be endangered by an insistence on justice, and, therefore in some instances justice efforts must give way to attempts to bring about peace.

Concerns about such issues led to the inclusion of Article 16 in the ICC Statute, which provides that the Security Council can cause the ICC to defer an investigation or proceedings for a period of one

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6 See WILLIAM A. SCHABAS, First Prosecutions at the International Criminal Court, in CRIMES AND HUMAN RIGHTS: ESSAYS ON THE DEATH PENALTY, JUSTICE AND ACCOUNTABILITY, 375, 392–401 (2008) (arguing that self-referral was neither anticipated by the drafters of the Rome Statute nor is it the best way for the ICC to proceed).
year, which can be renewed. This provision has been discussed in the Darfur situation, with considerable support in the Security Council for such a deferral.

In many ways this debate is based on a faulty premise: continued failure to address past crimes does not lead to peace but rather to more conflict. However, one must be cognizant that there are a number of not unreasonable voices who have argued that in specific situations, pushing for justice at certain stages can undermine efforts for peace. While these arguments are not persuasive to this writer, they are arguments that will continue to arise and will need to be addressed. Moreover, these lead to questions about the prosecutor’s proper role in determining when to investigate. Is it a straightforward legal decision, based solely on the evidence and the gravity of the crimes committed? Or should, political and pragmatic considerations, such as the effect such investigations will have on peace and stability of a country or region be factored into the equation? While we may disagree with the idea that justice should ever be sacrificed, it is clear that these questions will continue to arise and that they will present a set of long-term issues that the ICC and proponents of international justice will need to contend with.

Another issue that is emerging is that the ICC’s four situations are in Africa, while other situations such as Chechnya remain beyond the ICC’s reach. This raises a corollary to the “victor’s justice” argument; that is, justice for weak countries and not for the strong. The establishment of the ad hoc Tribunals with their limited jurisdictions, of course, raised this issue as well.

The establishment of the ICC has obviously widened the jurisdiction of international courts well beyond that of the ad hoc Tribunals, to say nothing of the NMT. Nonetheless, while many African states have joined the ICC, much of the rest of the world, including such powerful countries as the United States, Russia, and China have not as yet ratified the Rome Treaty. Thus, in some cases alleged crimes in weaker countries may end up being prosecuted, either because those countries have ratified the Rome Statute or because, as in the case of Darfur, the Security Council has referred the situation and the country has no right of veto in the Security Council. It is, therefore, true that even with the ICC, citizens of a country with the right of Security Council veto can and probably do avoid prosecution whereas similar crimes in another country can be and probably have been prosecuted.
This situation is, of course, a violation of the principle of equal treatment. Nonetheless, it is not a static situation, as we have moved from a situation where only a few years ago there was no possibility of an international prosecution to the current situation where over one hundred countries are subject to the ICC’s jurisdiction, with more ratifications coming as time passes. Many of these countries are significant powers, including the United Kingdom, France, Brazil, and South Africa. Therefore, given the nature of the crimes there is a persuasive argument that we should not make “the perfect the enemy of the good” but that more work should go into achieving an even broader scope for the ICC. Nonetheless, this will be a continuing issue that faces the ICC for the foreseeable future.

A broader and more fundamental issue that the ICC needs to address is that of complementarity. As noted above, under the ICC Statute, the ICC can only exercise its jurisdiction in cases where the national authorities cannot or will not investigate and prosecute the applicable crimes. Hence the purpose of the ICC is to complement, not supersede national jurisdictions. Thus, the court must make a decision whether this complementarity principle has been respected before the situation or case is admissible at the ICC.

This question involves an application of the relevant legal principles and rules. However, complementarity raises another set of questions: what is the ICC’s role with respect to assisting states in bringing their judicial systems up to a standard where they can prosecute crimes under the ICC Statute? Moreover, how are serious crimes that do not meet the prosecutor’s gravity threshold requirements to be handled? For example, the ICC might well decide to prosecute the general, but what happens to the captain who also committed serious crimes?

These difficult issues of complementarity, which some call “positive complementarity” have yet to be addressed. While this is understandable given the significant problems facing the ICC, these are issues that are likely to become more pressing as the ICC conducts more investigations and obtains more and more evidence and information. What relationship will exist between national prosecuting authorities and courts and the ICC?

There are some indications from the ICTY how such “positive complementarity” might work. The ICTY found that its caseload was too great, particularly in view of its plans to finish its work in a timely manner. As the judicial authorities and institutions recovered following the conflict and their capacity increased, the
ICTY transferred a number of low and mid-level cases to national courts, which developed specialized war crimes chambers to deal with these cases. Most of these cases went to the State Court of Bosnia-Herzegovina, which itself is a national hybrid court, and, with monitoring by the Organization for Security and Cooperation in Europe, the experiment was successful. Moreover, other methods of cooperation were developed to provide files, dossiers, and investigative materials to national prosecutors to develop their own cases. These prosecutors were also given access to the ICTY prosecutor's non-confidential electronic databases, and training was provided to prosecutors and judges.

While the situation in the former Yugoslavia is quite different from those which the ICC is currently investigating, and these methods were developed more in reaction to time pressure than a positive vision of complementarity, they are instructive and bear further study. In any event, if the ICC is to make a broader impact than simply holding a limited number of trials in The Hague, it will need to develop this concept of "positive complementarity." In my view, it is the key question for international criminal law and international justice generally during the next phase of its impressive forward march.

4. CONCLUDING REMARKS

The above discussion merely outlines this author's views of the principal developments in the field of international criminal law over this journal's life, slightly stretching beyond its thirty years because of the long fellow period between the NMT and the establishment of the ICTY. What is clear is that this field of law has rocketed from being a matter of theory, dreams, and hopes to the forefront of international law. This fact no doubt stems from a variety of developments connected both to the end of the Cold War and to mass communications (the "CNN effect"), but also springs from something more eternal: the desire to say "no" to those who would visit mass destruction and misery on their fellow human beings. While many issues and problems lie ahead for this field of law, thankfully there is no turning back.