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The OTP (Office of the Prosecutor) Should Not Close Investigations Unless Absolutely Necessary

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(/home)

Fatou Bensouda
Former ICC (International Criminal Court) Prosecutor

Topic for February 2020 – May 2020

Completion Strategy Question

What might be some elements of an ICC (International Criminal Court) completion strategy for situations under investigation?

Investigations are costly and the ICC (International Criminal Court) has limited resources. A long ongoing investigation may also impose costs, pecuniary and psychological, on victims and survivors, as well as nationals that are thought to be subjects of interest, and an endless investigation would not be without problems. A completion strategy for investigation of each particular situation could be useful. More broadly, a comprehensive completion strategy could be devised to maximize the benefits and minimize the costs of ICC (International Criminal Court) action. For reasons similar to these, the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda each adopted completion strategies.

Article 53 ([/rome-statute#ArticleArticle 53](#)) of the *Rome Statute* sets forth conditions for the Prosecutor to initiate an investigation and to inform the Pre-Trial Chamber and the referring State (or the Security Council) of a conclusion that there is no sufficient basis for investigation. However, the *Rome Statute* ([/rome-statute](#)) does not specify any procedures related to or considerations affecting whether, when, or how to complete an investigation.

What might be some elements of an ICC (International Criminal Court) completion strategy for situations under investigation?

First, how final is “completion”? “Completion” might entail terminating evidence collection, issuance of arrest warrants, and prosecution. Could “completion” include a suspension of those activities, and, if so, under what circumstances? If an investigation were suspended, what factors should trigger revival of an investigation?

Second, what factors should be considered in deciding when completion should take place? Should it matter whether the investigation was based on a Security Council or State referral, or initiated under the Prosecutor’s *proprio motu* authority? Should a lack of access to evidence trigger completion? The ICC (International Criminal Court) has authority to try only those “most responsible,” but the *Rome Statute* ([/rome-statute](#)) does not specify how many persons that might include; how should the Prosecutor determine that enough of those “most responsible” have been prosecuted so as to warrant completion? To what extent and on what legal basis should the beginning of domestic criminal proceedings, the establishment of a truth commission, or other aspects of the situation in the relevant State warrant completion? Should other factors be considered?

Third, what actions should be taken by each of the organs of the Court at completion of an investigation? Should the Prosecutor issue a final report on the status and conclusions of the investigation? Should the Prosecutor refer cases she decides not to prosecute to national courts? If so, what criteria should be used in determining which cases to refer to national courts, and which national courts should be referred to? Should the Registry and other actors under the Statute cease or continue outreach activities, victim reparation activities, or any other activities?



Evenson/Smith



Hamilton



Heller



Pocar



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The OTP (Office of the Prosecutor) Should Not Close Investigations Unless Absolutely Necessary

Summary

Numerous scholars have taken the position that the OTP (Office of the Prosecutor) should eventually close its investigations. This comment offers a (partially) dissenting view, arguing that there are compelling reasons for the OTP (Office of the Prosecutor) to keep its investigations open indefinitely. Sections two and three explain the advantages and disadvantages of not closing investigations. The final section then discusses how the OTP (Office of the Prosecutor) should think about closure if, contrary to the suggestion in this article, it believes that some investigations should be closed instead of kept open indefinitely.

Argument

I. Introduction

In its Strategic Plan for 2019–2021, the Office of the Prosecutor (OTP (Office of the Prosecutor)) acknowledges “the need to consider, in a strategic manner, the conditions and process by which it can eventually exit situations.”¹ All of the scholars who have written on completion strategies at the ICC (International Criminal Court) agree that investigations should eventually be closed.²

This article offers a (partially) dissenting view, arguing that there are compelling reasons for the OTP (Office of the Prosecutor) to *never* close an investigation. Section 2 examines the advantages of the OTP (Office of the Prosecutor) hibernating a “completed” or frustrated investigation instead of closing it. Section 3 then acknowledges that, in some circumstances, closure has some advantages of its own. Finally, Section 4 discusses how the OTP (Office of the Prosecutor) should think about closure if, contrary to the suggestion in this comment, it believes that some investigations should be closed instead of kept open indefinitely.

Before proceeding, it is important to clarify terminology. In what follows, “closing” an investigation denotes the legal and factual cessation of all of the OTP’s (Office of the Prosecutor) investigative activities in a situation, both in the field and at ICC (International Criminal Court) headquarters. As the OTP (Office of the Prosecutor) notes in its most recent Strategic Plan, this has not happened to date.³ By contrast, “hibernating” an investigation denotes the cessation of investigative activities in the field and the reallocation of some, but not all, of the resources the OTP (Office of the Prosecutor) previously committed to a situation. This is what the OTP (Office of the Prosecutor) did in Darfur in 2014.⁴

There is no question that the OTP (Office of the Prosecutor) lacks the resources to keep full-blown investigations going indefinitely in all situations. But that does not mean the OTP (Office of the Prosecutor) needs to close an investigation completely when it has either completed its initial program or has found it too difficult (whether because of government resistance or ongoing violence) to effectively investigate further. It could instead hibernate the investigation, reallocating resources but still maintaining a small field presence or situation team at

II. Why Close?

According to Evenson and Smith, “[t]he ICC (International Criminal Court) cannot stay in a particular situation in perpetuity.”⁵ But is that really true? There is no *legal* reason why the OTP (Office of the Prosecutor) has to close an investigation: although the *Rome Statute* (*/rome-statute*) regulates opening investigations, it is completely silent concerning closing them.

Evenson and Smith, of course, don’t claim otherwise. They are more concerned with the *practical* implications of never closing investigations, particularly in terms of how such a policy would affect the Court’s resources:

If the ICC’s (International Criminal Court) 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.⁶

There is no question that the OTP (Office of the Prosecutor) lacks the resources to keep full-blown investigations going indefinitely in all situations. But that does not mean the OTP (Office of the Prosecutor) needs to close an investigation completely when it has either completed its initial trial program or has found it too difficult (whether because of government resistance or ongoing violence) to effectively investigate further. It could instead hibernate the investigation, reallocating resources but still maintaining a small field presence or situation team at ICC (International Criminal Court) headquarters. Although not completely costless, there is no indication that the OTP (Office of the Prosecutor) cannot sustain a skeletal presence in each situation under investigation. Indeed, the OTP (Office of the Prosecutor) adopted such a cost-saving “maintenance strategy” in Uganda for the four years prior to Ongwen’s arrest—a time when it was unclear whether it would ever have anyone to prosecute—by operating with “minimum staff in charge of victims and witness management and protection, outreach, implementation of the Trust Fund for Victims projects and victims participation and reparation matters.”⁷

Even this minimal expenditure of resources would be unjustifiable, of course, if there were no practical advantages to keeping investigations open indefinitely. But that is not the case, because never closing an investigation facilitates the OTP’s (Office of the Prosecutor) work in numerous ways.

To begin with, it maximizes the OTP’s (Office of the Prosecutor) prosecutorial flexibility. As Ongwen’s arrest eleven years after the opening of the Uganda investigation indicates, the OTP (Office of the Prosecutor) can never rule out the possibility that a suspect deserving of prosecution will fall into its hands unexpectedly. After all, even the most successful trial program will involve a small fraction of the perpetrators in a particular situation.⁸ Closing an investigation would likely not prohibit the OTP (Office of the Prosecutor) from reopening it to prosecute a new suspect, but there is no question that reopening would be much easier under a maintenance strategy.⁹ Fabricio Guariglia,

where the OTP (Office of the Prosecutor) once closed its investigation in all but name, with Uganda, where it maintained a reduced presence instead:

Mr. Guariglia noted that there are two main prosecutorial functions after concluding an investigation from an OTP (Office of the Prosecutor) perspective: tracking suspects and maintaining regular contact with local communities and witnesses, including witness protection. This is to help restart an investigation later on. Mr. Guariglia gave two contrasting examples. In the Bosco Ntaganda (DRC (Democratic Republic of Congo)) case, OTP (Office of the Prosecutor) had to re-establish contact with witnesses and the victim community after ten years, many of whom felt abandoned, requiring re-engagement to restore trust. Mr. Guariglia contrasted this with the *Ongwen* (LRA (Lord's Resistance Army)) case where the OTP (Office of the Prosecutor) had maintained a field presence in Uganda and it was much easier to resurrect the case.¹⁰

Re-opening a formally closed investigation also raises difficult legal questions. The *Rome Statute (/rome-statute)* says nothing about what, if anything, the OTP (Office of the Prosecutor) must do to re-open a closed investigation. It is quite possible, however, that the OTP (Office of the Prosecutor) would have to formally re-open an investigation that it formally closed. If so, re-opening a *proprio motu* investigation would require new authorization by the Pre-Trial Chamber, while re-opening a state or UNSC (United Nations Security Council)-based investigation would require a new referral. It is highly unlikely that such authorization or referral would always be forthcoming.

To be clear, this is the only possible interpretation of the *Rome Statute (/rome-statute)*. The judiciary may well treat a “formal” decision to close an investigation as legally equivalent to hibernating one, in which case the OTP (Office of the Prosecutor) could re-open a closed investigation at any time. Nevertheless, the OTP (Office of the Prosecutor) could avoid any possibility of having to litigate the issue by simply leaving its investigations open indefinitely.

Leaving an investigation open indefinitely also has other benefits. Most obviously, an open investigation has more deterrent effect than a closed one. Deterrence is a function not only of severity of punishment, but also of the likelihood of apprehension.¹¹ Although the odds of being apprehended by the OTP (Office of the Prosecutor) are always low, almost by definition a high-value perpetrator has more to fear from an open investigation—hibernated or not—than from a closed one. And that is true even if the OTP (Office of the Prosecutor) can re-open an investigation without the need for judicial authorization or a new referral, because formal closure will mean not only the cessation of investigative activity, but also the closing of any field office and the total reallocation of investigative resources to other situations. A hibernated investigation can thus be restarted much more quickly than a closed one.

This consideration applies to all perpetrators in an investigated situation. The experience of previous international criminal tribunals (ICTs (international criminal tribunals)) indicates, however, that leaving an investigation open indefinitely can be particularly advantageous when the primary suspects are government officials. Although states are rarely keen to help an ICT (international criminal tribunal) investigate their own officials, non-cooperation in the face of an investigation that will not end merely delays the day of reckoning—it cannot end the threat. By contrast, a state that knows an ICT (international criminal tribunal) will eventually cease its investigative activities has a strong incentive to “wait out” the tribunal, refusing to cooperate until the tribunal closes and the threat passes. This is precisely what happened at the ICTY (International Criminal Tribunal for the former Yugoslavia): in 2003, Carla del Ponte told the Security Council that the hard deadlines in the Tribunal’s completion strategy, “instead of speeding up cooperation,” simply encouraged the Balkan states “to buy time and to place additional obstacles in the way of cooperation with the ICTY (International Criminal Tribunal for the former Yugoslavia).”¹²

The OTP (Office of the Prosecutor) could avoid this pitfall, of course, by refusing to close any specific investigation

until all of the suspects in its initial trial program have been apprehended and prosecuted. Indeed, as discussed below, that is the approach the OTP (Office of the Prosecutor) should take if it decides to close investigations. Given the OTP's (Office of the Prosecutor) notorious difficulties in obtaining suspects, however, not putting a temporal limit on the length of an investigation will likely mean that the OTP (Office of the Prosecutor) *never* formally closes an investigation. It will instead simply hibernate them until such time as active investigation becomes possible again.

Leaving investigations open indefinitely will also better protect the OTP's (Office of the Prosecutor) reputation when, as has often been the case, the OTP (Office of the Prosecutor) fails to complete its trial program in a particular situation because of lack of resources or state intransigence. Nothing is more harmful to an ICT's (international criminal tribunal) reputation than the perception that it did not complete its mandate because of non-legal factors.¹³ Previous ICTs (international criminal tribunals), all of which focused on one conflict, had no choice but to close when they could not obtain the necessary funding or cooperation from states. The ICC (International Criminal Court), by contrast, always has the option of hibernating a frustrated investigation instead of closing it. That will not completely insulate the OTP (Office of the Prosecutor) from criticism, as the backlash against the Darfur hibernation indicates.¹⁴ But it seems reasonable to assume that temporarily hibernating an investigation will generally lead to less backlash than abandoning a frustrated investigation entirely.

Finally, there are more quotidian advantages to never closing an investigation, even if doing so requires hibernation and a scaling back of resources. Oosterveld has noted that the continued presence of an OTP (Office of the Prosecutor) field office in a situation country will make it much easier for the Court to deal with a variety of residual issues, such as protecting witnesses and making archival material available to the local population.¹⁵ The same is true for providing a friendly government with evidence, technical assistance, and engaging in general capacity-building efforts.¹⁶ And, of course, the continued presence of a field office will greatly facilitate the Court's ongoing outreach efforts to affected communities. As the SCSL's (Special Court for Sierra Leone) experience indicates, an ICT's (international criminal tribunal) outreach is much more likely to succeed when it has a physical presence in a state: the tribunal was viewed by locals much more positively in Sierra Leone than in Liberia precisely because it was based in the former and not the latter.

III. Advantages of Closing

Taken together, these considerations make a powerful case for the OTP (Office of the Prosecutor) keeping investigations open indefinitely, hibernating instead of closing a particular investigation if the OTP (Office of the Prosecutor) either completes its initial trial program or (more likely) cannot advance the program any further. There is no question, however, that formally closing an investigation does have some advantages.

Most obviously, closing an investigation will better conserve the OTP's (Office of the Prosecutor) limited resources. Although maintaining a field office or team at ICC (International Criminal Court) headquarters for a hibernated investigation is not as resource-intensive as conducting an active investigation, it does require the OTP (Office of the Prosecutor) to allocate a certain amount of funds and personnel to an investigation that may not lead to additional prosecutions.

Closing an investigation will also better manage the expectations of the victims and the local population in a situation, because it will make clear that—barring exceptional circumstances—the ICC (International Criminal Court) does not intend to prosecute additional suspects. Evenson and Smith make this point well:

[H]aving 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 (International Criminal Court) 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.¹⁷

To be sure, closure does not guarantee that the victims and local community will be *satisfied* with the ICC's (International Criminal Court) efforts. That will be a function of how well the OTP (Office of the Prosecutor) designed and executed its trial program. But closing an investigation offers more certainty than hibernating one, because by definition hibernation assumes that the cessation of investigative activities will—or at least may—be temporary.

Relatedly, closing an investigation will encourage states to assume primary responsibility for addressing the international crimes committed on their territory. That may not happen in conflict or post-conflict situations where the government is simply unable to pursue accountability. But closure will send a powerful message to states that have the capacity to hold domestic trials that they can no longer expect the ICC (International Criminal Court) to do the heavy lifting for them. Uganda provides a striking example of this dynamic: Museveni's government always had the ability to prosecute members of the LRA (Lord's Resistance Army) domestically; it simply preferred, for a variety of reasons, to “outsource” accountability to the ICC (International Criminal Court).¹⁸ Had the OTP (Office of the Prosecutor) closed the Uganda investigation instead of hibernating it in 2011, perhaps Ongwen would now be standing trial in Uganda's International Crimes Division instead of siphoning off precious OTP (Office of the Prosecutor) resources in an unnecessary international trial.

IV. Considerations for Closure

On balance, the OTP (Office of the Prosecutor) would be better off keeping its investigations open indefinitely than formally closing them. The primary exception is where the OTP (Office of the Prosecutor) believes that closing an investigation is the only way to get a capable but intransigent government to pursue accountability itself. In nearly every other situation, the benefits of hibernating an investigation will outweigh the costs.

It is possible, of course, that the OTP (Office of the Prosecutor) does not and will never have the resources to maintain a field office or a small team at ICC (International Criminal Court) headquarters for every situation it investigates. If so, the OTP (Office of the Prosecutor) will be forced to close at least some investigations even if leaving them open would be the better practice. Two questions thus arise: (1) how should the OTP (Office of the Prosecutor) decide which investigations to close, and (2) how should the OTP (Office of the Prosecutor) plan those closures?

A. Determining Closure

There is no algorithm the OTP (Office of the Prosecutor) can use to decide which investigations to close instead of hibernate. That decision will depend on the balance of costs and benefits in each situation. Nevertheless, at the macro level, two circumstances would seem to strongly support keeping an investigation open indefinitely. The first is where the OTP (Office of the Prosecutor) is investigating crimes committed during an ongoing conflict, as opposed to a post-conflict situation. The need to maintain the deterrent value of an open investigation is obviously much greater during a conflict than after it. Moreover, when violence is ongoing, the need to maintain prosecutorial flexibility is particularly acute, because new high-value suspects can emerge at any time. In a post-conflict situation, the OTP (Office of the

Prosecutor) will have a much better idea *ex ante* which important suspects it wants to prosecute and can be more

confident that new suspects requiring prosecution will not emerge, making it safer to close the investigation once its initial trial program is completed.

The second circumstance favoring keeping an investigation open indefinitely is where the OTP (Office of the Prosecutor) is investigating current government officials, as opposed to rebels (such as the LRA (Lord's Resistance Army)) or a former head of state (such as Gbagbo). In such a situation, the only way the OTP (Office of the Prosecutor) can prevent the state from "waiting out" its investigation is to refuse to formally close the investigation until all of the relevant suspects have been surrendered to the Court. Similarly, given that the OTP (Office of the Prosecutor) is very unlikely to complete its trial program in a timely fashion when it is investigating government officials—as the investigations in Darfur, Libya, and Georgia demonstrate—the OTP (Office of the Prosecutor) can best protect its reputation by hibernating a frustrated investigation instead of simply closing it. In the latter situation, the government simply "wins." In the former, its victory is only temporary.

Given these considerations, the ideal candidate for closure is an investigation in which violence has ended in the situation country and the OTP (Office of the Prosecutor) is not targeting current government officials. In that context, the need for deterrence and prosecutorial flexibility will be at their nadir while the likelihood of the OTP (Office of the Prosecutor) successfully completing its trial program will be at its apex. Moreover, although the OTP (Office of the Prosecutor) will always find it easier to manage residual issues such as witness protection and outreach when it maintains a field office in a particular situation, those efforts will be less negatively affected by the absence of an office when the OTP (Office of the Prosecutor) is working with a friendly government in a post-conflict situation.

B. Planning Closure

Although every situation is different, the guidelines above should provide the OTP (Office of the Prosecutor) with a general idea of whether it will be able to eventually close an investigation. The key here is that the OTP (Office of the Prosecutor) needs to make that determination *before* initially opening the investigation, because the single most important lesson concerning completion that can be drawn from the experience of previous ICTs (international criminal tribunals) is that a completion strategy adopted *ex ante* is far more likely to be successful than one adopted *in media res*.¹⁹

The focal point of any such completion strategy must be determining the number of suspects the OTP (Office of the Prosecutor) intends to prosecute before closure—as the OTP (Office of the Prosecutor) is fully aware:

Mr. Rastan then noted that when the OTP (Office of the Prosecutor) commences work in a situation, there is an OTP (Office of the Prosecutor) integrated team from the outset with team members from all divisions of the OTP (Office of the Prosecutor). This team then develops not just a case hypothesis, but is also mandated to help the Prosecutor conceive of the OTP's (Office of the Prosecutor) overall prosecutorial programme by mapping all potential cases that meet the OTP's (Office of the Prosecutor) case selection and prioritization criteria. This not only helps to identify which cases the OTP (Office of the Prosecutor) should pursue, but also identify one aspect of completion, namely the potential end of the OTP's (Office of the Prosecutor) prosecutorial programme within a given situation.²⁰

The OTP (Office of the Prosecutor) should always err on the side of conservatism when deciding the number and kind of suspects it will be able to prosecute, at least insofar as its trial program will be communicated publicly. Experience suggests that nothing is quite as damaging to an ICT's (international criminal tribunal) legitimacy than overpromising what it can accomplish. That was clearly the case with the Special Panels for Serious Crimes (SPSC (Special Panels for Serious Crimes)), which was widely rejected by ordinary Timorese: although it was never realistic to expect the

SPSC (Special Panels for Serious Crimes) to prosecute those most responsible for atrocities in East Timor—high-ranking members of the Indonesian military. UNTAET (United Nations Transitional Administration in East Timor) unwisely raised Timorese expectations by giving the SPSC (Special Panels for Serious Crimes) universal jurisdiction over anyone who committed a serious crime between January 1, 1999 and October 25, 1999.

Because an incomplete trial program is so devastating to an ICT's (international criminal tribunal) legitimacy, the OTP (Office of the Prosecutor) should do everything it can to avoid closing an investigation before it has completed its trial program—even if that means keeping the investigation open, with the concomitant drain on resources, longer than the OTP (Office of the Prosecutor) would like. As Evenson and Smith note, “[p]reparation 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.”²¹ Indeed, the need to avoid premature closure is particularly acute at the ICC (International Criminal Court), where even the most ambitious situation-specific trial program will involve only a small handful of suspects. The ICTR's (International Criminal Tribunal for Rwanda) reputation was not adversely affected by its failure to prosecute the three suspects that remain at large because it was able to convict sixty-one suspects before closing. The OTP's (Office of the Prosecutor) failure to prosecute one of (say) four or five suspects before closing an investigation would obviously be far more delegitimizing.

Finally, because even the most successful OTP (Office of the Prosecutor) investigation will not prosecute all or even most of the deserving suspects in a particular situation, it is particularly critical that the OTP (Office of the Prosecutor) publicly explain—early and often—why it intends to pursue such a limited trial program. Here the SCSL's (Special Court for Sierra Leone) experience is instructive: because the SCSL's (Special Court for Sierra Leone) OTP (Office of the Prosecutor) invested considerable resources in explaining to Sierra Leoneans why its mandate extended only to individuals who bore the “greatest responsibility” for the violence in that country, the OTP's (Office of the Prosecutor) limited trial program—thirteen indictments and ten defendants—did not significantly undermine perceptions of the SCSL's (Special Court for Sierra Leone) legitimacy.²²

V. Conclusion

In an ideal world, the OTP (Office of the Prosecutor) would keep open all of its investigations indefinitely, even in situations where it was able to complete its trial program. The advantages of hibernating and pursuing a maintenance strategy instead of formally closing a situation are manifold, from maximizing prosecutorial flexibility to promoting deterrence to encouraging effective outreach.

The OTP (Office of the Prosecutor), of course, combats impunity with the resources it has, not the resources it wishes it had. Budgetary and personnel limitations may well make it impossible for the OTP (Office of the Prosecutor) to keep all of its investigations open indefinitely. If so, the OTP (Office of the Prosecutor) should endeavor to close only those investigations that take place post-conflict and/or focus on crimes committed by rebels and former government officials. When it decides to investigate situations involving ongoing violence and/or crimes committed by current government officials, the costs of closure are simply too high.

Endnotes — (click the footnote reference number, or ↩ symbol, to return to location in text).

1. **Office of the Prosecutor**, ICC (International Criminal Court), *STRATEGIC PLAN 2019–2021* ¶ 23 (Jul. 17, 2019) [hereinafter *Strategic Plan*], available online. (<https://www.icc-cpi.int/itemsDocuments/20190726-strategic-plan-eng.pdf>) ↩
2. See, e.g., **Dafna Gozani**, *Beginning to Learn How to End: Lessons on Completion Strategies, Residual*

Mechanisms, and Legacy Considerations from Ad Hoc International Criminal Tribunals to the International Criminal Court, 36 LOY. L.A. INT'L & COMP. L. REV. ([HTTP://ILR.LLS.EDU/](http://ilr.lls.edu/)) (LOYOLA OF LOS ANGELES INTERNATIONAL AND COMPARATIVE LAW REVIEW) 331, 370 (Apr. 1, 2015), available online;

(<https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1714&context=ilr>)

Elizabeth Evenson (/users/evenson) & Alison A. Smith, (/users/smith) Completion, Legacy, and Complementarity at the ICC (International Criminal Court), in THE LAW AND PRACTICE OF THE INTERNATIONAL COURT 1259, 1260 (CARSTEN STAHN (/USERS/STAHN) ED., May 1, 2015), available online.

(http://www.npwj.org/sites/default/files/ressources/ASmith_OxfordUniversityPress2015.pdf) ↵

3. *Strategic Plan*, *supra* note 1, ¶ 23. ↵
4. *Security Council Inaction on Darfur 'Can Only Embolden Perpetrators'—ICC (International Criminal Court) Prosecutor*, UN (UNITED NATIONS) NEWS, ([HTTPS://NEWS.UN.ORG/](https://news.un.org/)) (UNITED NATIONS NEWS) Dec. 12, 2014, available online. (<https://news.un.org/en/story/2014/12/486172-security-council-inaction-darfur-can-only-embolden-perpetrators-icc-prosecutor>) ↵
5. **Evenson (/users/evenson) & Smith, (/users/smith)** *supra* note 2, at 1260. ↵
6. *Id.* at 1261. ↵
7. **Assembly of States Parties, Report of the Court on Complementarity: Completion of ICC (International Criminal Court) Activities in a Situation Country**, ICC (INTERNATIONAL CRIMINAL COURT)-ASP (ASSEMBLY OF STATES PARTIES) /12/32, ¶ 42 (Oct. 15, 2013), available online. (https://asp.icc-cpi.int/iccdocs/asp_docs/ASP12/ICC-ASP-12-32-ENG.pdf) ↵
8. See, e.g., **Mark A. Drumbl, ATROCITY, PUNISHMENT AND INTERNATIONAL** 152 (Apr. 2007), *paywall*. (<http://www.cambridge.org/us/catalogue/catalogue.asp?isbn=9780521691383>)

(noting that “selectivity intractably affects, and will continue to affect, the ICC’s (International Criminal Court) work” because there will always be “a large disparity between the cases the ICC (International Criminal Court) could potentially prosecute and those that it will effectively prosecute”). ↵

9. **Evenson (/users/evenson) & Smith, (/users/smith)** *supra* note 2, at 1264.
 (“[W]here possible within the defined limits of the situation open before the Court, the ICC (International Criminal Court) 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.”)

Cf. Valerie Oosterveld, The International Criminal Court and the Closure of the Time-Limited International and Hybrid Criminal Tribunals, 8 LOY. U. CHI. INT’L L. REV. ([HTTPS://WWW.LUC.EDU/LAW/ACADEMICS/JOURNALSANDPUBLICATIONS/INTERNATIONALLAWREVIEW/](https://www.luc.edu/law/academics/journalsandpublications/internationalallawreview/)) (LOYOLA UNIVERSITY CHICAGO INTERNATIONAL LAW REVIEW) 13, 29 (2010), available online. (<https://lawecommons.luc.edu/cgi/viewcontent.cgi?article=1025&context=lucilr>)

(“If the ICC (International Criminal Court) does scale down its presence in a situation country, it must also plan for future rapid scaling up of investigatory, defense and outreach presence if fugitives are captured and transferred to the ICC (International Criminal Court).”). ↵

10. **Secretariat of the Assembly of States Parties, COMPLEMENTARITY: SEMINAR ON COMPLETION STRATEGIES ACROSS THE ICC’S (INTERNATIONAL CRIMINAL COURT) ACTIVITIES** 4 (Apr. 4, 2019) [hereinafter *Secretariat*], available online. (https://asp.icc-cpi.int/en_menus/asp/complementarity/Documents/4April%20Seminar%20Completion%20Strategies%20Summary%2016May2019%20) ↵
11. See **Drumbl**, *supra* note 8, at 169–70. ↵
12. Press Release, ICTY (International Criminal Tribunal for the former Yugoslavia), *Address by Ms. Carla Del Ponte, Chief*

Prosecutor of the ICTY (International Criminal Tribunal for the former Yugoslavia), to the UN (United Nations) Security Council, FH/PIS/791-E, AT 12 (Oct. 10, 2003), available online. (<https://www.icty.org/en/press/address-ms-carla-del-ponte-chief-prosecutor-icty-un-security-council>) ↵

13. See generally, **Kevin Jon Heller**, ([/users/heller](#)) *Completion Strategies and the Office of the Prosecutor* (Jun. 26, 2009), in *INTERNATIONAL PROSECUTORS 886* (LUC REYDAMS, JAN WOUTERS & CEDRIC RYNGAERT ([/users/ryngaert](#)) EDS., 2012), available online. (<https://poseidon01.ssrn.com/delivery.php?ID=261087081122064115116068107091105071052087053042027060078071083126091095081024011022019114028045009056121>) ↵
14. See, e.g., **Matthew Redding**, Coalition for the International Criminal Court, *Darfur ICC (International Criminal Court) Referral Turns 10: Reflections on the Troubled Path to Accountability* (Mar. 31, 2015), available online. (<http://www.coalitionfortheicc.org/news/20150331/darfur-icc-referral-turns-10-reflections-troubled-path-accountability>) ↵
15. **Oosterveld**, *supra* note 9, at 14–15. ↵
16. **Secretariat**, *supra* note 10, at 5.

(Statement of Rod Rastan). ↵
17. **Evenson** ([/users/evenson](#)) & **Smith**, ([/users/smith](#)) *supra* note 2, at 1261. ↵
18. See generally, **Mark Kersten**, *The ICC (International Criminal Court) as an Actor—Negotiating Interests, Selecting Targets, and Affecting Peace*, in *JUSTICE IN CONFLICT: THE EFFECTS OF THE INTERNATIONAL CRIMINAL COURT’S INTERVENTIONS ON ENDING WARS AND BUILDING PEACE* (2016), *paywall*, (<https://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780198777144.001.0001/acprof-9780198777144-chapter-8>) doi (digital object identifier). (<https://doi.org/10.1093/acprof:oso/9780198777144.001.0001>) ↵
19. See **Heller**, ([/users/heller](#)) *supra* note 13, at 917–20. ↵
20. **Secretariat**, *supra* note 10, at 5.

(Statement of Rod Rastan). ↵
21. **Evenson** ([/users/evenson](#)) & **Smith**, ([/users/smith](#)) *supra* note 2, at 1264. ↵
22. **Heller**, ([/users/heller](#)) *supra* note 13, at 918. ↵

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