**The London School of Economics
and Political Science**

*Present at the Completion:
Creating Legacies
at the International Criminal Tribunals*

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Economics for the degree of Doctor of Philosophy,
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Declaration

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Abstract

The rise of international criminal law and the proliferation of international criminal tribunals is one of the most striking developments in international law and international politics over the last two decades. Given the pending closure of the *ad hoc* tribunals, the question of their legacies has become increasingly topical. This thesis examines the institutional creation of legacies at the International Criminal Tribunals for the former Yugoslavia (ICTY) and for Rwanda (ICTR), the Special Court for Sierra Leone (SCSL) and the Extraordinary Chambers in the Courts of Cambodia (ECCC). Drawing on extensive field research, including over 230 interviews with key personnel, the thesis examines how each of the tribunals responded to the spectre of organisational decline. It finds an array of actors and institutions actively involved in the perpetuation of their international organisations and in the manufacturing of legacies. Incorporating insights from multiple disciplines, the analysis traces, and explains, variation across these processes of social construction.

In theoretical terms, the thesis conceives of 'legacy building' as an unexamined yet central coping strategy *vis-à-vis* organisational demise that is aimed, first and foremost, at meaning making. Challenging the common depiction of legacies as objectively measurable end results, the study demonstrates that legacies are actively produced, not passively acquired. This is shown to be so because the impending closure of international organisations raises existential questions — at both the institutional and individual level — about their ownership, legitimacy and *raison d'être*. Accordingly, the comparative analysis of the ICTY, ICTR, SCSL and ECCC reveals a hectic 'legacy turn' in the work of the tribunals that resulted in heightened, though not always effective, organisational reflexivity. The analysis contributes to filling an evident research gap in the study of international law. By showing where legacies come from, it challenges conventional, descriptive portrayals of the development of the international criminal tribunals. It unpacks what conventional accounts take as a given: the existence of legacies. But the research findings are relevant beyond international criminal law. They speak to the broader question of how international organisations portray—and perpetuate—themselves upon the completion of their mandate.

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« On ne fait pas un voyage. Le voyage nous fait et nous défait, il nous invente. »
- David Le Breton[1]

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[1] 'We do not simply set out on a journey. The journey constructs and reconstructs us, it invents us anew' Translation by the author.

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List of Acronyms

ADC-ICTY: Association of Defence Counsel practicing before the International Criminal Tribunal for the former Yugoslavia

ASP: Assembly of States Parties

EC: European Commission

ECCC: Extraordinary Chambers in the Courts of Cambodia

EU: European Union

ICC: International Criminal Court

ICTR: International Criminal Tribunal for Rwanda

ICTY: International Criminal Tribunal for the former Yugoslavia

IO: International Organisation

IR: International Relations

MICT: Mechanism for International Criminal Tribunals

NATO: North Atlantic Treaty Organisation

NGO: Non-Governmental Organisation

ODIHR: Office for Democratic Institutions and Human Rights

OHCHR: Office of the United Nations High Commissioner for Human Rights

OTP: Office of the Prosecutor

RSCSL: Residual Special Court for Sierra Leone

SCIF: Special Court Interactive Forum

SCSL: Special Court for Sierra Leone

STL: Special Tribunal for Lebanon

UK: United Kingdom

UN: United Nations

UNESCO: United Nations Educational, Scientific and Cultural Organisation

UNGA: United Nations General Assembly

UNICRI: United Nations Interregional Crime and Justice Research Institute

UNSC: United Nations Security Council

US: United States

Chapter 1

Introduction

The idea of legacy has gained political currency among international criminal tribunals, governments, non-governmental, international and national organisations. This thesis explores the topical development of legacy formation of international organisations (IOs) in terms of institutional persistence, meaning making and memory formation as exemplified by the *ad hoc* international criminal tribunals. It sheds light on the process of organisational decline against the backdrop of pending closure and the process of legacy building. In this sense, the point of departure is not the demise of particular organisations, such as international criminal tribunals *per se* but a different puzzle: how do organisations which may disappear institutionally in terms of a formal, legal entity continue to live on in some form beyond closure? By drawing together original empirical data it also contributes to new insights into the social processes of organisations. Talk about legacy, however, has taken place in isolation from much organisational literature and International Relations (IR) theory. In this thesis it is argued that a critical systematic examination of this feature of organisational development is urgently required to foster our understanding of the significance of completion, closure and legacies for IOs, as exemplified by the tribunals, and to fill a gap in the IR literature.

This introductory chapter is divided into five sections. To start, the overall research topic and its significance is introduced and highlighted, embedded in contemporary political developments and the existing literature. The research objectives and guiding questions are presented followed by a preview of the arguments of the thesis. The research design and methods are also detailed. Finally, an overview of the overall thesis structure is provided.

1.1.   Significance

The research topic of legacy formation of organisations − at the nexus of international politics and law − is of empirical and theoretical significance. Empirically speaking, the topic of legacy is ubiquitous, yet it is poorly understood and explained in current scholarship. In addition, hardly any empirical data on organisational legacy building exists. Theoretically speaking, the topic of organisational decline and organisational death in contrast to institutional emergence, evolution and effects has been given short shrift. Yet, eclipsing the focus on 'the end' and the concurrent institutional developments necessarily limits our understanding of organisations. The full appreciation of time processes and temporality is important for theoretical models of organisational development and for policy-making. For this fact alone, the topic of closure and legacy of IOs merits attention within IR scholarship.

This research is original and innovative in three important respects: By being 'present at the completion' − as the title suggests − the thesis provides the first systematic analysis of the final phase of the tribunals' existence in terms of process of closure and legacy formation; it develops an extensive empirical data set; and it lays important groundwork for future development of IR theory on IOs and the social mechanisms at play. First, the research is significant as it breaks new ground in analysing the process of organisational closure and legacy formation as exemplified by the tribunals. The thesis develops a new framework to systematically study institutional closure as linked to legacy formation, which, to date, is the first systematised attempt of its kind. It thereby allows scholars and practitioners to have a new understanding of organisational decline, organisational death[3] and legacy − concepts that are central but not thoroughly theorised within the discipline. The resulting analysis contributes to countering the dearth of systematic empirical data, challenging underlying assumptions and conventional portrayals of the development of the tribunals and their legacies and thus starts filling a research gap. Second, the methodological approach provides new data which leads to original insights, drawing on extensive empirical material based on primary data sources, over 230 interviews conducted with tribunal staff and officials, and observational research.

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[3] Term refers to the end of the organisational lifecycle. Chapter 2 is dedicated to the topic in detail.

There are gaps in the current understanding of organisational developments at the tribunals as relevant information is not readily available or transparently presented by the respective organisations. However, the new data unearthed by this study provides a more accurate analysis of the process of closure. Third, by so doing, this research lays basic though essential groundwork for further scholarship on organisational decline and institutional persistence, in terms of both IR theory on IOs and constructivist scholarship on the role of norms and social processes. Providing an original contribution this thesis can be seen as an opening for a wider research agenda on the theorisation of legacy and fine-grained and empirically rich research on legacy formation at the tribunals but also other organisations.

The research is topical and timely. With the closure of the tribunals becoming a reality, legal questions have been the predominant focus of research in international law (e.g. ongoing legal obligations, enforcement of sentences, trials of fugitives, protection of witnesses), yet political questions have not been given adequate attention in legal scholarship. However, it seems paramount and relevant to theoretically accompany the phenomenon of mandate completion and legacy building of the tribunals. Before further elucidating its wider relevance in view of memory and history, the political significance of the topic is carved out.

1.1.1. Political significance

The rapid rise of international criminal law and the proliferation of tribunals has been one of the most striking developments in International Law and IR over the last two decades. In the past decade policy-makers, practitioners and scholars alike have increasingly scrutinised the international tribunals with critiques growing in light of the law and politics of these organisations (e.g. Zacklin, 2004; Robinson, 2008; Cobban, 2009; Luban, 2013). The tribunals illustrate par excellence the nexus of international law and international politics and the interplay between beginnings and endings. Their in-built temporary nature has brought to the fore the question of temporariness in international law and international politics.

The interplay between continuity and discontinuity in international relations is exemplified by IOs that come and go. Finite organisational existence does not necessarily equate to finite organisational presence. The importance of institutional persistence is detailed in Section 2.1. Indeed, the question of how organisations can be made to close and disappear from discourse and the collective imagination or memory, or on the contrary to close and persist, touches upon social constructions of decline, closure and legacy and the politics of memory (e.g. on the inexistence of 'world memories' see Smith, 1990, 1999; for a challenge see Olesen, 2012). A central argument of the thesis is that organisations live on through their legacies and that legacy building is a central, albeit unexamined strategy aimed at institutional persistence. This is a significant point with a view to organisational reflexivity. The notion of legacy formation also resonates with normative change arguments, for instance pointing in the direction of a 'justice cascade' (Sikkink, 2011). Hence, paying more attention to legacy formation and politics of legacy building in the international arena is politically relevant, not only for the organisations *per se*, their creators or stakeholders, but also for future *modi vivendi* in terms of conflict intervention, post-conflict justice, peace processes and justice sector reforms as well as the role of IOs.

Although war crimes trials are a 'recurring modern phenomenon' and a 'fairly regular part of international politics' (Bass, 2000: 5), the political relevance and appropriateness of international criminal trials, or 'international judicial intervention' (see e.g. Scheffer, 1996; Kerr, 2000; Humphrey, 2003; Birdsall, 2008), in particular conflict or post-conflict settings continues to be debated which spurred some vigorous criticism (see e.g. Zacklin, 2004; Katzenstein, 2014). In this context, Akhavan (2009: 627) points out that 'these once-sacrosanct tribunals that were considered to be the only glimmer of hope where there was no willingness to intervene have been criticized as wasteful and elitist institutions that exacerbate rather than prevent atrocities'. International tribunals have become the object of much debate in what has become known as the 'peace versus justice debate' which achieved a permanent relevance in global governance with the establishment of the ICC (see Akhavan, 2009). Resorting to international criminal trials is one of a number of options in terms of political and judicial measures in the aftermath of a conflict. Indeed, criminal prosecutions represent often only one tool in the tool box

of post-conflict justice, i.e. one facet of the now popular umbrella term 'transitional justice' (see e.g. Teitel, 2003; Roht-Arriaza & Mariezcurrena, 2006; McEvoy, 2007; Arthur, 2009; Bell, 2009; Hayner, 2010; Shaw, Waldorf, & Hazan, 2010; Almqvist & Espósito, 2012; De Grieff, 2012; Nedelsky, 2012; Palmer, Clark, & Granville, 2012; Waldorf, 2012; Fletcher & Weinstein, 2015; Mutua, 2015; Sharp, 2015). In light of wider debates on dealing with mass atrocities in conflict and post-conflict settings and the role of international law (see e.g. Byers, 2000; Bassiouni 2006; Bowden, Charlesworth, & Farrall, 2009; Beigbeder, 2011) the topic of opening and closing international tribunals takes on particular salience.

Over the past 20 years various international and internationalised courts and tribunals have been established to end impunity by sanctioning serious violations of international criminal law committed by individuals. The creation of the *ad hoc* tribunals in the 1990s and the emergence of internationalised criminal courts since 2000 have been significant developments in international law and international relations. These time-bound judicial bodies include the *ad hoc* International Criminal Tribunal for the former Yugoslavia (ICTY), International Criminal Tribunal for Rwanda (ICTR), Special Court for Sierra Leone (SCSL), Extraordinary Chambers in the Courts of Cambodia (ECCC) and Special Tribunal for Lebanon (STL).[4] Other hybrid courts include the Special Panels for Serious Crimes in the District Court of Dili in East Timor and the 'Regulation 64' Panels in the Courts of Kosovo.

Now the *ad hoc* tribunals are at or nearing the end of life. The SCSL became the first modern contemporary tribunal to close in December 2013. Organisational closure represented a critical moment for the SCSL. Within the next couple of years the UN twin tribunals, the ICTY and ICTR, are also expected to conclude their work and shut down. As of May 2015, at the ICTY four cases remain at trial (Hadžić, Karadžić, Mladić and Šešelj) and three cases on appeal (Prlić et al., Stanišić & Simatović, Stanišić & Župljanin). The ICTR is awaiting the last Appeals Judgment in the Butare case to be issued by end of 2015. The SCSL was the first contemporary

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[4] For analyses of the legal basis, authority, and operations of the tribunals, see e.g. Schabas, 2006; Alamuddin, Jurdi, & Tolbert, 2014.

court to ceremonially close its doors in December 2013.[5] At first glance, it may seem that the era of the *ad hoc* tribunals is coming to an end.

More recently, proposals for an *ad hoc* tribunal for Kosovo gained traction internationally and a proposal to establish the new tribunal was passed by 89 votes to 22 in parliament in Kosovo on 22 April 2014. While the establishment of a tribunal remains contested in Kosovo, in April 2015 the European Union (EU) and the United States (US) further urged the government to set up a special court to be created by Kosovo but located in the Netherlands.[6] There have also been persistent calls for an international tribunal for the Central African Republic following recommendations by the International Commission of Inquiry presented in its report in January 2015. On 24 April 2015 Central African Republic's National Transitional Council adopted a law to establish a Special Criminal Court within the national justice system.[7] On 29 July 2015 the UN Security Council failed to adopt a resolution on the proposed 'International Criminal Tribunal for Malaysia Airlines Flight MH17' which received 11 positive votes, three abstentions and a negative vote by Russia.[8] David Scheffer, who served as first US Ambassador-at-Large for War Crimes Issues (1997-2001) and UN Special Expert on United Nations (UN) Assistance to the Khmer Rouge Trials, recalls, 'Many times, these efforts at building tribunals go through many stages of setbacks and then forward movement, until you actually get the court established' (cit. in Sonne, 2015). The current developments, which go in the direction of new international or internationalised tribunals, demonstrate the importance of a more thorough understanding and explanation (see Hollis & Smith, 1991) not only of the origins (see Katzenstein, 2014) but also of the endgame and legacy building of international tribunals to inform the design, mandate, timing and development of future war crimes trials.

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[5] The Special Panels for Serious Crimes in East Timor closed proceedings in 2005, however this is generally classified as hybrid process within the national court system whereas the SCSL is classified together with the ICTY and ICTR as international tribunals (see Schabas, 2006; International Center for Transitional Justice, 2011).

[6] See e.g. http://www.balkaninsight.com/en/article/kosovo-mps-approve-set-up-of-war-crime-tribunal or http://www.reuters.com/article/2015/04/21/us-kosovo-court-idUSKBN0NC1L720150421.

[7] See e.g. https://www.fidh.org/International-Federation-for-Human-Rights/Africa/central-african-republic/new-special-criminal-court-a-key-step-toward-justice and http://www.un.org/apps/news/story.asp?NewsID=49863#.VWC3cfNwbyA.

[8] See http://www.un.org/apps/news/story.asp?NewsID=51530#.VcEu9bWhkxI.

With the prominent exception of the International Criminal Court (ICC), all other tribunals were set up as temporary, *ad hoc* institutions, i.e. as a transitory solution in dispensing justice in post-conflict situations where the existing justice systems were unable or unwilling to do so. Additional unforeseen challenges have confronted local and international policymakers and jurists due to the limited life-span and the pending closure of the tribunals. Closing tribunals is a multi-faceted endeavour which may be viewed as a legal, political and practical challenge. As the political pressure to close the tribunals increases, three separate yet related challenges have become most prominent and pressing: completion of mandate, ongoing legal obligations and legacy. For over a decade now the topic of completion and legacy has become part of the discourse surrounding the tribunals. The enduring legal, political, social and cultural ramifications have become an object of scholarly debate (see topical overviews in edited volumes on legacy, e.g. Steinberg, 2011; Swart, Zahar, & Sluiter, 2011; Gow, Kerr, & Pajić, 2014; Jalloh, 2014; Meisenberg & Stegmiller, forthcoming; ICTR, forthcoming). Lawyers, policy makers, civil society, donors and IOs have discussed legacy in relation to questions of legitimacy, efficiency, effectiveness, 'lessons learned' and developed practices.

The topic of impact and legacy of international criminal trials has come into sharper relief of late. As shown in this thesis, legacy has become a buzzword (see Section 8.1.1). Given the finite lifespan and completion of mandate of the *ad hoc* tribunals, the question of their significance and lasting value has become increasingly topical. The recognition that tribunals should leave a lasting impact beyond prosecuting a select number of individuals is omnipresent. The legacies of the tribunals have figured increasingly prominently in official, debates and activities, at the international, national and local level. This does not seem coincidental as the ICTY and ICTR are in the throes of their respective completion strategies, first formalised in 2003 and 2004 (see Section 5.1.2). Following transition their successor organisation that has become known as the Mechanism for International Criminal Tribunals (MICT) continues the ongoing obligations or so-called residual functions (see Section 5.2). In this context, this research analyses intra- and inter-tribunal developments at a time when so-called completion strategies were well underway and legacy activities at the tribunals reached a high. For instance, numerous legacy conferences were organised by the tribunals and so-called legacy projects were being

designed and implemented (as detailed in Sections 6.2 and 8.2). Thus, the thesis investigates an important contemporary development of closure in the context of often referred to 'success stories' in post-conflict societies, such as Sierra Leone, which figure increasingly prominently in international discourse.[9] The relevance of IOs and their legacies in narratives and the politics of memory as mobilised in international relations leads to a discussion of the theoretical significance.

1.1.2. Theoretical significance

Thematically, the thesis is situated at the confluence of three areas that still remain under-researched in IR scholarship: the 'social lives' of organisations[10], the demise of organisations and legacy creation. Chapters 2 and 3 in conjunction develop the conceptual framework of the thesis addressing these three areas of theoretical neglect. In what follows, the research topic will be situated in a brief introduction to the literature, moving from the general to the specific, i.e. from international law to IOs to international courts and, finally, to tribunals.[11] The research draws on these different bodies of literature. Although space constraints do not allow a comprehensive discussion of all aspects in this introduction, important developments, relevant questions and salient lacunae are identified.

International law and temporariness

The role and relevance of international law in world politics has come into sharper relief in the last decades. This has been mirrored by a focus on the function of international law in IR scholarship (see e.g. Brown, 2002; Armstrong, Farrell & Lambert, 2004; Reus-Smit, 2004; Simpson, 2007; Reus-Smit & Snidal, 2008; Brown & Ainley, 2009). One peak of engagement between IR and International Law scholarship was reached at the turn of the millennium with the 2000 special issue of

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[9] See http://www.un.org/apps/news/story.asp?NewsID=47437#.U0Pz-VfpeQE.

[10] The term 'social lives' refers to the social arena of organisational existence with a particular focus on actors and their interaction, further explored in Section 2.1.2.

[11] 'International Law', 'International Tribunals' and 'International Criminal Court' are discussed as key concepts in *International Relations: The Key Concepts* (Griffiths, O'Callaghan, & Roach, 2008).

the journal *International Organization* on the theme 'Legalization and World Politics' (Abbott et al., 2000). Classic texts such as Anne-Marie Slaughter's (1993) article 'International Law and International Relations Theory: A Dual Agenda' have also furthered interdisciplinary engagement and closer scrutiny. Recently, Jeffrey Dunoff and Mark Pollack (2013) cogently brought together cutting-edge scholarship of both disciplines. In an otherwise impressive systematic mapping by Karen Alter (2014) notably international criminal law does not figure very prominently. In recent years scholars of international law have drawn on sociological approaches, however much scholarship has focused on bodies of law other than international criminal law. The thesis aims to contribute to the emerging sociologically oriented scholarship on international law and courts (see Dezalay & Garth, 1997; Dixon & Tenove, 2013; Madsen, 2013; Meierhenrich, 2014b).[12]

The apparent legalisation and judicialisation of international politics, or 'juridified diplomacy' (Simpson, 2007: 1), is a salient ongoing dynamic and is subject of growing interest in international law scholarship (see e.g. Abbott et al., 2000; Goldstein et al., 2000; Ferejohn, 2002; Shapiro & Sweet, 2002). Speaking about law and politics here is not based upon the assumption that law is in binary opposition to politics, nor does it refer to law to denote the absence of politics. It is accepted that international law is designed to pursue 'political ends through jurisprudential means' (Simpson, 2007: 24). This chimes with the liberal legalistic position of Judith Shklar, accepting that 'law, in short, is politics, but not every form of politics is legalistic' (Shklar, 1964: 144). In this reading, the international tribunals symbolise the choice of legalistic politics over other forms – at least for a specific time period. Debates have focused on multiple issues, including purpose of international law, legitimacy and legality (e.g. Drumbl, 2007; Brunnée & Toope, 2010; Dunoff, 2011) and the fragmentation of international law (e.g. Egede & Sutch, 2013), to name but a few.

Time and temporariness in international law has become a more recent focus.[13] For example, the 2014 special issue of the *Netherlands Yearbook of International Law* (vol. 45), entitled 'Between Pragmatism and Predictability:

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[12] See also 'Sociological Inquiries into International Law' conference held at LSE, 16-17 May 2014.
[13] See also 'International Law and Time' conference organised at The Graduate Institute Geneva, Switzerland, 12-13 June 2015.

Temporariness in International Law', identified the specificity of the temporary subject: 'the subject may be created for a specific period of time, after the elapse of which this entity ceases to exist. These subjects mainly concern the establishment of institutions or certain entities' (Ambrus & Wessel, 2014: 5). Examples of such temporary subjects in international law include territorial administrations or states in transition, but also the *ad hoc* tribunals. The delicacy of treatment of time in international criminal justice and the relevance of tribunals for the past and present, also in light of collective memory and history writing, has been given more consideration recently (see Savelsberg & King, 2007; Galbraith, 2009; Wilson, 2011; Gaynor, 2012). Chapter 2 highlights the ways in which temporariness is at the heart of the lives of the tribunals.

International organisations and inner lives

A veritable proliferation of IOs, whether inter-governmental, non-governmental, universal or regional, occurred from 1945 onwards. The Union of International Associations' (2014) *Yearbook of International Organizations* includes over 67,000 IOs.[14] IOs have been defined as 'an organization established by a treaty or other instrument governed by international law and possessing its own legal personality' (UN A/66/10: para. 52). Since Robert Keohane diagnosed UN studies as suffering from the 'Mount Everest syndrome' (1969 cit. in Reinalda, 2009: 7), i.e. observing an engagement with the object of study because it was obvious in the political landscape but demonstrating a lack of engagement with relevant theoretical questions, scholarship on IOs has become more sophisticated. IO as a field of study has its own history with interest waxing and waning (see e.g. Rochester, 1986). It is important to take IOs seriously, given their 'ubiquity, centrality and pathology' (Meierhenrich, 2012: 13; see also Barnett & Finnemore, 1999). Evidence for the centrality of organisations in the study of international relations has been established by recent academic publications (Devin & Smouts, 2011; Rittberger, Zangl, & Kruck, 2012; Weiss & Wilkinson, 2013; Hurd, 2013; Archer, 2014; Abbott et al.,

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[14] The Union of International Associations' *Yearbook of International Organizations*, which is widely regarded as the most definitive data set, includes the ICC, ICTY, ICTR and SCSL. The ECCC is not included as an IO, which is important to note for the analysis.

2015). Several dimensions of study have been most prevalent, in particular authority, bureaucracy, effectiveness and legitimacy of organisations. While realist IR theory largely sees IOs in mere epiphenomenal terms, for instance in highlighting 'the false promise of international institutions' (Mearsheimer, 1994/5), there has been substantial ongoing research about IOs in IR theory. Constructivism has provided an alternative reading with a focus on social facts, socialisation and norm diffusion and informs the exploration of legacy formation in this thesis.

The role of IOs, and in particular their changing role has garnered attention (Boisson de Chazournes, 2009). Within the IO literature, the dominant approach has been to draw on the principal-agent model. Hawkins et al.'s (2006) influential work 'Delegation and agency in international organisations' furthered the canon of the principal-agent model for IOs. The underlying assumption of the model is the existence of an asymmetric situation. For instance, an agent (IO) acts upon the interests of the principal (states as collective principal) who recontracts threats as a predominant way to influence the agent. Karen Alter (2008) has provided an influential critique of the generic principal-agent model in recasting international courts as international trustees and not agents, thus challenging the 'rational expectations' of acting in reflection of the wishes of states and avoiding adverse recontracting. Andrew Guzman recently posited the so-called 'Frankenstein Problem' of IOs when states create organisations that then develop lives of their own and 'risk the institution becoming a monster and acting contrary to their interests' (Guzman, 2013: 999). A recent study on organisational progeny analysed the role of international bureaucrats in designing IOs in a way that insulates them from states' usual control mechanisms and resultant loss of control of national governments over IOs (Johnson, 2014). Despite being different in detail, common to the aforementioned approaches seems to be the assumption that organisations are embedded in an external as well an internal context, and, moreover, that this context has often been under-examined. Therefore, this context seems a salient frame of legacy construction.

This thesis proposes to give greater consideration to the inner workings and micro-structures within organisations which remain understudied and often even little known. Treating organisations as 'black boxes' is a central limitation of

traditional IO scholarship that has led to calls of opening the 'black box' (Boas & McNeill, 2004). In this sense, the present study takes its cue from scholars who pioneered the unpacking of IOs, notably Michael Barnett and Martha Finnemore. Their influential article on the 'politics, power and pathologies' of IOs (1999: 699) and book *Rules for the World* (2004) broke new ground in studying IOs as bureaucracies. Barnett (2002) also produced a major study on the UN Secretariat during the Rwandan genocide. Also, other studies have taken IOs seriously as organisations (e.g. Chwieroth, 2010; Kleine 2013). The thesis seeks to make a contribution by providing an empirical analysis that speaks to IR theory scholarship on organisations (see Checkel, 1998; Barnett & Finnemore, 1999, 2004; Johnston, 2001, 2008) by studying tribunals as so-called social environments with 'social lives' as elaborated in Chapter 2. To date, in the literature, three areas of enquiry have dominated research agendas: institutional emergence, evolution and effects. Scholarship has given short shrift to the decline and demise of organisations. In sum, organisational decline and death is an area of neglect within IR scholarship. Given the unique institutional design of the tribunals, which seem to have been set up to be closed down, the thesis seeks to tackle this lacuna.

International criminal tribunals and social context

International courts and tribunals are particular forms of organisations which by now have captured the attention of international law and IR scholars. A focus on the 'judicialisation' of international law and the role of courts has percolated recent debates as Hernández (2014) points out reviewing three books at the vanguard of current international law scholarship (Alter, 2014; Romano, Alter, & Shany, 2014; Shany 2014). Dedicated research centres have been established, including, for example, the Project of International Courts and Tribunals at King's College London, and more recently, iCourts (Centre of excellence on international courts at the University of Copenhagen) and PluriCourts (Centre of excellence on courts at the

University of Oslo) in 2012. These are emblematic of the distinct scholarly attention directed towards international courts.[15]

Scholarship on international criminal law and tribunals is burgeoning. The multiplication and proliferation of international courts itself divides critics and has attracted much commentary (e.g. Kingsbury 1999; Buergenthal, 2001; Shahabuddeen, 2012).[16] However, the literature by and large suffers from certain weaknesses, including doctrinalism and anecdotalism. International Law scholarship focuses on salient questions of legal import as legal accounts by international lawyers interested in legal, doctrinal and procedural questions abound, focusing inter alia on modes of liability, sentencing and procedural law.

An extensive literature exists on the history of war crimes trials (e.g. Bass, 2000; Smith, 2012; Steinke, 2012; Bosco, 2013), the role of international courts from a comparative legal perspective (e.g. Baudenbacher & Busek, 2008; Alter, 2014) or specific dynamics of the politics of international law (e.g. Rajkovic, 2012). Much scholarship has focused on perceptions of the work of the tribunals with regard to impact in light of peace and reconciliation, for instance in the former Yugoslavia (e.g. Fatić, 2000; Orentlicher, 2008, 2010; Nettelfield, 2010; Ivković & Hagan, 2011; Clark, 2014) or has analysed their value as political tool or the nature of the trials as political (e.g. Graubart & Varadarajan, 2013; Meijers & Glasius, 2013). Another facet that has garnered attention is the question of legitimacy of trial justice and the consequences of international criminal law (e.g. Henham, 2007; Anderson 2009). A more practitioner-focused genre of the expert literature includes writings and memoirs by practitioners, including by first ICTY/ICTR Prosecutor Richard Goldstone (2000), former ICTY/ICTR Prosecutor Carla Del Ponte (2009), ICTY President Theodor Meron (2012), former ICTY Vice-President Mohamed Shahabuddeen (2012) and former US Ambassador-at-Large for War Crimes Issues David Scheffer (2012a).

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[15] See also American Society of International Law, Interest Group on International Courts and Tribunals focusing on the work of international judicial and arbitral bodies.
[16] See also conference entitled 'The Proliferation of International Tribunals: Piecing Together the Puzzle' co-sponsored by PICT at New York Law School in October 1998 and PICT The Hague conference held in 2007.

International and internationalised criminal tribunals have emerged as a subset of international courts. A common classification or typology refers to the concept of tribunal generations. The international criminal tribunal landscape is often divided into four so-called generations as follows: 1) International Military Tribunal for Nuremberg (hereinafter Nuremberg Tribunal) and International Military Tribunal for the Far East (hereinafter Tokyo Tribunal); 2) ICTY and ICTR; 3) SCSL, ECCC and STL; and 4) ICC. The thesis concentrates on the ICTY, ICTR and SCSL as main cases while also drawing on research conducted on the ECCC.[17]

There is a growing interest in the current state of international criminal law addressing the development of a new field of law (see e.g. Drumbl, 2009). Several legal accounts have explored the transformative power and creative development of the law (see Meron, 2006a, 2006b; Cassese, 2008; Darcy & Powderly, 2010; Jallow, 2010). With a view to donor fatigue and legitimacy concerns, failings and an identity crisis of tribunals have been detected (see Zacklin, 2004; Rabkin, 2005; Robinson, 2008; Crane, 2011). More recently, the current state has been described as 'international criminal justice 5.0' borrowing from computer programming terminology (Koh, 2013: 525), 'after the honeymoon' (Luban, 2013: 505) and a 'transformation of international criminal justice' (Christensen, 2015: 1). Much less attention has hitherto been afforded to the actual process of closing the *ad hoc* tribunals and the meanings of legacies. Exceptions to this are sociological studies of shifting professional practices (Christensen, 2015) and lessons learned manuals produced by the tribunals. The thesis is a response to the often methodologically flawed and theoretically speculative so-called 'legacy previews' (Byrne, 2006: 485; see Section 8.1.2). The focus is on the social process behind institutional closure in relation to actors and processes rather than empirically assessing the effectiveness of the tribunals *per se*. In other words, measuring the short term or long term effects and impacts is outside the scope of this study.

The topic of legacy construction is of great significance today as it resonates with the politics of meaning and memory. Legacy, or rather *legacies* –in the thesis a plural notion of legacies is proposed as argued in Section 3.1– are conceived as

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[17] It should be noted that throughout the thesis, for the sake of economy, when referring to several tribunals the term 'tribunals' *tout court* is used.

social constructs and sites of political contest for influence over remembrance, a deliberate selective use of the past according to the demands of the present. A deeper understanding of legacies is also critical in light of what became known as the 'consequentialist turn' in international justice (Snyder & Vinjamuri, 2004). The 'consequentialist turn' refers to a shift of perspective from international justice endeavours as such to their consequences unfolding over time. In this context, legacy talk seems highly relevant when taking into account constructivist literature on the role of norms and social processes in IR theory (see Checkel, 1998, 2005; Barnett & Finnemore, 1999; Finnemore & Sikkink, 2001; Johnston, 2001, 2008; Schimmelfennig, 2003; Dembour & Kelly, 2007; Park & Vetterlein, 2010). By studying tribunals not solely in the sense of abstract institutions but as complex social environments (Dembour & Kelly, 2007), this thesis uncovers the social construction of 'the end' of the tribunals and their legacies (on social construction see Berger & Luckmann, 1966; Christiansen, Jorgensen, & Wiener, 2001; Bless, Fiedler, & Straci, 2004). Indeed, international legal scholarship has produced invaluable insights into the *legal lives* of the tribunals but has sidelined their *social lives* (Meierhenrich, 2008b: 696).

Given the complexity of the topic under investigation, it is important to note the boundaries of the present study. This research is not conceived as a legal study on the law or procedure of institutional succession or on the effects of advance planning and closure on international law and jurisprudence. The minutiae of any particular case, legal decision or judgment are of no direct interest for this study. Rather than delving systematically into the tribunals' case law, substantive or procedural law, the thesis selectively draws on international legal scholarship and examples of the rich jurisprudence of the tribunals where relevant. It is hoped that such a wider perspective on legacy complements and enriches fine-grained legal analyses of particular topics concerning the tribunals' legal frameworks, procedures, and jurisprudence. Moreover, the study contributes to a certain extent to the transitional justice literature and is informed by select transitional justice literature (e.g. Lincoln, 2011), yet it is not centrally located within this field of literature. What the transitional justice literature usefully gestures towards is a wider purview beyond criminal trials, including truth and reconciliation commissions, apologies, amnesties and local justice mechanisms, i.e. serving as a useful reminder that the tribunals

operate in a much wider institutional landscape in post-conflict societies undergoing transition. Finally, the thesis does not seek to be a comprehensive academic version of a 'lessons learned' manual or a simple legacy policy tool systematically fleshing out policy recommendations for practitioners. While the thesis does include observations relevant for practitioners and policy makers, its ambition is to develop a more sophisticated understanding of the concept of legacy in international relations and of the study of legacy formation, and in particular how organisations build and leave legacies.

1.2.   Questions

Against the background of a necessarily abbreviated reading of the existing literature in this introduction, the thesis is guided by three central questions:

- How do IOs close and what meaning is attributed to their closure?
- How do IOs deal with eventual loss of meaning?
- How do they perpetuate themselves?

In addressing these fundamental questions, which are political, legal and social in nature, the thesis focuses on tribunals and their legacies, yet sheds light on processes that have significance and relevance far beyond the specific case of tribunals. The thesis endeavours to demonstrate the importance of institutional meaning making and persistence strategies for organisations at large, as exemplified by legacy building at the tribunals. Three main questions specifically focusing on the international criminal tribunals are addressed:

- How have the anticipated organisational decline and death been orchestrated and managed at the tribunals?
- How and why has a concept of legacy shaped the closing process of the tribunals?
- What is the role of the tribunals in legacy formation?

Indeed, the thesis aims to advance our understanding of legacy formation to elucidate questions of exactly whose legacy is being built and constructed, by whom, for whom, when, why and with what consequences. The focus hereby is on the tribunals in their role as 'legacy leavers'.[18] This in turn is linked to a deeper understanding of why practitioners, observers and scholars are becoming preoccupied with the legacies of the tribunals and what explains the variation among the tribunals.

This study deliberately shifts the focal point from the genesis of institutions and their effectiveness, which is the basis of much scholarship on IOs and courts (see Section 1.2), to the demise of institutions. The theoretical neglect at the confluence of the three above-identified areas, namely the 'social lives' of organisations, the demise of organisations and their legacies, leads to a distortion in conventional portrayals of organisational development by omitting relevant dynamics and the significance of projection into the future. In order to forestall such distortion, it is imperative to take organisational legacies seriously and to disaggregate shades of meanings constructed.

To this end, the thesis proposes to be 'present at the completion'.[19] The title refers to a double endeavour: First, as mentioned, the thesis seeks to challenge the orthodox starting point of institutional scholarship by shifting the focus from the creation and emergence of organisations to their closure and transformation. Completion may be analysed as a legal, political and practical challenge. By foregrounding legacy constructions, the research constructs an important bridge between organisational theory and constructivist IR scholarship. Second, the author of the study endeavoured to actually be 'present at the completion' of the tribunal's work as a researcher by conducting extensive empirical fieldwork at the tribunals during their final years (see Section 1.4).

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[18] The term legacy leaver, also called legator, refers to a person, institution or entity that leaves a legacy (see Section 3.2).

[19] The first part of the title of this thesis is an inversion of the title of US Secretary of State Dean Acheson's memoirs, *Present at the Creation: My Years in the State Department*, in which he consciously sought to capture 'what it was like to know the beginning only' as British historian Wedgwood had put it (Acheson, 1969: xvii). However, in contract to Acheson's account, the thesis does not resemble a memoir nor a written account from the perspective of a key participant or policy insider.

1.3.   Arguments

The arguments developed in the thesis are theoretically driven and empirically grounded. The thesis advances three main arguments:

First, it is argued that, in light of a much needed critical evaluation of the concept and practice of 'legacy building' in the realm of the tribunals, it is necessary to reconceptualise legacy formation as salient to all IOs. The conventional conception of legacy is highly problematic and it is evidenced that the tribunals have ambiguously embraced their role as legacy leavers. The thesis challenges the common depiction of legacy as an objectively measurable end result or brute fact coming into play following the last of three temporal moments: birth, life and death of a legacy leaver. This new conceptualisation of legacy challenges both the common linear portrayal of legacy as transmitted, or bestowed, from a leaver to a recipient, and the impoverished depiction of legacy as an objective end result. In furtherance of this argument, the thesis draws on constructivist scholarship on the role of norms and social constructs. The study of the social construction of 'the end' and legacy is at the heart of the thesis. Rephrasing Wendt's (1992) famous dictum, it is argued that legacy is what tribunals make of it; and what all other actors make of it. It is demonstrated that the notion of legacy, so readily embraced by tribunal officials, policy makers and scholars alike, is rhetorically overused, yet theoretically understudied. By elucidating the concept of legacy and tracing legacy formation in a nuanced and systematic way, this thesis contributes an innovative conceptualisation and analysis. The thesis, in short, seeks to establish the concept's relevance for the study of IOs in IR scholarship.

Second, it is argued that the topic of legacy is so significant and so sensitive because it touches upon constructions of ownership and meaning, *raison d'être* and legitimacy. Legacies appear as contested sites over meaning among legacy actors. In pursuit of this argument, it is shown that we have witnessed a 'legacy turn' in the realm of the tribunals which resulted in heightened reflexivity, sensibility for introspection and retrospection and legacy-oriented managerialism in IOs. It is demonstrated that legacy building has occurred as a social process at the tribunals,

explicitly and implicitly, over time. Although the legacies of tribunals have become a matter of much interest and attention both inside and outside of the tribunals given their pending closure, legacy formation started before any deliberate, strategic approach to legacy creation took hold and will continue long after any such approach by the tribunals. Consequently, legacy building is analysed here through the lens of institutional persistence with a view to organisational sustainability and symbolic immortality beyond formal closure.

Third, a deeper enquiry reveals significant variation among the tribunals as legacy leavers. By tracing legacy building within and across the tribunals, particular dynamics of the social lives of IOs are identified, namely dissonance between the different organs of the tribunals and at times individuals. While taking note of the macro-level (inter-institutional), meso-level (intra-institutional) and micro-level (individual), an emphasis is placed on the social lives within the tribunals and the interaction between different sections, units and between individuals. The research findings illuminate the role of different actors, competing rationales and ambivalences *vis-à-vis* both the legacies and the process of legacy building as pursued within and across the tribunals.

1.4.   Methods

The thesis brings to bear several different methods, including a combination of research using available data and research generating original first-hand empirical data through interviews and observational research. Using a comparative research design, the research primarily engages in ideographic reasoning. The study draws on the extensive scholarly and specialist literature on IOs and courts, at the intersection of International Law and IR scholarship. An interdisciplinary approach is chosen to synthesise insights from select literature within the fields of Political Science, Law, Sociology, Psychology, Anthropology and Administrative Science.

Three principal reasons informed the research design. First, using a plurality of methods and drawing upon a wide range of sources allows the complexity and multidimensionality of the research topic to be fully explored, which one single

method would not permit. The principle of triangulation hereby guides the research approach. Originally conceptualised by Webb et al. (1966) as confidence-enhancing approach to the development of measures of concepts prevalent in quantitative research, triangulation is also relevant and important in qualitative research where it is associated with using more than one method or source of data that do not share the same methodological weaknesses to build confidence in the assertions. Second, empirical data on the legacies of international criminal courts and tribunals to date remains thin, leading to numerous distortive accounts and analyses of the legacies. This dictated the need for original data collection and analysis. Over 230 interviews were conducted, to be detailed shortly. Third, engaging in observational research, via participant-observation or more often observation with limited participation, still remains innovative in IR scholarship. Such additional research provides insights into the cases and actors under investigation, i.e. is critical for revealing congruence, or lack thereof, between discourse and practice, in the interests of 'thick description' (Geertz, 1973) of the examined 'social lives' of tribunals.

1.4.1. Research design

Designed as a comparative study the research focuses on four tribunals, namely the ICTY, ICTR, SCSL and ECCC. Given the thematic focus of the thesis, a comparative case study has several advantages over a single case study. The research is a structured, focused qualitative comparison, i.e. 'structured' in that similar questions are asked in each case to guide the research, and 'focused' in that it 'deals only with certain aspects of the historical cases examined' (George & Bennett, 2005: 67). The tribunals do not exist in a political vacuum. Rather, they are part of a tribunal landscape in which interaction between the tribunals, inter-organisational politics and their social lives takes place. Examining these interactional dynamics underscores the importance of conducting longitudinal and cross-tribunal field research. There are only few examples of extended engagement using a comparative approach within the literature on international criminal tribunals, and most examples within International Law scholarship focus on procedure (see Schabas, 2006; MacKenzie, Romano, Shany, & Sands, 2010). Hence, a more extensive comparative study in IR scholarship would fill an important gap. A strength of the multiple-case

approach is its value for theory building, allowing the researcher to determine the circumstances in which a theory will or will not hold (Eisenhardt, 1989; Yin, 2003). In order to strengthen the research design and address concerns levied against the multiple-case study approach by Dyer and Wilkins (1991), such as the risk of negligence of contextual insight and an unstructured research approach, a considerable amount of time was spent on all cases.

The case selection follows the logic of 'most similar cases'.[20] It was decided to focus on the three so-called 'UN international criminal tribunals' (Schabas, 2006), namely the ICTY, ICTR and SCSL, with an additional focus on the ECCC. This seems most profitable in terms of highlighting and evaluating the similarities and variation regarding developments, mandate completion, residual mechanisms and legacy building at these tribunals. Both the ICTY and ICTR were set up as international tribunals and *ad hoc* subsidiary organs of the UN Security Council (UNSC), established in accordance with articles 7(2), 8 and 29 of the UN Charter. A comparison between the ICTY and ICTR may seem logical, given that the two organisations are often referred to as twin institutions or sister tribunals. Compared to a much larger scholarship on the ICTY, it seemed important to include the ICTR. The case of the SCSL was deliberately added as the SCSL was the first contemporary tribunal to complete its mandate. The SCSL was 'a treaty-based *sui generis* court of mixed jurisdiction and composition' (UN S/2000/915, para. 9), located *in situ*, i.e. in the country where the crimes were committed. An additional focus was put on the ECCC, which is more clearly classified as internationalised tribunal or UN-backed court in the domestic justice system, as it provides an interesting comparison given its different structure, timing, institutional development and only recent considerations of completion.

1.4.2. Research using available data

The first and most important data source upon which the thesis draws are public documents and official records. Primary sources consulted included UN

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[20] The most-similar method is one of the oldest recognised techniques of qualitative analysis as attested by Mill's (1834) classic study *System of Logic* (Gerring, 2007).

resolutions, speeches by UN officials and tribunal staff, press releases, annual reports, public information materials and outreach documents. In addition, relevant reports issued by non-governmental organisations (NGOs) and mass media were consulted.

Drawing on these data sources allowed a longitudinal analysis of primary documents since the establishment of the tribunals in order to trace official discourses and portrayals by the institutions themselves. It helped ascertain and identify the different discourses and certain tropes surrounding 'completion strategies' and 'legacies' as well as the respective waxing and waning of discourses over time. The unit of analysis was the physical unit, i.e. the official document or text. A further advantage of research using available data sources is that they are non-reactive, thus avoiding the methodological problem of reactive measurement (Hyman, 1972). The study aims to place political and legal developments in time and construct 'moving pictures' (Pierson, 2004) rather than 'snapshots', i.e. to examine completion and continuation at the tribunals since the turn of the millennium.

1.4.3. Interview research

The thesis centrally draws on extensive fieldwork involving the first-hand collection of data. Given the dearth of original empirical data on the topic under examination, extensive interviews were essential. An analysis of the qualitative data provides information on the perceptions and experience of the tribunals' work and legacies by different actors and probes the opaque or incomplete information available in the public domain.

Over the span of four years, between 2011 and 2014, the author of the thesis spent a cumulative total of eight months in the field. Numerous research trips of varying duration were undertaken to the following main sites: The Hague, Netherlands (ICTY, SCSL and ICC); Phnom Penh, Cambodia (ECCC); Freetown, Sierra Leone (SCSL); New York, US (UN Headquarters); and Arusha, Tanzania (ICTR). Table 1.1 provides a detailed overview by location in chronological order.

Table 1.1: Chronology of fieldwork (2011-2014)

Fieldwork site	Dates
The Hague, Netherlands	June 2011; November 2011; June – September 2012; August 2013; November 2013; May 2014
Phnom Penh, Cambodia	September 2012
Freetown, Sierra Leone	October 2012; February 2013
New York, US	April 2013
Arusha, Tanzania	September – October 2013; November 2014

At the core of the thesis are over 230 interviews conducted with key personnel, including tribunal officials and staff, defence counsel, diplomats, domestic legal professionals, civil society representatives, government representatives and staff members of the UN. Semi-structured in-depth interviews were chosen as principal method. The interviews were mainly conducted during the research trips detailed above. Additional interviews were conducted in Alpbach, Austria; Pittsburgh, US; Nuremberg, Germany; London, England; Kigali, Rwanda; Johannesburg, South Africa; and Kampala, Uganda. A comprehensive list of all interviews conducted is attached to the thesis (Appendix 1).

A combination of different sampling techniques was used. The primary sampling frame consisted of all individuals working at the tribunals, i.e. past or present officials and staff. A secondary sampling frame consisted of individuals working in other organisations associated with the work of the tribunals, e.g. the UN, governments and NGOs. Given the size of the sample (at least a few thousand staff members since 1993, spread worldwide), different sampling techniques were combined to draw on their benefits and strive towards a certain representativeness of the sample and counterbalance the weaknesses associated with each technique. In light of the qualitative nature of the research and the social environments of the organisations studied, including the role of hierarchies and key players, the involvement of specific staff, non-probabilistic or non-random sampling was chosen.

Purposive sampling ensured that relevant interlocutors who had direct relevance to the research were targeted. The purposive identification and selection of interviewees was guided by their professional positions, knowledge of the topic or

experience within the organisation. A select purposive sample was re-interviewed over the course of the different fieldwork visits. To ensure conversations with a cross section of different actors working in a court or the justice sector, interviewees were selected based on their affiliation to a particular organ of a tribunal or the defence, or government or NGO sphere. Such a cross-section was important since the research is aimed at uncovering the 'social lives' and assessing similarities or differences of perceptions and narratives across different groups within a wider social setting. Furthermore, during fieldwork trips snowball sampling provided a further powerful and useful sampling technique as many interviewees recommended additional colleagues and shared contacts. Opportunistic sampling supplemented the data collection process for instance during international conferences attended by the author (see Appendix 2) in order to make use of happenstance encounters with relevant interlocutors.

The type of interview opted for in this research is best described as qualitative, in-depth semi-structured elite interviews. The term 'qualitative' has been claimed to denote an unstructured interview (e.g. Mason, 1996), however as a general term it seems to embrace both semi-structured and unstructured interviews (e.g. Rubin & Rubin, 1995). The interviews were conducted on a semi-structured basis to ensure comparability of responses while ensuring flexibility and variation of sequence and emphasis of every conversation in light of the interviewee's profile, experience and interview reaction. The interviews covered questions concerning three thematic areas, namely completion, residual mechanisms and legacy, and featured queries based on the particular experiences and perspectives of the interviewee in question.

All interviews were conducted by the author of this study. The interview context resembled the archetypal face-to-face interview scenario of one interviewer asking one interviewee a series of questions and recording the answers.[21] The interviews were conducted in English. About a dozen interviews were conducted in French as per request of the interviewee. The vast majority of conversations lasted

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[21] There were only few departures from this archetype (<5%). On three occasions I interviewed two interviewees in the same interview as requested by those interviewed. Another departure occurred when telephone interviews were conducted in rare exceptions when it was not possible to meet the interviewee in person.

between 60 to 90 minutes, however interviews overall ranged in duration from 30 to 180 minutes. All interviews were recorded, via audio recording or note taking or a combination of the two when authorised by the interviewee, and later transcribed electronically.

1.4.4. Observational research

The thesis is furthermore informed by ethnographic field research. By engaging in observational research, a portion of which was conducted as 'participant-observation', the author was able to collect another set of data as supplemental evidence. In the case of this research, being 'in the field', i.e. the natural social setting familiar to the subject (see Shaffir, Stebbins, & Turowetz, 1980; Emerson, 1983, cit. in Singleton & Straits, 2005) meant the seats of the respective tribunals. Getting an insider's view of reality is the main goal of the field approach which requires spending a considerable amount of time 'in the field' and putting away preconceived notions. Ethnographic research refers to a distinct sensibility to 'glean the meanings that actors under study attribute to their social and political reality' (Schatz, 2009: 5). In light of the aim to comprehend the 'routine ways in which people make sense of the world of everyday life' (Hammersley & Atkinson, 1995: 2), observational research enables the researcher in particular to see through the eyes of the research participants' eyes. The notion of 'methodological empathy' is central as it 'differs from sympathy in that it is not necessary to agree with a perspective in order to understand it' (McGuire, 1982: 19, cit. in Singleton & Straits, 2005). Also, observational research allowed for an exploration between discourse and practice in greater depth and between actors enacting the 'heroic scripts' and actors enacting the quotidian 'bureaucratic scripts' (Neumann, 2005). It enabled a more holistic understanding of and in-depth insight into the tribunals' developments, achievements and legacies as perceived 'in the field' by attempting to bridge the gap between the etic and the emic perspective.

In ethnographic research, generally, observation is the primary method of data collection. It is important to note that field observation differs from ordinary observation in two ways: it involves direct observation with the researcher's eye and

takes place in a natural setting not a contrived or artificial situation. The twin aspect of participant-observation is very important combining active subjectivity and passive objectivity which actually amounts to do the 'impossible', i.e. the ethnographer's 'magic' (Malinowski, 1984: 6), and has been a cornerstone of traditional anthropology since being pioneered by Malinowski (1984: 20) who aimed to capture 'the imponderabilia of actual life'. The researcher thus attempts to be an accurate observer (of interaction between actors, their attitude towards and narratives about the institution) and simultaneously an active participant, e.g. as an interacting conversation partner. Writing, in form of ethnographic diary or field notes (Sanjek 1990; Emerson, Fretz, & Shaw, 2011), was started immediately to avoid any kind of familiarising effect taking place and, thus, before the 'exotic' becomes familiar or the 'stock of knowledge' grows considerably (Rabinow, 1977: 38; Malinowski, 1984: 21).

With regard to participant observation, the author's role was not uniform during the research process but depended on various factors, e.g. opportunities of participation and the degree of involvement with and detachment from members of the tribunals. Following Gold's (1958) classification of participant observer roles, the research navigated between the position of participant-as-observer and observer-as-participant. During all fieldwork trips a considerable amount of time was spent inside the tribunal buildings, in the courtroom, in offices, corridors and cafeterias. The author mainly was an observer-as-participant, but a four-month internship as a Legal Intern in the ICTY Appeals Chamber from June to September 2012 provided an invaluable opportunity to become a participant-as-observer. This immersion into the legal world and social setting made it possible to participate in day-to-day activities of the legal staff, to attend meetings and to have privileged insider's access to the staff and to the institution. In addition, the author attended and participated in 12 international conferences and workshops with a focus on 'legacy' in The Hague, Pittsburgh, Phnom Penh, Freetown, New York, Johannesburg, Nuremberg, Kampala, London and Arusha (see Appendix 2). These conference settings allowed me as a participant to observe how the organisers framed the issues, what pressing questions the audiences had, how the tribunal officials interacted and responded to critique or praise of the institutions. The thesis has also been informed and enhanced by

countless informal conversations with sources at the tribunals over the years and observations of court proceedings live in the courtrooms.

The process of entering and accessing the field, i.e. locating suitable observation sites and making and sustaining contacts, is delicate and requires non-random selection. It is however widely acknowledged that convenience, accessibility and happenstance are key determinants in terms of early observations and possible encounters (Singleton & Straits, 2005) which was also the case in my research. During the fieldwork the importance of negotiating access to organisations and to people became clear. Accordingly, it was necessary to gain access to the institution and then speak to different actors within. Two common methods guided gaining access: acquaintances and 'gatekeepers', i.e. those who control access to information, other people and sites. To ease the entrée into the institutional setting, the author made use of prior contacts, conversations, persistent and recurrent presence at the tribunals and at relevant practitioner meetings such as conferences and established rapport over time.

1.4.5. Research ethics

The importance attached to the maintenance of high ethical standards and the LSE Research Ethics Policy guided the fieldwork. A risk assessment was carried out in consultation with the LSE Department of International Relations before embarking upon fieldwork. Following the LSE Research Ethics Policy due consideration was given to the following aspects: e.g. that the research was designed, reviewed and undertaken in a way that ensures its integrity and quality; research subjects were informed fully about the purpose, methods and intended possible uses of the research, what their participation in the research entailed; the confidentiality of information supplied by research subjects and the anonymity of respondents was respected; research participants participated in a voluntary way and any kind of harm was ruled out; the independence and impartiality of the researcher was made clear (LSE Research Ethics Policy, 2008).

During the contact phase with the interviewees and at the beginning of each interview I volunteered information about the academic research project explaining the author's status as a researcher, institutional affiliation, topic and purpose of the study. The contact was friendly and smooth in principle and research participants generously made time to share their experience and perspectives. Informed consent was given orally at the outset of an interview. No financial support or provision of incentives was offered to research participants, so the expectation of any pecuniary or material benefit resulting from participation in the study was not an issue. At each tribunal the author was in contact with senior staff members from the Press and Public Affairs sections and senior management (Offices of the President, Prosecutor and Registrar) who were aware of the research at the respective tribunals, i.e. formal procedures were followed. Most of those interviewed for this study chose to remain anonymous. In order to treat all interviewees equally, it was decided to follow the same procedure for all in the light of anonymity requirements. Appendix 1 provides as much relevant information as possible, including organisation of the interviewee, location and date of conversation.[22]

1.5.   Structure

The remainder of this thesis is organised into three parts and nine chapters. The study has three parts. Part I ('A Theory of the end') sets the theoretical, conceptual and analytical scene of the study in Chapters 2 and 3. Part II ('A history of the end') examines the history of mandate completion and closure in Chapters 4 and 5. Part III ('A Reconstruction of the end') focuses on the (re)construction of organisational decline and death via legacy building and forward-projecting institutional persistence in Chapters 6 to 8. It is important to note that this thesis adopts a thematic approach rather than a traditional case study approach, i.e. instead of reserving a chapter per case, the chapters interweave case illustrations into the analysis throughout in order to enhance direct comparability. Due to the material in Chapter 6 the analysis lends itself to a more formally structured tribunal-by-tribunal

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[22] All staff and former staff from the tribunals and UN, quoted anonymously in the thesis, have made their comments in their personal capacity, and their remarks do not necessarily represent the views of the tribunals or the UN.

comparison. In addition, further elaboration and refinement of the analytical framing that is specific to tribunals takes place in Chapters 6 and 7.

Chapter 2 presents the conceptual issues underpinning the analysis exploring life and death in the long-term organisational development of IOs. The chapter focuses on the political and social dynamics involved in viewing legacy building as a persistence strategy and taking IOs seriously as bureaucracies with social lives. Drawing on institutional lifecycle models the relevance of organisational decline and death is critically presented. This allows for a more holistic understanding of the complex interplay between completion, closure and continuation.

Chapter 3 contributes the second element of the conceptual framing: a new conceptualisation of the legacy process by questioning and reconceptualising the common depiction of legacy *per se*. A process-oriented approach to legacies is elaborated by emphasising a closer examination of the different actors and processes involved. The framework identifies five main ideal actor types. Important interaction dynamics are sketched, with the 'legacy leavers' foregrounded as central actors for the thesis. By probing their political, social and psychological facets key mechanisms in the process of legacy construction are explored.

Chapter 4 chronicles the institutional development of the tribunals. A brief sketch of the establishment of the four tribunals under examination here, with particular reference to legacy-relevant institutions provides necessary contextualisation. Key figures on cases and costs are provided to better ground the analysis that follows in the actual developments of the tribunals.

Chapter 5 examines the development and implementation of completion strategies, from *ad hoc* references regarding completion to strategy documents including target dates and detailed steps. The formalisation process of the completion strategies, i.e. the enhanced efforts working towards completion of the mandate and gradual winding down of all activities in a given time frame, is traced. The tribunals are shown to be caught between the perceived conflicting demands of expediency and the demands of justice and between completion and continuation. *Vis-à-vis* the spectre of organisational death, the new successor organisations, so-called residual

mechanisms, have afforded the tribunals with a perspective beyond organisational closure towards institutional persistence.

Chapter 6 explores a new trend, called here the institutionalisation of legacy building. Tribunal developments are examined through the lens of three prevailing dynamics identified: *projection*, *professionalisation* and *projectification*. It is demonstrated that the idea of legacy has taken hold of the tribunals, rhetorically, structurally and practically. The chapter traces how particular legacy visions were sketched, committee and positions created, projects designed and implemented. Variation of institutionalisation processes between and across the tribunals is highlighted and explained.

Chapter 7 examines how legacy strategies, aimed at shaping what the tribunals will leave behind and for what they will be remembered, have unfolded within and across the three tribunals. The underlying interests in legacy are explored from the perspective of the tribunals as 'legacy leavers'. The main conditions of legacy building and carriers of legacy are identified. Then the focus turns to the actors involved in legacy creation. An analysis of legacy building strategies within the tribunal reveals internal tension and friction between organs and individuals. An emphasis is placed on the SCSL which pioneered many legacy developments.

Chapter 8 enquires into the development of legacy discourse in terms of narratives and ideas. It is explored how legacy became a buzzword and how official usage gained traction and how legacies are officially defined at the tribunals and constructed through language. A particular focus is on so-called legacy conferences as discourse fora which are analysed as unique moments of crystallisation for legacy consolidation and contestation in the construction process.

Chapter 9 summarises the main findings of the study and considers implications. The import of the findings and their future relevance is highlighted, including the wider role of legacy building for international politics and law.

PART I

A theory of the end

Chapter 2

From organisational demise to institutional persistence

In international politics and international law, organisations play an increasingly relevant role. IOs now permeate and constitute part of the global governance landscape, including universal and regional, multi-purpose and functional, inter-governmental and non-governmental organisations. Key questions relate to where IOs are going, how sustainable they are and what remains of organisations once dismantled and closed. These questions have not explicitly been in the spotlight of IR scholarship. Yet, history is rife with cases of dormant, defunct or moribund organisations. Prominent examples of IOs that ceased to exist include the League of Nations (1920-1946), Warsaw Treaty Organisation (1955-1991) and Council for Mutual Economic Assistance (1949-1991). Arguably, IR scholarship has not accorded the topic of organisational decline and death sufficient attention. This research aims to correct this oversight.

This study proposes to look at 'organisational decline' and 'organisational death' in a more nuanced way. The metaphorical use of the term 'organisational death' is introduced as an analytic framework for the formal cessation of organisational function and closure. Research on decline and mortality on the international stage gained salience in the face of the 2008 financial crisis and the fast turnover of organisations especially in the private sector. IOs may come and go, but analytically it is important to better understand and explain organisational persistence and self-perpetuation. Institutional legacy building is identified here as a means to perpetuate the organisation via projection into the future even after closure. Therefore the argument put forward is that IOs do not fully die even if they face formal, legal death and that the phenomenon of organisational legacy formation is an important line of inquiry for the study of IOs. The thesis explores two dynamics:

first, the politicisation and legalisation of legacy and, second, the 'legacification'[23] of politics and law.

This chapter is divided into two parts. First, it seeks to fathom the role of legacies of IOs and persistence strategies. Most prominently, legacy building is identified as unexamined yet central strategy for institutional persistence, meaning making and organisational memory beyond closure. Furthermore, it draws attention to the fact that organisations are not to be seen as 'black boxes' and insights into their social lives and bureaucracies enrich our understanding of organisational developments. Second, the interplay between organisational life and death, continuity and discontinuity, is theorised. The meanings of decline and death are explored, especially for time-limited organisations. This elaboration provides necessary context for the focal point of this thesis, namely a socially constructed death following an orchestrated decline and posthumous life promoted by legacy building. Chapters 2 and 3 in conjunction set out the theoretical issues at the heart of the thesis.

2.1. Lives of organisations

In an increasingly fast-paced, globalised world the empirical reality of organisational decline and closure and organisational mortality present new challenges. Peter Drucker distilled a modern trend for the 21st century in the light of organisational continuity: 'For the first time in human history, individuals can expect to outlive organizations' (Drucker, 1999: 162). For this reason alone it is important to consider organisational development in terms of actors and processes and passage of time.

Organisations do not exist in a political vacuum. At least three dimensions of organisational life can be identified. First, IOs are part of wider debates in international politics and international law about the role of e.g. cooperation, power,

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[23] This term is introduced here to refer to the process of turning elements into legacy. In contrast to legacy and what is called here 'legacification', the heritage concept and the process of turning elements into heritage, called patrimonialisation, have been the subject of scholarly inquiry (e.g. Ashworth, 1994; Harrison & Hitchcock, 2005; Gouriévidis, 2010).

sovereignty, peace, justice and politics and law. Second, IOs interact with creators, stakeholders, constituents and other organisations. Third, IOs have inner lives, or rather social lives. Scholars have proposed to stop treating IOs as unitary actors, to open the 'black box' of organisations and to investigate the inner workings of organisations *qua* bureaucracies (Sarfaty, 2009; Meierhenrich, 2012; Boas & McNeill, 2004). The thesis heeds such calls and focuses in particular on social processes taking place inside organisations.

2.1.1. Living on in legacy

Given the place of IOs, the oversight of the sustainability of meaning and legacies occasioned the orientation of this research. This perspective is attuned to contemporary notions of reflexive modernity and risk society (Beck, 1992). Legacy building concerns how someone or something is remembered and is linked to collective memory and representation. It also relates to the construction of identities of individuals, groups and institutions. When expanding the temporal horizon, debates on whether and how IOs matter take on a particular salience (see Hafner-Burton, von Stein & Gartze, 2008). Organisational death may be seen as conjuring risks of oblivion, loss of meaning and functional collapse. Thus, an organisation may attempt to mitigate these risks by engaging in institutional persistence strategies such as legacy building to face and overcome mortality and ensure a certain *Nachleben*, or posthumous life, for the organisation.[24] With a focus on eternity and organisational immortality persistence, preservation and sustainability take centre stage. Indeed, 'an institution must continue to exist. Every action must be undertaken with respect to eternity', as once remarked by James Herndon (1971: 109-110, cit. in Weick, 1974: 499). The focus on eternity is salient for every organisation, whether explicitly temporary or not. The prospect of becoming dormant, defunct or moribund may simply foreground the salience and urgency of institutional persistence and endurance beyond formal closure.

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[24] The concept *Nachleben*, a German term originally developed by art historian Aby Warburg, is widely used in art history and reception studies in Classics to refer to both survival and afterlife. See e.g. Vargas, 2014.

The importance of winning hearts and minds has also been recognised in the realm of international criminal justice. For legacy creation it seems directly relevant how the tribunals engage in the 'battle for hearts and minds' (Klarin, 2004). Extending Klarin's typology of 'four battles' (for survival, for respect, for hearts and minds and for time) mapped onto the ICTY's first ten years of existence, Rachel Kerr (2014: 1) suggests a fifth and final stage of tribunal development – a 'battle for its legacy'. Rather than adhering to this view of legacy building as final stage in a tribunal's development, this research emphasises that legacy building, which in a sense may resemble a battle for legacy, encompasses all four battles identified by Klarin (2004) rather than a battle that follows temporally. Thus, a non-linear conceptualisation of legacy is proposed in this thesis (see Section 3.2.2).

Two important clarifications are important. First, it is acknowledged here that organisations are not really biological organisms and living beings (Betton & Dess, 1985; Young, 1988), but rather legal and social constructions. Indeed, organisations come to life as legal creatures, by a treaty or document, and also die a legal or social death rather than a natural death. Using the life cycle paradigm suggests that organisations are conceived as living organisms. However, the analogy between organisations and living organisms undergoing a lifecycle is a useful heuristic tool, and indeed widely used in economics. Such an approach needs to be fully attuned to the limitations and discards a strict naturalised or anthropomorphic conception of organisations. Organisations therefore are not equated with human beings who rather appear as creators, operators and representatives of organisations. While keeping to the language of birth and death of organisations (for a discussion, see Sheppard, 1994), it is important to note that a bio-psychological or naturalisation approach to organisations is explicitly rejected in this research. Organisations are not conceived as biological bodies that are doomed to die in chime with deterministic theories and medical model of organisms (e.g. Laing, 1971). The present research is not concerned with diagnostics or prescription of organisational treatment contrary to Adizes' (1979) contingency model of organisational therapy and surgery or Samuel's (2010) diagnostic framework for organisations. While an evolutionary theory of organisational life is considered, a disclaimer of naturalised theorising in social sciences is necessary: the intentionality of actors and the social dimension needs to

be taken seriously, thus transcending any natural science approach to social phenomena.

Second, this chapter introduces analytical terms such as organisational life and death and posthumous life or *Nachleben*, inspired by the organisational lifecycle paradigm, in a metaphorical sense. The vocabulary used does not, in any way, imply religious categories or imbue institutions with spirituality or sanctity. It is not engaged with psychoanalytical orientations and metaphysical beliefs or analysis of bodily and spiritual aspects of death (e.g. Kelly & Riach, 2014). With these caveats in mind, the chapter now turns to the significance of legacies, in particular for temporary organisations.

Institutional persistence

Organisations engage in self-perpetuation and in what is here called institutional persistence. The thesis develops an understanding of persistence in a nuanced, forward-looking way, referring not just to the continued formal legal or physical existence but to the continued social existence of the ideas, values and knowledge embodied by an organisation. This helps to demystify the decrement of loss of meaning and adds a necessary historical perspective to organisations that may be short-lived. Taking such a perspective chimes with the observation that 'death hurts, but isn't fatal' (Hoetker & Agarwal, 2007: 446). In this sense, legacy building resembles an attempt to surmount the formal end by reconfiguring the endgame through projection of self or institutional projection directed towards institutional persistence.

While IOs may disappear institutionally from the world stage as an organisational entity in the juridical register, this does not mean IOs necessarily evaporate altogether in the political and social register. This is precisely the puzzle of the thesis which has not been systematically addressed in the literature: the topic of organisational legacies. It is argued that IOs *qua* legacy leavers, and particular individuals within the organisations, engage in legacy building, purposive and otherwise, through a continuum of strategies, aimed at institutional persistence,

legitimisation and meaning making. In pursuit of this argument, the dichotomous approach epitomised in the 'rise and decline' narrative classically used to describe institutional developments is deliberately transcended. What is missing, it is suggested here, is an understanding and appreciation of the importance of legacies and organisational legacy formation as social process from the onset.

Persistence strategies

While organisations are often inaugurated with great fanfare and publicity, not all IOs have been created with widespread recognition. Some have had more humble beginnings. Still, their beginnings have often been carefully studied. Exit processes aimed at shutting down particular organisations are too often relegated to the sidelines. With regard to peacekeeping operations, a focus on 'exit' as necessary strategy appeared in the context of closure and transition of peacekeeping operations in the Report of the Secretary-General entitled *No exit without strategy: Security Council decision-making and the closure or transition of United Nations peacekeeping operations* (UN S/2001/394). However, operations cannot be simply equated with organisations. Due to the legal nature of IOs organisational closure is the result of a negotiated political decision making process and legal procedure of dissolution. Generally, however, dissolution is not foreseen in the common organisational script as 'the constitution of most organizations, including the UN and the majority of the specialized agencies of the UN, do not have provisions on dissolution, probably because they were intended to continue in existence indefinitely' (Amerasinghe, 2005: 466). In these cases, an agreement or an amendment to the founding document by member states could be voted to abolish the organisation. This has been the case for the tribunals under examination.

The performance and effectiveness of IOs are increasingly scrutinised (e.g. Drezner, 2002; Voeten, 2007; Avant, Finnemore, & Sell, 2010; Weiss & Thakur, 2010; Bowhuis, 2014). Given a growing result-oriented culture, particularly manifest in the evaluation and audit culture, it seems a focus on assessment and measurement has also increasingly reached tribunals (e.g. Stahn, 2012; Shany, 2014; Ford,

2014).[25] Quite a sizable literature has developed on the impact and effectiveness in the case of the ICTY (see e.g. Stover & Weinstein, 2004; Meernik, 2005; King & Meernik, 2011; Clark, 2011). To be sure, IOs are not always involved in easily measurable or quantifiable services, but performance issues have come into focus (Vaubel, Dreher, & Soylu, 2007). The idea of maximising returns upon investments is for example epitomised by the United Kingdom (UK) Department for International Development (2011) study *Multilateral aid review: Ensuring maximum value for money for UK aid through multilateral organisations*. The United Nations General Assembly's (UNGA's) (2008) *Review of results-based management at the United Nations: Report of the Office of Internal Oversight Services* concluded 'that results-based management has been an administrative chore of little value to accountability and decision-making', also observing that

> Although aspirational results are utilized to justify approval of budgets, the actual attainment or non-attainment of results is of no discernable consequence to substantive resource allocation or other decision-making. Financial and programmatic records do not compare. Reporting on results does not feed into the budgeting calendar. (UNGA, 2008: paras 33-34)

Nonetheless, IOs face heightened budgetary pressures and scrutiny. In *Permanently Failing Organizations*, Meyer and Zucker (1989) showed how persistence can remain a driving force even in light of permanent failure.

In the face of possible loss of meaning IOs employ different persistence strategies. Deepening and widening, or integration and enlargement, are classic strategies leveraged by organisations as exercised for instance by the EU and also several IOs in the wake of the Cold War. To take the example of North Atlantic Treaty Organisation (NATO), McCalla (1996) scrutinised its persistence after the Cold War. Skepticism about its future was at a high and as McCalla (1996: 446) notes 'several analysts argue that NATO has achieved its purpose, outlived its usefulness, and can – even should – be expected to die a peaceful death'. Contrary to traditional alliance theory (see Walt, 1987; Christensen & Synder, 1990; Snyder 1991) which expects loss of alliance cohesion once the threat is removed, McCalla

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[25] See also 'The Legitimacy and Effectiveness of International Criminal Tribunals' conference held at PluriCourts, University of Oslo. 28–29 August 2014.

found that NATO added functions to its portfolio, broadened its relations to other states and organisations and laid the groundwork for membership enlargement. He concluded, 'NATO is moving… in a direction clearly opposite to that predicted by neorealism', showing 'continuity and innovation with respect to its overall strategic direction' (McCalla, 1996: 447, 449). Almost twenty years later, NATO's case seems emblematic of how the development of an organisation is shaped both by internally driven persistence strategies, such as enlargement, mandate elaboration or 'out-of-area' activity, and external political developments, as exemplified in the renewed calls for NATO's involvement *vis-à-vis* newly identified threats. Countering loss of meaning by institutional persistence strategies is not uncommon in organisations. Here it is argued that an undervalued and unexamined persistence strategy of IOs is legacy building. Unlike McCalla (1996) who sets out to test IR theories' explanatory or predictive power with regard to institutional persistence, this thesis is more interested in the social construction of institutional persistence, and concurrently, immortality of IOs. But first the question arises whether IOs actually die.

International organisations never die

It is often believed that IOs rarely die. In a book chapter entitled 'Why do international organizations never die?' Susan Strange (1998) explores the difficulties in eliminating IOs once established. Indeed many scholars argue that while IOs may change functions, membership or name, they rarely, if ever, 'die' (Haberler, 1974; Strange, 1998; Vaubel, 2006). IOs either are relegated to obscurity or evolve accordingly, yet several factors favouring the survival of IOs have been identified (Bernholz, 2009): institutional design (international treaty, loose control by leading representatives, broad mandate with leeway of amendments, financial independence); interests in maintenance of the organisation (by members of the board, employees, host city and state, beneficiaries); and maintenance as a byproduct of organisational existence (freedom from tax, diplomatic status, career prospects, networking). With regard to political will in organisational death, it has been suggested that 'An organization's presence itself creates a constituency, and even if institutions' creators no longer need them, they would let the institutions slide into

obscurity rather than expend resources in a battle to kill them' (Shanks, Jacobson, & Kaplan, 1996: 593). However, as will become clear over the course of the thesis, the case of the tribunals and the political endeavour to close them paints a slightly different picture.

The research question whether and why organisations are immortal has a long pedigree. Herbert Kaufman (1976) famously first asked 'Are Government Organizations Immortal?' He contended that 'Even with an extremely low birth rate, a population of immortals would gradually attain immense proportions' (Kaufman, 1976: 1). In his classic study on the longevity of organisations, he found that most U.S. federal organisations persist. He went on to hypothesise organisational survival as a function of organisational adaptability to environmental contingencies. Following on Kaufman's research, Lewis (2002), however, found that governmental organisations are by no means immortal and argued that survival is a function of institutional design based on a large-scale study of U.S. federal organisations in the period 1946-1997. Certain birth characteristics thus favour survival chances. Lewis called this the 'design thesis' of organisational development. In a recent study, a group of scholars scrutinised the 'design thesis' by analysing the so-called New Deal organisations. The authors concluded that the findings did not refute the thesis but detected insufficiencies as no magical design combination appears to be a guarantor of survival. Therefore, the argument goes, the focus needs to be on design for adaptation rather than design for survival (Boin, Kuipers, & Steenbergen, 2010).

The topic has made rather modest inroads in IR scholarship, while considerable research has developed on organisational death in administration and management science (Sutton, 1983, 1987; Barron, West, & Hannan, 1994; Brüderl & Schüssler, 1990). Studies on the number of IOs have a considerable tradition. The first systematic study on population change of international governmental organisations in the modern state system was conducted by Wallace and Singer (1970) and concluded that after controlling for the increasing number of states between 1815 and 1964 'the familiar relationship between the passage of time and the amount of intergovernmental organizations in the system' (1970: 282). The number of international governmental organisations increased markedly after the world wars and growth continued, albeit at a progressively slower pace (Wallace &

Singer 1970; Jacobson et al., 1986). In a study on the (im)mortality Cupitt, Whitlock and Whitlock (1996) apply population statistics and conclude that neorealist and institutionalist approaches have limitations in explaining the durability of IOs. In a Realist reading IOs are viewed as epiphenomenal that rise and fall with ephemeral interests of powers (e.g. Gilpin, 1981; Grieco, 1990). Neoliberal rational institutionalists emphasise how cooperation is started and maintained, and how IOs persist as long as constituent states show interest, rather than how cooperation and IOs die (e.g. Koehane, 1989). Grotian neoliberals assume that IGOs continue existing as long as the deeply embedded values of a world order remain intact (Ruggie, 1982).

Nevertheless, empirical reality is abundant with examples of organisational deaths following an institutional reshuffling and change in political climate. There are numerous examples of IOs declining and becoming dormant or defunct. Murphy (1994) explored eleven world organisations abolished before 1920. Shanks et al. found that one third of international governmental organisations became inactive between 1981 and 1992 concluding that 'like the domestic bureaucracies that Kaufman studied, have a mortality rate, and it can be surprisingly high'. The same study concluded, 'The end of the cold war explains part of this change, accounting for about one-eighth of IGO deaths' (Shanks, Jacobson, & Kaplan, 1996: 594, 595).

However, it is important to draw a distinction between death of an IO as a formal legal entity and death of an IO as a social construct. Organisational death marks the transition when the main existence of an organisation shifts from the juridical register to the social and mental register. Indeed, it seems less evident that the legal termination of an organisation concurrently entails the death of the social construct of the organisation. Formal legal organisational death is conceived as a formal procedure with a definite endpoint. Organisations as a social construct do not have a definite endpoint, neither in terms of their social role nor in terms of significance and construction of meaning by former staff members and related actors. Here, the proposed shift in emphasis on organisational beginnings and endings is seen against the backdrop of fundamental changes in the pace of continuity and discontinuity and the vehicles. New organisational forms may develop following a formal death in the form of a successor organisation or

reassembly of the staff corps (see Poroli, 2010). Otherwise, the danger is to be caught by fads and a tendency to extrapolate from fear of devaluation or cycles of organisational triumphalism and retrenchment and mythologies. An example of this is the episodically recurrent debate on the demise of the UN and pronunciations on failure and decline. The politics surrounding prognostics of organisational death have been captured in an article entitled 'Stayin' Alive: The Rumors of the UN's Death Have Been Exaggerated' (Luck, Slaughter, & Hurd, 2003). What appears to be a paradox at first glance, namely that an organisation may institutionally die as a legal entity but not disappear as a social construct, can be resolved through closer inspection.

'The organisation is dead. Long live the organisation!'

The interplay between continuity and discontinuity is illustrated in the succession between the League of Nations and the UN, officially portrayed as an organisational death of the former and an organisational birth of the latter. As chronicled by British historian Mark Mazower in his book *Governing the World* (2012):

> The funeral was carefully orchestrated. One year after San Francisco, in April 1946, the last assembly of the League of Nations took place in Geneva. Lord Cecil – who had addressed the first assembly back in 1920 – praised the League for having made the new world organization possible. "The League is dead. Long live the United Nations", he concluded. By this point the handover had quietly been arranged. (Mazower, 2012: 211)

This prominent usage of the metaphor of organisational death by Nobel Laureate Lord Robert Cecil underlines the power of imagery in attributing meaning to institutional persistence and consequently legacy formation (on images in international relations see Jervis, 1970). The relevance of carefully arranged organisational transition is not to be underestimated. The metaphors of funeral and rebirth are also central to accounts of organisational succession: 'The League had been reborn, and could thus be buried with dignity' (Mazower, 2012: 213). The linkage between continuity and discontinuity is a key leitmotif of the analysis

throughout this thesis. The succession of the tribunals to so-called residual mechanisms is discussed in Section 5.2. Organisations to a certain extent live on through successor organisations created. But formal succession is not the only way to 'stay alive'.

Indeed, organisations live on through the legacies they create. This ensures something remains even as time, and thereby the direct bondage separating the past and the present, lengthens (Halbwachs, 1992). The collective representation of organisational death, whether linguistically or visually (Bell, 2012), is linked to collective memory formation. Remembering the dead has an important function as 'if society cannot integrate its dead, then it loses touch with its past, it has no history' (Walter, 1999: 20). In addition, questions of leadership play a significant role for 'legacy organizational identity' through sensebreaking and sensegiving (Walsh & Glynn, 2008: 262). Maintaining links to deceased organisations and being cognisant of their legacies at the individual and organisational level is critical for understanding and staying attuned to organisational memory and meaning making in policy making in the long term.

Legacies of organisations

While IOs are central to international politics during their lifetimes, the relevance of IOs does not necessarily diminish when they decline or cease to exist: IOs build and leave legacies. If the significance of the legacies of IOs is not immediately apparent, it is important to highlight that legacies are of great importance in international relations as they form the core for understanding politics and the use of references and metaphors. In this context the issue of epistemic communities and the broader Weberian questions of who or what gets to write history and of the importance of historical significance and effectiveness (Weber, 1949) take on a particular salience. In this Weberian sense the importance of legacies for shaping the politics of IOs is to a large degree highly independent from the temporariness of the given organisation leaving a legacy. In other words, having an interest in sustainable development, and, thus answering the quest for evaluating historical significance and effectiveness has recently come to the forefront of IOs, be

they temporary or permanent (elaborated further in Section 2.1.1). Before turning to the concept of legacy in more depth in Chapter 3, it is useful first to highlight the role of organisations as 'legacy leavers'.

Organisations as legacy leavers

Organisations do not simply become legacy leavers shortly before or at the time of closure, but are legacy leavers through their existence.[26] Two levels need to be considered: building legacy and preserving legacy.[27] Legacy building can act as a coping strategy in the face of mortality, but it can also be a strategy of legitimisation and accountability, irrespective of how immanent the spectre of organisational demise is. The prevalence of institutionalised legacy building may derive from underlying assumptions that are identified and categorised here as legalist and managerialist. It is thus valuable to trace the meaning of legacy in organisations and how the concept has come to shape the institutions themselves (see Chapter 6 on the institutionalisation of legacy building).

For the study of legacies two aspects are important: the legitimacy and the reputation of organisations. While organisational legitimacy and reputation have similar antecedents and construction processes, a distinction between the two is suggested: Whereas legitimacy highlights social acceptance based on adhering to social norms and expectations (see e.g. Coicaud & Heiskanen, 2001), reputation refers to comparative evaluation among organisations (see e.g. Deephouse & Carter, 2005). It is important to bear in mind that 'Those who work in international organizations, and those who benefit from the work of international organizations, have an incentive to oversell their work' (Bowhuis, 2014: 1). This is also relevant in light of the 'uniqueness paradox', defined as 'a culture's claim to uniqueness through cultural manifestations that are not in fact unique', also examined in organisational stories (Martin et al., 1983: 439). The self-understanding or claim that one organisation is unlike any other with unique challenges and accomplishments is widespread and also encountered at the tribunals. Organisational stories have been

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[26] This longitudinal view on legacy is discussed in more detail in Chapter 3.
[27] The ethos of leaving a legacy, be it as individuals or as organisations, is also explored in more detail in Section 3.1.

analysed as self-serving rationalisations of the past which 'is not merely a dispassionate inquiry' as 'reputations and self-esteem are on the line' (Martin et al., 1983: 449). Following Sharman (2007), three fundamental tenets of the constructivist perspective are important: First, reputation is argued to be a relational concept rather than a property concept. Second, reputation is a social fact with an emergent, intersubjective quality, not just a collection of individual beliefs. Third, rather than being an inductively derived objective record of past behaviour, reputation is based on associations, feelings and social cues.

In terms of legitimacy, organisations project an image of themselves as well as their creators, during their lifetime and after their demise. Legacies are indeed relevant for the IO in question but also for the creator. In this sense, the mode of creation is relevant. Traditionally, IOs were created by states. Currently, most IOs are so-called emanations, i.e. second-order organisations created through actions of other organisations (Shanks, Jacobson, & Kaplan, 1996). This is the case of the ICTY and ICTR which are considered UNSC subsidiary bodies (see Sievers & Daws, 2014). It has been suggested that 'Traditional organizations are difficult to create but once established, are tenacious; emanations, in contrast, are much easier to create and somewhat easier to kill off', leading to the observation that 'Traditional organizations constitute a relatively stable core within the IGO population, while emanations come and go rapidly, comprising a fluid and rapidly enlarging periphery' (Shanks, Jacobson, & Kaplan, 1996: 599).[28] In this shifting organisational landscape increasing attention deserves to be paid to what remains of IOs that may come and go rather rapidly. In such periods of rapid development and increased discontinuity as in the last two decades the quest for continuity and sustainable development has put renewed interest in values, norms and traditions, and mental models. One role of legacies is shaping and balancing the politics of IOs in order to cope with anxiety and uncertainty of an ephemeral existence. Why, and how, legacies are essential for providing meaning and for making sense of organisational developments is the topic of the next subsection.

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[28] The distinction between traditional organisations and emanations is not of primary importance given the focus of the thesis, however would make an interesting avenue for future research on legacy formation of other IOs.

Legacy formation

Legacy construction as an ongoing process effectively undermines the idea that the past exists as independent and impenetrable from the present and future. In this sense, individuals, events or institutions retroactively become who or what they are said to represent (Zehfuss, 2007). Edkins' (2003) analysis of 'trauma time' is helpful in this context. Zerubavel (2003) distinguishes historical narratives as *legato* (when change is gradual and time appears long and continuous) or *staccato* (series of separate or discontinuous historical episodes with abrupt breaks). In addition, Zerubavel's 'sociomental topography of the past' emphasises time maps and collective memory. At first glance, legacy formation conventionally appears to be inscribed in a linear conception of time. Yet the legacy process contains the confluence of three temporalities (past, present, future). Prior to the birth of an individual, holding of an event or creation of an institution legacy formation starts and continues long after their disappearance (see Section 2.2.1). Indeed, legacy formation seems to involve a certain disruption of a linear temporality. Legacies are social facts, the product of intersubjectively held beliefs that vary empirically and contextually (Chwieroth & Sinclair, 2013). As such, legacy formation unfolds over time, starting long before the eventual death of the legacy leaver.[29]

Legacy building is a coping strategy *vis-à-vis* mortality, an attempt to remain immortal by memory shaping and image maintenance (see Marcoux, 2001). Legacy construction begs the question of how meaning is created and how much importance may be accorded to agency and deliberation in the process over time. On the individual level, legacy construction involves the self-examination of life's purpose. Most individuals want to believe that they will be remembered by posterity, i.e. 'will make a mark of some kind, perhaps only in the memories of the descendants, but a mark nonetheless. We were here; we thought; we loved; we created' (Hunter & Rowles, 2005: 328). From this supposedly stems the desire for legacy. So-called legacy planning presumably helps individuals gain a sense of control over their lives who thereby face (or fail to face) mortality (Kane, 1996b).

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[29] Chapter 3 explicates in more detail the conceptual underpinnings of the new conceptualisation proposed in the thesis and exemplified at the tribunals studied.

This observation leads to a brief discussion of the psychological underpinnings of legacy. Leaving a legacy is an individual preoccupation that arises toward the end of one's life, as psychological research has shown (see Erikson, 1950; Schaie & Willis, 2000). Framing the traditional model of legacy for individual development, Erikson (1950) proposed a reference model: the final of eight universal life stages includes a so-called 'life review', an emotional mechanism to balance what he calls 'despair' and 'ego integrity'. Interestingly, Schaie & Willis (2000) recently revised their Stage Theory Model of Adult Cognitive Development by adding a final stage for the 'oldest-old', persons 85 years and above, namely 'Legacy Creating'. Hunter and Rowles (2005) however hypothesise that 'nearness to death' rather than age *per se* influences the individual impulse for legacy creation. Comparatively, this is of particular significance in the context of the tribunals – which also have a finite lifespan and, however not at particularly old age, have faced impending closure, a kind of symbolic 'death' (see Section 2.2. for an extensive discussion on organisational death).

The inevitability of mortality is part of the human condition (Bauman, 1992), even if in modern societies a reluctance to entertain the idea of death has been noted (Mellor & Schilling, 1993). Facing death then provides hints regarding meaning attached to life projects (Berger, 1969; Willmott, 2001). In this sense, 'death can no longer be exclusively regarded as an event at a particular point in time', but needs to be acknowledged 'as a constituent part of one's life' (Sievers, 1994: 215). It has been noted that '[d]eath is an integral part of organizational life, not only in talk and symbolism, but also in a very real physical sense' (Bell, Tienari, & Hansson, 2014: 1). The end of the economic, juridical and social existence of an organisation cannot be avoided. Meaning is constructed by way of bringing the past into the present and continuing bonds with the deceased organisation (Bell & Taylor, 2011). Striving for sense making links to identity preservation after death, e.g. through narratives (Czarniawska, 1997). The thesis does not dwell on these debates though as the perspective of human development is a different one to organisational development despite overlapping themes when focusing on actors as crucial factors in legacy creation. Therefore, the level of analysis in the thesis is at the level of organisational development with a clear role for individuals in such development rather than at the level of human development of individuals. For example, the specific way of

language use or leadership style in organisations cannot be separated from the individuals' sense of identity or mental models of the actors. Narratives are shaped by individuals' attitudes and memories.

The human quest for meaning and will to make a difference in the world and live on in people, institutions or events, has been extensively examined. Works such as Frankl's (1959) *Man's Search for Meaning*, Becker's (1973) *The Denial of Death* and Kortre's (1984) *Outliving the Self* can be seen as precursors to the debate on the strong relation between legacy and meaning. In *The Denial of Death* Pulitzer prize winner Becker argues that, in light of the knowledge of mortality,

> What man really fears is not so much extinction, but extinction with insignificance. Man wants to know that his life has somehow counted, if not for himself, then at least for a larger scheme of things, that it has left a trace, a trace that has meaning, its effects must remain alive in eternity in some way. (Becker, 1973: x)

Given a duality between the physical world of objects and a symbolic world of meaning Becker suggests that by embarking on what he refers to as an 'immortality project' (or *causa sui*) in which individuals link themselves to something they feel is eternal in contrast to their own ephemeral physical self, they feel they have become 'heroic' as part of something that lasts forever. Whereas Becker's analysis is based on the central Freudian concept of death anxiety, this idea is rejected here. However, it is worthwhile considering the relevance of organisations for constructing symbolic immortality (see Walter, 2014). An interesting link here is seen to the relevant aforementioned concept of *Nachleben* which means both survival and posthumous life.

A brief note on the notion of legacy strategy is in order. But, what is a strategy? It is worth recalling that strategies here are understood as cognitive structures to facilitate action. Following Andrews' (1980) classic definition, strategy is defined here as an overall pattern of decisions in an organisation strictly related to its objectives and goals that result in the principal policies and plans for achieving the organisational goals and that define the contribution it intends to make. Components of strategic management include defining a goal, analysing risks and

chances and implementing a strategy. If well formulated a strategy helps to marshal and allocate resources.

Leadership plays a central role in defining and implementing strategies and the purpose of an organisation. An absent or unclear understanding of purpose and ends sought results in loss of morale and meaning within staff. As Lionel Urwick (1956: x) aptly noted in his classic study, 'There is nothing which rots morale more quickly and more completely than […] the feeling that those in authority do not know their own minds.' This chapter returns to the topic of leadership in Section 7.2.1 when discussing plurality of strategies and risks of missed opportunities, fragmented and wasted effort and internal tension. In sum, the importance of the social dimension in the construction of organisational death cannot be overestimated.

2.1.2. Social lives

The role of actors and social dynamics in organisations, whether dying or not, have largely not been given adequate attention, albeit are central as explored next. When turning to social lives of orgnisations now three aspects brought to the forefront here are the following: bureaucracies, social processes and organisational memory.

Organisations as bureaucracies

Common wisdom holds that public institutions endure and are long-lived. Organisations of all types develop into bureaucracies, or rather are constituted as bureaucracies. Indeed, 'bureaucracy is a ubiquitous feature of modern life', which is deemed necessary yet seen as ambivalent (see Barnett & Finnemore, 2004). Four central features of modern bureaucracy have been identified as hierarchy, continuity, impersonality and expertise (Beetham, 1996). Max Weber once described bureaucracies as 'practically indestructible' (Weber, 1978: 988). The difficulty of disbanding bureaucracies is touched upon in this thesis. In his classic study on bureaucratisation he shows sensitivity to what could be virtues and vices of the new

form of authority, as the appearance of depoliticisation is portrayed not without its ambiguities. Barnett and Finnemore (2004) developed a convincing framework for understanding IOs as bureaucracies placing the issue of pathology centre stage.

A fruitful line of inquiry focuses on so-called pathologies of organisations. The concept of pathology is used here in the sense of identifying whether bureaucracies are set up or develop in a dysfunctional manner and how, where, when and why they are failing (see Deutsch, 1963; Barnett & Finnemore, 1999, 2004). In other words, pathologies refer to dysfunctions that can be traced to the bureaucratic culture of an organisation. In their landmark article 'The Politics, Power, and Pathologies of International Organizations' Barnett and Finnemore (1999) argued that a new constructivist approach rooted in sociological institutionalism explains both the power and propensity for dysfunctional behavior *vis-à-vis* the narrowness and blindness attributed to realist and liberal IR scholarship that treats IOs as epiphenomenal or with no ontological independence. They identify three broad types of power of IOs: classification, fixing of meanings and diffusion of norms. These, alongside possible pathological developments, are to be explored further in the context of legacy building as institutionalised endeavour in the empirical chapters of this thesis.

The disaggregation of bureaucracies and organisations is particularly relevant for IOs, but has been rarely studied in the case of international tribunals (for an exception see Schiff, 2008). Kennedy (1999) discussed different theoretical approaches to international law. Treatments of international courts as bureaucracies though are hard to find in the literature. In light of the empirical turn in international legal scholarship, for instance the ICC literature is seen to have

> largely failed to engage, both theoretically and empirically, with the inner workings of the sizeable bureaucracy based in The Hague–and the many organizational, cultural, and other cleavages that run through it and that have had a more than random institutional effect on international adjudication (Meierhenrich, 2014a: i).

One challenge is identified in a 'continuing divide–which has manifested itself ontologically, epistemologically, and methodologically–between scholars and practitioners of international law' (Meierhenrich, 2014a: iii). To remedy the state of

the art, Meierhenrich (2014b) provides theoretical underpinnings for a sustained practice turn in the study of international law and edited a special issue on 'The Practices of the International Criminal Court' (see also Kendall & Nouwen, 2014; Werner, 2014). The approach developed in the thesis resonates with this practice turn.

Social processes

The significance of socialisation as a central theme is growing in social science research and IR theory (e.g. Johnston, 2001, 2008; Checkel, 2005; Schimmelfennig, 2005). The thesis follows the approach of studying international institutions as social environments (Johnston, 2001). The treatment of tribunals in this vein has been convincingly depicted:

> Their boundaries are always porous, their projects incomplete and their goals contested. The personnel and experts who staff international courts cannot be assumed to share the same justice project – they may have different goals and assumptions… It is therefore crucial to view the institutions of international law, not merely as abstract entities, but as complex social processes. (Dembour & Kelly, 2007: 8).

As Onuf (1998: 59) argued, 'social relations *make* or *construct* people–ourselves–into the kinds of beings we are'.

Yet, which specific micro processes make up socialisation is still under-researched. Three micro processes have been prominently examined, namely mimicking, social influence and persuasion (Johnston, 2008). While conventionally '[t]he organizations of the international scene are […] seen merely as creatures of the dominant actors, with little initiative, power, or effectiveness', organisational sociology challenges this as it acknowledges that organisations themselves

> are not simple mechanical tools obediently doing the work of their creators. They are live collectivities interacting with their environments, and they contain members who seek to use the organization for their own ends, often struggling with others over the content and allocation of the product. These

dynamics produce a distinctive organizational character over
time. (Ness & Brechen, 1988: 246-247)

The terms 'social lives' of international justice (Dembour & Kelly, 2007) or 'social worlds' of tribunals (Eltringham, 2011) make plain the importance of the social in the context of international tribunals. In international law scholarship and commentary the legal dimension has clearly dominated over social dimension. Anthropological and ethnographic research however has immensely contributed to illuminating multiple tensions of understanding justice and law and levels of social processes, including across the international and the local, the legal and the social (Merry, 2006; Dembour & Kelly, 2007; Goodale, 2007; Eltringham, 2008).

Tensions or clashes also occur within organisations. The importance and creative productive power of 'the sense of dissonance' (Stark, 2011) in organisations has been convincingly elucidated. Hand in hand goes the recognition that not all voices are equal, outside and inside organisations. As suggested by Eltringham (2014a) in relation to the ICTR, in order to foreground the social processes and uncover the social lives of IOs, it is necessary to question the conventional portrayal of disembodied institutions and disaggregate 'the Tribunal'. Given the scope of the thesis at times the term 'the Tribunal' is used while being acutely aware of the importance to disaggregate the different actors and situated persons. However, wherever possible, the role of various organs (i.e. Chambers, Office of the Prosecutor (OTP) and Registry) and particular individuals in the process of completion, closure and continuation through legacy formation are disentangled.

Organisational memory

Remembering and memorialising are important social processes and central to legacy formation. The process however is not linear, finite, mechanic or smooth, but characterised by selective retention and recollection and thus once more a construction process. Organisational memory formation is, as Bell (2012: 5) aptly put it, 'an ongoing process of negotiation and contestation; battles over the social legacy of the past and how to interpret it may thus be fought between different mnemonic communities, even within the same organization'. Memories need carriers

or vectors and retrieval mechanisms to be available even as time passes, staff members join and leave an organisation, or if an organisation itself closes:

> If an organization is to learn anything then the distribution of its memory, the accuracy of that memory, and the conditions under which that memory is treated as a constraint become crucial characteristics of organizing. If knowledge is packaged in the mind of one individual presumably the organization will unfold in a different manner than if the memory is housed in a set of committees with different interests. Furthermore, the organization's usage of its retained interpretations will also be affected by whether that memory is placed in files, rule books, or on computers and how much of that information the organization admits to. (Weick, 1979: 206)

Organisational memory is important at two levels: First, internally, for organisations during their life time in enhancing effectiveness and smooth functioning of organisational processes and, second, externally, in the process of legacy construction and preservation once an organisation is preparing for closure or lies dormant. The emphasis in the thesis is on the second level. The focus on memory and memory storage in the context of organisations or communities is not novel. Organisational memory has been explored as intersubjectively constituted and as bound for example in culture and time (Nissley & Casey, 2002; Feldman & Feldman, 2006). Drawing on Zerubavel (2003), Rowlinson et al. (2010) explore organisations as mnemonic communities which develop a commonly shared understanding of the past based on cultural and symbolic practices, events and rituals. Places and objects play an important role in experiencing the past through *lieux de mémoire* (Nora, 1989) and can become important sites of organisational memory. Rituals and commemorative practices become performances of collective memory. In this sense, organisational memory projects in the form of lessons learned manuals, oral history projects and archiving take on a particular salience. Particular attention is paid to such organisational memory projects in the form of legacy projects in Chapter 6. Two main carriers of legacy are highlighted: people and processes. The analytical framing with regard to these carriers is refined in the specific context of the tribunals in Section 7.1.2.

Capturing organisational memory, or contemplating or attempting to capture it, has become a cornerstone of legacy building. Institutional memory is important

for the individuals concerned and for the organisation. Its importance at two levels: for smooth functioning while operational and for institutional persistence following closure. Mnemonic communities develop at organisations. In line with the observation that 'death hurts, but isn't fatal' (Hoetker & Agarwal, 2007: 446) and the exploration of the meaning of organisational death in this chapter, preserving and ritualising memory takes on a particular relevance. Memory capture takes place both inside and outside of organisations. Inside the tribunals organisational memory is the main focus of legacy creation and preservation. Outside the tribunals the role of war crimes trials as 'vectors of memory' (Wood, 1999) deserves attention. The painful and uncertain dimension of memory is explored in works which foreground 'trauma' and 'wounds of memory', highlighting the construction of collective memory and its function of political legitimisation (e.g. Edkins, 2003; Zehfuss, 2011).

A brief mention of the role of the visual as significant in the formation of organisational memory is in order (Sontag, 1979, 2003; Zerubavel, 1996; Bell, 2012). Visualisation has taken on even greater salience in the age of a globalised world through telecommunication and various media. Death has been an enduring, timeless theme in art. *Memento mori*, which stands for 'remember that you will die', as well-known artistic or symbolic reminder of mortality and the inevitability of death can be found e.g. in paintings of a skull, hourglass, clock or extinguished candles. This became particularly popular in 17th century art reflecting the religious belief that life on earth was short-lived and a mere stage before an posthumous life. Sontag (1979: 15) also sees photographs as such reminders: 'All *photographs* are *memento mori*. To take a photograph is to participate in another person's (or thing's) mortality, vulnerability, mutability. Precisely by slicing out this moment and freezing it, all photographs testify to time's relentless melt.' A contemporary *memento mori* may include for instance a countdown clock until closure.

Having surveyed relevant dimensions of institutional mortality with a view to institutional persistence, the second part of this chapter draws upon the organisational science literature to sketch the scenario of organisational life and death.

2.2. A deeper exploration of organisational decline and death

The legacy process is shaped by the process of organisational developments, or in short, the life and death of organisations as social entities.

2.2.1. Organisational life

Traditionally the life and death of organisations is perceived as a linear process. In the thesis a non-linear view against the backdrop of institutional persistence beyond formal closure is elucidated. But first an overview of existing paradigms and classic models on organisational life and death is provided.

Life cycle paradigm

The key assumption of the life cycle paradigm is that organisations are subject to a life cycle proceeding in stages: birth, growth, maturity and death. The thesis challenges the common depiction of legacy as an objectively measurable end result or brute fact coming into play following the last of three temporal moments: birth, life and death (Figure 2.1).[30]

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[30] It must be noted again that the thesis focuses on legacy construction in lieu of assessing the effectiveness or impact of the tribunals *per se*. The measurement of legacies conjures up many questions and important conceptual and methodological challenges, for instance how to assess the value of legacy and how to measure legacy over time. Measurement issues per se though are not of immediate interest here since a legacy assessment is outside the scope of this project although it is hoped that reflections and arguments put forward here will influence future measurement research.
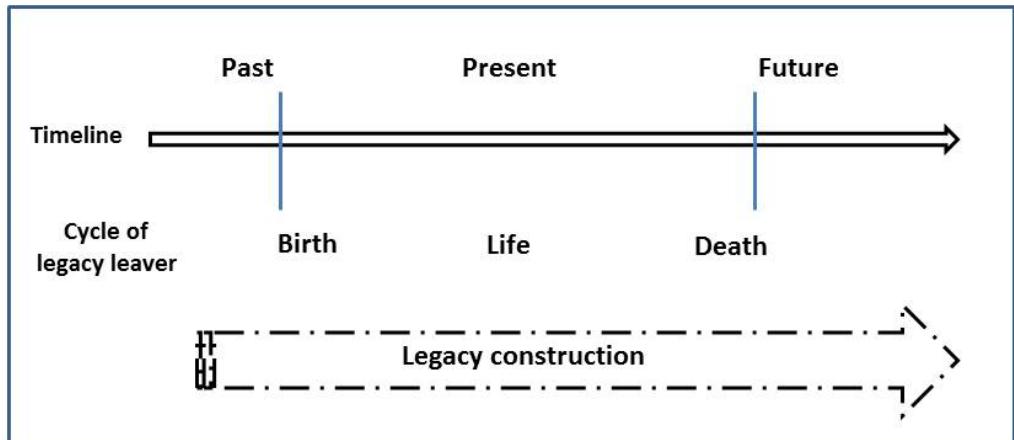
Figure 2.1: Legacy construction in relation to the life cycle of the legacy leaver

To define a precise starting point of legacy creation in the life cycle (see Section 2.2.1.) does not seem possible[31] as legacies can be formed since the birth of the legacy leaver, or even before. During the second phase legacies are further constructed particularly with the collaboration of the legacy leaver. In the wake of a legacy leavers's death the third phase is an indefinite period, stretching for decades possibly centuries, since legacies do not have a determined duration. This third phase ostensibly has often been the least-planned (see Cashman, 1998). Given the pending closure of the tribunals, a particular focus of this research is the second phase of legacy construction, i.e. legacy building by the legacy leaver prior to the occurrence of organisational death.

The so-called life cycle paradigm entails the analogy between organisations and other organisms in order to capture the interplay between continuity and discontinuity. It has a long pedigree in organisational science and is well established and widely discussed within that literature (e.g. Greiner, 1972; Adizes, 1979; Kimberley & Miles, 1980; Churchill & Lewis, 1983; Quinn & Cameron, 1983; Miller & Friesen, 1984; Kazanjian, 1988; Kazanjian & Drazin, 1989). The life cycle paradigm has also been widely applied, inter alia to the world system of states

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[31] Illustrated in Figure 2.1 via a non-linear starting point of the arrow depicting 'legacy construction'.

(Galtung, 2007), products (Klepper, 1996) and teams (Tuckman, 1965), to name but a few.

While life cycle proponents agree that an organisation undergoes different stages of development, the number and nature of the different life stages has been a matter of dispute. Each model presents stages that represent an orderly sequence, follows a hierarchical progression of passing through stages successively and implicates organisational activities and structures (Quinn & Cameron, 1983). It is noteworthy that organisational lives may be characterised by different phases rather than stages. Indeed, the life cycle paradigm with respective passages through life draws on a Western conception of time as chronological and linear leading towards death as an absolute, irreversible end point (Adam, 1995). In terms of temporality, Argenti (1976) and D'Aveni (1989) propose a distinction between slow death and sudden death. The first category, i.e. slow death, best captures the development of the tribunals. The theme of temporality of organisational death is taken up in Section 5.2. Various classic models of organisational life cycle exist in the literature. A comparison is provided in Table 2.1.

Table 2.1: Comparison of classic life cycle models[32]

Model	Start Up Stage	Expansion Stage	Maturity Stage	Diversification Stage	Decline Stage
Adizes, 1979	1.Courtship 2.Infancy	3.Go-Go 4. Adolescence	5. Prime 6. Stable		7.Aristocracy 8.Early Bureaucracy 9. Bureaucracy 10. Death
Churchill & Lewis, 1983	1.Existence 2.Survival 3.Success-Disengagement	3.Success-Growth 4.Take-Off	5.Resource Maturity		
Flamholtz, 1995	1.New Venture	2.Expansion	3.Professionalisation 4.Consolidation	5. Diversification 6.Integration	7.Decline
Galbraith, 1982	1.Proof of Principle/ Prototype 2.Model Shop	3.Start-Up/ Volume Production	4.Natural Growth	5.Strategic Maneuvering	
Greiner, 1972	1.Creativity	2.Direction	3.Delegation	4.Coordination 5.Collaboration	
Kazanjian, 1988	1.Conception & Development 2.Commercialisation	3.Growth	4.Stability		
Miller & Friesen, 1984	1.Birth	2.Growth	3.Maturity	4.Revival	5.Decline
Quinn & Cameron, 1983	1. Entrepreneurial	2. Collectivity	3.Formalisation	4.Elaboration of Structure	
Scott & Bruce, 1987	1.Inception 2.Survival	3.Growth 4.Expansion	5.Maturity		
Tuckman, 1965	1.Forming	2.Storming	3.Norming 4.Performing		5.Adjourning/ Mourning

As shown in Table 2.1, three life cycles models include a final stage of decline (Adizes, 1979; Miller & Friesen, 1984; Flamholtz 1995). Another well-known stage model in relation to small group settings was introduced by Tuckman (1965) who identified four stages as 'forming, storming, norming, and performing', later adding a fifth stage, 'adjourning' (also known as 'mourning'). When considering the social dynamics in the final phase of organisational development, in particular its last stage, the so-called mourning stage, the model allows for an analysis of meaning making *vis-à-vis* closure for staff members of dying

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[32] Source: Adapted from Hanks et al., 1993.

organisations. It might be said that statements about decline are meaningless unless a date is given as then the prediction cannot easily be falsified. Yet whether a temporal horizon is sketched or not, the classic rise and fall story, which has been prominently used to describe the development of great powers (Kennedy, 1987), needs to be further interrogated.

Organisational decline

The emergence, growth and success of organisations have drawn more attention than the subject of decline and demise (for a notable exception, see Hirschman, 1970). In a seminal article, Whetten (1980: 577) noted a bias towards success and growth in the literature as 'organizational decline, although of important and fundamental concern to organizations, has been given little attention by research'. From the outset, organisational theory has followed a growth-oriented paradigm with the normal state being growth (Penrose, 1959; Bedeian, 1980). Organisational decline is a frequent empirical reality, from businesses failing, financial institutions collapsing, NGOs dissolving to IOs disbanding. A growing organisational science literature has taken up the topic of decline which became a topic in vogue in the late 1980s, but is still not the subject of systematic research (see Argenti, 1976; Whetten, 1987; Guy, 1989; Meyer & Zucker, 1989; Weitzel & Jonsson, 1989; Anheier, 1999; Mellahi & Wilkinson, 2004; Samuel, 2010). Even within the literature that does address the topic (for a detailed discussion of the organisational literature see e.g. Bozeman, 2010; Ribeiro Serra, Portugal Ferreira, & de Almeida, 2013; Heine & Rindfleisch, 2013), what is often given short shrift is the actual meaning attributed to decline.

Meaning of decline

Before decline can be managed it is important to better understand the concept of organisational decline. The process leading towards death, i.e. the dying process, has been referred to as organisational decline (e.g. Cameron, Kim, &

Whetten, 1987; Cameron, Sutton, & Whetten, 1988). A metaphor often used for decline is 'spiral of decline' (e.g. D'Aveni, 1988; Guy, 1989; Weitzel & Jonsson, 1989; Samuel, 2010), also referred to as 'downward spiraling, in which the organization does enough to survive, but not enough to stop the devolution' (Guy, 1989: 6). The concept of decline signals the decreasing capacity of adaptation to the environment within which an organisation is embedded (Greenhalgh, 1983). In other words, losing the endorsement of stakeholders and thus environmental support and adaptation in turn leads to a reduction of internal resources, hence decline has been conceived as a two-step process (Cameron, Sutton, & Whetten, 1988). In order to explaining the double meaning of the concept Whetten highlighted

> The word *decline* has two principal meanings in the organizational literature. First, it is used to denote a cutback in the size of an organization's work, profits, budget, clients, and so forth. … The term *decline* is also used to describe the general climate, or orientation, in an organization. Using the life cycle model, some authors speak of mature organizations becoming stagnant, bureaucratic, and passive. (Whetten, 1987: 345-346)

Organisational decline is commonly directly associated with organisational failure. Thus conceived, the term decline suggests a golden glow of the past, whereas failure denotes various shortcomings such as the inability to attain goals, attract staff and sufficient resources. There is a small body of literature, e.g. on failure of federations, states, treaties and firms. Decline is studied more in order to isolate factors that accelerate and decelerate decline in order to predict and ultimately avert decline. The result of organisational failure in economic terms seems most obvious, even when not precisely and commonly defined in the literature. Yet, the meaning of organisational decline is not well understood. Cameron et al. (1988, 1989) define failure as 'deterioration in an organization's adaptation to its micro-niche and the associated reduction of resources within the organization.' Two outcomes of decline and pending failure are possible: institutional termination or renewal. Organisational failure denotes poor performance as measured by particular criteria, such as financial or economic measures.

This thesis questions the synonymy between decline and failure. Others have argued that ineffectiveness and inefficiency can lead organisations to fail, but not

necessarily to close or die. The phenomenon has been systematically captured in Meyer and Zucker's (1989) landmark book on the subject, *Permanently Failing Organizations* which explains the idea of 'permanent failure' and the motivation of certain stakeholders to keep organisations alive which perform poorly. As DiMaggio (1989: 9) aptly noted, 'efficient performance is only one–and not necessarily the most important–determinant of organizational survival' as the failure of many organisations 'is neither temporary nor aberrant, but chronic and structurally determined'. A common assumption is that decline has a negative connotation and needs to be averted. The argument in the thesis challenges this common misguided notion of decline as failure. Indeed, decline can also be constructed as success in terms of mandate completion or redundancy after endeavoured changes have occurred. Closure and failure thus need to be distinguished.

Causes and consequences of decline also need to be distinguished. Various typologies exist. For instance, as Samuel (2010) lays out, origins of decline may be internal factors to the organisation (identified as *r-extinction*) or external factors (identified as *k-extinction*), including organisational atrophy, vulnerability, loss of legitimacy and environmental entropy; symptoms of decline include low morale, high stress, high turnover, low productivity and accidents. Miller and Miller (1991) instead put forward eight so-called 'organizational pathologies'. Organisational deficiencies thus need to be more thoroughly scrutinised, especially with regard to how decline is managed.

Managing decline

Before setting out the meaning of managing decline, it is important to understand what decline may look like in the first place. Importantly, this research takes as starting point that decline is a process and not an event (see Sutton, 1987; Hambrick & D'Aveni, 1988; Heine & Rindfleisch, 2013). In terms of rhythm and velocity of decline, D'Aveni (1989) distinguishes between three patterns: sudden decline, gradual decline and lingering. For instance, the prototype of permanently failing organisations as coined by Meyer and Zucker (1989) seems to fit a prolonged pattern of lingering. Guy (1989) distinguishes three types of decline, which may

overlap, namely undiscovered decline, uncontrolled decline and orchestrated decline. While the latter is always intentional, the former two types can be either intentional or unintentional.

For the purposes of this study, the third type proposed by Guy (1989), i.e. orchestrated decline, is the most interesting as the tribunals' closure seems to represents an archetype of intentional orchestrated decline as analysed in the chapters to follow. As proposed here the decline of the tribunals does not equate with failure but is an anticipated and orchestrated process. Reponses to decline in organisations can be traced systematically on an individual level, for instance prominently understood as 'exit', 'voice' and 'loyalty' by Albert Hirschman (1970). In Chapter 5 the thesis returns to this theme, in particular the interplay between individual exit strategies and organisational completion strategies.

New organisational forms may emerge in the process. Organisational decline does not necessarily lead to demise. Downward spiraling is neither progressively automatic nor irreversible. It would be analytically shortsighted to equate decline, and even death, with 'the end' of an organisation. From this perspective, an ending importantly also represents a beginning. Poroli (2010) points to three relevant organisational forms which follow death: resurrection (same organisational form), reincarnation (different organisational form) and mutation (organisational form with similar and different features). Following Mary Guy (1989), when an organisation experiences turnaround, renewal or 'resurrection', it exhibits what she refers to as the 'Phoenix Syndrome'. In other words, a dying organisation may rise from the ashes again like the mythological bird. Alternatively, a successor organisation with a similar role is created as exemplified in the succession between the League of Nations and the UN (see Section 2.1.1; see also Goodrich, 1947). The new kind of organisational form the so-called residual mechanisms as successor organisations of the tribunals represent is a theme taken up in Section 6.2. Organisational decline may however turn out to be fatal and culminate in organisational death to which the thesis turns next.

2.2.2. Organisational death

Three aspects in the study of organisational death have been identified: causes of death, temporality of death and the dying process (Poroli, 2010). Temporality of death has already been discussed above with regard to the life cycle paradigm and organisational decline resulting in death. In the following, the metaphorical use of the term is explored, explanations of organisational death are reviewed and the question of meaning of organisational death is examined.

Death as a metaphor

The term 'death' in the context of IOs may at first sound weighty or jarring, but it is not an unusual expression and metaphor in IR literature. For example, the issue of 'state death' has been widely studied (Waltz, 1979; Wendt, 1999; Howes, 2003; Fazal, 2004, 2007; Valeriano & Van Benthuysen, 2012). But its use as a metaphor in the context of organisations needs to be nuanced. As Walter notes, the use of the term hampers a sense of responsibility:

> Metaphors are replete with imagery, so what kind of imagery is associated with the term organizational death? Studies of organizational death thus typically portray the death of the organization as caused by human agency. … the organization does not die of its own accord, but is kept alive, or allowed to die, by human (including governmental) agency. It is not surprising therefore, that those with the power to initiate the decision to kill an organization rarely use the metaphor of organizational death. They use euphemisms such as downsizing, administration or merger that cover up (at least to themselves) the human pain entailed. (Walter, 2014: 70-71)

Using metaphors in studying organisations has been proposed as valuable lens (Morgan, 1986; Tsoukas, 1991), although the fruitfulness has been questioned (Grant & Oswick, 1996). It has been claimed that 'metaphors are thus mind-stretchers on the one hand and mind-closers on the other' (Lundin & Steinthórsson, 2003: 237). According to Sutton (1987: 543), while organisational death is best understood as metaphorical as it is not like physical death, 'the death metaphor best

expresses how individuals experience this transition'. This chimes with another observation that highlights the social dimension: 'Unlike euphemism, the metaphor of organizational death therefore creates a very human frame within which to see the closure of an organization' (Walter, 2014: 71). Furthermore, Walter (2014: 72) noted that 'some have pushed the metaphor of organizational death by drawing on theories from death studies. […] Just as humans can have a social existence after physical death (Unruh 1983), so too can organizations'. While not turning to death studies here, the social existence of organisations is projected beyond closure via institutional persistence and legacy building strategies. The metaphor of organisational death is referred to in the thesis in order to link the concept of legacy developed here to the well-known conventional concept of legacy associated with the death of the legacy leaver.

Explaining death

Focusing on causes of mortality begs the question of why some organisations die whereas others persist. This puzzle has motivated scholars to set out explanations that focus on exogenous and endogenous causes of organisational mortality (see Mellahi & Wilkinson, 2004). Two approaches are prominent: the ecological study of organisations and the study of organisational pathologies. The latter is closer to the perspective taken in this thesis (see Section 2.1.2).

The ecological study of organisations is concerned with birth and death rates in large-scale populations. The focus of organisational ecology is on demographic and ecological factors such as an organisation's age, size and industry or organisational niche (Hannan & Freeman, 1989; Hannan & Carroll, 1992; Hannan, Carroll, & Pólos, 2003). In terms of age-dependent survival of organisations, three major mortality patterns have been identified: liability of newness (Stinchcombe, 1965), liability of adolescence (Brüderl & Schüssler, 1990) and liability of senescence or aging (Barron, West, & Hannan, 1994). With regard to niche, fitness set theory (Hannan & Freeman, 1977), later refined as niche-width theory (Freeman & Hannan, 1983), makes predictions about mortality rates of generalist and specialist organisations in fine-grained and coarse-grained environments respectively.

The study of organisational pathologies rather seeks to explain decline and death for a single organisation or a small sample. Attention is hence directed towards explanatory variables such as leadership, strategy structure and culture. Studies have for instance examined the role of leadership incompetence (e.g. Argenti, 1976), leadership change (Singh, Tucker, & House, 1986), leadership succession from the founder and inaction of leaders (Weitzel & Jonsson, 1989) at various organisational stages. Furthermore, organisational atrophy (Whetten, 1980, 1987) has been studied as driver of organisational death. The syndrome 'success breeds failure' has been identified as one variant (Starbuck, Greve, & Hedberg, 1978; Miller, 1990). Mellahi and Wilkinson (2004) have provided a critique and integrated framework of recent scholarship reflecting deterministic and voluntarist trends on exogenous and endogenous causes of organisational death. To be clear, the aim here is not to issue a death certificate for the organisations studied and inquire into the causes and criteria of death, but rather to sharpen our understanding of the meaning of organisational death, anticipating and confronting mortality at the international level, and to examine legacy formation.

Meaning of death

Two levels are distinguished here: (1) formal legal death and (2) social death. This distinction has been linked to the difference between the formal structure of the organisation and the social lives, values, knowledge and practices, or in short, between organisational container and content: 'Il nous parait donc important de distinguer la mort juridique formelle qui touche au contenant organisationnel, de la mort sociale effective qui affecte le contenu organisationnel' (Poroli, 2010: 32). The process itself also needs interrogating further. Similarly to Glaser and Strauss' (1968) highly influential study on the unfolding of the individual dying process, organisational death could be conceptualised as a process of varying nature and length depending on events or critical junctures. Such a process-orientated view

> would encourage conceptualization of organizational death
> as a socially constructed process that involves the formation
> of expectations which determine how specific organizational
> groups respond to these events […]. This would also

> encourage of how memories of deceased organizations are integrated into the ongoing lives of survivors through inviting understanding of grief as an aspect of collective identity construction and organizational memory formation that can extend well beyond the functioning life of an organization. (Bell & Taylor, 2011: 8)

A neat definition in a more functionalist tradition with the underlying assumption that the moment of death is defined when an organisation ceases to operate (Sutton, 1987) gives short shrift to the distinction between formal, legal death and social death. Also, important social dynamics involved in constructing organisational closure are omitted. Milligan (2003) explicitly refers to organisational death as a social process unfolding in congruence with actions and understandings of change by organisation members.

If the existence of organisational death is acknowledged, the question then is what it means to different actors. Organisational death may come in different forms and may include scenarios as diverse as bankruptcy, insolvency, disintegration, takeover, collapse or transformation (Bell, Tienari, & Hansson, 2014). Since the early days of research on this topic, there has not been agreement on the meaning of death as the following observation attests:

> While research on organizational death is beginning to emerge in the literature […] it is hampered by a lack of consensus on what organizational death represents. Does it occur when there is a change in the name of the organization? When all its members are replaced? When the facility is moved? (Whetten, cit. in Kimberley & Miles, 1980: 371)

Organisational death has been defined as 'the substantial loss of costumers, clients, and market value that causes an organization to cease its operations in its current form, relinquish its existing organizational identity and the ability to self-govern' (Hamilton, 2006: 329).

As already mentioned, it is thus important to not simply equate organisational death with failure. Indeed, failure can be temporary and reversible; however, death in the formal sense is definite and irreversible. Organisational failure may result in organisational death, or survival. More importantly for this study, not every organisational death is the outcome of organisational failure but is the product of an

announced closure and orchestrated decline process not strictly coupled with organisational performance. Moreover, interestingly, Sutton's (1983) research shows counterintuitive findings, namely that, pending organisational death, staff members actually are cooperative in working towards death and making it as peaceful as can be. His process model of organisational death contains three phases which reflect members' perceptions: disbelief, acceptance and dealing. What is of particular significance for the tribunals is the announcement of organisational death that is here also understood as process.

Of a death foretold[33]

The focal point of this study is a particular type of socially constructed death, namely one that follows an orchestrated decline which did not arise from failure. This reflects the nature of the organisational death of the tribunals under examination which seems predetermined, announced and prepared. Certain organisational deaths are announced in advance. Such an announcement may occur once the organisation is operational during the life cycle, or already prior to becoming operational, i.e. at organisational birth. The second scenario, one in which the knowledge of organisational death can be explicit and unambiguous since establishment, is of greater interest to this study on the tribunals.

Announced death at birth

What is specific about some organisations is that they are purposefully designed as time-limited at their conception. Following the life cycle paradigm it is possible to conceive all organisations as impermanent in some way, yet certain organisations are explicitly designed as temporary *ex ante*. In other words, by definition, a temporary organisation has a beginning and a definite endpoint. 'The end' can be linked to time when stating a fixed date, to events when following a specified event or to conditions upon achievement of a condition or state of affairs.

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[33] The phrase became popularised in view of classic novel *Chronicle of a Death Foretold* by Gabriel García Márquez (2007 [1981]).

For instance, the presence of a so-called sunset clause in the original document delineates temporariness and may be seen as a predictor of organisational death.

Certain organisations are designed to be terminated after fulfilling their mission. Indeed, '[m]ission completion could take away an organization's reason for existence, which, it stands to reason, would cut its life short (even in the absence of a sunset clause)' (Boin, Kuipers, & Steenbergen, 2010: 394). Consequently, sunset clauses and narrow mission mandates serve a symbolic or signal function, i.e. to reach agreement to create the organisation in the first place and possibly shield it from excessive critiques by assuring and appeasing critics that the organisation is not intended to grow old.

Organisational death may resemble a death foretold. It is known from the onset that an organisation created with a particular mandate or task is to exist for a limited period of time only. Such organisations are created with a set temporal horizon and mechanism of institutional dissolution which is linked to mandate completion. This is the case for instance for the tribunals under examination in this study as will be analysed in Chapters 4 and 5. The theme of preemption of and reaction to a foretold organisational death is taken up in the empirical chapters to follow through an examination of the social lives of the tribunals and how individuals and organisational units make sense of the upcoming closure and legacy. In sum, from the time of establishment, certain organisations are anticipated to be impermanent, finite, short-lived, time-bound or temporary.

A note on terminology is in order. Unlike e.g. Miles (1964), Bryman et al. (1987) and Ekstedt et al. (1999), the thesis does not use 'permanent organisations' as an antonym for 'temporary organisations'. The most significant body of literature dealing with temporary organisation is to be found in management and organisation science (Miles, 1964; Bennis, 1965; Lundin & Söderholm, 1995), including work on ephemeral organisations (Lanzara, 1983), disposable organisations (March, 1995), transitory organisations (Palisi, 1970), temporary teams (Saunders & Ahuja, 2006) and short-term projects (Faulkner & Anderson, 1987). However, the management and organisation science scholarship on temporary, often project-like, organisations has limited relevance for the type of temporary organisations examined here which resemble IOs with full-fledged bureaucracies, in existence for years or even decades,

albeit with a finite existence. What is more, the theme of legacy building of temporary organisations is missing in the above scholarship. An exception to this is a note in passing of an organisation's 'desire to leave an inheritance […] that will remain in use also after closing-up shop' (Porsander, 2000: 27). Time is a key variable for such organisations as organisational death eventually becomes a certainty. Thus, careful management of an announced closure takes centre stage.

Managing death

The process of decline and death can be long or prolonged, lasting weeks or years. The dying process of organisations has not been the centre of attention of organisational science scholarship, nor in the least in IR scholarship. A prominent exception is Sutton (1983: 398) who brackets organisational death as a process beginning when the cessation of organisational functions is announced and ending with a declaration that the event actually has occurred. In a pioneering study Sutton comprehensively lays out 'eight tasks typically required for the management of organizational death': disbanding, sustaining, shielding, blaming, delegating, informing, inventing and coping. However, he acknowledges that completing these eight tasks is not a straightforward exercise as complications arise from the chaos and conflict that may occur in the dying process, although he only deals with cases of unambiguous organisational death, as does this research. 'Disbanding' and 'reconnecting' are recognised as two fundamental dynamics of the dying process.

Disbanding dying organisations implies an active role by the organisations themselves in making efforts to prepare for their own 'end'. As Samuel (2010: 151) points out, 'The managing of decline process […] differs from the management of dying processes. The former represents attempts intended to prevent death, whereas the latter refers to the performance of tasks intended to bring the dying organization to its end.' The social dimension of dying organisations and the social construction of death deserve special attention. For instance, closing ceremonies play an important role in this regard: 'The socially constructed "fact" of organizational death is reinforced by parting ceremonies–gatherings at which members and former members join together to say good-bye to the dying organization and one another'

(Sutton, 1987: 558). The function of closing ceremonies is seen, inter alia as 'unique coping mechanisms' since participants 'are at once providers and receivers of support' (Harris & Sutton, 1986: 11), leading to a collective realisation of death and a 'wake' which may approximate a lifetime achievement awards ceremony. Also within organisations there is the possibility of taking control and constructing the 'good death'. For individuals, images of the 'good death' seem to surpass the archetypical deathbed scene with the dying person imagining the completion of a full life and its legacies (Kastenbaum, 1994; Leichtentritt & Rettig, 2001). The 'good death' has been studied as a multidimensional phenomenon with physiological, personal, interpersonal, social and cultural facets and shaped by a combination of both individual wishes and social norms and law (Emanuel & Emanuel, 1998; Leichtentritt & Rettig, 2001). With regard to the construction of the good death one study employed a dramaturgy analysis approach identifying eight meaning-making strategies in light of the ideal script for the final act (Leichtentritt & Rettig, 2001), yet the normative dimension of 'good death' is not a focus in this study.

The process of closing down an organisation is multifaceted and complex, involving legal, political, administrative and social dimensions. As Pfeffer (1982: 543) cautions, 'Organizations do not die as neatly as humans'. The possible messiness and ambiguity of organisational death should not be glossed over. The thesis explores this complexity by focusing on organisational strategies aimed at death management. Thus, the perspective is not on causes of decline and death or effects but on meaning making. In doing so, we need to examine how IOs engage in downsizing, in meaning making and in coping strategies and the role of organisational culture and organisation members.

Dying organisations

When facing decline and death some developments at the individual, collective and organisational level run in parallel. The lived experience of the closure of an organisation or a site may resemble a certain death (Milligan, 2003; Blau, 2006). As some research has shown, the closure of an organisation seems not unlike the loss of a close relative for some staff members (Sutton, 1987; Cunningham,

1997). From a psychological perspective, organisation members may experience different reactions, most notably denial (based on perception of refusal of death), partial acknowledgement (reversibility of death) and anger and grief (inevitability of death). The realisation that organisational death is inevitable and imminent is gradual, as Cunningham aptly suggests (1997: 474), 'In this sequence of events, members first think of their organizations as permanent, then temporary, and finally defunct'. While the present study is not psychological in nature, it seems important to briefly touch upon certain psychological dimensions of organisational death.

In the case of organisational death particular individual and collective coping mechanisms are developed. Individual staff members develop own strategies, including career trajectories. Some will leave the sinking ship early whereas others stay on the ship until sinking. For instance, it has been observed that talented employees tend to move to a new job and exit the dying organisation in question before the management of closure has been finalised (Sutton, 1987):

> The staff members involved in such a process typically lack the enthusiasm present when starting a new organization. Rather, the staff often despair at the loss of their aspiration for both the organization and their careers. They also face an uncertain return to the job market. Hence, staff retention is a common problem (Bowhuis, 2014: 1314).

Staff retention has been indeed an issue for the tribunals. Although the psychological consequences of decline and closure are beyond the purview of this study, they inform and shape institutional strategies and legacy building and thus deserve brief mention. The psychological effects of downsizing and closure are important to consider, e.g. employees entering a 'mourning period' (Tuckman, 1965). Within the social scientific study of death and loss typically three concepts are distinguished: bereavement, grief and mourning (Charmaz & Milligan, 2008):

> Bereavement is defined as the survivor's status following a loss through death. It is accompanied by the expectation of grieving, a subjective emotional response to irretrievable loss that may be made manifest in mental, physical or social ways. Grief is expressed through individual or institutional practices of mourning. (Bell & Taylor, 2011: 2)

Organisational death has real repercussions on individual staff members and those involved can represent a source of loss and suffering (Driver, 2007), in particular in light of what has been described in terms of an emotionalised nature of organisations (Fineman, 2003). The role of mourning and memorialisation has been analysed as ritual practices (Bell, Tienari, & Hansson, 2014). Assistance in coping with affective and cognitive challenges linked with organisational closure through ritual acts has been highlighted by Harris and Sutton (1986). For instance, the salience of parting ceremonies is underlined in which 'members and former members join together to say good-bye to the dying organization and one another' (Sutton, 1987: 558). For instance, an 'organisational funeral' and eulogizing the past (Albert, 1984) has been proposed to enable staff members to grieve and create closure in line with the stage theory model of grief.

Reviewing the organisational literature, Bell and Taylor (2011) highlight that the conventional depiction of the grieving process is linear and sequential and that of grief is temporary. They further note that the organisational literature which extensively and uncritically relies on stage-models of grief overlooks that in scholarship on dying and bereavement, which has experienced a fundamental empirical and conceptual shift (Klass, Silverman, & Nickman, 1996), stage theories of grief have been challenged by the theory of continuing bonds, also considered more relevant to the analysis of the tribunals in this thesis, which 'explored the complex and multiple way in which the living maintain relationship with the deceased at emotional, social and material levels, through constructing lasting inner and symbolic representations, sensing the presence of the deceased, and behaving in ways that take their presence into account' (Bell & Taylor, 2011: 4-5). Accordingly, continuing bonds theory does not assume that death represents the end of existence, thus challenging the conventional portrayal of chronological time. Adam (1995) suggests that the deceased leave a record and thus are never simply gone. The question then is how to preserve and maintain such a record left by an individual or an organisation and in this regard the focus turns to legacy.

Mourning of the organisational entity may become particularly salient, before and after organisational death as already mentioned. An unexpected phenomenon observed and studied is an increase in productivity and employee output during the

final phase leading to closure, which has been called 'countdown effect' (Bergman & Wigbald, 1999). This thesis examines legacy building as a different kind of 'countdown effect'. Under increased time pressure given their announced closure organisations may fervently turn to justifying their own existence and projecting themselves into the future with the aim of institutional persistence. Specific dynamics and developments aimed at completion, closure and continuation via legacy building are explored in Chapters 5 to 8.

Conclusion

Decline and death of organisations are frequent empirical occurrences. IOs are also more affected than the existing IR literature would seem to suggest. The thesis addresses this lacuna and makes a contribution to the study of IOs by importing and combining insights and theoretical approaches from management, organisational science and sociology. Hence, this study proposes a shift of emphasis from organisational beginnings to organisational endings, and from institutional existence to institutional persistence. In sum, organisational decline and death are understood here as processes.

To be more precise, organisational decline and death are considered as social processes that are constructed and managed by IOs. This is important as this research studies organisations in terms of social environments. Against the backdrop of the lifecycle paradigm, the thesis emphasises a questioning of the meaning and management of organisational decline and death. It suggests a clear distinction between decline and failure. Exploring legacy building aimed at institutional persistence beyond death follows from the starting point that organisations may formally close and disappear, yet do not fade into obscurity but rather live on though in different ways through created legacies.

Going forward, the thesis examines a particular type of decline, namely a decline that is anticipated, announced, and, importantly, orchestrated, and a particular type of social constructed death. It has been highlighted that in order to cope with pending organisational decline and death, both individual strategies and

organisational strategies are developed. Given the focus of this research, the thesis is mostly concerned with the organisational level. Before two strategies aimed at completion and continuation, namely completion and legacy strategies, are examined in Chapters 5 and 7, it is essential to provide the necessary context for the particular tribunals studied and briefly chronicle their historical development in Chapter 4. Prior to that, however, Chapter 3 enquires more deeply into the notion of legacy and legacy construction. The following chapter thus provides the second dimension of the conceptual framing of the thesis.

Chapter 3

Formation of legacies

To gain a deeper understanding of the significance and dynamics of legacies for IOs, a conceptual examination of the very term 'legacy' is necessary. Spurred on by scholarship aiming at *précising* concepts (Adcock & Collier, 2001; Meierhenrich, 2008c), this chapter develops a theoretical framework for the empirical analysis.[34] This chapter is divided into two parts. It first enquires into the meanings of the term legacy, surveying lexical definitions and going beyond to problematise the concept *per se*. Three different conceptions are highlighted: legacies as *bequests*, *remains* and *lessons*. Importantly, a conceptualisation of legacies in the plural is advocated. Second, developing a process-oriented approach to the study of legacy, this chapter focuses on the social construction of legacy, particularly on the actors and processes involved. The agents have hitherto been given scant attention. Prompted by this oversight, the chapter identifies five ideal types of actors and depicts their interaction dynamics. Finally, the social construction process of legacy is theorised.

3.1. Concept of legacy

Talk about legacy often arises in a valedictory or commemorative setting when reflecting upon accomplishments and the meaning of being. It is widely acknowledged that every being and entity leaves a legacy, whether purposely or not, hence legacies seem 'inescapable'. A poem ('*Vermächtnis*') on the theme of legacy by Johann Wolfgang von Goethe opens with the words 'No being can dissolve into nothingness!'[35], thereby confidently underscoring the endurance of being. Leaving a legacy is not a novel idea or practice. However, today, legacy leaving has ostensibly become a social and political expectation and responsibility mirrored in the

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[34] Indeed, the aim was to arrive at a concept for scholarly academic usage. The theorisation of legacy as presented here has been adopted by Carsten Stahn (2015) whose broad account of legacy developments bears striking resemblance to this research.

[35] 'Kein Wesen kann zu nichts zerfallen!' Translation by the author.

ubiquitous question 'What will be your legacy?' Legacy creation is often linked to leadership.[36]

The search for meaning is of utmost importance for human moral and social life (Wolf, 1990; Baumeister, 1991) and for understanding the heightened fascination with legacy today. In the face of mortality, the idea of making a difference in the world and leaving a legacy takes on a particular salience and urgency (Hunter & Rowles, 2005). The theme was already portrayed in Cicero's dialogue 'On Old Age': '*serit arbores, quae alteri saeclo prosint*'.[37] An interesting parallel can be drawn with the tribunals examined in the thesis which have faced impending closure, a certain 'organisational death' (see Section 2.2.). Legacy issues both in terms of costs and expected deliverables have become particularly salient for the actors at the tribunals. The crucial initial step of any conceptualisation is a review of definitions to allow an enhanced awareness of former and current usages of a term.

3.1.1. Conceptualisations

Etymologically, the term legacy in the English language today (Middle English *legacie*) can be traced to the Medieval Latin *legatia* and Latin *legatus* and to the Old French *legacie*. The first set of entries in the Oxford English Dictionary (1989) defines legacy as legateship or legation, i.e. 'the function or office of a delegate or deputy' (1384) and 'the function or office of a papel legate; a legateship' (1387). A second set of entries define legacy as 'the action or an act of bequeathing' (1513), 'a sum of money, or a specified article, given to another by will' (1514) and, figuratively speaking, 'anything handed down by an ancestor or predecessor' (1595). All meanings except the latter two have become obsolete nowadays. It is the last definition that is of interest to this study. The New Shorter Oxford English

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[36] In recent years numerous 'how to' handbooks on leadership and legacy building have sprung up. Examples include *The Legacy Guide: Capturing the Facts, Memories and Meaning of Your Life* (Franco & Lineback, 2006), *A Leader's Legacy* (Kouzes & Posner, 2006), *Beyond Success: Building a Personal, Financial, and Philanthropic Legacy* (Ottinger, 2008), *Legacy: 15 Lessons in Leadership* (Kerr, 2013), *Your Living Legacy: An Important Conversation* (Cousins, 2014), *Leading with Your Legacy in Mind: Building Lasting Value in Business and Life* (Thorn, 2014).
[37] Two translations exist: M. Tullius Cicero De Senectute (On Old Age) 1.31: 'He plants the trees to serve another age'; M. Tullius Cicero Tusculanae Disputationes 1.31 'One plants what future ages shall enjoy'.

Dictionary provides the following definitions: 'a tangible or intangible thing handed down by a predecessor; a long-lasting effect of an event or a process; the act of bequeathing'.

This brief review of lexical definitions shows that historically the term legacy has entailed different meanings depending on historical moments, yet a rather technical, mechanical element is visible in all definitions. For the purposes of this thesis, the lexical definitions remain wanting. The definitions, moreover, do not adequately convey neither the sense of importance and meaning attached to a legacy nor the effort invested in its creation, promotion and maintenance (see McAllister III, 2003). These key themes will be explored throughout the thesis. What is strikingly still absent in the definitions is an emphasis on the legacy process behind any legacy outcome, i.e. addressing how, why and when legacies come into being.

Nobel Laureate Jonas Salk has been credited with saying 'Our greatest responsibility is to be good ancestors'. But what legacy actually means has not been properly problematised. The term legacy implies calls to duty and responsibility. Analysing legacies in the following three ways illuminates the different meanings attached to legacy which seems particularly important since the concept has recently gained such significance in the work and commentary of the tribunals (see Chapters 7 and 8). The three main conceptualisations of legacies, as *bequests*, *remains* and *lessons*, are discussed now in turn.

Legacies as bequests

In its narrowest sense, legacy as a legal term refers to a 'gift by will' (Blacks Law Dictionary, 2005). This meaning relates to bequests, i.e. giving property, e.g. tangible wealth such as money or material possessions, which chimes with the meaning of the Latin term. Such bequests are intimately connected to law and the right of testation, the right to decide who will take our property after death. This right is fundamental to Anglo-American legal culture and highly guarded by custom, courts and law (Frolik, 1996). Weinberg (1996) underscores the paradox that many believe that we are free to choose what to give to whom, when and how, whereas

historically legacies as bequests have been legally constrained in numerous ways (see laws regarding inheritance, land transfer restrictions or estate taxes). Important distinctions are made with legal qualifications, amongst others between absolute, conditional, lapsed, pecuniary, specific and void legacies (Blacks Law Dictionary, 2005). An entire industry seems to revolve around leaving a legacy and building a legacy. Legacy giving in the sense of charitable giving has become recognised and advertised. An International Legacy Giving Day is recognised annually on 13 September.[38] Planned legacy giving, i.e. leaving a gift legally per will, has grown into a considerable market.[39]

Leaving a legacy is more than solely a technical, legal formality as legacies may generate great emotional stress between the testator and heirs or amongst the heirs. Legacies can evoke various emotions such as jealousy, bitterness, pride, gratitude, rage and love (Kane, 1996a). With their emotional baggage legacies can be bound up in conflict, emotion and power (see Lustbader, 1996) and become sites of contestation. Given the strong emphasis on intentionality and legal ownership conceptualising legacies as bequests is not satisfactory and meaningful outside the legal domain (see Preuss, 2007). Although the tribunals are judicial institutions, they do not bequeath legacies in a strictly legal sense.

Legacies as remains

The second, more figurative and most common meaning of legacy refers to anything that is left behind or handed down. As remains or outcomes legacies continue affecting the world after an individual passes away, an event is over or an institution closes. Such remains take many forms (see variety of United Nations (UN) Educational, Scientific and Cultural Organisation UNESCO's World Heritage identified as 'legacy for all' (Mayor Zaragoza, 1988)). Legacies can be tangible if

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[38] See e.g. Austrian website www.MyHappyEnd.org, a coalition of ten public benefit organisations which advertise with the slogan 'Stay in good memory' ('Bleiben Sie in bester Erinnerung'), and UK website www.rememberacharity.co.uk. Also, see the Institute for Legacy Management and Code of Fundraising Practice.

[39] Also, this understanding of legacy and legacy fundraising is visible in a 2014 advertised UNICEF tender for consultancy to analyse the legacy performance of UNICEF National Committees and its competitors, and develop the legacy strategy in terms of private sector income generation of the Private Fundraising and Partnerships Plan 2014-2017.

they are material, e.g. buildings, documents, photographs or heirlooms. Equally, legacies can be more intangible or symbolic, such as talents, wisdom, attitudes, habits, principles, visions and norms.

Leaving a legacy represents the possibility of leaving a lasting contribution. The figurative expression of handing down resonates with a common euphemism for dying, namely 'passing away' and 'passing on' (see Kane, 1996a). The idea of passage connects to the questions how and for what you want to be remembered once you have passed through life. The handing down process does not occur in an apolitical vacuum. Remains rarely 'remain' the same over time but are part of a dynamic legacy process which is explored below.

Legacies as lessons

Some intangible legacies take on or are invested with a specific pedagogical function, namely to teach lessons. As constructs about the past lessons satisfy certain needs of the present. There is great importance attached to bequeathing a nugget of wisdom or the moral of one's life (Hunter & Rowles, 2005). Williams et al. (2010) develop the concept of 'ethical capital' as an intangible resource rooted in personal experience and comprising lessons about illness, strength, coping, living and dying. Since no two lives resemble one another, two different unique legacies in the form of lessons are left behind which can enrich one individual or an entire generation. In politics, the legacy concept is strongly related to the idea of 'learning from history' (see Jervis, 1976).

Legacies and lessons are subject to continuous negotiation and contestation in the political realm. Turning to the past and resorting to historical analogies or 'lessons' for dealing with the present is common practice among policy makers and has been carefully discussed before (e.g. May, 1973; Ravenal, 1976; Khong, 1992). Ravenal (1976) proposes some very valuable 'lessons about lessons' regarding their usefulness and reliability suggesting that lessons would have to be settled quickly if they were obvious. In his view these must fulfil five requirements, i.e. be projective, general or generic, applicable to collectives, appropriate and learned. The last

requirement in particular is not as obvious as it may appear. In fact, learning in the context of a collective, such as a nation-state or an organisation, appears far more complex than the learning of an individual. For legacies as lessons to be handed down legacy recipients need to be committed to life-long learning. A relevant example of the nexus between legacies and lessons are the 'Lessons and Legacies Conferences' held in the US (1990-2002) focusing on the Holocaust.

Having gone beyond lexical definitions this section has discussed three conceptualisations of legacies, namely as bequests, remains and lessons. The latter two appear particularly relevant in the tribunal context. In order to comprehensively address the conceptual confusion, the challenges and problems inherent to the language of legacy deserve attention.

3.1.2. Language usage

The general appeal as well as casual usage of the term legacy warrants further examination. Notwithstanding its success, popularity and omnipresence the term itself is not without its ambivalences. The limitations of current usage are discussed below. Simply calling for its abandonment or replacement seems short sighted, failing to address the underlying unexamined claims and assumptions.

Current usage

The term has wide currency in different disciplines, ranging from political science and IR (e.g. Franceshet, 2001; Mahoney, 2001; Meierhenrich, 2008a; Hadiwinata, 2009; Browning & Lehti, 2010) to law (e.g. Byrne, 2006; Rapp, 2006; Tomuschat, 2006), from history (e.g. Cronon, 1987; Winter, 2009) to management (e.g. Dobel, 2005) to gerontology (e.g. Kane, 1996a; Hunter & Rowles, 2005), from sports studies (e.g. Preuss, 2007; Dyreson, 2008) to literature studies (e.g. Richards-Wilson, 2011). Since the 1980s the notion has seen an increased usage. It appears that this is also when the first article explicitly discussing legacies of the Nuremberg Tribunal was published (Luban, 1987). Data based on the 'Web of Knowledge'

database suggests a clear trend. An observable increase in the use of the term legacy in the title of academic publications (Figure 3.1) demonstrates the timeliness and significance of the exploration of the concept that constitutes the core of this chapter.
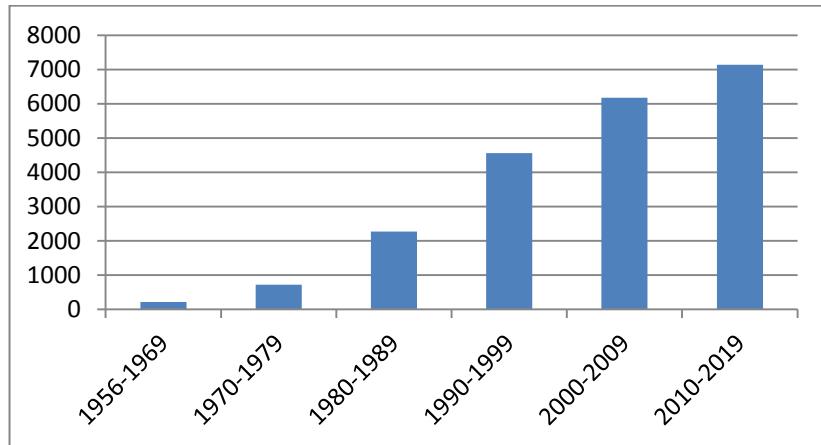
Figure 3.1: Number of publication including 'legacy' in the title per decade[40]

However, the academic usage often lacks conceptual rigour and clarity. The lack of a good conceptualisation has direct implications for operationalisation and measurement (see Adcock & Collier, 2001; Meierhenrich, 2008c). This chapter shows that a more systematic conceptualisation is essential not solely for measurement purposes but first and foremost to foster understanding of the complexities of the legacy process of the tribunals.

From legacy to legacies

The usage of legacy in the singular is problematic and misleading. Instead, it seems appropriate to speak of legacies. Such emphasis on the plural implies greater

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[40] Data for the decade 2010-2019 are extrapolated from the available data in 2010-2011 as in 2012 the database changed its ownership and functionality. Results from an advanced search conducted using the database 'Web of Knowledge' (including five citation ISI databases: SCI, SSCI, AandHCI, CPCI-S and CPCI-SSH) on 24 January 2011. The database starts its searchable records in 1956, thus the first column encompasses one and a half decades.

precision and more adequate capture of the construction process. The term legacy, however, is mostly used in the singular. Although this observation may appear banal, it is an important one. Indeed, language matters and suggests a construction of reality. Speaking of *the* legacy or *a* legacy does not adequately mirror the complexity of the different realities of legacy. Here it is argued that the common concept of legacy is too simplistic and one-dimensional. Often, based on a loose understanding of the term 'legacy', it is not uncommon that even the singular term implies various meanings or legacies. In the reified sense in which it is often used, legacy in the singular or Legacy with a capital 'L' appears to be a grossly perfunctory catchphrase. Legacies may be logically connected, complementary, competing, or even conflicting. The notion of multiple legacies of course begs further questions regarding their development and interaction. Another reason to develop the notion of legacies is to obviate that actors talk past one another despite allegedly using the same terminology. Put simply, 'legacy talk' means different things to different actors inside and outside the tribunals – a central theme explored in greater depth in Chapters 8. But first a general note on some limitations.

Limitations of current usage

Three brief limitations of the current usage will be noted here to illustrate the challenges of malleability, vagueness and incontestability of the use of the term legacy. First, its assumed self-evident simplicity seems a main factor for the term's attraction and casual usage (MacAloon, 2008). However, 'The concept of legacy exists in the shadow of the counterfactual of what would have happened' (Dobel, 2005: 229), thus its simplicity appears far from self-explanatory. The success of any buzzword calls for vigilance. Bendix (2000) underscores that resorting to the language of heritage appears to shift the focus onto the mechanics of preservation rather than the politics of preservation since the question 'how?' costs money while the question 'why?' requires thought. The danger of steering attention away from the complexity of history and politics also applies to legacy talk. In the official discourse legacies are generally presented as products of intent and deliberation. The underlying assumption is that its legacy is highly malleable by the legacy leaver. Such an approach to legacy construction does not only neglect the social dynamics

of leaving a legacy as a constructive process but also underestimates the crucial role of various stakeholders and narratives and thus overestimates the tribunals' own influence. Such neglect raises a serious concern with regard to a possible conceptual misperception of legacy and the political dimension of legacy building by the tribunals. Additionally, it suggests a reduction of legacy to discreet concrete projects that may be conceptualised and implemented by the tribunals.

Second, the vagueness of the term allows it to be malleable for multiple purposes and be charged with specific meanings. The term has been described as elusive, problematic and ultimately even dangerous (Cashman, 2005). Niven's analysis of the language of collective memory also rings true for legacy discourse and its supposed gravitas in the political arena:

> Its very vagueness, perhaps, is the source not just of our dissatisfaction with it, but also of its appeal. We keep coming back to it because we can make it mean what we want it to mean – and because it remains a catchy phrase, resonant with a certain mystery, magic, even aura. (Niven, 2008: 436)

The third limitation is the suggested 'desirability of the discursive object' (MacAloon, 2008: 2065). Tackling the issue of legacy planning is often portrayed as proactive and progressive when the term legacy is used as part of a managerial or magical discourse (see MacAloon, 2008). The concept of legacy is appropriated and charged with specific meanings and certain desirability. The term as well as its content thereby becomes politically less challengeable and assailable. Such presumed incontestability is fundamentally problematic, especially for the tribunals at the interface of law and politics.

Having identified the challenges presented by the language of legacy and conceptual complexities explored above, a new conceptual framework of legacy is developed in the second part of this chapter. The framework attempts to better reflect the multidimensionality and actor-oriented and process-oriented character of the construction of legacies.

3.2. Construction of legacies

Legacy construction is of great significance today as it resonates with the politics of meaning and memory. The central argument here is that legacies are a social construct and a site for contestation over remembrance. Legacies can be sites of contestation over power, reputation and collective memory shaping. Examples of such contestation include the legacies e.g. of an individual such as Abraham Lincoln (see Peterson, 1994; Schwartz, 2000) or of an event such as the Vietnam War (see Lake, 1976; Shafer, 1990). The past is partially (re-)invented over time yet the question of limitless malleability of the past has been intensely debated (e.g. Hobsbawm & Ranger, 1983; Irwin-Zarecka, 1994; Edkins, 2003). As was mentioned in previous chapters, due attention is yet to be paid to the social lives of international tribunals. Legacies are not to be considered as immutable facts but rather are closely interconnected with social processes. Hence, in a continuous state of construction and reconstruction legacies incessantly remain in the process of being formed. The thesis argues that there is a need to go even beyond the examination of legacy along the lines of Meyer-Sahling (2009), i.e. the causal effects and explanatory power of legacies, and examine their construction *per se*.

Talk of legacy also seems highly relevant in light of the burgeoning literature on constructivism and the role of norms (see e.g. Finnemore, 1993; Checkel, 1998; Wendt, 1999; Finnemore & Sikkink, 2001), and in recent years also on socialisation (see e.g. Johnston, 2001, 2008; Checkel, 2005; Schimmelfennig, 2005). Adopting a social constructivist lens in this research allows us to 'focus on the role of ideas, norms, knowledge, culture and argument in politics, stressing in particular the role of collectively held "intersubjective" ideas and understandings of social life' (Finnemore & Sikkink, 2001: 392). Legacies are an interesting example of the creation of inter-subjective meaning as legacies resemble inter-subjective rather than idiosyncratic constructions. Legacy construction begins in the mind but the focus is less on their material reality and more on their value as 'social facts' (Searle, 1995). Adopting a process-oriented approach, legacy construction can be characterised as both a 'cognitive enterprise' (Girginov & Hills, 2009: 23) and a social endeavour.

Countering the dearth of preoccupation with the actual process of constructing legacies, this chapter sketches the contours of a new framework

outlining a notional legacy process placing the social construction of legacies at the centre of the analysis (Dittrich, 2014c). The next section foregrounds the actors involved in legacy formation which is essential for understanding agency in the process.

3.2.1. Legacy actors

Prior to closure, the tribunals' legacies have indeed already become sites of debate and struggle over their meaning for the respective post-conflict society, international politics and international criminal law. The presence and role of different actors have to date been given inadequate consideration (exceptions include Hunter & Rowles, 2005; Girginov & Hills, 2008; Mégret, 2011). This chapter attends to this lacuna and identifies five main ideal types of actors: legacy leavers, producers, enforcers, recorders and recipients. A differentiation of actors is of particular importance for the empirical analysis of the legacy formation of the tribunals. In Chapters 6 to 8 the thesis mainly focuses on the legacy leavers, i.e. the tribunals themselves.

Significance of actors

The oversight of actors in the existing literature is problematic for two reasons. First, it turns a blind eye to the construction process of legacies and the interplay between intentionality and non-intentionality. A focus on the latter puts paid to the common assumption that legacies somehow simply happen or emerge organically. The most powerful and long lasting legacies seem to be products of collective interaction over time with different actors competing or sharing a similar sense of purpose, commitment and responsibility (see McAllister III, 2003). Taking its cue from the notions 'moral entrepreneurs' (Becker, 1963) and 'reputational entrepreneurs' (Fine, 1996), legacy actors may be called 'legacy entrepreneurs' who attempt to shape how and for what someone or something is or should be

remembered (on norm entrepreneurs see also e.g. Sunsein, 1996; Chong, 2000; Posner, 2000; Ellickson, 2001).

Second, such oversight ignores actor diversity. Not all actors are given equal weight, recognition and standing by those both inside and outside of the legacy process. Different actors may have different motivations, stakes, tools and legacy visions which may be complementary, competing or even conflicting. Legacy entrepreneurs can be self-proclaimed or officially nominated, main stage as well as back stage actors in the legacy arena. Actors do not exist in an apolitical vacuum, but within given structures that can be disabling or enabling for legacy building. Legacies therefore can become sites of debate, contestation, and struggle which will be explored in Chapters 8 and 9. Five main types of actors are depicted in Figure 3.2.
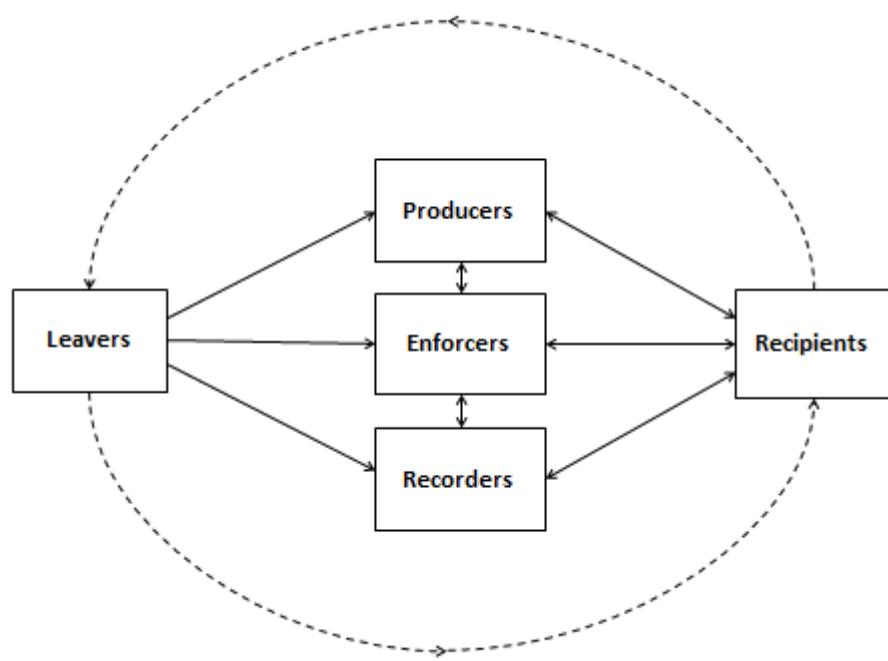
Figure 3.2: Ideal-typical interaction of main legacy actors

Importantly, it is argued that the legacy leaver while central to the legacy process is but one of a panoply of legacy actors. As evident in Figure 3.2, five main

ideal types of actors are identified here. This selection is indicative and reflective of the actor diversity and highly dynamic legacy process: legacy leavers, producers, enforcers, recorders and recipients.[41] The legacy leavers and recipients have specific roles, but can also act as producers, enforcers and recorders. In other words, leavers, recipients as well as intermediaries can actively engage in the production, enforcement and recording of legacies.

Legacy leavers

First, the type of actor generally given the most attention is the legacy leaver. Without legacy leavers, also called legators, there would be no legacies. Many leavers actively attempt to shape their legacies and how they want to be remembered. Planning presumably helps legacy leavers gain a sense of control over their lives and thereby face (or fail to face) mortality (see Section 2.1.1). The search for meaning and significance leads to attempts at post-death image maintenance and memory shaping (Hunter & Rowles, 2005). Most commonly the legacy leaver is an individual. We speak of the legacy of our ancestors, or of public figures such as Martin Luther King, Nelson Mandela or Abraham Lincoln. Legators, more broadly understood, can also be events such as the Olympic Games or organisations such as the tribunals. The three different tribunal organs, Chambers, OTP and Registry, can be considered different legators. Equally, individuals within these organs can be recognised as legacy leavers, most notably the principals, i.e. President, Prosecutor and Registrar. This is an important differentiation, in contrast to an abbreviated reading of the tribunals as unitary legacy leavers, and is taken up when discussing legacy strategies starting in Chapter 6.

Legacy producers

Second, legacy producers actively attempt to construct or respectively deconstruct and reconstruct legacies. Often, legacies do not simply emerge, but are

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[41] The terms producers and enforcers are inspired by Girginov and Hills (2008).

made and created; in other words, they are produced. Using the terminology of production sheds light on the travail behind any legacy. The idea of production moreover illuminates that legacies may be subject to the logic of branding and marketing and even exploitation. In a priori non-commercial contexts brand speech is often resisted and rejected for its close association with commercialisation (see MacAloon, 2008). However, branding remains implicit in any legacy production. Some producers therefore engage in outreach activities, interacting with media and marketing activities which can be called legacy promotion. The tribunals' outreach sections and officers are prominent cases in point (on outreach see e.g. Manning, 201; Ford, 2014). The production of legacies is linked to so-called memory work and ultimately 'the very process of production is thus frequently a site for articulating priorities, obligations, goals, and intended audiences' (Irwin-Zarecka, 1994: 13).

Two different producers are in opposition: positive and negative legacy producers. Positive producers attempt to promote positive legacies that value the legator and highlight significant achievements. Conversely, negative producers attempt to reverse or undermine certain legacies thereby engaging in what may be called legacy revisionism. Not all producers, be it experts, political or religious leaders, artists or others, are granted the same authority.

Legacy enforcers

Third, legacy enforcers attempt to establish and safeguard certain legacies or visions. They are concerned with securing a certain desired content and form of remembrance. To this end, enforcers first and foremost attempt to claim and gain the privilege of interpretation of legacies. Different legacy enforcers can be opposed over the meaning and appropriation of a certain legacy vision, yet even a shared vision is not homogeneous or static.

The struggle over the privilege of interpretation is the centre-piece of legacy contestation. More than 'guardians' the term 'enforcers' deliberately conveys a sense that these actors are ready to appropriate, defend and enforce certain legacy visions. Enforcement can be ideological, e.g. lobbying, or more practical, often including

bureaucratic, political and financial considerations, e.g. organising a commemoration, renaming a street, building a memorial or museum, rewriting history books or travel guides. From a moral perspective legacies are intrinsically connected to a sense of obligation, duty to remember and to jealously guard legacy remembrance. When studying the construction of legacies the political perspective of legacy enforcement should also consider the interests and power relations of those involved. For instance, numerous NGOs and activist groups attempt to rally support for tribunals and international criminal justice and actively attempt to reorient public debate, e.g. the Coalition for the ICC or International Center for Transitional Justice.

Legacy recorders

Fourth, legacy recorders document, preserve and store legacies for posterity. Recordings may take different forms – academic, practitioner and popular – which encompass, but are not limited to, biographies, monographs, articles, policy documents, archives, audio-visual media, and museum exhibitions. There have also been numerous legacy recorders ranging from journalists, civil society actors, policy makers, artists, institutions and ordinary citizens to academics.

All legacy recordings inevitably have biases as recorders select certain information and documents depending on their respective narrative arch and question. In analogy to historians, legacy recorders write a certain version of history and certain legacy versions, thereby acting either as 'sanctifiers' or 'disrupters' of memory (Gouriévidis, 2010: 44, 175). For legacy construction(s) to function certain material carriers and recording devices as well as remembrance and enforcement vehicles are necessary. Beyond the importance of architecture as traditional material carrier four further carriers or channels are central: oral (narrated stories, audio tapes), print text (reports, newspapers, journals, books), multimedia (internet, web material) and visual (photographs, video tape recordings, television) carriers. Furthermore, remembrance vehicles play a special role in promoting the endurance and enforcement of legacies. Examples include naming opportunities for instance for streets, buildings, museums or scholarships.

Two distinct types of legacy recordings can be ascertained. Legacy previews can be distinguished from legacy reviews, i.e. depending on when a recording is produced, namely before or after a legator has ceased to exist. Also, the type of recording produced can *prima facie* be identified. Some recorders document legacies in an allegedly objective scientific manner, for instance scholars or archivists who publish or collect tribunal documents. Other recorders document legacies in a manner attractive to a mass audience due to existing economic, political or ideational pressures, e.g. journalists or museum curators, artists or film-makers. Contrasting allegedly objective scientific to more popular legacy accounts, however, proves a false dichotomy. In all cases, recorders produce an authoritative account of legacies, rendering legacies public and communicable. The process of idealisation corresponds to a certain dramatisation of the past. Dramatisation and sacralisation of legacies can lead to distortions and myths or legends penetrating legacy constructions.

Legacy recipients

Fifth, as a counterpart to the leavers, legacy recipients receive legacies. Recipients, also called legatees, can be designated by a leaver or receive legacies voluntarily. Different legacy recipients can be identified depending on the kind of legacy. Tangible material legacies are generally handed down to one individual or entity, named in a will, as concrete bequests. Legatees can also be groups, a community, society, entire generation or humanity as a whole in the case of legacies that are not bequeathed monopolistically (legacy as a bequest) but more socially and symbolically than actually legally sanctioned (so legacies as remains and lessons). Except in cases of concrete bequests which however are not the focus here, the question of legacy 'ownership' loses pertinence. It is argued that legatees play a key albeit understudied role as active participants shaping the meaning and value of legacies anew, time and again taking on the role of legacy producers.

Reception is of paramount importance, yet does not represent the end of the legacy process. The latter is continuously ongoing as recipients take on an active role in continuous (re-)production, enforcement and recording of legacies they receive as

well as those they themselves will hand down as legators. Two-way communication, reciprocity and internalisation are central to the legacy process as 'just as a falling tree makes a noise when someone hears, so a person's life lessons really exist when someone else thinks the lessons are important enough to learn and meaningful enough to remember' (Kivnick, 1996: 32). Legacies need a symbolic story-teller (leaver) and listener (recipient). As meanings are dynamic and fickle, legacies are exposed to constant impetus via re-interpretation.

Interaction among actors

Legacy actors play a key role as agents and as a point of reference in the social construction of legacies. The five actor types developed above are not static, nor mutually exclusive, nor do they act in isolation. The continuous interaction between the different actors is multifaceted and highly dynamic.

Legacies are conventionally portrayed as transmitted, or often bestowed, from a leaver to the recipient(s). This simplified conception overlooks that their interaction is not solely unidirectional. The model deliberately develops an alternative to a classic sender–receiver model. Legatees can and do act upon legacies and are not solely passive recipients in the literal sense. Active reception and (re)interpretation shape their meaning and value anew, for instance when recipients act as 'legacy tourists' (see McCain & Ray, 2003). Conversely, contrary to general assumptions, legatees may also fail to act upon a legacy, which leads to a significant disjuncture between leaving and receiving. Legacies are deeply affected by recipients who define their meaning and value anew by their acknowledgement and acceptance, contestation or rejection in light of their engagement in (re-)producing, enforcing and recording legacies. What is more, legacy financiers are rarely included in any analysis. Legacy financiers are thus included in the present analysis, but rather than identify financiers as separate actor category, it is considered that they are a subcategory of actors coming into appearance as producers, enforcers or recorders depending on fundraising and financing. Indeed, their enabling function for legacy production, enforcement, and recording should not be underestimated as they engage in important mobilisation of material resources which finance legacy efforts.

The dyad of legator and legatee, i.e. leaver and recipient, frames the legacy process. The institutionalisation of legacy building at the tribunals (detailed in Chapter 6) demonstrates how legacies are actively being shaped by legacy leavers. In the context of tribunals a plethora of stakeholders and consequently legacy recipients are to be recognised: victims, witnesses, defendants, tribunal staff, various professionals, civil society, the domestic justice systems and governments, other tribunals, the UN and international community.

Legacies do not emerge in a singular fashion as the construction of legacies is an inherently social process involving discussion, negotiation, and contestation. In the model presented here the legacy process remains dynamic, multifaceted and ongoing given the actor interaction and continuous (re-)construction. The actor constellation may vary. Some overlaps among the different actors are noteworthy. The role of legacy producers, enforcers and recorders can be assumed by both leavers and the recipients. Additionally, third parties beyond the central dyad of legator and legatee who invest time, energy and resources into legacies may assume one or more these three roles. Leavers as well as recipients can also take on all three roles. Legacy producers become recorders if they engage in publishing and collecting documentation. In turn, all legacy recorders become producers themselves, willingly or not. Whether portraying a legacy differently from the orthodox way, i.e. contesting a legacy, or echoing an already existent legacy version, a legacy recording is not neutral. All legacy assessments, studies and collections are inherently political for two reasons: as value judgment and as a source of power (see Girginov & Hills, 2009; Hammersley, 1995). Legacies emerge through constant multi-way communication and social processes.

All five types of actors engage in forms of legacy building as argued here. This can take the form of purposive legacy 'engineering' or more contingent, opportunistic legacy building. However, any legacy building ultimately shapes certain versions of history. This resonates with the following observation: 'History, truly considered, is a verb, not an abstract noun. We history' (Brett, 1993: 186). Legacy construction of the tribunals resembles an attempt to 'history' by a vast number of actors. Moreover, attempts of addressing conflicting interpretations of

history in a courtroom and writing history highlight the complexity of interplay between law and history in international criminal trials (see Wilson, 2011).

The thesis is not a comprehensive study of all actors involved, but instead mainly concentrates on a nuanced analysis of the legacy leavers. However, the important benefit of an actor-oriented model of legacy is an emphasis on the concrete doing of diverse actors (on transnational power elites see Kauppi & Madsen, 2013). Indeed, different legacy actors have a different role and weight in the process depending on the stage in the life cycle of the legacy leaver and the cycle of legacies. The question arises as to how much importance may be accorded to agency and deliberation in the process over time. With regard to agency the question of intentionality is an important issue. It is crucial to appreciate the role of intentionality which is addressed shortly. Hence, the politics of legacy construction deserve more attention than generally accorded and will be explored next. The above-sketched framework sets the scene for the remainder of this chapter which places the actual construction process of legacies into the centre of the analysis.

3.2.2. Legacy construction

The construction of legacies *per se* is a political choice or series of choices between remembering and forgetting and between different contents and forms of remembrance. Selection is central to this process and occurs at all levels. This issue relates to the dual importance of meanings of legacies and legacies as quests for meaning and identity. The multiplicity of processes and the essential components of dissonance and contestation are all too often missed.

Multiple constructions

Constructing legacies implies constructing identities of the actors involved. This reflexive dimension refers to an attribution of significance and grandeur to legacy actors. Hunter and Rowles (2005) contrast the idea of legacy to that of generativity (Erikson, 1950), or the idea of shaping the next generation. Although

both legacy and generativity contain a certain idea of 'outliving the self' (Kortre, 1984), legacy implies no negative connotation regarding the desire to be remembered and the projection of self (Hunter & Rowles, 2005). Leaving a legacy is then related to the 'intergenerational allocations of benefits and burdens' (Wade-Benzoni et al., 2010: 7). Legacies can refer to both *inter*generational transfers and *intra*generational transfers. Indeed, some legacies presumably can be handed down already before death or closure, e.g. immaterial or psychosocial legacies, which are 'most often given and received while both the giver and the recipient are still alive to benefit from the transaction' (Kivnick, 1996). Since the generational metaphor has been applied to international criminal tribunals (see Section 1.1) this is particularly relevant.

Indeed, a complex interplay between continuity and discontinuity is at play in legacy formation:

> Whenever we remember anything, we are effectively establishing that something continues, however obliquely or remotely, to be a part of our lives. Determining a legacy is a way of registering what we cannot forget, commemorating some achievement that still makes a difference to us. To this extent, determining a legacy would seem to be little more than a redundancy if remembering the legacy were not also a way of redeeming it and ourselves in the process. (Dahlstrom, 2007: 289)

In a similar vein, Miller (2009) emphasises the circular relationship between identity and memory as we are not solely shaped by our memories but also shape them. Equally, we are not solely shaped by legacies handed down but simultaneously shape them. As has been noted, 'It is not just that "he who controls the past controls the future" but he who controls the past controls who we are' (Middleton & Edwards, 1990: 10). The relationship between legacies and identity construction can hardly be overestimated (see also Walsh & Glynn, 2008).

The highly constructible and constructed nature of legacies is not unrelated to the concept of 'framing' (Goffman, 1986). Highlighting the centrality of framing and interpretation, one often encounters specific qualifiers or 'labels' attached to legacies. Such qualifiers as well as the legacies themselves are not static but change in meaning and significance depending on the actors' perspective and passage of

time. Framing relates to content as well as forms of remembrance and enforcement of legacies (see 'frames of remembrance' in Irwin-Zarecka, 1994). The framing issue highlights the volatility of legacy constructions and the importance of understanding meaning.

Different, perhaps conflicting, claims over constructions of truth and the power of interpretation are ultimately at play. Given the constructed nature of legacies, the vantage point of the actor is paramount. The same event or outcome may be viewed and promoted positively by one actor and negatively by another; thus different legacies may transpire underpinned by positive or negative legacy production. Constructions of legitimacy, effectiveness, and purpose are also revealing of different constructions of legacy.

Legacy building over time

Time and space are key categories for legacy construction. The multifaceted process of legacy construction over time is discussed here whereas the spatial aspect is discussed in subsequent chapters. Our thinking about the past evolves in the present while the present is itself constantly evolving and projected into the future. In an ambiguous relationship to time, 'a legacy occupies a nether region, defined by neither the sheer presence nor the sheer absence [...] Different from past and present, it can neither be defined in terms of past or present alone nor be defined without them' (Dahlstrom, 2007: 298). What matters most about the past is subject to constant re-evaluation over time.

Anniversaries are often moments of re-opening of debates on legacies. Most recently, to mark the 800th anniversary of the *Magna Carta* the British Museum used the idea of legacy as a starting point for an exhibition entitled 'Magna Carta: Law, liberty, legacy' (Breay & Harrison, 2015). Other examples of a legacy focus included as diverse occasions as the centenary of Hans Morgenthau's birth (Williams, 2007), the 50th anniversary of the US Supreme Court decision Brown v. Board of Education (Henderson, 2004) or the 25th anniversary of Katzenstein's *Small States in World Markets* (Ingebritsen, 2010). Legacies are a challenge of the past and

a challenge for the future (Schafer, 1990). Yet here it is suggested that legacies also acutely represent a challenge for the present (see legacies as sites of contestation), not least in the sense of legacies shaping current dynamics in international relations. For example, understanding the current conflict situation in Libya seems hardly possible without a referral to the legacies of the domestic and international actors involved.

Cycle of legacies

Drawing on the analysis of the role and development of norms offered by Park and Vetterlein (2010: 20), a cyclical perspective is presented to capture the continuous (re)construction of legacies. Such a perspective allows legacies to be examined at every stage in the cycle, thereby emphasising a point often neglected: there is no definitive starting or end point of legacy construction. In short, it appears that legacies are constructed *ad infinitum*. The cycle of legacies entails three phases: creation, consolidation, and contestation. This is not to suggest that legacy formation occurs following a strict linear pattern. Rather, these three moments can occur consecutively but also concurrently as a multitude of actors is involved. As represented in Figure 3.3, these are best considered a heuristic device for examining how and why certain legacies or legacy constructions come to the fore.
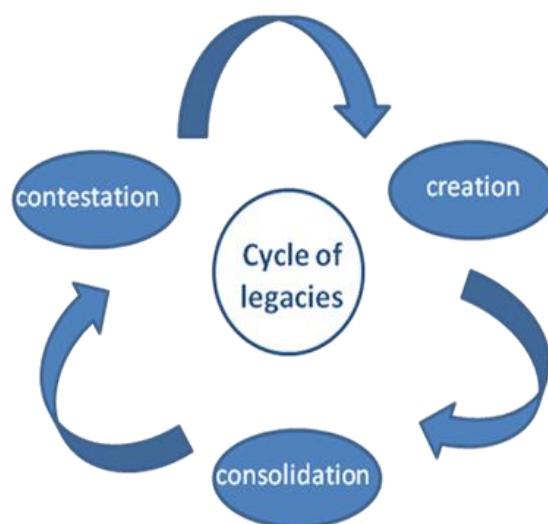
Figure 3.3: Three phases of the cycle of legacies

Legacies can acquire meaning beyond the original intent and emphasis. Their significance constantly shifts as both a movable and moving target. In other words, no legacy actor controls their definite meaning. All legacy actors may significantly shape legacies; we therefore need to be careful not to overestimate the role or achievements of the legacy leaver. Time performs the role of a prism 'refracting unpredictable meanings and purposes. Emphasizing what remains after one leaves and the fragility and uncertainty about how actions will be understood underscores the importance of humility in transmitting a legacy' (Dobel, 2005: x). With the new conceptualisation of legacy presented here it is explicitly acknowledged that legacies evolve over time and are intrinsically linked to shifts in meaning and power of interpretation in light of actor interaction.

This raises the question whether legacy can be assessed, or at least talked about, *a priori*, before the death of an individual or an organisation. It is a simple question, yet an important one which this thesis addresses head-on. Any preview or prediction of legacies prior to the closure of the tribunals seems premature and oxymoronic at first glance. In this context it is important to remark that the topic of impact of international criminal justice has garnered attention and already considerable empirical research, in particular on the ICTY (e.g. Stover & Weinstein, 2004; Meernik, 2005; King & Meernik, 2011). However, while other first evaluations can be equivocal, inaccurate and error-prone due to incomplete evidence and anecdotalism, 'legacy previews' merit attention – not so much for their empirical accuracy but for revealing the underlying processes of meaning making (see Byrne, 2006). Examining such early evaluations however is useful and insightful not least for raising constructive concerns, alerting the public to contradictions and lacunae and stimulating official action aimed at re-shaping certain perceived legacies (Mangan, 2008). At this point in time it appears *quasi* impossible to conclusively assess the long-term impacts and effects of the tribunals because the work of these tribunals is just barely being completed. But it is possible to discern the manner in which these legacies are being constituted or constructed.

Legacy planning

Efforts of deliberate legacy planning often uncritically embrace two problematic underlying assumptions. It is believed that legacies are highly malleable, and that the more intended, deliberate and sophisticated the planning is, the more one actually shapes and controls legacies. In anticipation of final closure there are attempts to consolidate the legacies at the tribunals. The common solution proposed to maximise the legacy is more planning (see Office of the United Nations High Commissioner for Human Rights (OHCHR), 2008). Given the limits to planning and controlling legacies, advocating more planning seems to suggest a myopic panacea ignoring the complexity of the social and political facets of legacy construction. Three main factors shape legacy building: 1) timing, 2) actors involved and 3) personality and interests of key actors.

The question of at what point in time, if at all, a legacy is describable or measurable has come to the fore. A distinction has been made between the 'potential for legacy' and the actual legacy (Perriello & Wierda, 2006) or legacy and the purportedly 'real legacy' (Swart, 2011). Claims about the realness and objectivity of a tribunal's legacy assessable only after final closure expose the traditional depiction of legacies as measurable end results. Here it is argued that a distinction between intended and realised legacies as well as a cyclical approach to legacies is primarily of heuristic value in capturing the ongoing legacy construction (see Figures 3.3 and 3.4). There is no strict linearity between intended legacies and realised legacies, as illustrated in Figure 3.4 (adapted from Mintzberg and Waters's (1985)).
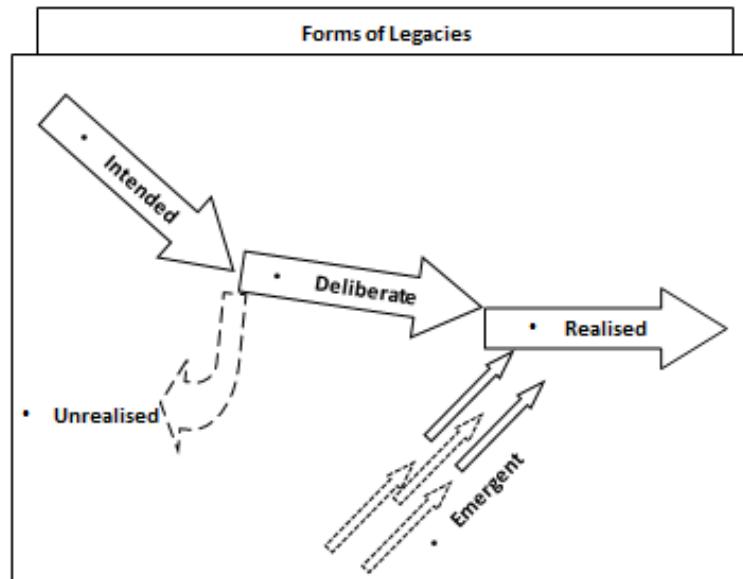
Figure 3.4: Forms of legacies over time

Five variants of legacies can be distinguished: intended, deliberate, realised, unrealised and emergent. Intended legacies refer to the process by which actors engage in purposeful planning of what they wish to leave behind and how they wish to be remembered. Two further legacy variants may be distinguished: deliberate legacies act as a bridge for intentions to be realised, i.e. referring to active steps taken to implement the intended legacies. Emergent legacies develop in the absence of intentions or despite them. Legacies are realised if some kind of outcome actually surfaces. Unrealised legacies point to outcomes that have been abandoned, hindered or remain below the surface of legacy discourse. A pure version of deliberate and emergent legacies can be considered rare as most realised legacies seem part of a continuum. In this thesis the research draws on this conception of forms of legacy and in particular the first two types, intended and deliberate legacies.

Ultimately, the actual realisation of legacies and their interpretation and (re)construction over time appears outside the control of the legacy leaver – although that may be influenced by the extent of success of self-promoted legacy projects. Emphasising what remains after one leaves and the fragility and uncertainty about

how actions will be understood underscores the importance of humility in transmitting a legacy' (Dobel, 2005: 237). Legacies are best viewed as a moving target as suggested above.

Despite meticulous and admirable legacy planning, realised legacies are not all amenable to planning and control. Such an observation does not advocate apathy or disengagement *vis-à-vis* legacies or dwarf legacy planning efforts as such. It is rather hoped that illuminating the multifaceted and complex construction process involving diverse actors will foster a greater appreciation that legacies are not bestowed authoritatively, that unintended and unrealised legacies exist, and that legacy constructions may inevitably result in cacophony rather than concordant harmony. Since legacy planning has increasingly become an acute concern of the tribunals the institutionalisation of legacy building is critically assessed in Chapter 6. Sustainable legacy engagement requires a prior understanding of legacy formation and mindfulness of the political, reflective, ethical and temporal facets of legacy construction.

Conclusion

The notion of legacy has to date not been satisfactorily conceptualised. A central finding here is that paradoxically the concept is rhetorically overused yet conceptually under-theorised. Prompted by this obvious gap, this chapter has attempted to contribute to the conceptual development of legacy and to elaborate a process-oriented approach to analysing the nature and role of legacy. Systematic conceptualisation seems an indispensable step prior to any in-depth analysis of legacy formation of IOs as exemplified by the tribunals in subsequent chapters.

With respect to the concept of legacy, this chapter has moved beyond lexical definitions which do not adequately reflect the construction process and importance of meaning and effort involved. Three conceptualisations of legacies, as bequests, remains and lessons, have been discussed here. Importantly, a new conceptual framework has been developed that places the analysis of legacies in the plural centre stage.

The role of legacy actors and processes has been outlined for the actual construction process. Given the significance of actors in the process, five ideal types were identified (legacy leavers, producers, enforcers, recorders and recipients). These categories are conceived as fluid and overlapping, leading to interesting interaction effects among the different actors who as 'legacy entrepreneurs' constantly engage in legacy building. Moreover, the political, reflective, ethical and temporal facets of legacy construction have been introduced. The exactitude of viewing legacy primarily or solely as the leaver's own endeavour and object of intended and deliberate planning needs rethinking because realised legacies, as argued here, are ultimately above and beyond the control of any legacy leaver.

In light of the overall conceptual framework for the thesis sketched in Chapters 2 and 3, Chapters 6 and 7 will further elaborate and refine the framework of legacy building in the specific context of the tribunals. Part II provides a brief overview of the historical development of the tribunals (Chapter 4) followed by an analysis of the so-called completion strategies and transition to successor organisations (Chapter 5) before turning to Part III, the analysis of legacy building (Chapters 6 to 8).

PART II

A history of the end

Chapter 4

Rise of the tribunals

Before turning to their completion strategies and legacy strategies, this chapter provides a brief historical overview of the tribunals. It sheds light on the complex multifaceted process of the tribunals' closure by backtracking to their very creation. The chapter is divided into two parts. First, it enquires into the rise of the tribunals since the early 1990s. Second, the challenges of the early years of their existence are critically examined, in particular the political environment, the obstacles to becoming fully operational institutions and the humble beginnings. A brief empirical record of the tribunals is sketched highlighting key figures in terms of cases, budgets and notable milestones.

4.1. Coming into being

The international criminal tribunal landscape in existence today is quite a different one from twenty years ago when it was quasi non-existent. The so-called first generation tribunals, the International Military Tribunal in Nuremberg and International Military Tribunal of the Far East in Tokyo, were established in 1945/6 and finished proceedings within two years each.[42] While it is hard to fathom it now, given that the contemporary tribunals have become robust and thriving institutions and sizable bureaucracies, in the early 1990s there were serious doubts about whether the two so-called second generation tribunals, the ICTY and ICTR, would ever be more than impressive paper tigers. Indeed, initially their rise was not exactly anticipated. While critics remain vociferous today, the tribunals' work has been visible and publicly hailed as having irreversibly altered the political and legal landscapes (to be discussed in Section 8.1). At the ICC Review Conference in Kampala Ban Ki Moon (2010) ceremonially declared the 'era of impunity' as over

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[42] On the Nuremberg tribunal generally see e.g. Taylor, 1992; Blumenthal & McCormack, 2008; Mettraux, 2008. On the Toyko tribunal generally see e.g. Röling & Cassese, 1993; Futamura, 2008; Boister & Cryer, 2009; Totani, 2009.

and ushered in a 'new age of accountability'.[43] However, their rise was certainly not linear, straightforward or rosy all the way. It is pertinent therefore to trace certain key moments of their creation and gradual coming to life into full operational judicial institutions before attempting a brief empirical stocktaking. It is concluded that given many adverse political circumstances, the rise to prominence and institutional developments of the tribunals, notwithstanding their limitations, are highly remarkable.

4.1.1. Establishment of the ICTY and ICTR

The rapid revival of international prosecution and calls for a permanent ICC since 1989 is notable after decades of delay or absence of UNSC action caused by political infighting and deadlock. During the Cold War when the UNSC was characterised by stalemate due to the bipolar geopolitical configuration, establishing an international tribunal pursuant to Chapter VII of the UN Charter seemed politically unthinkable. The establishment of the *ad hoc* tribunals by UNSC Resolutions, a first in international politics, was nourished by the unique geopolitical moment after the end of the Cold War and disintegration of the Soviet Union and changing Zeitgeist in the immediate wake of the Cold War and powerfully set the scene for further action. The history of war crimes trials, including the well-known and more under-explored trials, and the origins of the tribunals under examination is well known and already chronicled in detail elsewhere (e.g. Bass, 2000; Robertson, 2006; Schabas, 2006; Simpson, 2007; Scheffer, 2012a; Heller & Simpson, 2013). The politics surrounding the establishment, composition and functioning of the tribunals are not the main focus of the present chapter, thus are not rehearsed here in depth (for an in-depth insider account see Scheffer, 2012a). Undoubtedly, these factors certainly have a bearing on legacy leaving and building. Hence, a brief sketch of the origins of the tribunals is necessary.

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[43] See http://www.un.org/apps/news/story.asp?NewsID=34866#.UdC-sjtmiSo.

ICTY

Two years after violent conflict erupted in the Balkans, the ICTY was established in 1993. To be precise, on 25 May 1993 in reaction to the commission of mass atrocities the UNSC adopted Resolution 827 establishing 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', in short the ICTY (UN S/RES/827). The resolution was adopted unanimously without vote but by general agreement. The conflict in the former Yugoslavia is remembered as a dark episode in recent European history[44] and, indeed, the ICTY was born 'out of the utmost despair of the international community as to how to manage the unmanageable conflicts in the Balkans', as Louise Arbour, former ICTY Prosecutor (1996-1999) recalls (Arbour, 2003: 196). The war in Bosnia-Herzegovina has been analysed as 'new war', a case study that became 'the archetypal example, the paradigm of the new type of warfare' (Kaldor, 1999: 31). The story of the establishment of the ICTY is not as linear as often portrayed, namely that the scale of violence spurred the UNSC to immediate action. Instead it was a complex exercise of international politics that led to its creation.

The establishment of the first international war crimes tribunal, not only since the Nuremberg and Tokyo trials but also directly by the UNSC, was not exactly a walk in the park (see detailed accounts of formal steps towards creation and complex high-level negotiations between the UN Office of Legal Affairs and states in Bass, 2000; Schabas, 2006; Scheffer, 2012a). Once the extent of the atrocities became clear, there was considerable pressure from human rights groups, the press and public opinion which culminated in a call by Human Rights Watch for an international tribunal as early as July 1992. It must be recalled though that at the outset there was considerable disagreement among UNSC members regarding the appropriateness of such a tribunal. Michael Scharf (1997), then acting as Attorney Adviser for UN Affairs at the US Department of State, provides interesting behind-the-scenes insights into the story behind the ICTY. In 1992 the political positions of the Permanent Five were described as follows: whereas China was sceptical of the

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[44] The modern history of the Balkans and the unfolding of the conflict in the 1990s has been compiled elsewhere and even an abridged version would go beyond the scope of this study. See e.g. Mazower, 2000; Rohde, 2012.

idea that the UNSC had the legal authority to create such a tribunal, France and Britain were concerned about the possibly adverse relationship between an international tribunal and the peace process, Russia was keen to prevent any punitive measures against Serbia and the US, although the strongest supporter of a tribunal, was hesitant regarding its effectiveness beyond being a useful policy device. As a compromise, on 6 October 1992, the UNSC first unanimously voted, through Resolution 780, to establish a Commission of Experts (UN S/RES/780). The commission however cannot be heralded as the most efficient and proactive ever to have been created, largely due to its token budget and staff. Due to the unfaltering commitment by Cherif Bassiouni it managed to produce a final report of 3,300 pages documenting mass atrocities committed in the former Yugoslavia and has become a reference point in terms of international commissions. On 22 February 1993, Resolution 808, adopted unanimously, determined that an international tribunal should be established and the Secretary-General was charged with preparing further proposals (UN S/RES/808). Surprisingly, however, no guidance was given as to how such a tribunal is established or on what legal basis.

Given that the negotiation of a treaty was politically not viable with the warring Balkan states in question, the Secretary-General ultimately acknowledged the establishment pursuant to Chapter VII. The mode of creation has a significance for legacy: 'In this particular case, the Security Council, would be establishing, as an enforcement measure under Chapter VII, a subsidiary organ within the terms of Article 29 of the Charter, but one of a judicial nature' (UN A/RES/47/121, para. 28). Following this, judges were tasked with developing the Rules of Procedure and Evidence, based on proposals by organisations and states. The seat of the ICTY was chosen to be in The Hague, Netherlands. It was unprecedented that the UNSC established a tribunal and represented considerable institutional innovation, not least since the ICTY was heralded as the first truly *international* criminal tribunal (Robertson, 2006). Thus, a precedent was set and within 18 months a second international tribunal was established.

ICTR

In the aftermath of mass killings and genocide of approximately 800,000 Tutsi and moderate Hutus in Rwanda during approximately 100 days between 7 April and mid July 1994, the UNSC adopted Resolution 955 and established the ICTR on 8 November 1994. Incidentally, this was the very day the ICTY held its first hearing. Resolution 955 formally created the 'International Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994', in short the ICTR. Awareness of Rwandan history in general and of the unfolding of the Rwandan genocide in 1994 is indispensable.[45]

While the atrocities were ongoing in 1994, several human rights organisations brought evidence of the mass atrocities to the world's attention. The UN engaged in a special mission to Rwanda which produced a report on which UNSC Resolution 935 requesting the establishment of a Commission of Experts was based (UN, 1994; for a discussion of the commission of experts see e.g. Mégret & Akenroye, forthcoming). The initial impetus requesting the UNSC to establish an international tribunal for Rwanda came from the post-conflict government of Rwanda (UN S/1994/1115). Rather than request the Secretary-General or the UN Office of Legal Affairs to submit proposals for a Statute, the UNSC itself proposed a draft that closely resembled the ICTY Statute. Ironically, Rwanda, then non-permanent member of the UNSC, was the only state to vote against the Resolution. This has been attributed to the tribunal's statute which did not coincide with its request and expectations (Cruvellier, 2009; Donlon, 2011) as three objections were discernible: no application of the death penalty, location outside of Rwanda and method of appointment of ICTR judges (Peskin, 2008). Ultimately, the ICTR then may be seen as the result of efforts by the international community rather than the government of Rwanda. Nonetheless, considering the tribunal's temporal jurisdiction for example, it has been suggested that 'by an accident of history that gave it a

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[45] Providing a detailed account goes beyond the scope of this chapter. For accounts of recent history in Rwanda, see e.g. Reyntjens, 1990; Prunier, 1995; Des Forges, 1999.

temporary seat on the Council, Rwanda arguably had more influence over the blueprint of the ICTR than its counterparts in the Balkans over the blueprint of the ICTY' (Peskin, 2008: 168). In parallel, *gacaca* jurisdictions were organised in Rwanda, drawing on an allegedly traditional institution of participatory justice which were held 'on the grass' in the past as the name in the language of Kinyarwanda suggests.[46]

With the ICTR the UNSC has been seen to create a 'replica of the ICTY for Rwanda' (Cruvellier, 2009: 10). Both the ICTY and ICTR were set up as *ad hoc* subsidiary organs of the UNSC, established in accordance with articles 7(2), 8 and 29 of the UN Charter (see Sievers & Daws, 2014). The tribunals have faced repeated contestation regarding their establishment and jurisdiction in terms of legality and legitimacy starting with the ICTY's first case.[47] Today it seems beyond any doubt that the establishment of an international tribunal was within the powers of the UNSC (Schabas, 2006). As Alvarez notes,

> The UN Security Council is the *deus ex machina* of the international legal system. […] The Council is empowered to give effect to human rights principles by, for example, adopting a highly malleable interpretation of what constitutes a "threat to the international peace," and can therefore respond to systematic human rights violations through…economic embargoes, the establishment of *ad hoc* criminal tribunals, or intrusive civil administrations of territory (as in Kosovo and East Timor). (Alvarez, 2005: 926)

Another important similarity of the *ad hoc* tribunals is their location outside of the country or region of conflict. Similar to the ICTY, a major line of reasoning to locate the ICTR headquarters outside of the conflict zone underscored security reasons. Arusha, Tanzania, which has been described as the 'perfect choice for the UN tribunal' (Cruvellier, 2009: 6), was chosen as the seat of the ICTR in 1995 (UN S/RES/977), following considerations put forward by the Secretary-General regarding efficiency, costs and proximity to witnesses (UN S/1995/134, para. 35; see also Donlon, 2011). The ICTY and ICTR also were institutionally intrinsically

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[46] On *gacaca* and *gacaca* jurisdictions see e.g. Reyntjens, 1990; Ntampaka, 2000; Clark, 2010; Mironko & Rurangwa, 2007; Ingelaere, 2008; Human Rights Watch, 2011. On the interaction between transitional justice mechanisms in Rwanda also see Schilling, 2005; Palmer, 2015.
[47] See *Tadic* Defence Motion filed on 23 June 1995 and *Tadic* Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction on 2 October 1995.

connected. They initially shared a Prosecutor until 2003 and they still share an Appeals Chamber based in The Hague. The creation of their residual mechanism has anew reinforced their interconnectedness as explored in Section 5.2.

4.1.2. Establishment of the SCSL and ECCC

At the turn of the millennium two new tribunals were created in Sierra Leone and Cambodia whose establishment is detailed next. The new generation of tribunals is often called 'hybrid courts' (Donlon, 2011). Their politicisation has been a marked feature of analysis (see e.g. Romano, Nollkaemper, & Kleffner, 2004; Hamilton & Ramsden, 2004; Sperfeldt, 2013).

SCSL

Following a civil war that raged in Sierra Leone between 1991 and 2002, the Government of Sierra Leone and the UN established the SCSL per Agreement on 16 January 2002 (on the conflict see e.g. Gberie, 2005; Keen, 2005; for a wider history of Sierra Leone see e.g. Harris, 2013). As Scheffer recalls, 'the diplomacy to build the court for Sierra Leone began on May 11, 2000' and shortly thereafter he and Pierre-Richard Prosper, former ICTR prosecutor, began to draft a concept paper for a 'special court' (Scheffer, 2012a: 321). On 12 June 2000 Sierra Leonean President Ahmad Kabbah (1996-1997 and 1998-2007) sent a letter to Secretary-General Annan accompanied by a 'Suggested Framework' (UN S/2000/786, Annex). After further diplomacy and concept drafts, on 9 August 2000, he addressed a request to the UNSC to create 'a strong and credible court that will meet the objectives of bringing justice and ensuring lasting peace' in Sierra Leone and the West African sub-region (UN S/2000/786). Responding promptly the UNSC unanimously adopted Resolution 1315 on 14 August 2000 (UN S/RES/1315). This Resolution did not create the court but rather requested the Secretary-General to negotiate an agreement with the government of Sierra Leone for an independent special court. The Agreement establishing the SCSL was signed on 16 January 2002 and the Parliament of Sierra

Leone enacted the Special Court Agreement Act by March 2002. The question of course arises why a so-called special court was established by international agreement rather than another tribunal modelled on the ICTY and ICTR.

Despite the brutal civil war raging in Sierra Leone the option of establishing a third *ad hoc* tribunal was no longer politically viable given the growing awareness of problems plaguing the twin tribunals on different fronts and a heightened sense of what became known as donor and tribunal fatigue (see Section 4.2.1). There were calls for greater national ownership and involvement and more efficiency and cost reduction. Such calls were heeded in the case of Sierra Leone which ultimately led to the establishment of 'a treaty-based *sui generis* court of mixed jurisdiction and composition' (UN S/2000/915, para. 9). Freetown, the capital of Sierra Leone, was chosen as the seat of the SCSL, in theory by the Headquarters Agreement signed on 21 October 2003, but in practice already a year earlier. This was a significant departure from the twin tribunals which are both not located *in situ*, i.e. located in the country or region where the conflict occurred. It is important to note, however, the final trial was moved to The Hague – that of Charles Taylor, former President of Liberia. This move was officially rationalised by concerns raised about security in the West African region (UN S/RES/1688).

The location of the SCSL *in situ* had implications for legacy building in terms of partnership with civil society and the focus on leaving legacies for Sierra Leone and Sierra Leoneans (see Section 7.2.2). The mode of creation of the SCSL (see Section 4.1.1) also had implications for legacy from the perspective of the SCSL in terms of conditions of legacy building: First, in contrast to the *ad hoc* tribunals, the court was not established by the UNSC pursuant to Chapter VII but by an international treaty between the UN and the government of Sierra Leone; and second, on a related note, the court is not funded from the regular UN budget but from voluntary contributions. Third, more specific to the context of post-conflict Sierra Leone, the co-existence of the SCSL and the Sierra Leone Truth and Reconciliation Commission established in 2003 placed heightened attention on the court to position itself in the post-conflict landscape and to demonstrate its value.

Given the departures from the *ad hoc* model the SCSL often is characterised as belonging to a new generation of tribunals, commonly referred to as hybrid,

mixed or internationalised tribunals (Donlon, 2011). The hybrid character is often seen in the institutional set-up regarding staff composition and applicable law, both international and Sierra Leonean law. In terms of contestation of legal status, in 2004, the SCSL Appeals Chamber declared:

> We come to the conclusion that the Special Court is an international criminal court. The constitutive instruments of the court contain indicia too numerous to enumerate to justify that conclusion. To enumerate those indicia will involve virtually quoting the entire provisions of those instruments. It suffices that having adverted to those provisions, the conclusion we have arrived at is inescapable.[48]

This conclusion by the Appeals Chamber was of considerable significance regarding the possibility of initiating proceedings against Charles Taylor, former President of Liberia. It has been prominently argued that the SCSL 'is a close relative of the "hybrid tribunals", but is more accurately classified with the *ad hoc* tribunals because it is a creature of international law, not domestic law' (Schabas, 2006: 6).

ECCC

After complex multi-year negotiations since 1997 the Agreement between the United Nations and the Royal Government of the Kingdom of Cambodia to establish the ECCC was finalised in June 2003 (ECCC Agreement, 2003). The Agreement was approved by the National Assembly and Senate in October 2004.[49] According to this agreement, the mandate of the ECCC consists of 'bringing to trial senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979'. After a further two years, the ECCC began its operations in February 2006, and became fully operational after the adoption of its Internal Rules in June 2007. In contrast to the

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[48] Taylor (SCSL-2003-01-I), Decision on Immunity from Prosecution, 31 May 2004, para. 6.
[49] Law on the Establishment of the Extraordinary Chambers, with inclusion of amendments as promulgated on 27 October 2004, Chapter I, Art. 1.

UN international tribunals possessing an international legal personality and standing apart from national court systems, the ECCC is an internationally-assisted domestic court as part of the Cambodian judiciary with the UN Assistance to the Khmer Rouge Trials (UNAKRT)[50] providing technical assistance. The politics surrounding the establishment, composition or functioning of the ECCC have been analysed in depth elsewhere, thus are not rehearsed here (see Fawthrop & Jarvis, 2004; Ciorciari, 2006; Whitley, 2006; Ciorcari & Heindel, 2009; Scheffer, 2012a; Ainley, 2014).

The creation of the tribunals is hailed as an historic moment, forcefully putting international criminal justice on the international agenda. From a political perspective, the mere establishment of these tribunals was regarded a considerable achievement. Their coming to life provided critical momentum towards the adoption of the Rome Statute in 1998 and the establishment of the ICC. The progress narrative with regard to international criminal justice and international criminal law has become commonplace and has been rightfully questioned (e.g. Koller, 2012). The next section turns to the early years of the tribunals.

4.2.   Coming to life

Once established, the tribunals were not just content with merely existing on paper or at a more symbolic level. Indeed, senior officials became determined to turn the tribunals into robust organisations, make a difference and fulfil their mandates. Their 'coming to life' proved quite an undertaking, given the myriad political, legal and practical obstacles faced. But the newly established tribunals stayed the course and eventually became fully operational criminal courts and bureaucracies.

4.2.1. Challenges in the early years

Certain critical junctures of institutional development illustrate the major challenges of the early years. The case of the ICTY as first tribunal to come to life is explored as pertinent example below.

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[50] See http://www.unakrt-online.org/ and http://www.eccc.gov.kh/.

Token institution

In the early days of the ICTY in the 1990s it was at first not at all clear whether it would actually come to life and become a fully-fledged international criminal tribunal. The establishment of the ICTY had been hailed as 'critical juncture for the new world order' (Akhavan, 1993: 262). However, serious doubts were raised about the genuine interest of the international community to establish thriving judicial institutions rather than solely token institutions. Indeed, a commonplace critique highlights that the establishment of the tribunals served primarily to assuage guilt for not preventing or stopping the horrendous atrocities committed rather than to actually guarantee international justice (see Maogoto, 2004; Robertson, 2006). Indeed, in the early years the tribunal struggled for survival. Gabrielle Kirk McDonald, former ICTY President (1997-1999), noted she

> often heard it said that the Tribunal was a 'fig leaf' – an expression of the inability or unwillingness of the international community to end the horrific violence. Some doubted the UN had sufficient will for the Tribunal to succeed. Some even suggested that failure was the preferred outcome. Certainly the way that the budgetary requests were treated reasonably allowed one to conclude that there was not an abundance of enthusiasm in New York about the Tribunal (McDonald, 2003: 16).

Although there had been the political will to establish the tribunals, there seemed to be less political will to actually make them work and fulfil their mandates and prevent immediate decline. The international community's forceful backing was floundering from the moment of their creation given the ICTY's token staff and budgets.

Regarding the climate at the ICTY, soon after its establishment, it has been observed that '[t]here was no triumphalism in The Hague, only a gnawing fear that the entire effort would prove pointless, or would discredit the Nuremberg legacy by failing' (Bass, 2000: 5). Furthermore, Bass (2000: 207) criticised states as 'Absent at the Creation':

> After all, the establishment of the Hague tribunal was an act
> of tokenism by the world community, which was largely
> unwilling to intervene in ex-Yugoslavia but did not mind
> creating an institution that would give the *appearance* of
> moral concern. The world would prosecute the crimes that it
> would not prevent. The tribunal was built to flounder (Bass,
> 2000: 213).

However, the prognosis confounds two critiques: on the one hand, that the tribunals served as a post hoc remedy, a legalistic cover-up of political failures to prevent or stop the atrocities, and on the other, that the tribunals were set up in such a way as to ensure failure. In hindsight, the latter critique ignores the empirical reality of no outright failure of the tribunals, and at least partial completion of mandate, and of the continuous investments of the international community and individual states, politically and financially, for two decades. This is not to say that the political and financial commitment could not have been greater and more consistent, but the question of rise and decline needs to be pondered carefully.

Given several challenges described below specifically the twin tribunals were perceived in the early years as a 'toy in the hands of the great powers' (Mégret, 2002: 21). The first ICTY President (1993-1997), the late Antonio Cassese, once suggested a memorable analogy: 'Our tribunal is like a giant who has no arms and legs. To walk and work, he needs artificial limbs. These artificial limbs are the state authorities' (Cassese, 1995). In the US, which by and large has been the strongest supporter of an international tribunal, a political behind-the-scenes game seemed to be played (Scheffer, 2012a). Following the establishment of the ICTY, there was no sense of triumphalism but rather an attempt to temper expectations. Even Madeleine Albright, US Ambassador to the UN (1993-1997) and Secretary of State (1997-2001), the 'mother of all the tribunals' as Goldstone had called her (see Bass, 2000; Scheffer, 2012a), did not appear overconfident regarding arrests and the actual holding of trials: 'The Tribunal will issue indictments whether or not suspects can be taken into custody. They will become international pariahs' (cit. in Bass, 2000: 235). In 1997, the US State Department established a new post of Ambassador-at-large for war crimes issues which showed at least in appearance how seriously the US took the issue of mass atrocities in conflict. Despite the lack of political will, or one might even say despite the political obstructionism at times, the ICTY did eventually become more than a paper tiger despite their humble beginnings. The metaphor of

life of the tribunals has been embraced by tribunal officials (e.g. Cassese, 2004; Wald, 2006a; ICTY, 2009).

Humble beginnings

The tribunals were built from scratch, figuratively and literally. This was the case in terms of drafting Rules of Procedure and Evidence and recruiting staff and in terms of building or procuring tribunal facilities. All three tribunals in their own specific contexts of creation and location started from rather humble beginnings (see Bass, 2000; Cruvellier, 2009).[51] When the tribunals started operating they were not equipped with modern high-tech courtrooms or with fully furnished offices but only provisional facilities.

At the time when the ICTY started its work in The Hague in 1993, for instance, '[t]here were a few computers, and two weeks of rent paid for a few rooms in the Peace Palace, the seat of the International Court of Justice' until the first ICTY President, the late Antonio Cassese, 'set about finding the tribunal a headquarters in a slightly run-down building shared with a Dutch insurance firm, and starting work on a single courtroom and on a twenty-four cell jail' (Bass, 2000: 217). The later courtroom was also used as a conference room until 1994 by the insurance firm Aegon. Indeed, apparently only in late 1994 the ICTY was in the position to sign a lease for its headquarters on Churchillplein in the north of The Hague. Eventually the tribunal took over the entire building which it still occupies, now housing very modern courtroom facilities. Also, over time, other buildings became part of the ICTY complex, for instance, the detention facility and the so-called 'beach building' whose name is due to its location next to a red lighthouse looking onto Scheveningen beach. At the outset it seemed 'all that international justice needed [...] was a couple of tables, a few dozen chairs, one or two interpreters, and a squad of security guards. Form was not yet important' (Cruvellier, 2009: 5). Form became increasingly important however and the tribunals quickly changed appearance, now displaying 'modern courtrooms equipped with digital cameras, flat-panel displays, and infrared microphones where abstruse and laborious proceedings are conducted with a

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[51] Interviews 6 and 13, ICTR officials, 21.06.2011, 24.06.2011.

fastidious respect for form, robes, and decorum' (Cruvellier, 2009: 7). Technological advances in terms of software, data bases and digitisation possibilities certainly shaped judicial proceedings.

Despite their humble beginnings as evident in the number of cases and development of tribunal facilities in the early years, the tribunals started flourishing albeit constantly confronting legal, political and practical challenges.

From a paper tiger to a tribunal with teeth

The nascent international judicial institutions faced enormous challenges and obstacles – in legal, political and practical terms. Many critical commentators have remarked that initially the tribunals had no 'teeth' due to a chronic lack of staff, funding, intelligence cooperation, refusal to arrest individuals indicted, the scarcity of legal and procedural precedent to follow and, finally, for the twin tribunals, the remoteness from the scenes of the crimes (see Askin, 2003). The initial crises did not seem to bode well for the workings of the *ad hoc* tribunals.

The pursuit of justice in ongoing conflict certainly exacerbated certain political obstacles such as the willingness to cooperate and authorise ICTY investigators to gain access to reported crime scenes and witnesses. Initially, the ICTY started investigations of alleged crimes during ongoing conflict in Croatia (1991-95) and Bosnia and Herzegovina (1992-95). Moreover, the ICTY had to face the perceived conflicting demands of justice and peace, getting caught up in what has become known as the 'peace versus justice' debate (see e.g. Maogoto, 2004). The Dayton Accords contained several provisions requiring the parties to cooperate with the ICTY, but in practice this was not followed nor did NATO prove cooperative declining to authorise NATO personnel to seek out war criminals, even after the Dayton Accords. NATO's 'hands-off' policy only changed in the late 1990s, at a time when the international community also increasingly used conditionality for economic aid to the governments in the former Yugoslavia to foster greater cooperation with the ICTY.

Another challenge was the initial absence of a prosecutor and then the existence of one office responsible for both the ICTY and ICTR. The initial selection of a suitable prosecutor appeared an undertaking of trial and error as UNSC members insisted on reaching an agreement by consensus. It has been noted that 'unfortunately, the convoluted search for a prosecutor left the impression that the US and other major powers were talking the talk but not walking the walk, and using almost any excuse to slow down the Yugoslav Tribunal's work' (Scheffer, 2012a: 31). It took 14 months from its establishment to find a suitable candidate the UNSC would approve. Richard Goldstone finally was unanimously approved as Chief Prosecutor by UNSC Resolution 936 (UN S/RES/936, 1994). There was great relief which then ICTY President Cassese expressed in a euphoric letter sent to his fellow judges: 'Dear friends, *Habemus papam*' (cit. in Stuart & Simons, 2009: 50 (emphasis in original)). While waiting for a prosecutor to finally be appointed, the judges had drafted the Rules of Procedure and Evidence and the Deputy Prosecutor had mounted the OTP, recruited first investigators and started preparing some investigations. Goldstone's first indictment was confirmed by the tribunal on 4 November 1994: Dragan Nikolić. The fact that Nikolić only came into ICTY custody in 2000 illustrates the tribunal's initial inability to arrests suspects and gain full cooperation by authorities in the region. The first trial opened against Tadić on 7 May 1996. Tadić was convicted on 7 May 1997 and sentenced to a 27-year prison term.

After a few years many senior figures had been indicted or were still considered for indictment, e.g. Karadžić and Mladić were indicted on 25 July 1995 and newly indicted for genocide, crimes against humanity and war crimes at Srebrenica on 16 November 1995. However, the ICTY seemed to face constant obstruction by Bosnian Serb authorities. Milosević was also ultimately indicted in 1999 for crimes against humanity in Kosovo. When Louise Arbour took office as Prosecutor following Goldstone in 1996 she took the far reaching decision to issue sealed indictments. This change in prosecutorial strategy together with the decision by NATO to change strategy regarding arrests gave the tribunal considerable momentum, not least fuelled by the EU to make ICTY cooperation a condition for membership in the accession negotiations. The importance of the characters and action of individual principals (i.e. President, Prosecutor and Registrar) is often

overlooked. An exception is Hagan's (2003) original sociological study of the development of ICTY from birth to maturity with a focus on the inner workings and individuals who shaped the institution.

Finally, the ICTY faced many challenges due to its remoteness and location in The Hague, a city far removed from the locale of the conflict. In terms of communication with the peoples and professionals in the region of the former Yugoslavia, this was rectified to some extent by then ICTY President Gabrielle Kirk McDonald in 1999 when she launched the ICTY Outreach Programme. This represented an important, forward-looking albeit long overdue effort. Today every international tribunal has an outreach programme, dedicated section and staff which demonstrate the role of outreach alongside the traditional judicial functions of a tribunal. There has been some research on the promises and pitfalls of outreach (see e.g. Clark, 2009), which is also highly relevant to closure and legacy.

Building the tribunals and a novel international criminal justice system from scratch meant that the early years were characterised by many fits and starts and institutional innovations. The tribunals soon developed a greater sense of confidence and institutional independence. Against this backdrop the seminal decision on jurisdiction in the Tadić case in 1995 is worth noting. The Appeals Chamber concluded that although the ICTY had been established as a subsidiary organ to the UNSC, the tribunal could not be considered a '"creation" totally fashioned to the smallest detail by its 'creator' and remaining totally in its power and at its mercy'.[52] In this sense, earlier on it was suggested that the tribunals may pose a 'Frankenstein Problem' (Guzman, 2013) for the UN in light of the classic principal-agent model. The relationship between the UN and the tribunals is further scrutinised with a focus on the completion strategies in Chapter 5. Ultimately, despite a slow start, the tribunals grew far stronger than many sceptics and opponents and even their 'creators', in keeping with the language used, would have imagined since the early 1990s. In short, the paper tigers developed into tribunals 'with teeth'. Their growing strength and presence over the years will be illustrated briefly by turning to the development of their physical infrastructure. The importance of architecture and

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[52] Prosecutor v Tadic, Case No IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 15.

purpose-built facilities has a direct bearing on legacy. Recent discussions on physical material legacies of court sites are reflected in the construction of new permanent premises for the ICC in The Hague (see Dittrich, 2013) and a new premise for the ICTR branch of the residual mechanism in Arusha.

Their powerful metamorphosis from paper tigers to tribunals with teeth gave momentum to their rise – even if the rise to a certain extent continued to occur in fits and starts and with its own moments of decline. As Scheffer concluded, '[e]ach war crimes tribunal built during the 1990s is a story of trial and error, innovative lawmaking, political intrigue, and obstinate personalities' (Scheffer, 2012a: 12). Resorting to the lifecycle metaphor, the tribunals underwent phases of growth and maturity before experiencing decline which is the focus of Chapter 5. But first a brief review of their lives is in order.

4.2.2. Life of the tribunals: A brief empirical record

During their rise the tribunals took on a life of their own after slow, difficult early years, developing their own timelines, principles and dynamics. Taking stock of the tribunals is a complex undertaking and it is not the purpose here to assess their overall performance given that the focus of the thesis is not on the assessment of legacy but of the legacy process. Nevertheless, it is still useful to briefly highlight some facts and figures regarding indictments, cases and budgets based on publically available information as they provide important context for the comparative analysis.

Key figures

A simple case count might be a poor singular measure of success. Achievements cannot be counted in numbers alone and yet the tribunals' self-presentations include a focus on numbers on their respective websites. Measurement of performance in quantifiable figures is a feature of an audit culture the tribunals are

also not exempt from. The number of arrests and trials per tribunal is a commonly used indicator for comparison. However, bearing in mind the low number of initial arrests and NATO policy in the early 1990s, John Shattuck, former US Assistant Secretary of State for Human Rights, noted: 'I would not measure [the] tribunal in terms of how many people go to jail or top-level people, because the number is going to be very low. Success is a commitment to establish principles of accountability, getting out the truth' (cit. in Bass, 2000: 222). In terms of numbers, unsurprisingly, the ICTY as the largest and oldest contemporary tribunal has the most impressive record. The ICTY indicted a total of 161 persons, i.e. nearly twice as many as the ICTR and 15 times as many as the SCSL. What is more, the tribunal apprehended all 161 indictees with the two last remaining fugitives, Ratko Mladić and Goran Hadžić, being arrested on 26 May 2011 and 20 July 2011 respectively. Table 4.1 provides further details.

Table 4.1: Key figures of ICTY cases[53]

The ICTY has indicted 161 persons

Ongoing proceedings: 14 accused in 7 cases
10 before the Appeals Chamber (4 cases)
4 currently at trial (3 cases)

Concluded proceedings: 147 accused in 89 cases
18 acquitted;
80 sentenced, of which
7 awaiting transfer
18 transferred
52 have served their sentence
3 died while serving their sentence;
13 referred to national jurisdiction pursuant to Rule 11*bis*
36 had their indictments withdrawn or are deceased
0 at large

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[53] As of July 2015. Source: Excerpted from 'Key figures of ICTY Cases', last updated 16 April 2015. Retrieved from www.icty.org/sections/TheCases/KeyFigures.

The ICTR has indicted 93 persons for genocide and other serious violations of international humanitarian law committed in 1994. Proceedings for 77 accused have been concluded, including 4 transferred to other jurisdictions. The last trial judgment was delivered by the ICTR in the Ngirabatware case on 20 December 2012. The last appeals case against six defendants is currently before the Appeals Chamber. To date, 9 fugitives remain at large, of which six cases have been transferred to the Rwandan national jurisdiction and three cases have been transferred to the ICTR branch of the Residual Mechanism as examined (on referrals see also Section 5.1.2). Table 4.2 provides details.

Table 4.2: Key figures of ICTR cases[54]

The ICTR has indicted 93 persons

Ongoing proceedings: 6 accused in 1 case
6 before the Appeals Chamber (1 case)

Concluded proceedings: 77 cases
14 acquitted
10 transferred to national jurisdiction pursuant to Rule 11*bis*
34 have served their sentence
2 had their indictment withdrawn before trial
3 deceased
9 at large (6 transferred to Rwanda and 3 to the MICT)

In the case of the SCSL which is mandated to try those who bear the greatest responsibility for crimes committed in Sierra Leone, the Prosecutor issued thirteen indictments in 2003 (see Appendix 3 for details). Three cases against eight accused were completed by October 2009, namely against three former leaders of the Armed Forces Revolutionary Council, two members of the Civil Defence Forces and three former leaders of the Revolutionary United Front. The fourth and final case against Charles Taylor was completed by September 2013. The SCSL then closed in December 2013. Only one person indicted, who is not in custody of the court, is

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[54] As of January 2015. Source: Excerpted from ICTR website and Annual Reports 1994-2014.

Johnny Paul Koroma. After closure of the SCSL the residual court will have jurisdiction to try him (see section 5.2.2). Table 4.3 provides details.

Table 4.3: Key figures of SCSL cases[55]

The SCSL has indicted 13 persons

Ongoing proceedings: 0 cases
0

Concluded proceedings: 4 cases
0 acquitted
9 transferred
3 deceased
1 at large (case transferred to the RSCSL)

Since its establishment in 2003 the ECCC has concluded one case, Case 001 with 76 Civil Parties. Kaing Guek Eav alias Duch, former Chairman of the notorious S-21 security prison in Phnom Penh, was convicted by the Trial Chamber on 26 July 2010 and sentenced to 35 years. The judgment was appealed and on 3 February 2012 the Supreme Court Chamber upheld Duch's conviction and increased the sentence to life imprisonment. Case 002 is still ongoing with 3867 Civil Parties, but has been severed into mini trials. The hearings of Case 002/01 concerning the administrative structures of the Democratic Kampuchea Regime and focusing on the crime of forced transfer, but also including charges of extermination, murder and persecution, have been concluded, and the first trial judgment was rendered on 7 August 2014 for the two co-defendants Nuon Chea, Pol Pot's second-in-command, known as 'Brother Number 2', and Khieu Sampahn, the former Head of State. Two other accused are no longer part of the proceedings: Ieng Sary, former Foreign Minister, passed away on 14 March 2013 and proceedings were terminated with immediate effect. Ieng Thirith, former Minister of Social Affairs, has been found unfit to stand trial due to

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[55] As of December 2013 upon SCSL closure. Source: Excerpted from SCSL website and Annual Reports 2002-2013.

progressive dementia and proceedings were suspended in September 2012. The Supreme Court Chamber had ordered that the second trial against Khieu Samphan and Nuon Chea, Case 002/02, shall commence as soon as possible. There have been ongoing efforts to prepare two more cases, Cases 003 and 004, against members of the military and provincial authorities. After years of speculation and frequent opposition voiced by the Cambodian government to proceed further, International Co-Investigating Judge Mark Harmon charged two persons in absentia, Meas Muth in Case 003 and Im Cheam in Case 004, on 3 March 2015. The developments in Cases 003 and 004 will have implications for legacy building at the ECCC in terms of the temporal horizon of the legacy leaver and ongoing constructions of legacies in light of endings and beginnings.

The case figures are shaped by prosecutorial strategy and decisions over investigation of major crimes bases, arrest warrants and time and resources available. The statistics certainly need to be read in conjunction with an understanding of the EU conditionality policies *vis-à-vis* the Balkan candidate countries and the decisions taken by the ICTY and ICTR respectively with regard to multi-accused versus single-accused cases. The question of who is indicted and tried at the tribunals, in terms of seniority, level of responsibility and side of the conflict has been a matter of contention (e.g. Laughland, 2008; Cruvellier, 2009; Nettelfield, 2010). The ICTY prides itself that among those indicted are Heads of State, prime ministers, army chiefs-of-staff, ministers, high-level military and political leaders from the various ethnic groups in Croatia, Bosnia and Herzegovina, Serbia, Kosovo and the Former Yugoslav Republic of Macedonia.[56] The SCSL has indicted and tried individuals across all three major factions (Armed Forces Revolutionary Council, Civil Defence Forces and Revolutionary United Front). The ICTR has indicted across all levels of seniority. However, it has only indicted Hutus and not members of the Rwandan Patriotic Front. Several attempts appeared to be repeatedly obstructed by the government of Rwanda. This has made the ICTR vulnerable to a most persistent criticism regarding legitimacy and accusations of one-sided justice, 'victor's justice' (e.g. Laughland, 2008; Peskin, 2008) or 'loser's justice' (Cruvellier, 2009). Consequently, these debates and critiques also colour debates on legacy.

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[56] See http://www.icty.org/sections/AbouttheICTY.

Costs of international justice

Between 1993 and 2010 the international community spent approximately $4.7 billion on international criminal tribunals. By the end of 2015, the sum will have increased to an estimated $6.3 billion (Ford, 2011; more recent figures available in McLaughlin, 2015). Funding grew substantially over the years and then decreased with organisational decline. Especially at the SCSL and ECCC chronic underfunding has defined developments. Tribunal officials have incessantly expressed concern about this model of voluntary contributions.[57] The tribunal budgets are reflective of their life cycles (see Figure 4.1).
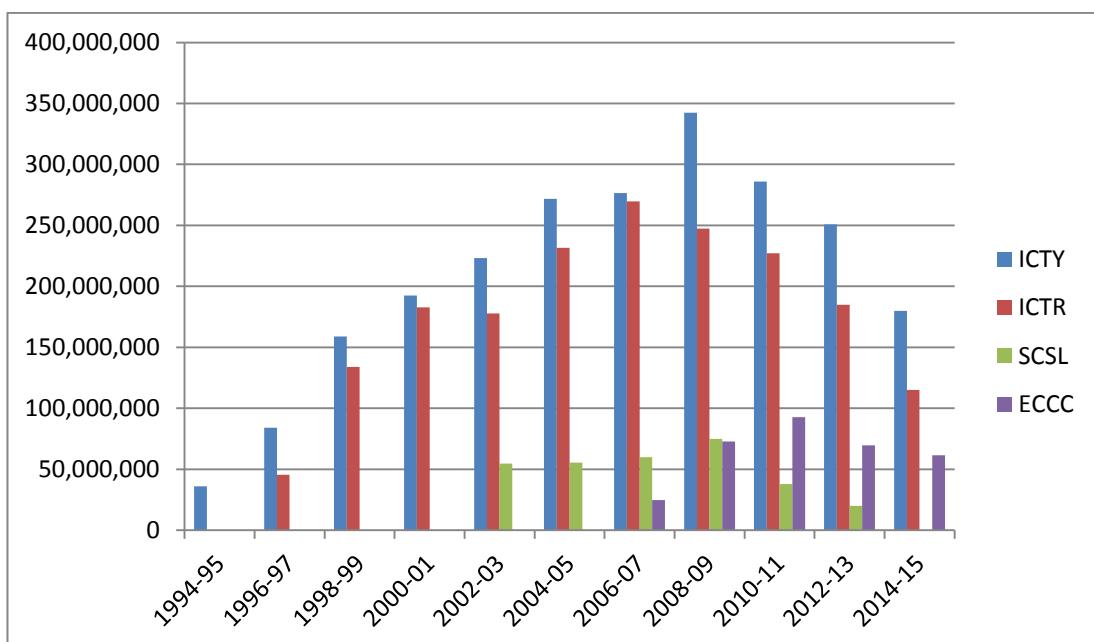
Figure 4.1: Tribunal budgets biannually (1994-2015)[58]

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[57] Interviews 26, SCSL official, 22.08.2011.

[58] Net in US dollar. Sources: ICTY- 'The Cost of Justice', ICTY . Retrieved from http://www.icty.org/sid/325; ICTR - 'General Information, Budget and Staff ', http://69.94.11.53/ENGLISH/geninfo/index.htm and prior 'General Information' for previous years; SCSL – Excerpted from SCSL Annual Reports, 2002-2013; ECCC - Excerpted from ECCC Budget Documents 2005-2009, 2010-2011, revised budget 2012-2013, revised budget 2014-2015; Retrieved from http://www.eccc.gov.kh/en/about-eccc/finances.

One of the loudest recurrent critiques of the tribunals has been their cost. In light of what has been seen as an unduly bureaucratic expansion failings were detected in terms of resources: 'The total number of posts exceeds 2,200 and the combined budgets exceed $250 million per annum and are rising, representing more than 10 per cent of the total annual regular UN budget' (Zacklin, 2004: 543). The costs of justice are briefly surveyed for each tribunal below.

From the time period 1993, with a budget of 276.000$ that year, to 2015 the ICTY will be the most costly international tribunal with an estimated $2.3 billion, while the ICTR will have cost an estimated $1.75 billion and the SCSL will have cost an estimated $257 million (Ford, 2011). The price tag has been a major critique, by donor states, NGOs and for instance by the Rwandan government which repeatedly compares key budget and case figures of the ICTR and the nationally held *gacaca* proceedings. The cost of international criminal trials has been carefully dissected before, also in comparison to domestic universal jurisdiction trials (see e.g. Romano, 2005; Wippman, 2006).

The twin tribunals receive their budgets directly from the UN budget. Thus, subject to approval of the General Assembly, they have an assured budget from year to year, or biennium to biennium. The budgets of the ICTY and ICTR increased steadily over the first ten years, yet the ICTY peaked in the biennium 2008-09 and the ICTR budget in 2006-07 (see Figure 4.1) after which organisational decline was mirrored in the budget. The ICTR is often characterised as the 'poor cousin' of the ICTY, even if this pejorative comparison is simultaneously deplored by those making reference to it. Regrettably for many, this gives the impression, whether real or perceived, that the ICTR is not only 'poorer' than the ICTY in terms of budget allocation but also in terms of quality of work and performance.[59]

The SCSL is not funded through the UN budget but entirely through voluntary contributions from governments. The budget has been considerably smaller than that for the twin tribunals, but also peaked in the years 2008-2009 (see Figure 4.1). By October 2009 only the trial against Taylor remained as fourth and final case before the SCSL. The strongest supporters have been the US, Canada, the

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[59] Interviews, ICTR officials, 06.07.2011.

Netherlands, Nigeria and the UK, but contributions have been received from over 40 states. A so-called Management Committee advises the SCSL on non-judicial matters and oversees financial issues (on the establishment and role of the committee see e.g. Machochoko & Tortora, 2005). Due to funding shortfalls, the SCSL also received subventions from the UN in 2004, 2011 and 2012. The novel system of voluntary contributions has proven a considerable challenge as tribunal officials have needed to use a considerable amount of time for fundraising.[60] This has led to questioning whether a limited budget leads to limited justice, i.e. 'justice on the cheap' (Akin, 2005), 'justice on a shoestring' (MacDonald, 2002) or 'wrong-sizing international justice' (Sriram, 2005). The SCSL, similarly to the ECCC, has faced repeated funding shortfalls requiring emergency funding to stay operational.

Over the years the notion of efficiency of IOs and also of international justice institutions has come to the fore. With acute concern especially since the 2008 financial crisis, the cost of justice has been increasingly monitored to ensure 'value for money'. A recurring common criticism over the years has been that the tribunals are too expensive and too slow and that resources could be better spent (Cobban, 2009; Scheffer, 2012a). The topic of funding modalities and their implications has garnered some attention (Ford, 2011; Kendall, 2011). Nonetheless the cost of justice divides commentators as ever. Tribunal supporters deplore under-investment whereas opponents scrutinise over-investment in these international judicial institutions. Debates over the appropriateness of their cost and the 'price tag' are directly linked to the perception of their achievements and ultimate objectives and to cost-benefit assessments (e.g. Ford, 2011), which will come into sharper relief with regard to legacy funding and financiers later (see Section 7.1).

Notable milestones

The mere establishment and institutional persistence of the tribunals over 10 and 20 years respectively is notable. It is beyond question that 'progress has been generated on many fronts – political, jurisprudential, educational, legal developmental, intellectual, etc. – simply as a result of the ICTY's establishment

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[60] Interview 165, ICC official, 22.08.2013.

and its evolution into a credible, thriving institution' (Askin, 2003: 904). The tribunals have made prosecution a reality for several hundred accused persons and tribunal officials at various staff levels have been eager to play a considerable role in challenging impunity.[61]

The biggest albeit difficult to measure success of the tribunals has been the continuous development of international criminal law. Indeed, regarding the development of international law in substantive and procedural terms the tribunals have been proactive protagonists over the past two decades. Their Rules of Procedure and Evidence have been adopted, reviewed and refined on a continuous basis. Their achievements in confronting some of the most heinous crimes imaginable need to be put into perspective since

> the challenges and complexity that these unprecedented trials faced were unknown at the outset. The consequences of melding of two different judicial approaches and personnel with various legal backgrounds, language issues, transportation issues, and the use of a single prosecutor for both the ICTY and ICTR were not fully realized until the courts were in operation. (Jones, 2010: 184)

Earlier discussions on firsts and achievements and milestones can be seen as antecedents to legacy talk. The tribunals have reiterated narratives about their creation and work and how it has served as impetus for numerous pioneering developments. The ICTY itself claims that it 'has irreversibly changed the landscape of international humanitarian law and provided victims an opportunity to voice the horrors they witnessed and experienced' (ICTY website).[62] The ICTR for instance produced a timeline highlighting its 'milestones' for its new legacy website (see Appendix 3).

Given the initial hesitations, the results are respectable to say the least, even if certain developments and decisions remain very controversial, for instance on the doctrine of joint criminal enterprise (see Swart, Zahar, & Sluiter, 2011). Doing justice to all decisions rendered and their impact is beyond the scope of the thesis. Offering a positive outlook, Schabas and Bernaz have claimed that

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[61] Interviews 179 and 199, ICTR officials, 19.09.2013, 01.10.2013.
[62] http://www.icty.org/sections/AbouttheICTY.

The three *ad hoc* tribunals can be said to have fulfilled their promise. They were more expensive than ever imagined, and they lasted much longer than expected. But each of the three—for the former Yugoslavia, Rwanda and Sierra Leone—brought to justice the leading suspects. They held credible trials, in which the rights of the accused were respected. They acquitted a few of the accused, and delivered stern sentences to those who were convicted of genocide, crimes against humanity and war crimes. (Schabas & Bernaz, 2011: 453)

The ongoing debate whether the tribunals have actually fulfilled their promise links to the ongoing debate which promise in terms of objectives and purpose is taken as a basis in the first place. Ideas about international criminal justice and the objectives of the tribunals had mushroomed. Indeed, '[e]veryone had ideas variously grandiose, minimal, punitive, reconciliatory, dissuasive, and, above all, contradictory' (Cruvellier, 2009: 5). But notwithstanding these debates, there is wide agreement that the now-voluminous and rich body of law these three tribunals leave will guide other criminal trials in the years to come in terms of precedents set either to be followed or departed from (see Schabas, 2006).

The tribunals rose to prominence despite moments of decline. For instance the death of Slobodan Milosević, the most high-profile accused, in ICTY custody in 2006 was such a moment as it was unclear whether the tribunal would survive this setback. While evidently beyond the control of the tribunal, this episode has been presented as one of the most important crisis of its existence.[63] The establishment of the ICTY in 1993 certainly set a precedent as an international institutional response to war crimes, crimes against humanity and genocide. This precedent loomed large when the international community soon after was confronted with mass atrocities and acute calls for justice in Rwanda. The establishment and rise of the *ad hoc* tribunals certainly added momentum to the idea of a permanent court which eventually became reality in 2002, a decade after calls for the first *ad hoc* international tribunal were headed (see e.g. Koller, 2012). Nevertheless, although the tribunals have been working at full capacity on their respective remaining cases, a forceful dynamic of orchestrated decline is highly visible (see Chapter 5).

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[63] Interviews 15 and 25, defence counsel and ICTY staff, 24.06.2011, 01.07.2011.

Conclusion

This chapter reviewed the respective founding moments of the tribunals under examination here, in 1993 (ICTY), 1994 (ICTR), 2002 (SCSL) and 2003 (ECCC) respectively. The politics surrounding their creation can be seen to foreshadow certain dynamics that returned to centre stage in terms of legacy building. Differences in mode of creation, location, funding scheme, mandate formulation and composition of the tribunals have enabled or limited legacy building endeavours and the variability amongst the tribunals. Criticisms aside, commentators commonly declare that the tribunals have set ground-breaking precedents and profoundly shaped and continue to shape the current international legal and political landscape. Such statements by external actors form an important part of legacy consolidation and contestation. Having provided a necessary contextualisation with a review of their origins and of their coming to life, the next chapter turns to their coming to an end and the question of anticipated, announced and orchestrated decline.

Chapter 5

Completion Strategies

Against the backdrop of the organisational developments of the tribunals discussed in the previous chapter, at the turn of the millennium their finiteness came into sharper relief. This triggered heightened considerations of completion. The starting point is that completion represents a legal, political and administrative challenge (see Chapter 2). The main emphasis is placed here on the political dimension. In the following the most significant developments retracing the formalisation process of the completion strategies and the creation of successor organisations is analysed. The cases are drawn on in chronological order, first relating to the ICTY and ICTR and then to the SCSL. This chapter only briefly touches upon the ECCC since a focus on completion has only been publically announced with its first official completion plan published in March 2014.

The chapter is divided into two parts. The first part examines the endgame of the tribunals. The anticipation of closure is explored in relation to their limited lifespan, donor fatigue and drive towards mission completion. Then the analysis turns to the orchestration of decline. A brief chronology of the actual completion strategies is presented highlighting salient dynamics. In the second part, the meaning of completion and closure is discussed in light of the interplay between continuity and discontinuity. The creation of the successor bodies, so-called residual mechanisms, is traced and the relationship between the tribunals and their successor bodies is elucidated.

5.1. Coming to an end

The contemporary *ad hoc* tribunals were not the first international tribunals ever to be established or to be closed down. Notable historical precedents were the Nuremberg and Tokyo Tribunals, which entailed their own respective patterns of rise and decline (Pittman, 2011). Above and beyond any difference between the

respective tribunal generations, closing a tribunal that has been in existence for 10 years (in the case of the SCSL) or 20 years (in the cases of the ICTY and ICTR) represents an undertaking of quite a different magnitude from closing tribunals that were in existence for only one or two years (Acquaviva, 2011a). To provide necessary context for the later discussion of the interplay between completion and continuation (Section 5.2) first it is important to analyse completion as political imperative.

5.1.1. Completion as political imperative

The *ad hoc* tribunals are judicial bodies created by a political body, the UNSC, and do not operate in a political vacuum.[64] To better understand how completion became a political imperative, the analysis draws attention to three dimensions: anticipation of closure, the shift in international climate in terms of political support and fatigue and drive towards accomplishment of mission and mandate completion. To set the scene, the anticipation of the endgame of the tribunals is explored first.

Anticipation of closure

From the outset all contemporary tribunals have been construed as time-bound or temporary in nature, with the notable exception of the permanent ICC. The idea of closing the *ad hoc* tribunals did not really come as a surprise. Even if no one could have anticipated the exact date of closure back in the 1990s or early 2000s they were not created as permanent organisations. Policy makers and practitioners relegated the idea of closure to the back of their minds for quite a while. But anticipation of closure soon grew both in the UN Office of Legal Affairs and the diplomatic corps in New York and within the tribunals at the turn of the new millennium.[65]

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[64] Interview 11, former ICTY official, 23.06.2011.
[65] Interviews 30, 74 and 227, ICTY and ECCC officials, 14.11.2011, 01.10.2012, 20.07.2014.

The lifespan of all three tribunals was explicitly or implicitly limited from the very start. The finite lifespan of the tribunals was conditioned and determined by their very creation. In other words, the prospect of organisational decline and death was built into the institutional design from the beginning. The lifespan of the *ad hoc* tribunals was explicitly linked to the completion of their mandates and restoration and maintenance of peace and security. The Secretary-General's 1993 report presenting the draft statute of the ICTY states that the tribunal was created as

> an enforcement measure under Chapter VII, however, the life span of the international tribunal would be linked to the restoration and maintenance of international peace and security in the territory of the former Yugoslavia, and Security Council decisions related thereto. (UN S/25704, para. 28)

It is worth recalling on this point the exact phrasing of UNSC resolutions 827 and 955 regarding the purpose ICTY and ICTR respectively. In 1993, the UNSC established

> an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1993 and a date to be determined by the Security Council upon restoration of peace. (UN S/RES/827, 1993)

Unlike for the ICTY, the UNSC did not leave open the end point of temporal jurisdiction for the ICTR although again no time horizon for the tribunal's existence was provided. In 1994 the ICTR was established

> for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994. (UN S/RES/955, 1994)

The lifespan of the SCSL was explicitly related to the completion of its mandate as it was anticipated that the original agreement 'shall be terminated by agreement of the Parties upon completion of the judicial activities of the Special Court' (SCSL Agreement, 2002: Art. 23). The purpose of the SCSL was more

limited and focused on the seniority of the accused to be tried, namely 'to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996' (SCSL, 2002: Art. 1). Ultimately, three-year terms of appointment were envisaged for the judges and the Prosecutor in light of the aim to complete trials at first instance within three years. The SCSL itself also refers in its first Annual Report to 'the Court's third and final year' (SCSL, 2003: 31). The original documents were written in a belief that the SCSL would have a relatively brief life compared to the ICTY and ICTR.

In light of these clear stipulations in the founding documents it may seem surprising that a systematic critical reflection or serious debate on their ultimate closure did not surface until a few years ago. A possible reason for the early absence of such a discussion on closure must be seen in the light of the initial hesitations surrounding their creation and possible effectiveness and success (see Section 4.1.2). Also, closing organisations which have turned into sizable bureaucracies after years of operation is not a quotidian undertaking.

Tribunal fatigue

With the advent of the new millennium a new approach to tribunals began to crystallise. Two realisations were at the heart of this new approach, namely that the *ad hoc* tribunals were indeed only *ad hoc* and were perceived to be rather expensive and slow. Criticisms that the tribunals are too costly, too slow and too insignificant continue to be made. The tribunals consequently had to demonstrate their continuing relevance to fight for their very existence. Speeding up judicial proceedings and working towards completion came to be portrayed in an existentialist light. For instance, in 2000 the ICTY Annual Report noted: 'the Tribunal has reached a turning point in its history and that its credibility and the international support it enjoys are at stake' (ICTY, 2000). In particular, the ICTY became the object of continued criticism from Russia, making it clear that the closure of the tribunal is of high

priority.[66] Political considerations and continuous pressure exerted by Russia put the immanent closure of the *ad hoc* tribunals squarely on the agenda of the UNSC.

The overall international climate became increasingly characterised by what is known in government and practitioner circles as 'donor fatigue' (for a critical assessment of the role of donors see Kendall, 2011). Another variant of fatigue was also identified as 'tribunal fatigue' (see e.g. Boas, Schabas, & Scharf, 2012) – a term coined by Scheffer, then Senior Counsel and Advisor to the US Permanent Representative to the UN before becoming the first US Ambassador-at-Large for War Crimes Issues. As Scheffer explained 'tribunal fatigue' relates first and foremost to diminished readiness of the UNSC to establish new tribunals:

> Thereafter "tribunal fatigue" in New York stymied several efforts to replicate Security Council engagement in creating international criminal tribunals for Sierra Leone, Cambodia, Iraq, Burundi, Lebanon, and other situations. But the earlier exercises for the former Yugoslavia and for Rwanda placed the Security Council squarely within the jurisdiction of international criminal justice. (Scheffer, 2015)

In a wider sense, the phenomenon of tribunal fatigue became coupled with donor fatigue in direct relation to investing economically and politically in tribunals, especially the *ad hoc* international model as post-conflict mechanism of accountability and justice. In light of this fatigue establishing other *ad hoc* tribunals became politically difficult and closing the already established tribunals and new courts became a political imperative of a cost reduction and agenda setting, pushed for political reasons by certain states such as Russia's interest in closing the ICTY. The focus shifted to the ultimate completion of their mandate and actual closure in the near future. First estimates of a tentative completion schedule for the ICTY for instance were being reported by 2000 (see Section 5.1.2). In light of the 2008 financial crisis, donor fatigue became prominent yet again.[67]

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[66] In light of the relationship between the governments of Russia and Serbia, the disapproval and opposition expressed by Russia through formal UN channels (especially UNSC and Informal Working Group on International Tribunals) has been referred to as 'open secret' in interviews, e.g. 34, 70 and 74, ICTY officials, 16.11.2011, 27.09.2012, 01.10.2012.

[67] See current discussions about future tribunals for Central African Republic, Kosovo and Sudan as mentioned in Section 1.1.

Here it is worth exploring briefly why closure became such an important matter on the international agenda since 2000. At least three factors deserve some attention. First, a novel institution forcefully entered the tribunal landscape with the establishment of the ICC as permanent institution in The Hague. The ICC officially came into being on 1 July 2002 when the Rome Statute of 17 July 1998 entered into force after 60 states had signed the treaty. The permanent ICC as so-called fourth generation tribunal started focusing on justice in currently ongoing conflicts and was seen as the future of international criminal justice. This enhanced competition over attention given to past conflicts and crimes committed in the former Yugoslavia, Rwanda or Sierra Leone 10 or 20 years ago, and over resources devoted to international criminal justice worldwide. This has been recognised by the *ad hoc* tribunals. For instance, ICTY Prosecutor Serge Brammertz presented the ICTY as offering 'value for money' in an address to the UNSC on 6 December 2010:

> We understand that the international community has finite resources and many competing priorities. We reiterate our commitment to ensuring that the international community's investment in justice and accountability in the former Yugoslavia pay maximum dividends within an acceptable timeframe. (Brammertz, 2010)

Second, internationalised courts, so-called third generation tribunals, were established given the growing awareness and criticism of deficiencies of the purely international *ad hoc* model, including the remote location of tribunals, international law applied and personnel employed. Three notable examples are often seen in the Special Panels for Serious Crimes in East Timor (2000), SCSL (2002) and ECCC (2003). The so-called hybrid model of international justice, combining international and national elements, seemed to have superseded the truly international tribunal model by the early 2000s and consequently the ICTY and ICTR started to lose the attention of the international community.

Third, within the *ad hoc* tribunals a realisation of finiteness started to materialise in light of the fast approaching tenth anniversaries of the ICTY in 2003 and of the ICTR in 2004 which spurred debates on efficiency, achievements and impact. Inside the ICTY and ICTR pressure built up given a heightened sense of international monitoring or scrutiny due to auditing reports around the turn of the millennium. A heightened sense of 'New York is watching' developed, as an

interviewee put it.[68] One could observe efforts regarding the conclusion of the mandate originally being initiated from judges of the ICTY. Also, more serious reflection on palpable finiteness began at the SCSL. Given its precarious financial situation due to the voluntary funding scheme and its inability to meet the projected three-year timeframe, serious efforts started within the SCSL to actively work towards completion. These realisations and efforts found expression in a formalisation process of completion strategies (see Section 5.1.2).

Completion of mission

Within the tribunals the anticipation of closure became intrinsically connected to their own mission. Alongside the language of closure and completion, the language of accomplishment or fulfilment of a 'mission' became pervasive in official documents. Back in 2000 the ICTY urged that the international community 'should allow [...] the Tribunal to accomplish its mission' (ICTY, 2000). As pointed out by Pittman (2011), in an intriguing address to the UN General Assembly on 27 November 2001 the then ICTY President Claude Jorda refers to the completion of mission a remarkable 11 times: (1) 'fulfilment of the International Tribunal's mission', (2) 'bring the mission you conferred on us to the swiftest possible conclusion', (3) 'without which it could not fulfil its mission', (4) 'accomplishing our mission at the earliest opportunity', (5) 'achieve the mission of the International Tribunal within the intended timeframe', (6) 'bringing our mission to a swift close', (7) 'finish our mission as rapidly as possible', (8) 'legal rules available to them for fulfilling their mission', (9) 'so that they may accomplish their mission', (10) 'bring the end of our mission within sight' and (11) 'fulfilling the mission you conferred on us' (cit. in Pittman, 2011). In the context of the pursuit of justice, the language of 'mission' seems misplaced and odd given the dubious connotations of righteousness and superiority echoing a past *mission civilisatrice* aimed at bringing a certain kind of justice to the world.

But what is the so-called 'mission' of the tribunals in their own words? The ICTY mission is portrayed as two-fold and visibly displayed for everyone entering

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[68] Interview 30, defence official, 14.11.2011.

the ICTY: 'Bringing war criminals to justice and justice to victims'.[69] In the ICTY lobby a large banner to the right far side next to the entrance immediately catches your eye and seems to epitomise the mission the tribunal sees as its own. This mission statement also prominently appears on the ICTY website underneath its logo. The mission of 'bringing war criminals to justice' was interpreted by some actors, most prominently by ICTY Prosecutor Carla del Ponte (1999-2007), as a man-hunt against all odds. The title of her memoirs (Del Ponte, 2009) in the original Italian version is revealing of this: *La caccia: Io e i criminali di Guerra.*[70] The arrests of the two last remaining fugitives, Mladić and Hadžić, were celebrated by the ICTY and commentators as important achievement towards completion of its 'mission' and more generally for the enterprise of international criminal justice. A celebratory mood at the ICTY was palpable.[71] Posters were printed and put up in the lobby and individual offices showing that '0 Fugitives' remain. Such commitment is meritorious in many respects, but framing the challenge to end impunity as militant man-hunt raises questions.

The ICTR 'mission' is presented as 'Challenging Impunity', also visible as motto on the ICTR website. Interestingly, at its 10th anniversary the ICC publicised its motto as 'Fighting Impunity', which seems to be a superlative to the ICTR's slogan. Such statements have been viewed critically, in particular by defence counsel who sincerely question whether this should be the 'mission' of a court of law or whether this was merely the mission of the OTP writ large for the court as catchy phrase. An address by ICTR President Khalida Rachid Khan on 24 October 2011, stated broader aims:

> Our mission is to contribute to sustainable peace in Rwanda and the Great Lakes Region by trying those most responsible for the Rwandan genocide. In pursuit of that mission, we have tried to make a difference in the everyday lives of Rwandans by giving victims a voice in our courtrooms and by creating a record of what occurred in Rwanda in 1994.' (Khan, 2011: 1)

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[69] The same phrase is printed on postcards distributed by the ICTY as outreach material.
[70] 'The hunt: Me and the war criminals' (own literal translation by the author), but published under title *Madam Prosecutor: Confrontations with humanity's worst criminal and the culture of impunity* in English. See also DVD Carla's List (2006).
[71] Interview, ICTY official, 11.2011.

The ICTR mission has time and again been presented as even more far-reaching than legal prosecutions, including contribution to peace, a therapeutic platform for victims and the creation of a historical record. This extended mission has important implications for 'completion' and 'legacy'. Whether courtrooms are the best setting to authoritatively create historical records and the dilemma of writing history in international criminal trials has been extensively debated since the Nuremberg trials (e.g. Arendt, 1965; Wilson, 2011).

More recently there has been a focus on a time line for completion whose 'purpose is to make sure that the Tribunal concludes its mission successfully, in a timely way and in coordination with domestic legal systems in the former Yugoslavia'.[72] Back in 2000, when several high-level war crimes suspects still remained at large, some considered the outlook to be rather bleak. For instance, it was argued that '[e]ven if they are finally caught, the overall story of The Hague will be largely a dispiriting one' (Bass, 2000: 208). With hindsight, and 15 years later, this projection seems myopic, one-sided and outdated. The simplicity of dichotomous framings in terms of rise and decline, or success and failure, is an inadequate description as the emphasis on a complex interplay on continuity and discontinuity here suggests (see Section 5.2.1).

In sum, the three factors outline above, namely anticipation of closure, tribunal fatigue and international politics coupled with a drive towards mandate completion within the tribunals, have resulted in a particular organisational development towards closure of the tribunals. This leads to the question how the decline of the tribunals was conceived and managed. It is precisely the management of the decline process that is explored next.

5.1.2. Towards completion strategies

Recognising the special judicial nature of the *ad hoc* tribunals and their finiteness is the first critical starting point. Two papers which alluded to a 'term of expiry' in their titles are thought-provoking by honing the debate on decline and expeditiously closing the tribunals 'at the earliest possible date': 'Best Before Date

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[72]See http://www.icty.org/sid/10016.

Shown' (Acquaviva, 2011b) and 'Da consumarsi preferibilmente entro...' (Cannata & Costi, 2007). Speaking in such terms echoes the naturalised model of organisations. However, as argued earlier in Section 2.2, a tribunal is not like an organic product with a 'natural' expiry date at the end of its lifecycle. Rather, the date of closure of an organisation is the result of a political and legal decision and not the product of any organic process. As Schabas astutely observed,

> at the rate at which each tribunal has operated, there are enough suspects to keep them going for many decades. It would seem that *ad hoc* tribunals are almost by definition confronted with the difficulty of knowing when to stop. Yet they develop a momentum of their own that soon becomes unhinged from the rationale that justified their creation in the first place. (Schabas, 2006: 40)

This 'difficulty of knowing when to stop' linked to the sheer number of criminal suspects is at the heart of the alleged tension between a political and legal imperative of when and how to close the tribunals and the deliberation involved. At the tribunals there seems to have been not much guidance on how to close as there are not many examples of actually closing down a UN organisation or tribunal or entire criminal justice system.[73]

In the last decade a new awareness of the *ad hoc,* temporary nature of the tribunals emerged which led to an increased focus on 'completion' as outlined above. What started as *ad hoc* references to the completion of judicial mandates soon was translated into full-fledged formalised completion *strategies*. All three tribunals examined here have devised so-called situational completion strategies. In contrast to global completion strategies which give consideration to completion issues *ex ante*, situational completion strategies solely consider such issues *in medias res*, i.e. after a tribunal has been created and had become fully operational (Heller, 2012). A brief chronology of important steps towards the formalisation of completion strategies is sketched.

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[73] Interview 197, ICTR official, 01.10.2013.

ICTY and ICTR completion strategies

The development of the completion strategies of the twin tribunals, the ICTY and the ICTR, are intrinsically linked. As parallel developments between the ICTY and ICTR are discernable, they will be discussed together.

'At the earliest possible date'

The origins of the completion strategies of the ICTY and ICTR can be traced in a series of formal letters, statements and reports by the Tribunal Presidents, the Secretary-General and the UNSC from 2000 to 2003 (for detailed overview see Pittman, 2011). The first mention of conclusion of the judicial work appeared in the 7th ICTY Annual Report in 2000 referring to back to considerations by the tribunal at the end of 1999:

> In November 1999, the new President, the Judges, the Registrar and the Chamber Legal Support Service began to consider ways to permit the Tribunal to accomplish its mission more effectively and to deal with its greatly increased workload. They concluded that the work of the Tribunal, as it currently stands and taking into account the Prosecutor's penal policy could go until 2016 if no change were to be made (ICTY, 2000).

An extraordinary plenary meeting was held in April 2000 during which the judges discussed various 'solutions' to this impasse. Ultimately, they drew up the plan to have a pool of *ad litem* judges to increasing the tribunal's trial capacity.

The future closure of the tribunal is mentioned for the first time in an official document on 12 May 2000 in a letter from then ICTY President Judge Claude Jorda to the UN Secretary-General (see Pittman, 2011). A month later, on 14 June 2000, a similar letter by then ICTR President Judge Navanethem Pillay reached the Secretary-General. Following these letters to the Secretary-General a first report was presented to the UNSC on 20 June 2000 (UN A/55/382-S/2000/865). In response to these letters and a letter from the Secretary-General to the President of the UNSC dated 7 September 2000, the UNSC adopted Resolution 1329 on 5 December 2000,

the first resolution calling 'to expedite the conclusion of their work at the earliest possible date'. The key decisions of Resolution 1329 concerned the establishment of a pool of *ad litem* judges in the ICTY, enlarged membership of the combined Appeals Chamber, election of two additional judges for the ICTR and a request to the Secretary-General 'to submit to the Security Council, as soon as possible, a report containing an assessment and proposals regarding the date ending the temporal jurisdiction of the International Criminal Tribunal for the Former Yugoslavia' (UN S/RES/1329). Three areas towards completion were highlighted in particular in the preamble: (1) reform measures, especially improvement of the Rules of Procedures and Evidence to speed up proceedings, (2) focus on civilian, military and paramilitary leaders in preference to minor actors and (3) suspension of indictments.

The first formalisation of the ICTY completion strategy took shape in a 27-page *Report on the Judicial Status of the International Criminal Tribunal for the former Yugoslavia and the Prospects for Referring Certain Cases to National Courts* annexed to a letter from Judge Jorda to the Secretary-General dated 10 June 2002 (ICTY, 2002). The completion strategy conceived of completion as a three-stage process: (1) cessation of prosecutorial investigations (by end of 2004), (2) closing of all first instance trial activities (by end of 2008) and (3) all appellate proceedings (by end of 2010). This provided the blueprint for a three-pronged approach.

The ICTR presented the first draft of its formal completion strategy on 14 July 2003 (ICTR, 2003, Annex, para. 2). On 28 August 2003 the UNSC issued Resolution 1503 in which it urged the ICTR

> to formalize a detailed strategy, modelled on the ICTY Completion Strategy, to transfer cases involving intermediate- and lower-rank accused to competent national jurisdictions, as appropriate, including Rwanda in order to allow the ICTR to achieve its objective (UN S/RES/1503: preamble).

The following timeline was devised. Completion of investigations at the international criminal tribunals was expected by the end of 2004, all trial activities at first instance by the end of 2008, and all of its work by 2010 (UN S/RES/1503, preamble). In Resolution 1503 the UNSC requested the ICTY and ICTR Presidents

and Prosecutors to explain the progress made on the completion strategies in their annual reports. The most important decision was the amendment of Article 15 of the ICTR Statute and the announcement to no longer have a joint Prosecutor. Hassan Jallow became the ICTR Prosecutor.

A second UNSC resolution was issued a year later on 26 March 2004 (UN S/RES/1534) addressing both the ICTY and the ICTR. Resolution 1534 recalls the Completion Strategies endorsed by the UNSC and shows both determination and concern to fully implement the strategies by the dates set out previously. An important addition to Resolution 1503 was the biannual reporting request on the progress made towards implementation of the completion strategy by each tribunal. This meant that the Presidents and Prosecutors have presented two completion strategy reports per year, totaling 23 reports as of July 2015. Interestingly, the issuance dates of these resolutions coincided roughly with the tenth anniversaries of the ICTY and the ICTR, in 2003 and 2004, respectively.

The lifespan of the *ad hoc* tribunals was explicitly linked to the completion of their mandates and restoration and maintenance of peace and security. The ICTR is set to close following the last appeal judgment expected in the last quarter of 2015.[74] As the debate on completion became more serious and nuanced and criticisms of failure became prominent (see e.g. Zacklin, 2004; Reydams, 2005; Cruvellier, 2006), the international community showed increasing resolve to monitor more closely the work, efficiency and effectiveness of the tribunals. More attention was simultaneously paid to what will remain once the tribunals conclude their work, what should remain and how the institutions will and should be remembered. As the political pressure to close grows, three separate yet related issues appear most prominent and pressing in the current political and legal considerations: completion of mandate, residual functions and legacy.

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[74] See www.unictr.org/en/news/ictr-expected-close-down-2015.

A roadmap for completion

The completion strategies set out timeframes for the judicial milestones necessary for the completion of the respective tribunal's mandate. Their conceptualisation and subsequent implementation has however been the object of criticism both from within and outside the tribunals. Ultimately, the strategies can be seen affected by the conflicting demands of expediency and the demands of justice. Expediency seems to have been a driver of the conceptualisation and endorsement of completion strategies, in particular by the UNSC and the international community. There has been continuous reference to completion 'at the earliest possible date' (e.g. UN S/RES/1329, preamble). The UNSC, moreover, 'noting with concern indications [...], that it might not be possible to implement the Completion Strategies set out in resolution 1503', in Resolution 1534 'urges each Tribunal to plan and act accordingly' and declares 'the Council's determination to review the situation [...] to ensure that the timeframes set out in the Completion Strategies and endorsed by resolution 1503 (2003) can be met' (UN S/RES/1534, preamble, Art. 3 and 7).

The origins of the completion strategies and implications of the process still give rise to ambiguous accounts today. On the one hand, its origins are perceived to be located within the ICTY. Then ICTY President Jorda initiated planning and first timelines were drawn up.[75] Former ICTY President, Judge Fausto Pocar (2008: 657) concludes, 'it would be wrong to suggest that the Security Council imposed the Completion Strategy upon the Tribunal. It was actually the ICTY that proposed this course of action, and it did so in a creative and courageous way'. On the other hand, the completion strategies remain to be critically perceived as a top-down imposition by the UNSC given the pressure created, especially at the ICTR.[76] At the management level officials came to accept the completion strategies that were 'not just contrived overnight', however 'the average staff member was surprised'.[77] In this sense, a certain asymmetry of information among different echelons of staff about discussions between senior tribunal officials and the UN Office of Legal Affairs existed.

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[75] Interviews 47, 74 and 133, ICTY officials and professor, 24.08.2012, 01.10.2012, 12.04.2013.
[76] Interview 180, ICTR official, 20.09.2013.
[77] Interview 182, ICTR official, 20.09.2013.

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The completion strategies and derived procedural reforms to 'speed up' trials have been both welcomed in the light of fair trial rights, rights to a speedy trial and due process, but have also been vehemently criticised as incompatible with an independent administration of justice. Many judges said that they 'will not dance at the pace of the completion strategy' and have adamantly emphasised their independence.[78] It is beyond the scope of the thesis to engage in any legal discussion on the existence or absence of 'judicial effects' of the completion strategies, which have been debated by international legal practioners (e.g. Johnson, 2005; Mundis, 2005; Dieckmann & Kerrl, 2008). Ultimately, it seems that political demands of expediency and efficiency may not over-ride core demands of justice at a tribunal. The presentations and debate at the 6228th Meeting of the UNSC on 3 December 2009 are interesting in this regard. A UN press release, dramatically titled 'Justice supersedes Completion Strategy Deadlines for International Criminal Tribunals in Security Council Debate' was released the same day.[79] The politics and the law surrounding the completion strategies have been debated, both by actors outside of the process and by participating actors (e.g. Raab, 2005; Møse, 2008; Llewellyn, 2010; Frisso, 2011; Landale & Llewellyn, 2011; McIntyre, 2011; Mundis, 2011).

Completion has remained a moving target. Completion strategies have been repeatedly revised. It soon became clear that the initial dates of 2004, 2008 and 2010 for the twin tribunals, as outlined in Resolutions 1503 and 1534, were too optimistic and stringent if considered deadlines rather than projected target dates. As a result of the complexity of trials, unforeseen circumstances and delays, late arrests of two last remaining fugitives Mladić and Hadžić in May and July 2011 respectively, revisions have taken place on a regular basis. One tribunal expert evoked the analogy of a 'chewing gum… which gets being pulled and pulled'.[80] When the Appeals Chamber Schedule Working Group, working under the auspices of the Vice-President of the ICTY, had to make major adjustments and postponed dates for completion, the issue of legacy came into focus (discussed in greater detail in Chapters 6 to 8).[81]

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[78] Interviews 70 and 182, ICTY and ICTR officials, 27.09.2012, 20.09.2013.
[79] See http://www.un.org/press/en/2009/sc9801.doc.htm.
[80]Interview 232, former ECCC official, 07.10.2014.
[81] Interview 25, ICTY official, 01.07.2011.

SCSL completion strategy

When the SCSL was established in 2002 discussions on completion had taken hold at the *ad hoc* tribunals. A focus on completion was existent from the very beginning. Already the 1st Annual Report shows reflection of the impending organisational decline and death. It is mentioned that while the court 'is still very much in its infancy, yet it has no significant life expectancy given its mandate and funding' (SCSL, 2003: 31). Specific planning towards completion and thus orchestration of decline became a focus early on. The 1st Annual report further notes: 'Looking further ahead to the Court's third and final year, […] it is crucial that planning begins now for the completion of its mandate as set out in the Agreement and the Statute' (SCSL, 2003: 31) During the first year of operations preliminary work was conducted with the aim of producing an 'Exit and Completion Strategy document'. The document was circulated for discussion and the Management Committee was seized. Further concrete efforts then took shape in 2004. From August 2004, a Completion Strategy Coordinator started work in order to coordinate a strategy in term of 'both residual and legacy activities' (SCSL, 2005a: 23).

On 6 October 2004, the SCSL Management Committee adopted the first Completion Strategy document (SCSL, 2005a). On 24 May 2005 the UNSC endorsed the updated Completion Strategy. Due to the unexpected length of Taylor's testimony who took the witness stand from 14 July 2009 to 5 February 2010 the SCSL completion strategy was revised three times over a period of 12 months, in December 2009, June 2010 and December 2010. In the meantime, Fidelma Donlon (2008), who went on to become SCSL Deputy Registrar, was hired as expert consultant and produced a *Report on the residual functions and residual institution options of the Special Court for Sierra Leone.* Three priority working areas were identified in the completion strategy: completion of Charles Taylor trial, transition to the residual Special Court and transfer of the court site and assets to the Government of Sierra Leone. In its completion strategy the SCSL established a Retention Strategy and Guidelines for Reduction of Staff/ Reintegration Allowance, i.e. a revised personnel policy. In light of this, the SCSL also established an Advisory Committee on Personnel Questions which reports to the SCSL Registrar (see SCSL, 2011a).

What is of direct relevance to the arguments put forth in this thesis regarding the pioneering role of the SCSL in terms of legacy building is the conception of its completion strategy. Three phases of the SCSL completion strategy were distinguished back in 2004: 'The Completion Phase (Completion of the Trials and Appeals), The Post-Completion Phase (Residual Judicial Functions) and The Legacy Phase (Impact on Sierra Leone After the Court's Departure)' (SCSL, 2005a: 25). In this sense, legacy has been brought into the picture early on at the SCSL to complement the focus on completion and closure. The developments at the ECCC paint quite a different picture.

ECCC completion strategy

The ECCC presented its first official Completion Plan in March 2014, nearly a decade after its establishment (ECCC, 2014a). Compared to other tribunals, a formalised completion plan for the ECCC was developed and presented rather late in the tribunal's lifecycle if judged by a strict temporal comparison. The initial timeline of three years has been revised. The need to develop a completion plan was highlighted already four years earlier by civil society (Open Society Justice Initiative, 2010). The UN Secretary-General formally advised the General Assembly in October 2013 that the ECCC's indicative court schedule 'projects judicial activity until 2018, and possibly beyond' (UN A/68/532: para. 38). Upon recommendation by the Fifth Committee, a proposal before the General Assembly was concerned with mandating the ECCC to elaborate a completion strategy (see UN A/268/7/Add. 12, §32(e)) as this was seen as a formalised requirement for funding arrangements under the UN subvention system. The ECCC Completion Plan, which is revised and updated quarterly, was first developed in March 2014 'through consultation by the Office of Administration with the Judges of the Chambers, the Co-Investigating Judges and the Co-Prosecutors for their respective responsibilities' (ECCC, 2014a). It is currently anticipated that the last judicial milestone will be reached in summer 2019. The actual publication of a completion strategy remains a 'mystery' to some ECCC officials and close tribunal observers since there has been some speculation as to the authorship and provenance of the document within the tribunal and the interest

on the international and national side in a concrete roadmap for closure.[82] Since March 2014 four revised completion plans have been published. The most recent plan dates from 31 March 2015.

As has become evident, a development that began with *ad hoc* references to completion has become formalised and institutionalised. Each of the four tribunals examined here has presented its own completion strategy. The aim is shared, namely completing the mandate in light of judicial considerations, however the timing and processes have differed between the *ad hoc* tribunals and the SCSL and ECCC, both in terms of design and implementation.

5.2. From end to new beginning

When discussions about completion and ultimate closure became more palpable, tribunal officials turned to a more careful consideration of how to complete their mandate and judicial work, how to close and yet simultaneously how to ensure organisational continuity. This is an indication of heightened reflexivity within the tribunals and purposeful orchestration of the decline and setting the stage for legacy building from within.

5.2.1. From completion to continuation

Winding down organisations and large-scale bureaucracies such as the tribunals is a complex undertaking involving many political, legal and administrative decisions and ongoing bureaucratic, communicative and social processes. Closing a tribunal is a particular challenge even if closing any organisation is a multifarious process. It soon became clear that concluding its main activities, finishing its last cases and subsequently simply 'closing its doors' was not an option for the tribunals. The closure of the contemporary tribunals appears novel in relation to many facets of the process, particularly regarding the interest in legacy which is the main focus of

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[82] Interviews 227, 228 230, UN official and former ECCC officials, 20.07.2014, 18.08.2014, 30.09.2014.

this thesis. Concrete realities of closing any organisation have proven salient for the tribunals, such as downsizing, changes in organisational culture and material liquidation of buildings and assets, which however are beyond the scope of this chapter. In practice, the road towards termination of all judicial work and ultimate closure has turned out to be rocky with many challenges to be mastered on the personnel, budgetary and organisational fronts and strategies to be developed. A heightened focus on temporariness led to the conception of decline as an 'orchestrated decline' (Guy, 1989) as discussed in Section 2.2.1.

Language of completion

The language of completion became important politically speaking once the imperative to close crystallised (see Section 5.1.1). The actual coining of the phrase 'completion strategy' has been attributed to an ICTY press release on 23 April 2002 following an extraordinary plenary session of the ICTY Judges on the prospect of referral of cases to domestic courts in the region of the former Yugoslavia. The question arises whether 'completion' is an accurate description, a euphemism or wrong label altogether. On closer examination the language of completion and closure seems misleading. [83] It might be politically necessary *vis-à-vis* the political pressures to wind down and complete the mandate or mission as just outlined, but has worrying connotations. Especially constituent groups in the affected countries have found the expressions worrying as they imply that a tribunal 'literally will close its doors and all staff will run away'.[84]

In 2008 a certain reinterpretation or even rebranding of the completion strategy was attempted. Then ICTY President Judge Fausto Pocar argued that the ICTY's completion strategy is best understood as continuation strategy, a strategy of continued legacy building (see Pocar, 2008). Indeed, it is 'not so much a strategy to 'complete' the work of the ICTY as it is a strategy designed to allow continuation by local actors of those activities that were initially 'kicked off' by the ICTY under the mandate of the Security Council' (Pocar, 2008: 661). The continuation of the ICTY's

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[83] Interview 8, SCSL official, 22.06.2011.
[84] Interview 7, SCSL official, 22.06.2011.

work by domestic jurisdictions is seen as natural since it involves 'returning cases to where they belong' (Pocar, 2008: 661). In a sense this resembles a positive complementarity approach. Judicial law reforms in the region have been connected to the completion strategies of the tribunal but will continue after they close (see e.g. Barria & Roper, 2008).

A forward-looking reinterpretation of completion in the light of continuation can also be observed within the tribunals themselves. This seems to be strongly linked to meaning making and self-valuation. For many, the spectre of organisational death does not necessarily represent 'the end'. As one SCSL official noted: 'I don't see death, I see continuation.'[85] As Pocar (2008) outlines the ICTY's legacy will live on in the region. The courts in the region which are in a way continuing the work are seen to play an important role in legacy formation. For instance, it was noted that the 'ICTY has created offspring'[86] which speaks to the logic of continuation and living on through others.

It is important to appreciate however that completion and continuation are not mutually exclusive. Hence, the question whether it is or should be called either a completion or a continuation strategy poses the wrong question. Different actors are involved in the long term. The tribunal in question completes its work while the work is being carried forward and continued by other tribunals and successor organisations once the tribunals as legacy leavers have ceased to exist. A focus on continuation besides or beyond completion has increasingly allowed attention to turn to post-closure issues. Within the tribunals there is an ever greater focus on legacy and residual issues which are explored in Section 5.2.2.

Beyond rise and decline

The narrative arch of 'rise and decline' often frames accounts of organisational development. The development of international criminal justice and law and war crimes trials has been portrayed in terms of rise (Anderson, 2009), rise and fall (e.g. Smith, 2012), and even rise and fall and rise (Akhavan, 2013). The

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[85] Interview 22, ICTY official, 30.06.2011.
[86] Interview 25, ICTY official, 01.07.2011.

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pertinent metaphor of 'rise and decline' and variations thereof, for instance the common variant 'rise and fall', are widely used in scholarship on international law (see e.g. Weiss, 2000; Koskenniemi, 2001; Reydams, 2010). It is to the orchestration of decline the thesis turns to shortly. *Vis-à-vis* pending closure, different manifestations or meanings of organisational decline are imaginable. For instance, organisations may experience decline in importance, quality, support and size. In the following the latter two dimensions of decline which are logically connected and have proven most salient for the tribunals in question will be explored in more depth. The theme of decline in importance linked to a threat of loss of meaning is raised through the analysis of legacy strategies and legacy formation in Chapters 6 to 8.

Arguably, organisational decline of the tribunals which is announced, anticipated and orchestrated represents organisational success rather than failure, and rise rather than decline. The closure of the tribunals represents organisational decline in many respects as the institutions are downsizing, completing cases and winding down and ultimately will be institutionally dissolved. However, keeping in mind the initial hesitation and continuous political obstacles, their closure also epitomises their success and symbolic rise since the tribunals are working towards the completion of their mandate and finishing their last, and often most high profile, cases and handing back cases to countries of the former Yugoslavia or to Rwanda. Indeed, as one interviewee said, 'coming to an end is also a success criterion'.[87] Scheffer also noted the high on which the ICTY is ending in terms of mandate completion: 'The remarkable fact that frankly no one predicted in 1993 is that the Yugoslav Tribunal stands on the precipice of accomplishing its mandate' (Scheffer, 2015).

Although adhering to the bipartite dichotomy of rise and decline as organisational framing device, the thesis suggests challenging this simplistic narrative. On the one hand, it deserves highlighting again that decline was built into the institutional design of the tribunals from the outset given their limited life spans and mandates. During their rise they had to face pressures for completion and decline linked to the growing sense of tribunal fatigue and also faced serious moments of crisis, including death of high-level accused and political obstructionism. On the other hand, the tribunals continue to rise while trying their last, often high-profile

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[87] Interview 14, ICTY official, 24.06.2011.

cases, completing their mandates and thus actively working towards closure and ultimately their own decline. As one interviewee put it, with a hint of irony, 'we are ensuring that we close down'.[88] Indeed, rise and decline are not separate, successive episodes in the tribunals' lives but seem interwoven in a complex manner into the lifecycles of the tribunals.

Reactions to a death foretold

When considering the temporality of the closure process of the tribunals, the process is characterised here as 'slow' death (on distinction between slow and sudden death (Argenti, 1976; D'Aveni, 1989) see Section 2.2.1). Put simply, life continued while the tribunals were *en route* to closing. Two reactions to anticipated organisational death are outlined.

Frist, the impending closure, and anticipated organisational death, came to be widely accepted. It has been observed 'Everybody knows the court is closing'.[89] Another interesting dynamic can be observed: not only acceptance but embracing of death. For instance, some interviewees reiterated this sentiment emphasising that the closure represents successful completion of mandate: 'We are working towards death'[90] and 'we are looking forward to death. We are working for it.'[91] Second, tribunal officials have developed strategies to deal with the anticipated death. Various coping strategies to minimise uncertainty have been developed. It has been noted that while the tribunals have completion strategies individuals within the organisation have their own exit strategies.[92] Two levels are distinguished here: Individual survival strategies and coping strategies facilitated by the tribunals. The scarcity of jobs and scramble over the extension of contracts and few existent jobs in the tribunals and successor organisations has led to fierce competition and low morale. Interviewees have confirmed the dense psychological atmosphere, for instance by referring to the metaphor of 'rats deserting a sinking ship' and observing

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[88] Interview 25, ICTY official, 01.07.2011.
[89] Interview 9, SCSL official, 22.06.2011, see also interview 1, SCSL official, 20.06.2011.
[90] Interview 25, ICTY official, 01.07.2011.
[91] Interview 18, ICTR official, 27.06.2011.
[92] Interview 4, ICTR official, 21.06.2011.

that 'people who are leaving are seen as deserters, those staying as martyrs'.[93] Another example of a career perspective comes from the SCSL. SCSL President King has repeatedly insisted on bringing the absence of pensions for SCSL judges to the attention, most recently at the closing ceremony of the SCSL at the President of Sierra Leone's State House in Freetown in December 2013. More generally, from a career perspective on the difference between the *ad hoc* tribunals and the SCSL, it has been observed that 'Unlike ICTY and ICTR where people actually had careers, SCSL was always thought of as short-term project'.[94] It is beyond the scope of the thesis to provide a detailed psychological or sociological analysis. Put simply, suffice it to say that the spectre of organisational demise has had effects on the individual and collective psyche within the tribunals which has had a bearing on the social lives of organisations. The *ad hoc* tribunals themselves have engaged in facilitation of transition. The holding of job fairs was pioneered by the ICTR and taken up by the ICTY.[95] In addition, career offices were created. A UN Career Transition Office was created whose services have been used by hundreds of ICTY staff, including senior tribunal officials.[96] No such formal structure was put in place at the other tribunals to accompany staff members' individual exits and transitions.

The two reactions outlined above can be characterised as 'acceptance' and 'dealing' with organisational death. These correspond loosely to the latter two of three phases of organisational death identified by Sutton (1983), namely disbelief, acceptance and dealing (see Section 2.2.2).

5.2.2. Invention of successor organisations

The acknowledgement of post-completion issues relating to the functioning and completion of mandate of the tribunals led to a major new development: the creation of new organisations, so-called residual mechanisms. It is to this important development that has shaped the meaning of organisational death of the tribunals the chapter turns to here. The tribunals gradually discovered important closure and post-

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[93] Interview 17, ICTY defence assistant, 27.06.2011.
[94] Interview 10, SCSL officials, 22.06.2011.
[95] Interviews 4, ICTR official, 21.06.2011.
[96] Interviews 220 and 221, ICTY officials, 13.05.2014.

closure matters they had to deal with. Indeed, if the completion of mandate is paramount, then there are ongoing obligations, or so-called residual functions, that continue well after any last case has been tried. Due to the special nature of a judicial institution and its work ongoing legal obligations include, for instance, oversight and revision of sentences, protection of witnesses, contempt of court cases, fugitives and management of archives, to name but a few. Moreover, there was a heightened concern about legacy and about how the closure will affect the impact and image of the respective tribunal. The three elements of 'completion', 'residual' and 'legacy', have gradually become part and parcel of tribunal parlance. The three issues are often discussed together, particularly in relation to residual functions and legacy, and at times even are collapsed into a single challenge. Although the challenges are obviously interrelated, they can and should be separated for analytical purposes.

Identification of residual functions

It soon became clear that concluding its main activities, finishing its last cases and subsequently simply closing its doors was not an option for any tribunal. The work of a judicial institution continues well after its last case has been tried. Ongoing obligations or residual functions include judicial, registry, prosecutorial and defence activities. Most prominent obligations relate to remaining fugitives at large, long prison sentences, continued witness protection and management of the archives. A significant number of experts were consulted (see Aptel, 2008; Oosthuizen, 2008; Oosthuizen & Schaeffer, 2008; Reiger, 2009; Oosterveld, 2010) and prepared expert meetings and provided input.

Due to the special nature of a judicial institution and its work core ongoing obligations exist. In 2009, the Secretary–General identified eight residual functions in his *Report on the Administrative and Budgetary Aspects of the Options for Possible Locations for the Archives of the ICTY and the ICTR and the Seat of the Residual Mechanism(s) for the Tribunals* written upon request by the UNSC in its Presidential Statement of 19 December 2008 (UN S/2009/258). Post-closure obligations include judicial, registry, prosecutorial and defence activities and residual functions include for instance, oversight or revision of sentences, protection

of witnesses, contempt of court cases, tracking of fugitives and management of archives. The primary residual function is trying remaining fugitives as the ICTR referred three fugitive cases (Augustin Bizimana, Félicien Kabuga and Protais Mpiranya) to the Residual Mechanism. Six fugitive cases have been referred to Rwandan jurisdiction under Rule 11*bis*. Lifting some of the burden of the tribunal's workload is not the only function of Rule 11*bis*. While the possibility of referrals is a consequence of the evolving capacity of national courts within the territory of the former Yugoslavia and Rwanda to deal with complex cases involving international crimes, referrals are also aimed at enhancing the national capacity to prosecute the most serious international crimes (see e.g. Mujuzi, 2010). The process of transfer was particularly challenging in the case of Rwanda in light of the challenge of finding countries for transfer, not antagonising Rwanda and in-house problems such as strikes of prisoners.

The location of the Residual Mechanism and the archives has been a bone of contention for the Rwandan government. This question has turned into a political challenge between the government of Rwanda and Tanzania that will host the archives. According to the Statute of the Residual Mechanism, the archives are to be co-located with the respective branches, i.e. in The Hague and Arusha. The tribunals' records outlive the tribunals' lifespan. Hence, the role of archives in terms of legacy building has received considerable emphasis (see e.g. Peterson, 2006; Adami, 2007; Ketelaar, 2008; Emmerson, 2011; Marchi-Uhel, 2011; Pillay, 2011; Sisk, 2011; Campbell, 2012; Caswell, 2014).

So-called residual mechanisms were created as new bodies in the logic of continuing the work of the *ad hoc* tribunals. On 22 December 2010 with a vote of 14 to none, with one abstention (Russian Federation), the UNSC adopted Resolution 1966 establishing the International Residual Mechanism for Criminal Tribunals (UN S/RES/1966). The new mechanism has two branches, one for the ICTY in The Hague which started functioning on 1 July 2013 and one for the ICTR in Arusha which started functioning on 1 July 2012. The Residual Mechanism, also referred to as MICT, has started functioning and issued first judicial decisions, inter alia the Appeals Judgment in December 2014. Moreover, the Residual Mechanism is tasked with preserving and sustaining the legacy of the tribunals.

In order to ensure that the imminent closure of the tribunals does not result in impunity the trial of remaining fugitives is the primary residual function. Since the arrest of Ratko Mladić and Goran Hadžić, on 26 May 2011 and on 20 July 2011 respectively, the ICTY has no more indictees remaining at large. The ICTR however still has 9 remaining fugitives at large. Three of these are high level and would necessitate trials at the international level (Augustin Bizimana, Félicien Kabuga and Protais Mpiranya) while the others may be referred to national jurisdictions under Rule 11*bis* (see part 3.2.). Also, at the SCSL one indictee still remains at large, Johnny Paul Koroma. A serious concern for all tribunals has been the existence of fugitives at large, especially high-profile indictees. A question pondered was how to bring these to justice if the tribunal in question is closed before they are arrested (see Riznik, 2009). In a speech on 15 December, 2006 former ICTY President Robinson underlined,

> It would be a lasting stain on the legacy of the Tribunal if these accused were to remain untried by the Tribunal and would send the wrong message with respect to the international community's commitment to the former Yugoslavia. We must forge ahead together to see the work of the International Tribunal through not only for historic reasons, but more importantly, for the cause of international justice and the continued fight against impunity in the interests of promoting international peace and security. (UN S/2006/898, 2006).

Hence, the trial of fugitives remains a key residual judicial function.

Different options for the institutional design of the residual mechanisms have been discussed, including the extension of the lifespan of the tribunals, establishing a joint residual mechanism for all tribunals or separate mechanisms and transferring functions to other already existent courts. Stakes are high regarding the conception, design and implementation of residual mechanisms as it relates to the legitimacy and legacy of the tribunals in question but also the evolving international criminal justice system as a whole. Any residual mechanism will shape the long term legacy of thet tribunal it follows and is in itself an inherent part of the legacy (see Section 8.1.2). The planning phase for residual mechanisms has generated a lot of speculative or prospective scholarship on the topic (see e.g. Open Society Justice Initiative, 2008; Acquaviva, 2011a), particularly focusing on three aspects. Indeed, debates concerned

not only the nature and design as well as location of any residual mechanism but also the role played by the UNSC. Regarding the form and design of the mechanism, two extreme options were envisaged (see Acquaviva, 2011b). Undoubtedly, the question of location is intrinsically connected to the questions of ownership and legacy; hence the seat of the residual mechanism has given rise to much controversy. The seat of the residual mechanism will simultaneously host the archives. The management of the archives is a central residual function and is considered the second most important function of any residual mechanism (see Denis, 2011). In relation to the archives and management of the archives, three interrelated aspects need to be considered: how best to preserve, secure and make accessible the tribunals' archives.

Much debate and uncertainty has also concerned the role of the UNSC which is figuratively seen as the parent of the *ad hoc* tribunals. Given that the tribunals are subsidiary bodies (see Section 4.1.1), the UNSC has a key role in their organisational development. As such, the 'Security Council is assuming its responsibility through the Security Council's Informal Working Group on International Tribunals', as the chair of the working group has clarified (Büehler, 2011: 59). The Informal Working Group on International Tribunals was established in 2000 (on origins and role see Sievers & Daws, 2014: 518-519). Assisted by the UN Office of Legal Affairs the working group consists of legal advisors of the member states of the UNSC. Formerly the working group worked in obscurity without public scrutiny and input, however has changed its working methods in recent years while working on the preparation of the residual mechanism (see Büehler, 2011). Still, the working group remains to some extent opaque to outside observers as its main work is conducted *huis clos*.[97]

International Residual Mechanism for Criminal Tribunals

The International Residual Mechanism for Criminal Tribunals was established for the ICTY and ICTR respectively. On 22 December 2010 with a vote of 14 to none, with one abstention (Russian Federation), the UNSC adopted Resolution 1966 establishing the International Residual Mechanism for Criminal

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[97] Interview 145, UN official, 19.04.2013.

Tribunals ('Mechanism'). The actual circumstances of adoption of the resolution on 22 December 2010 and reasons for an agreement after highly politicised negotiations over years remains a mystery to those not involved in negotiations.[98] The UNSC ultimately decided to establish one mechanism with two branches, one for the ICTY and one for the ICTR. It thus opted for what can be called a compromise between the two extreme options sketched above. The starting dates for the two branches were also decided: the ICTY branch began functioning on 1 July 2013 while the ICTR branch began functioning one year earlier, on 1 July 2012. The Transitional Arrangement was annexed to UNSC Resolution 1966 which makes plain the UNSC vision: 'the international residual mechanism should be a small, temporary and efficient structure, whose functions and size will diminish over time, with a small number of staff commensurate with its reduced functions.'

Given that the Mechanism has so-called 'continuing' and 'ad hoc' functions, it represents an organisation of 'variable geometry'.[99] Future developments, including possible arrangements of combining the Mechanism structure with another residual body, including that of the SCSL and ECCC or using the newly purpose-built premises of the ICTR branch in Arusha for other African international criminal law processes, remain to be seen. In short, its organisational script still has an open end. It also bears noting that the Mechanism established focuses solely on so-called 'core' functions of a tribunal (see Pittman, 2011) and is not endowed with explicit competence and mandate in the field of outreach or legacy. This mirrors the situation of tribunals today as since their inception outreach and legacy activities were and still are considered extra-budgetary and are not financed through the core budget. This hints at the fact that the Mechanism, just like the completion strategies, appeared caught in design between short-term financial and political considerations of expediency and long term considerations of justice.

Once the Mechanism framework was put in place with UNSC Resolution 1966, completion and transition increasingly became seen as an administrative challenge. In order to keep the Mechanism temporary and efficient and to leverage the organisational competence and inside knowledge of tribunal functioning by

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[98] Interviews 139 and 145, UN officials, 13.04.2013, 17.04.2013.
[99] Interview 218, ICTY official, 13.05.2014.

current staff members, the idea of 'double-hatting' became a central feature of the transition process. In a sense, this arrangement has been seen as 'piggy-backing or free-riding' on services provided by the tribunals such as transport and security (UN S/RES/1966). Double-hatting refers to the process of staff members working in two roles, in this case for two connected but separate organisations, i.e. for the tribunals and their successor organisations. Certain staff members involved have displayed concern with double organisational identity construction and 'legacy organizational identity' (Walsh & Glynn, 2008: 262, see Section 2.1.1).[100]

Residual Special Court

Four months prior to the establishment of the MICT an Agreement on the Establishment of a Residual Special Court for Sierra Leone (RSCSL) was signed by the United Nations and the Government of Sierra Leone in August 2010. The competence of the RSCSL is laid out in Article 1.1 of the Agreement (2010): 'The purpose of the Residual Special Court is to carry out the functions of the Special Court for Sierra Leone that must continue after the closure of the Special Court.' As the first tribunal to complete its work and close, the transition between the SCSL and RSCSL was more linear than between the ICTY and ICTR and the MICT (which currently exist in parallel until the closure of the *ad hoc* tribunals; see Donlon, 2013). It was decided that the RSCSL should commence functioning following the delivery of the final judgment in the Charles Taylor case, i.e. upon closure of the SCSL. The SCSL officially closed on 31 December 2013 and the RSCSL commenced on 1 January 2014. The interim seat is The Hague. Currently the RSCSL is hosted by the ICTY in The Hague.

At the closing ceremony of the Special Court for Sierra Leone the moment was seized to look back and to look forward (see De Serpa Soares, 2013). Unsurprisingly, throughout the court's life certain legal decisions and judgments and some drama inside the courtroom, for instance when Naomi Campbell and Mia Farrow took to the witness stand, drew most attention in the international media. The title of an article published in the Africa Section of the United Nations Department

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[100] Interviews 192 and 194, MICT officials, 27.09.2013, 30.09.2013.

of Public Information takes up the idea of organisational death: 'The Special Court rests – for good' (Gberie, 2014). An official closing ceremony was held in Freetown on 2 December 2013. A symbolic moment was the handing over of an oversized ceremonial key to the court house from SCSL Registrar Mansaray to the Attorney-General and Minister of Justice of Sierra Leone. Eulogising the past is linked to the orchestration of organisational funerals such as that of the League of Nations (see Mazower, 2012 and Section 2.1.1). The role of parting ceremonies and symbols and rituals in the dying process (see Sutton, 1987; Harris & Sutton, 1986, as discussed in Section 2.1.) has become apparent. In addition, to the formal ceremonial occasion, different actors engaged in bidding farewell. For instance, Registrar Mansaray thanked the international community for support by bidding farewell. Another example includes the NGO No Peace Without Justice that has been connected to the court since its beginnigs and conducted the legacy survey (see Section 6.3), publically said farewell to the court.[101] Such symbolic gestures, verbally and visually, reveal the level of orchestration in such processes and the importance of sensegiving and sensebreaking.

Institutional persistence beyond death

In light of the creation of the residual mechanisms, organisational death has been reinterpreted as a transition rather than as an endpoint. The thesis proposed the distinction between formal, legal death and social death (as discussed in Section 2.2.1). While the tribunals may cease to exist in the formal, juridical register they certainly live on in the social and mental register. The final closure of the tribunals coincides with their formal, legal death at the end of their lifecycles (see Section 2.2.1). Out of the cases studied here, the SCSL is the only court to have actually closed and experienced organisational death thus far. The case of the SCSL which officially closed in December 2013 is instructive in this regard.

However, the tribunals are seen to live on in a number of ways. This is referred to here as 'posthumous life', also called *Nachleben* (see Section 2.1.). This posthumous life can be seen in two ways.

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[101] See http://www.sierraexpressmedia.com/?p=61204, http://www.npwj.org/ICC/Sierra-Leone-NPWJ-says-farewell-Special-Court-Sierra-Leone-with-pride-our-partnership-and-gratit.

First, the actual successor organisations, i.e. residual mechanisms, provide the tribunals with a symbolic continued existence given that these organisations were designed to carry out 'residual' functions of the tribunals. This has been emphasised by staff members of the tribunals: 'afterlife would be the residual mechanism'[102] or 'afterlife, yes, hopefully not a reincarnation'.[103] It has been noted the Mechanism represents nothing less than the 'UN's newest international criminal tribunal' (Pittman, 2011: 797) – even if it may appear miniature in comparison to its antecedents, the ICTY and ICTR. President Meron presented on the topic of 'The United Nations Mechanism for International Criminal Tribunals as a new model of an international criminal tribunal' in Oxford on 6 February 2015. It is pertinent in this context to once again take a closer look at the language used. The expressions 'residual functions' and 'residual mechanisms' do not do justice to the fundamental importance of these functions and mechanisms. The use of the adjective 'residual' lamentably fails to 'convey the sense that these are core ongoing obligations, chiefly of the international community, some of which will concern life-or-death matters and fundamental human rights' (Oosthuizen & Schaeffer, 2008: 50). Indeed, one commentator writes, it is 'somewhat unfortunate, that the new Mechanism perpetuates, even in its own name, the expression 'residual mechanism', based on the assumption that the functions which remain once trials and appeals have concluded are merely of a 'residual' nature' (Acquaviva, 2011b: 796). In this logic, the mechanisms established appear as mere afterthoughts of a residual character, hence could be considered of lesser importance than the tribunals themselves which is a misleading distortion. Similarly to the expression completion strategy, the term residual mechanism also fails to impart a sense of continuation.

The actual term 'residual mechanism' to designate a successor organisation remains a contested term by those working inside the organisations given that it is not seen as an accurate description of the organisation and it is not seen attractive to work in an organisation that has the connotation of 'residual'. None of those interviewed for this study took a liking to the name– even if staff had applied for a job at the Mechanism or were already working there. All tribunal staff, without exception, displayed ambiguity towards the term itself and took issue with the term

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[102] Interviews 4 and 21 and 24, ICTR and ICTY officials, 21.06.2011, 28.06.2011, 01.07.2011.
[103] Interview 25, ICTY official, 01.07.2011.

'residual' or 'mechanism' or the composite term. It has been said to 'sound like an assembly line or factory' or a 'dental procedure' or 'sewage system'.[104] Although considerable consultations took place between tribunal officials and UN officials in New York about institutional design, the Mechanism is largely seen as a 'creation of the Office of Legal Affairs', even by those who participated in launching the process.[105]

The acronym 'MICT' has been created standing for 'Mechanism for International Criminal Tribunals'.[106] This elegantly drops the 'residual' qualifier, and is now commonly used at the tribunals. Its origins have been traced back to ICTY/MICT President Meron's office.[107] It is not the official name and official documents continue to use the full name (which in fact mirrors the use of the acronym 'ICTY').[108] Still, the acronym can be read as a bottom-up rebranding exercise by senior officials involved who, guided by endeavours geared towards sensemaking but also individual careers and legacy building, engage in projection of the organisation into the future and thus reinterpret the interplay of organisational continuity and discontinuity. It has slipped past the attention of, or rather been tolerated by the UNSC and Informal Working Group on International Tribunals and UN Office of Legal Affairs. The official name of the Mechanism was an important part of the lengthy negotiations in New York prior to UNSC Resolution 1966 and hence is likely to have sticking power in policy circles.[109]

Second, the tribunals are seen to live on through their legacies. Legacy building has emerged as strategy with a view to institutional persistence (a central theme taken up in Chapters 7 and 8). The relationship between the tribunals and their successor organisations is a significant feature in legacy creation. The discursive construction of the MICT as 'maintaining the legacy' is important to note (see Section 8.1.2). Prior to its first legacy conference organised in February 2010, the ICTY recognised that 'The shape of the Tribunal's legacy is in part connected to the work of the Security Council Informal Working Group on the International Tribunal

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[104] Interviews 133 and 180, ICTR official and professor, 12.04.2013, 20.09.2013. See also 64, ICTY official, 21.09.2012.
[105] Interviews 66 and 180, ICTY and ICTRR officials, 25.08.2012, 20.09.2013.
[106] See http://www.unmict.org/.
[107] Interviews 180, ICTR official, 20.09.2013.
[108] Interviews 180, ICTR official, 20.09.2013.
[109] Interviews 139 and 143, UN officials, 17.04.2013, 19.04.2013.

on setting up the residual mechanism(s)' (ICTY, 2010: 6). In the context of institutional transition, recognising this interrelation between the residual mechanisms and legacies of the tribunals is salient for the multiplicity of actors and strategies involved.

Conclusion

The topic of completion and closure has come to define the organisational developments at the tribunals in various ways. The *ad hoc* and temporary nature of the tribunals became a guiding focus in light of a shifting international political climate characterised by 'tribunal fatigue' and increasing pressure exerted by certain states through the UNSC towards closure. In this context, the tribunals developed formal completion strategies which served as road map for closure with remaining milestones and target dates. The interplay of completion and continuation, and organisational continuity and discontinuity, has been identified here as shaping factor of the organisational development of the tribunals and of the process of meaning making. Individual coping strategies and organisational developments are important to consider. It is concluded that the exactitude of the often invoked metaphor of rise and decline of the tribunals needs rethinking. The simplistic 'rise and decline' narrative is inadequate. In terms of organisational death, it is concluded that the closure of the tribunals represents a formal, legal death but not a social death. While the tribunals may disappear institutionally speaking as formal organisations, they continue to live on. Two forms of institutional persistence of the tribunals are highlighted: residual mechanisms and their legacies. Part III of the thesis ('A reconstruction of the end') now turns to the topic of legacies and legacy building.

PART III

A reconstruction of the end

Chapter 6

Institutionalisation of legacy building

In anticipation of the closure of the tribunals, a whole host of debates and projects have mushroomed under the seemingly ever growing 'legacy' umbrella. As the tribunals are winding down and nearing closure, increasing attention turned to the question of legacy, inside and outside the organisations. As examined in Chapter 5, the tribunals are now in the throes of their respective completion strategies under which they will soon all have shut down – save, of course, for the residual mechanisms that will have to necessarily remain. Strategic thinking on legacy at the tribunals has surfaced in the past decade. In the following it will be demonstrated how the emerging legacy awareness within the organisations was translated into institutional action and legacy strategising. In short, this chapter shows how the idea of legacy has influenced the vocabulary and temporal horizon, institutional structure and portfolio of functions and activity horizon of the tribunals. The strategic interest is evidenced by the creation of terms, committees, positions and budgets with an explicit focus on legacy. Indeed, legacy building has not only remained an amorphous undertaking but also considerable amount of money went into legacy building (see Section 6.3 on legacy projects).

It is argued here that 'legacy building' has become an institutionalised endeavour at the tribunals. In this sense, it performs the function of a coping strategy *vis-à-vis* organisational demise that is aimed, first and foremost, at meaning making. This strategy is central yet has hitherto remained unexamined. A comparative analysis reveals a hectic 'legacy turn' in the work of the tribunals in anticipation of closure. The 'legacy turn' resulted in heightened, though not always effective, organisational reflexivity. Here organisational reflexivity refers to the double sense of introspection and retrospection at the institutional level.

Two questions in particular guide the analysis here: How has a concept of legacy taken hold of the tribunals? And is there any variation among the tribunals in terms of their approach to legacy leaving? From an analysis of tribunal developments a distinct new trend of active 'legacy building' is identified in the thesis, namely the

institutionalisation of legacy building. Three interrelated processes of this institutionalisation are comparatively traced: *projection*, *professionalisation* and *projectification*.[110] First, the term projection is used to capture the phenomenon of 'legacy planning' which implies projection of self, here of an organisation, into the future. Rhetorically speaking, the principals (i.e. President, Prosecutor and Registrar) recognised legacy as an issue on the agenda and develop a vision to project their work into the future. Second, the term professionalisation is employed to emphasise the establishment of issue-specific working groups or committees and targeted institutional posts. Structurally speaking, institutional bodies or working groups and professional positions dedicated to legacy were created within the tribunals. Third, the term projectification used here refers to the trend of turning to project management and designing and delineating neat projects. Practically speaking, specific institutional bodies and key tribunal officials intensified efforts at designing and implementing legacy projects and activities. Each dimension is considered for each tribunal examined in turn. These three processes did not necessarily occur consecutively in this order; however, for analytical purposes, they are considered in turn while highlighting synergies where appropriate. This chapter is divided into three parts which map onto the three processes of the identified institutionalisation, namely projection, professionalisation and projectification. In the analysis a main emphasis is placed on the SCSL. Here the analysis concentrates on those developments and activities explicitly labelled under the legacy umbrella by the tribunals. The analysis proceeds thematically per tribunal as the material lends itself to such a detailed structured analysis.

6.1. Projection: Developing a legacy vision

Leaving an indelible legacy has become an immediate concern for tribunal actors. Legacy building holds appeal for many actors in light of man's search for an 'immortality project' (Becker, 1973, see Section 2.1.1). In turn it helps tribunal officials and staff to counterbalance uncertainty and face anxiety of post-mortem oblivion and meaninglessness (see Section 2.1.1). For instance, one interviewee

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[110] The term is drawn from the management literature. On 'projectification of the firm', see e.g. Midler, 1995; Packendorff & Lindgren, 2014.

stressed the urgency and inevitability of legacy creation by framing it as a need: 'We need to leave something behind.'[111] The opportunity to be part of a historical moment has been seized by principals and senior management as is demonstrated below.

Legacy building is aimed at self-legitimisation and meaning making. Indeed, legacy creation often begins when thinking about what a legacy leaver wishes to leave behind. As will become clear, an important technique seen at play is the visualisation of a goal and then working backwards to design and implement the necessary steps – from visualisation to attainment of a goal. Visualisation means the projection of self into the future and desired outcomes. Furthermore, the idea of legacy expands the temporal horizon of an organisation beyond organisational closure. In other words, the tribunals were engaged not only with successful completion of mandate at a fixed point in time but also, and importantly, with institutional persistence for an indefinite time. The tribunals projected themselves into the future and developed legacy visions to varying degrees.

ICTY

The ICTY started developing a more concrete legacy vision from 2007-08 onward, 15 years into its existence. Former ICTY President Robinson explicitly refers to the tribunal's 'legacy vision' and emphasises 'national ownership' as a key guiding concept (Robinson, 2011a: 11). The ICTY Annual Reports mentioned the term 'legacy issues' for the first time in 2004. But, in contrast to the SCSL (section 6.1.3), talk about residual functions and a residual mechanism was officially subsumed under a discussion on legacy until 2008 (see ICTY Annual Reports 2004-2008; Campbell & Wastell, 2008; Pocar, 2009; Lincoln, 2011). In particular when the Appeals Chamber Schedule Working Group working under auspices of the ICTY Vice-President had to make major adjustments the topic of legacy became salient.[112]

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[111] Interview 18, ICTR official, 28.06.2011.
[112] Interview 24, ICTY official, 01.07.2011.

An important conceptual crystallisation occurred with former ICTY President Pocar's (2008) redressing of the completion strategy as 'continuation strategy' or 'strategy of continued legacy building'. The reason for holding the first legacy conference in 2010 was 'to make public the court's vision of its legacy and discuss it in open'.[113] The ICTY President has portrayed its development of a legacy vision as an inclusive process allowing for external input and evolution. It has been stated that 'through the exchange of ideas, we wanted to come to a fuller and richer vision of what the legacy should be' (Robinson, 2011a: 11). Moreover, the importance of honesty, transparency and critical assessment has been formally endorsed by ICTY President Robinson (2011a). However, how these pledges continue to play out in practice, until closure and especially beyond, remain to be evaluated in coming years. The only strategic document on its legacy vision that is publically available is the *Report of the President of the ICTY on the 'Assessing the Legacy of the ICTY' Conference* (Robinson, 2010b). This resembles a strategic legacy preview in which 'strategic considerations' are explicitly formulated. Therein it recognises, inter alia, the importance of its core work, the preservation of its records and the cooperation with states in the region of the former Yugoslavia as well as other UN agencies (Robinson, 2010b). The ICTY President envisaged a very broad conceptualisation of legacy. In the context of the first legacy conference in February 2010 a policy document described legacy as 'that which the Tribunal will hand down to successors and others'.[114] The discourse and definitions of legacy at the tribunals are examined in Chapter 8.

It is noticeable that legacy activities have encompassed both a regional and a global dimension despite an emphasis on national ownership. In this respect, the vision appears double. Indicia of this are two major conferences by the Office of the President: 'Assessing the Legacy of the ICTY' in February 2010 and 'The Global ICTY Legacy' in November 2011, focussing on regional and global legacies respectively. Two regional legacy conferences were also held in Zagreb and Sarajevo in 2012. A key element of the ICTY's legacy strategy has been represented as a 'collegial partnership with the judiciaries in the former Yugoslavia' (ICTY, 2010: 3).

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[113] Interview 11, former ICTY official, 23.06.2011.
[114] http://www.icty.org/sid/10293.

The turn to legacy from 2007 can be read as a reaction to developments at the tribunal. The ICTY outreach programme, established by then President Gabrielle Kirk McDonald in 1999 and increasingly professional and proactive in legacy projection, deserves special mention.[115] Antecedent outreach activities with a legacy focus worth highlighting here include the 'Bridging the Gap' conferences in Brčko, Foča, Konjic, Srebrenica and Prijedor in 2004 and 2005. The conferences showed the interest of tribunal officials in dialogue and some clashes of perception regarding the tribunal's role and work crystallised in conference discussions.[116] It is important to note that the year 2006 was eventful for the tribunal in many respects and characterised by deaths in detention and protest actions of defendants. Indeed, the most prominent defendant Slobodan Milosević, the first sitting Head of State indicted for war crimes, died in custody on 11 March 2006. These most dramatic events led to controversial discussions and publicity and an acute awareness of managing expectations. Indeed, questions about the ICTY's legitimacy, relevance and achievements were raised by outside observers, NGOs and the media. Most notably, a crisis of relevance was palpable and hence the turn to legacy is a response to existential questions about legitimacy and *raison d'être* posed by both international and domestic constituents.

Moreover, thinking on long-term sustainability of efforts and impact emerged considerably earlier in the OTP. This was due in part to the necessity for close contact between the OTP and prosecutorial offices in the region since the 1990s and in part due to foresight and a vision of cooperation and rule of law building in the region. International attention to building up legal systems in the region through a number of initiatives has coloured the legacy vision prevalent in the OTP which has a strong regional perspective.

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[115] In response to criticisms of alienation and removal *vis-à-vis* the population that experienced conflict the outreach function of tribunals is now a common central feature of all tribunals, albeit one that remains extra-budgetary and continuously debated (e.g. Enaut, 2006; Clarke, 2009).

[116] See http://www.icty.org/sections/Outreach/BridgingtheGapwithlocalcommunities.

ICTR

The ICTR has intermittently become proactive in laying the foundations for building and leaving a legacy. More recently, since 2012, the ICTR has increasingly pursued and publicised its legacy vision. Senior officials have noted the importance of leaving a mark: 'We need to prove to the world, mark to the world what we did and what we achieved'.[117] The year 2014 marked the 20th commemoration of the Rwandan genocide and the 20th anniversary commemoration of the establishment of the ICTR and its legacy and provided an opportunity to pause for a moment. The ICTR Legacy Symposium in November 2014 gave a platform for the dissemination of its legacy vision as further explored in Section 8.3.

The ICTR's legacy vision has not been widely publicised. In large measure this was related to the state of its former website which was seen as outdated, incomplete and unsystematic.[118] In November 2014 the tribunal launched a new legacy website (detailed below). It is important to note that legacy building has been increasingly institutionalised, with renewed verve by tribunal officials in the past couple of year. Palpable excitement but a senior ICTR official notes that legacy has often been recorded 'in gold letters' from which the ICTR deliberately attempted another approach: 'We wanted to do something more dynamic'.[119]

One prominent legacy recording is a brochure entitled 'The Legacy' published in 2009 (with a special page on 'Outreach, capacity-building and legacy matters' and 'Legacy and Residual Issues'). It seems notable that a dedicated space has been given to legacy issues as in former publications the topic has not been mentioned. This notwithstanding, the brochure resembles previous ICTR publications in content and form (except title page and 'legacy' page). The title page displays a group photo of all staff members with the UN Secretary-General during his visit to the tribunal in 2008. Displaying prominently the actors of the tribunal can be viewed as recognition of the staff involved and the 'human legacy' of the ICTR. Giving tribunal staff a face, or a voice, has influenced legacy-oriented projects such

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[117] Interview 181, ICTR official, 20.09.2013.
[118] The old website has been described as 'embarrassment' by ICTR staff (Interview 187 and 193, 24.09.2013, 30.09.2013).
[119] Interview 181, ICTR official, 20.09.2013.

as the 'Voices from the Rwanda Tribunal' project also conducted in 2008 which has collected 49 interviews with ICTR personnel.[120]

SCSL

Under the leadership of the first Registrar, the late Robin Vincent, the topic of legacy for the court and for war-torn Sierra Leone became an early preoccupation at the SCSL. The SCSL showcased considerable institutional innovation in its legacy efforts and work and appears to have played a pioneering role in efforts to institutionalise a legacy focus (Dittrich, 2014a, 2014c). Registrar Vincent's 'foresight' deserves particular credit.[121] Since its establishment the court gradually specified its legacy vision and portrayed itself early on as a proactive legacy leaver. The SCSL Annual Reports, the most prominent and regular institutional legacy recordings coordinated in the Office of the Registrar, trace the significant steps forward taken by the Court toward designing and implementing policies directed at legacy production. Already the first SCSL annual report 'consider[s] the important issue of the legacy the Court will leave behind' (SCSL, 2003: 4). The report highlights 'the court-wide effort to leave a positive legacy for the Sierra Leonean people'. It moreover devotes one full page to legacy issues stressing the 'importance of leaving a legacy for the Government and the people of Sierra Leone also presents both a challenge and an opportunity' (SCSL, 2003: 28).

The Court's legacy vision first received formal expression in the so-called Initial Legacy White Paper of 2005. This internal court document seems to have had the function of a formulating the court's legacy vision and a strategic legacy preview. The Legacy White Paper has not been made public so as not to inflate expectations of Sierra Leoneans about the court's legacy work.[122] Four thematic areas were identified to ensure continuity after closure: (1) promoting the rule of law and accountability, (2) human rights and international humanitarian law, (3) role of civil society in the justice sector in Sierra Leone and (4) capacity-building of Sierra

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[120] See http://www.tribunalvoices.org/.
[121] Interview 1, SCSL official, 20.06.2011.
[122] Interviews 17, 95 and 101, SCSL officials and civil society member, 27.06.2011, 19.10.2012, 22.10.2012.

Leonean legal professionals (SCSL, 2005a). These four areas were selected with a view to pre-existing projects and to ensuring continuity beyond completion of mandate and closure (see Nmehielle & Jalloh, 2006). The SCSL legacy programme has expanded and been revised over the years.

The Court has engaged in 'deliberate legacy planning' although not explicitly mandated in this realm (see discussion on legacy and mandate in Section 7.2.). By 2005, three phases were officially envisaged: completion, post-completion and legacy (SCSL, 2005a). The legacy phase was characterised as phase dealing with the long term impact on Sierra Leone after the court's dissolution. Since 2005 the Annual Reports 'also reflect the significant steps forward taken by the Court during the period in respect of creating, defining and implementing policies to ensure a sustainable legacy'. Moreover, the SCSL judges adopted a resolution noting the importance of the issue of legacy, especially the future use of the court site and archiving on 23 November 2006 (SCSL, 2006: 11). The location of the court *in situ* is often associated with an

> unusual opportunity [...] to leave a lasting legacy for the people of Sierra Leone. Principally because of its location, it is thought that the court could assist Sierra Leone in solidifying its fragile peace by contributing to the efforts to address the root causes of conflict, in order to break the vicious cycle of violent war and mass atrocities, peace settlements, and internationally-funded criminal trials (Nmehielle & Jalloh, 2006: 109).

Moreover, the outreach work can be viewed in light of the Court's overall legacy planning (on SCSL outreach, see e.g. Kerr & Lincoln, 2008; Lincoln, 2011; Ford, 2014). The SCSL outreach section is an interesting case of legacy promotion via a certain form of marketing of the SCSL work and positive legacy production catered towards a local audience. The Special Court Interactive Forum (SCIF) played the role of a key partner in this regard.

ECCC

A heightened sense of urgency as legacy leaver based on the experience of other tribunals has not fully developed at the ECCC. There are no publically available documents on legacy. Tribunal officials have intermittently addressed the topic of legacy at various occasions, notably at the 'Hybrid Legacies of the Extraordinary Chambers in the Courts of Cambodia' Conference in September 2012 (hereafter 'ECCC Legacies Conference'). Tony Kranh (2012), ECCC National Head of Administration, highlighted that legacy is viewed as an essential part of the mandate, including its focus on providing justice for victims, maintaining peace and reconciliation and enhancing judicial reform and Rule of Law capacity building. In 2010 the common goal was presented as follows: 'developing, keeping, and properly disseminating the legacy framework of the Court' (ECCC, 2010). Seven areas of activity were identified: (1) records, archives and library, (2) development of court practices and capacity building, (3) physical infrastructure (courtroom and legal documentation centre), (4) outreach and dissemination, (5) victims participation, (6) Virtual Tribunal and (7) residual issues (see Jarvis, 2012).

Until 2012 the ECCC appeared reluctant to get officially involved in public discussions and initiatives led by NGOs in Cambodia.[123] The view that it was too early to discuss legacy was prevalent among tribunal officials, not least because the first Supreme Court judgment in Case 001 was yet to be rendered. In summer 2012 the ECCC then decided to become involved as external partner with the ECCC Legacies Conference, spearheaded by the Cambodian Human Rights Action Committee, just a few months before it was scheduled to take place in Phnom Penh on 13-14 September 2012. According to tribunal observers this joint venture between the ECCC and civil society was a remarkable, dramatic shift in approach.[124] Reasons unearthed for this shift include recognition of how high profile the event and invited speakers would be, that it might be better to participate in the event rather than stay on the side-lines of an event which is about oneself.[125] However,

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[123] Interviews 50, 52, 54 and 61, civil society members, 04.09.2012, 10.09.2012, 11.09.2012, 15.09.2012.
[124] Interviews 50 and 52, ECCC official and civil society member, 04.09.2012 and 10.09.2012.
[125] Interview 230, former ECCC official, 26.09.2014.

while the conference deliberately had a focus on practical recommendations, it is not obvious if and how this shaped the ECCC's legacy vision.

Select tribunal officials showed an early impetus to pursue legacy building. However, the legacy ambition at the ECCC got caught up in a political tussle about ownership of the narrative on legacy and eventually was largely abandoned as a result (see Dittrich, 2015). Hardly any central planning took place.[126] Reasons identified include the politicisation of legacy, but also a certain disinterest or limited understanding, capacity and funding to engage in comprehensive legacy building.[127] Two related factors are noteworthy, namely the novelty of terminology for the Cambodian language as there is no direct translation for the term legacy and the already ongoing efforts and discourse around victims participation and reparations which is different to the context of other international tribunals. Politicisation occurred given the sensitive nature of the topic and sensitivity on the Cambodian side with regard to control of the law and justice system. It has been suggested that 'the justice system is used to keep the government in place, so improving rule of law and separation of powers is seen as a threat'.[128] The concept is ambiguous because of the difficult translation of the concept into the Cambodian language and legal system. These factors contributed that the actors perceived this a sensitive area of action. In turn, this sensitivity led to little communication and resulted in ambiguous understanding and lack of open engagement.

While the ECCC had the advantage of not being the first tribunal facing completion and closure and having experienced staff from other tribunals, collaboration or consultations on legacy with the international tribunals seemingly did not occur at a systematic institutional level. The importance of striving for a positive legacy based on the needs of the Cambodian people and of developing criteria for evaluation was emphasised early on by Robin Vincent, then SCSL Registrar, during a visit in Phnom Penh in 2006: 'the ECCC should belong to the people of Cambodia – and that thus the ECCC should leave something behind for the children of Cambodia – a footprint in the sand' (cit. in The Phnom Penh Post, 2006).

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[126] Interview 2, ECCC official, 20.06.2011.
[127] Interviews 50, 52, 54 and 61, civil society members, 04.09.2012, 10.09.2012, 11.09.2012, 15.09.2012.
[128] Interview 2, ECCC official, 20.06.2011.

Similar to the other tribunals, there is no explicit mention of the term legacy in the ECCC foundational documents. But, unlike the other tribunals, it is noteworthy that there is hardly any public engagement online, e.g. there are no dedicated sections on legacy on the general ECCC website, nor on the website of the UN Assistance to the Khmer Rouge Trials. Interestingly, the Defence Support Section officially presented a legacy programme, including outreach and capacity-building, and a section entitled 'Legacy' on the ECCC website noting: 'The ECCC presents an excellent opportunity to bolster the understanding of the criminal trial process within Cambodia and, in particular, the right to a fair trial and an effective defence.'[129] Yet, the view that the ECCC and its legacies present an 'excellent opportunity' is not univocally shared by international and national actors. Still, whether the tribunal or other actors develop and sustain a legacy vision or not, legacy formation occurs as the everyday judicial work contributes to the ECCC's legacies.

Overall, interest in legacy has grown across the tribunals as respective legacy visions were developed. The importance of building and leaving legacies has been recognised by the principals and staff more generally. The projection of each organisation into the future was not uniform but became salient for different actors at different moments in time. It is striking that each tribunal seemingly idiosyncratically looked towards the future and contemplated institutional persistence. No sustained concerted or systematic effort of envisioning the legacies of the tribunals together exists (see Section 7.2. on plurality of legacy strategies). This growing legacy awareness has also become reflected across the tribunals in what is called here the professionalisation of legacy.

6.2. Professionalisation: Creating committees and positions

The growing interest in legacy has become reflected in the very institutional structures of the tribunals. Tribunal principals took the decision to establish legacy committees or working groups as well as specific professional positions as detailed for each tribunal below. The analysis now explores the professionalisation of legacy at each tribunal in turn.

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[129] ECCC, 'Legacy', *ECCC DSS Website*, http://www.eccc.gov.kh/en/dss/legacy.

ICTY

The ICTY Office of the President took the lead on legacy during Pocar's presidency (2007-2009). The President took charge of policies and the Legacy Officer, and now Chef de Cabinet as Acting Legacy Officer, have acted as ICTY legacy focal point. One of the main objectives of the legacy work has been inter-organ coordination on legacy as well as conceptualising and implementing legacy projects.[130] The ICTY is the only tribunal that has not established an explicit legacy working group or committee. Consultations on legacy have still taken place in an informal manner, mainly led by the Office of the President and the OTP.[131]

An important step towards institutionalisation was the creation of a professional position of legacy officer in 2008. Then President Pocar created such a post in the Office of the President and deliberately recruited a staff member with extensive knowledge and work experience in the region. Mathias Hellman had studied Bosnian, Croatian and Serbian and became the first outreach officer, later served as Registry Liaison Officer in Bosnia and Herzegovina and Serbia and Outreach Coordinator for Croatia and Serbia. After two years Hellman joined the ICC in 2010 and Diane Brown, then legal officer in the Office of the President, took up the position of Acting Legacy Officer. Another two years later, when Brown left the tribunal, Chef de Cabinet Gabrielle McIntyre took over the title Acting Legacy Officer in 2012. In addition, in preparation of the legacy conferences held in 2010 and 2011 one staff member was given the title of Legacy Administrative Officer. It seems however that the position was *ad hoc* and was not created in the Office of the President.[132] In 2014 the OTP also advertised an internship position with an explicit focus on 'legacy' and has been thinking of hiring a legacy consultant.[133] While the OTP also has its own legacy initiatives, officials and staff working in any organ at the ICTY clearly recognise the Office of the President as the institutional focal point of legacy.

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[130] Interviews 21 and 22, ICTY officials, 29.06.2011, 30.06.2011.
[131] Interviews 70 and 157, ICTY officials, 27.09.2012, 20.08.2013.
[132] Interview 21, ICTY official, 29.06.2011.
[133] Interview 222, ICTY official, 14.05.2014.

ICTR

At the ICTR the focal point of legacy gradually shifted from the Office of the Registrar to the Office of the President. Early on, in 2005, a tribunal-wide ICTR Legacy Committee was created. Jean-Pelé Fomété, then Senior Legal Adviser and Special Assistant to the Registrar and Chief of Court Management Services and now ICJ Deputy Registrar, chaired the committee. 2010, as the final milestone of the completion strategy, became an important date. For instance, Fomété spoke of a 'countdown to 2010' (Fomété, 2007), yet also shifted the temporal horizon of the tribunal beyond end of mandate 'beyond 2010' (Fomété, 2006). While the committee sat in Arusha, three staff members acted as focal points in The Hague (in Chambers, Languages and Registry/ Court Management).[134] The main focus of the group was on the seamless continuation of residual functions and transition to a successor body, the residual mechanism. Once some key ICTR committee members had left and decisions on the residual mechanism were taken, the committee lost visibility. To gather new momentum, a reconstituted Legacy Committee was established by then ICTR Registrar Adama Dieng on 31 August 2012 (ICTR Information Circular No. 53, 31 August 2012). The committee again included representatives of all three organs as decided by the principals.[135] Notably, it developed a Concept Note for Developing a Comprehensive Approach to ICTR Legacy Issues (ICTR, 2013) to be submitted for the Coordination's Council preliminary review and approval on 25 February 2013. The Legacy Committee held regular meetings and developed ideas and concrete projects, most notably the new ICTR website,[136] tribute video and Legacy Symposium held in Arusha in November 2014.

Another step toward institutionalisation was the creation of the post of legacy officer in 2013. This professional position was inter alia tasked to 'assist and contribute to oversight of legacy projects under the guidance of the Legacy Committee'.[137] Amanda Grafstrom, former ICTR legal officer familiar with the tribunal's work, was recruited for this position and took up the job in December 2013. Two points are worth noting. The post was budgeted within the Office of the

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[134] Interview 3, ICTR official, 21.06.2011.

[135] Membership was enlarged to include archivists and IT specialist for website project in 2013.

[136] Contact information for what is called the 'ICTR Legacy Office' is provided on the ICTR legacy website: 'For more information, please contact the ICTR Legacy Office: ictrlegacy@un.org'.

[137] See job description: http://unjoblist.org/vacancy/?280535.

President, and not within the Office of the Registrar, which thus mimics the ICTY's similar institutional legacy focus. It also is an indication of the shift of focal point from the Office of the Registrar to the Office of the President which has not gone unnoticed in the Office of the Registrar and has been lamented by some senior officials.[138] The post was moreover officially listed and advertised as 'Associate Legal Officer (Legacy)', seemingly downplaying the 'legacy' focus to external actors that provide political support and funding, namely the UN. Informally, within the ICTR, it is referred to as 'legacy officer'.[139]

SCSL

The Office of the Registrar has been the focal point of legacy at the SCSL, in contrast to the ICTY and ICTR. The first SCSL Registrar, the late Robin Vincent, initiated a Legacy Working Group. This represented a first in international criminal tribunals and skillfully enhanced the visibility of the SCSL's legacy strategies. The group was formally established in 2005 with eight members drawn from various sections of the Court and was composed mainly of Sierra Leoneans.[140] The group was co-chaired by the Completion Strategy Coordinator and the Project Officer responsible for legacy and 'is expected to reflect the mixed Sierra Leonean and international composition of the court' (Nmehielle & Jalloh, 2006: 112). The creation of this group within the institutional framework goes hand in hand with the recognition of a 'need for a significant input and ownership of the process by Sierra Leoneans' (Nmehielle & Jalloh, 2006: 112). Four legacy sub-working groups were established, namely on capacity-building, infrastructure and physical assets, archiving and witness and victims legacy.[141] Their objective was the identification and implementation of a host of projects aimed at contributing to a lasting legacy in Sierra Leone. Going forward the group's main focus was on the initial Legacy

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[138] Interview 183,ICTR official, 23.09.2013.
[139] Interviews 187 and 236, ICTR officials, 24.09.2013, 05.11.2014.
[140] Information regarding membership and meetings have not been made publically available. According to Nmehielle and Jalloh (2006), the composition of the working group co-chaired by the Completion Strategy Coordinator and the Project Officer responsible for legacy seemed as follows: Chief of Outreach; Deputy Chief of Press and Public Affairs; Trial Attorney, OTP, Senior Defence Advisor, Defence Office; Senior Secretary to the Registrar; and a representative from Staff Council.
[141] Interview 42, former SCSL official, 08.03.2012.

White Paper. This is the court's own prominent legacy recording in which some legacy projects were identified. Following this, the group turned to its second task, implementation and securing funding for possible projects.

A year following the creation of the working group the SCSL Plenary set up a Legacy Committee headed by Justice Benjamin Mutanga Itoe in 2006. This move by the SCSL Plenary is the only example of Chambers directly and explicitly discussing legacy and taking action. The Legacy Committee was tasked with overseeing legacy projects, archiving, preserving records and the future use of the court site in Freetown (see SCSL, 2007: 6). The previously established working group was to act as its subsidiary (see SCSL, 2008: 6). Against the backdrop of this double structure an episode of tension between the then SCSL President and Registrar ensued. This can be seen as an example of the social lives and possible pathologies in light of a bureaucratisation of legacy building.[142]

The creation of a legacy officer position in 2007 was an innovative step at the SCSL. This professional position was the first of its kind at any international criminal tribunal (unlike presented in an overview account by Stahn (2015)). This innovative decision is another indication of the institutionalisation of legacy building. Interestingly, the legacy officer worked under the direct supervision of the President and the Chief of Court Management. Duties included liaising with national organisations, ensuring local ownership of legacy projects and raising awareness of the Court's legacy programme. The main focus however was placed on the archives and coordinating the development and implementation of the SCSL archival policy while other. The Court's archives were presented as the Court Management Section's 'most important legacy' (SCSL, 2008: 49). Indeed, the direct link between legacies and archives which represent material continuation was explored in Section 5.3. Memunatu Pratt served as the first and only legacy officer from September 2007 to December 2009. In light of the completion strategy and downsizing dynamics, the post of legacy officer was downgraded from P4 to P3 (see SCSL, 2009a: 30) and eventually downsized. Keeping in mind the difficult environment of downsizing, the eventual abolition of the legacy officer post as well as the dormant legacy working

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[142] Interviews 95, 101, 161 and 164, SCSL officials and former SCSL officials, 19,10,2012, 22.10.2012, 21.08.2013, 22.08.2013. For further exploration of the theme of internal tensions and social dynamics see Section 7.2.

group do not reflect a simple de-institutionalisation of legacy building. Upon enquiry why the position was abolished, downsizing is given as main reason, yet personnel politics also seemed to have played a key role as the particular legacy approach was a sensitive topic as revealed in interviews.[143]

It is important to note that a Sierra Leonean took up the position of legacy officer. The choice of a national of the country concerned seems noteworthy as this approach was not replicated in the ICTY and ICTR. In important ways, the participation of Sierra Leoneans in key roles, for instance Binta Mansarey as Outreach Coordinator and eventually as Deputy Registrar and Registrar and Joseph Kamara as former Deputy Prosecutor and Judges Kamanda and King as former SCSL Presidents, has further attuned the court officials towards leaving a legacy for Sierra Leoneans. This is an important point which decisively shaped the outlook and legacy strategies at the court (as will be discussed in Chapter 7). On a closer reading, legacy work at the SCSL was decentralised as project-specific working groups or management boards were established. When specific legacy projects started to gain momentum legacy management was decentralised.[144] The focal point of the court's legacy work continued to be the Registrar under whose aegis coordination meetings on legacy continued to be held until closure.

ECCC

The idea of professionalising legacy was also taken up at the ECCC. In terms of creating its own institutional architecture Robert Petit, then International Co-Prosecutor with vast experience at different tribunals, played the leading role in taking the initiative on legacy and archive management. In July 2008 a Legacy Working Group was established. By December 2008 it had produced a report identifying seven issues which are worth recalling here: 1) records, archives and library, 2) development of court practices and capacity building, 3) physical

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[143] Interviews 40 and 101, SCSL officials, 02.03.2012, 22.10.2012. The sensitivity of the topic was apparent to the point that some interviewees were hesitant to speak about the legacy officer.
[144] Interview 40, SCSL official, 02.03.2012. Interestingly, some SCSL staff considered the Legacy Working Group still active (e.g. interview 1) while others were not even aware of its existence (e.g. interviews 9 and 10).

infrastructure (courtroom and legal documentation centre), 4) outreach and dissemination, 5) victims participation, 6) Virtual Tribunal and 7) residual issues. However, the group did not meet very frequently which was explained by the fact that all staff had pressing tasks.

As announced on 26 March 2010, i.e. a few months before the first trial judgment was rendered, the Office of Administration established a Legacy Advisory Group and Legacy Secretariat (ECCC, 2010). The two bodies were formed at the same time, thus a double structure was created. A division of labour and responsibilities was apparent. While the Legacy Advisory Group was tasked with advising, planning and authorising contents with regard to legacy frameworks and was a tribunal-wide senior staff committee, the Legacy Secretariat was in charge of practically implementing the relevant legacy projects once approved by the Legacy Advisory Group. The composition included key members drawn from substantive offices and sections who represent various aspects of legacy with both national and international representation, although the Legacy Advisory Group included predominantly if not solely Cambodians. An obstacle is seen in what has been lamented as lack of coordination between the international and national side and lack of support for legacy work at the ECCC by top officials in the Office of Administration.[145] In addition, two judges have acted as the judicial focal point for legacy. Socheat Thaung, Cambodian Chief of the Budget and Finance Section, chaired the Legacy Secretariat. Two points are important to note here. First, in an interesting parallel to the SCSL, national ownership of the legacy work is noteworthy as reflected through the Cambodian membership and chairmanship of the institutional body. Second, the selection of the chair based on his expertise and profile in the court seems to indicate a managerial, money-driven approach to legacy at the ECCC with a special emphasis on funding and monies obtained for legacy work (see Section 7.2.). The *ad hoc* nature, opacity of these legacy bodies and seemingly minimal activity on legacy has been a widely shared concern by tribunal observers (e.g. Bates, 2010).

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[145] Interviews 230, 231 and 233, former ECCC, UN officials and civil society members, 26.09.2014, 30.09.2014, 20.10.2014.

In contrast to the other tribunals, the ECCC has not advertised a professional position with a dedicated focus on legacy. In 2007 when Robert Petit joined the ECCC as International Co-Prosecutor the idea of a legacy officer was entertained; however, the position was not considered viable for budgetary reasons.[146] It has been noted with regret that 'we still don't have a legacy officer and that is a bit of a shock really when you think about it, after all this time. But at this moment adding a new position when the financial situation is so desperate, it's not going to happen'.[147] However, it is important to note that the UN Office of the High Commissioner for Human Rights (OHCHR) country office in Cambodia had an ECCC legacy programme and an expert legacy officer, Michelle Staggs Kelsall. Following the ECCC Legacies conference, a so-called Legacy Advisor was externally hired by the ECCC Victim Support Section in 2012 to work on the maximisation of the ECCC's legacy. In the resultant briefing paper presented to the ECCC in February 2013 the need for a strategic legacy framework was emphasized; however, the report has not been published and there has been no formal follow-up. Therefore, it is not clear if and how the ECCC's vision and strategy has changed internally in light of such expert input given that discussions take place behind closed doors among select staff members only. However, this lack of transparency sheds light on the actors' conflicting interests, hesitance *vis-à-vis* legacy building and ambivalence from the national side *vis-à-vis* the ECCC and its legacies

From a comparative perspective, legacy building has been professionalised at all tribunals. The SCSL led the way in this regard by establishing the first ever Legacy Working Group and targeted Legacy Officer post. Three main tasks of the respective institutional structures dedicated to legacy are identified here: affirming the importance of building and leaving legacies, coordinating initiatives across the different tribunal organs and designing and implementing legacy projects, including fundraising. In terms of funding, it is worth noting that legacy work is considered a non-core activity at the tribunals, i.e. extra funding needs to be raised. Indeed, the term 'legacy' does not explicitly figure in their respective founding documents. The question whether legacy is, or should be, part of the mandate of the tribunals continues to be a matter of debate (as will be discussed in Section 8.2). When

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[146] Interviews 45 and 216, former ECCC officials, 21.04.2012, 30.01.2014.
[147] Interview 60, ECCC official, 14.09.2012.

commissioned to write *An administrative practices manual for internationally assisted criminal justice institutions* SCSL Registrar Vincent highlighted that 'every effort should be made to include an experienced legal professional to make an assessment of the national judicial and legal capacity' (Vincent, 2007: 4). This call was not heeded uniformly by the tribunals. Nonetheless, variations of an institutionalised legacy structure were deliberately set up. A major task of these professional bodies was the identification of particular projects.

6.3.   Projectification: Designing and implementing legacy projects

As legacy considerations became more concrete, the design of specific so-called 'legacy projects' became fashionable amongst the principals and section chiefs. The first publication on legacy places an emphasis on projects, to be precise, on 'discrete, pragmatic, and achievable projects' (International Center for Transitional Justice & UNDP, 2003: 20). The conceptualisation and ongoing implementation of specific legacy projects has further institutionalised legacy at the tribunals. In short, legacy projects reveal a certain legacy production. The involved actors take on the role of legacy producers, a key actor identified in the new actor framework presented in Section 3.2.1. Adopting a market-oriented approach, legacy projects seem designed to show 'legacy products' upon successful project completion. ICTR Prosecutor Jallow has repeatedly used the term. The notion of legacy products, or deliverables, indicates the influence of project management approaches in the tribunals. Such language can be seen in a wider context observed in international criminal justice and refers to a certain form of 'marketisation' and the presence of economic parameters in the field. For example, Kendall (2011) provides a lucid critique of 'donor's justice' and the implications of donor interests and powers for international criminal justice. In addition, ongoing activities of the court such as outreach and capacity building programmes have a legacy dimension. Such programmes are less apolitical than often presented by the tribunals (see Kendall, 2015; Nouwen & Werner, 2015).

ICTY

The ICTY has launched an array of different legacy projects. The ICTY projects have been aimed at writing about legacy or rendering available or publishing documents through which the tribunal hopes to preserve its legacy. The big legacy projects have been characterised by partnerships with permanent institutions. On the one hand, this has allowed the ICTY to draw on expertise of other institutions and ensure a prompt implementation of an envisaged project. On the other hand, it has been acknowledged that working on legacy projects in cooperation with other institutions has been a difficult experience even if the outcome was ultimately positive (see Robinson, 2011b). The ICTY has already completed several legacy projects (see Table 6.1).

Table 6.1: Overview of main ICTY legacy projects

Projects	Estimated project costs (including partial funding)
Manual of Developed Practices	Not available
War Crimes Justice Project (including inter alia capacity training and transcription of case records into regional languages and IHL-based E-learning portal)	~$4.4 million (EU)
'Assessing the Legacy' conference (2010)	Not available
'Global Legacy' conference (2011)	Not available
Regional legacy conferences (2012)	Not available
ICTY legacy website development	$80,000 (Charles Stuart Mott Foundation)
OTP Manual on Sexual Violence	Not available

The first legacy project was initiated by then President Pocar in 2008. A publication entitled *ICTY Manual on Developed Practices* was produced in partnership with the UN Interregional Crime and Justice Research Institute (UNICRI). The manual contains information on the ICTY procedures, proceedings, challenges and innovations which was collated and written by tribunal staff of all

organs.[148] Judge Robinson (2011b: 23), under whose presidency the project came to fruition, has clarified that 'It was a very conscious decision on the part of the Tribunal to use the expression "developed practices" and not "best practices" as there are no grounds to claim that the practices developed by the Tribunal are better than those of any court of legal system'. However, there has not been consistency of this approach as the language of 'best practices' was used in tribunal documents in 2008.[149]

The second legacy project, developed together with the Office for Democratic Institutions and Human Rights (ODIHR) in 2008, envisaged an evaluation study of capacity-building and a needs assessment of the local jurisdictions. The final project report was published in September 2009. Following the report recommendations a major legacy project entitled the 'War Crimes Justice Project' was launched in partnership with the Office for ODIHR and UNICRI and funded by the EU. The project aimed to provide practical support to legal professionals in the region and transfer knowledge. A whole array of activities was envisaged under the framework, including inter alia an international humanitarian law-based e-learning portal, curricula, transcription of selected transcripts into BCS and training sessions.[150] The project ended in October 2011. Moreover, similar to the SCSL's legacy digital project, the ICTY also initiated a legacy website development programme. During the18-month grant period, funded by the Mott foundation, the aim was to provide a BCS translation. Today the ICTY website is available in English, French, BCS, Albanian and Macedonian.

In addition, a number of legacy conferences were organised by the ICTY (this will be discussed in greater detail in Section 8.3.). Two significant legacy projects have been the two international conferences co-organised by the ICTY which have been two significant events geared towards the media and in particular international audiences.[151] The first conference entitled 'Assessing the Legacy of the ICTY' took place in The Hague on 23-24 February 2010. This conference was the

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[148] It is important to note that the manual does not contain an emphasis on defence activities. In response, within the framework of the War Crimes Justice Project funded by the EU, the ADC-ICTY and UNICRI produced a Manual on International Criminal Defence (ADC-ICTY & UNICRI, 2011).
[149] See http://www.icty.org/sid/9900/en.
[150] See http://wcjp.unicri.it/project/.
[151] Conference proceedings have been published in a book format (Steinberg, 2011; ICTY, 2012) and are available on Youtube, thus represent important legacy recordings.

focal point of the first Legacy Officer's term of office and the collaborative result of collective input from different section.[152] The second conference entitled 'The Global Legacy of the ICTY' took place on 15-16 November 2011 (see Section 8.2 on legacy conferences).

Tribunal actors have variously expressed their interest in other legacy projects. But to date a firm commitment of the ICTY or particular organs and project partners and lack of resources and personnel has caused delays in translating ideas into action. The following projects have been contemplated since at least 2011, e.g. information centres in the region of the former Yugoslavia, an oral history project, Virtual Tribunal, a version of a peace museum and victims assistance initiative in the form of a Trust Fund.[153] The idea of information centres was pioneered by the ICTR in Rwanda 10 years ago but their feasibility for the region of the former Yugoslavia is still being discussed. An ICTY mission was conducted by chef de cabinet Gabrielle McIntyre and administrative officer Pierre Galinier to Rwanda in 2011.[154] These projects have not come to fruition, due to lack of funding and capacity and shifting priorities. The ICTY outreach programme also produced a series of documentaries[155] on ICTY jurisprudence and key cases which can be conceived as legacy recordings that were widely presented and distributed in The Hague and the former Yugoslavia. It also started publishing Outreach Annual Reports from 2011 which represent another legacy recording exercise in addition to lessons learned manuals. Between 2008 and 2013 a number of legacy projects were developed. However, recently some projects have stalled and no new projects were added.

ICTR

The tribunal-wide Legacy Committee has worked on projects for the preservation and sharing of the Tribunal's achievements and lessons learned. The Committee's approach has coalesced around the design and creation of a website.

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[152] Interview 11, former ICTY official, 23.06.2011.
[153] Interviews 21, 22 and 25, ICTR and ICTY officials, 28.06.2011, 30.06.2011, 01.07.2011.
[154] Interview 21, ICTR official, 28.06.2011.
[155] Documentaries include 'Sexual Violence and the Triumph of Justice' (2011), 'Crimes before the ICTY: Prijedor' (2013), 'Through their Eyes: Witnesses to Justice' and 'Crimes before the ICTY: Central Bosnia' (2015). See http://www.icty.org/sections/Outreach/Documentaries.

The new website was launched at the 20th anniversary commemoration on 7 November 2014. The website is available in English, French and Kinyarwanda. Internet users are reminded 'You are viewing the ICTR Legacy Website, which will maintain the virtual face of the Tribunal after it closes'.[156] It contains comprehensive information and material pertaining to judicial, legal and administrative matters and represents an immense improvement over the old ICTR website. A 4-minute tribute video on the Rwandan genocide and the history and legacy of the ICTR commissioned now appears as first item on the website. The video, commissioned by the tribunal and first screened at the 20th anniversary commemoration, has been referred to as legacy project. A recently proposed 'lessons learned and best practices memoir' focusing on administrative achievements and challenges as experienced by the Registry (Kilemi, 2014) is in the making. Three legacy conferences have been initiated and organised by the ICTR, which have provided fora for discussion, contestation, and documentation (as discussed in Section 8.2). The multiple ICTR legacy projects developed and implemented in recent years are illustrated in Table 6.2.

Table 6.2: Overview of main ICTR legacy projects

Projects	Estimated project costs (partial funding obtained)
Legacy Website and Launch Events	$280,000
Legacy Symposium	$170,000
Tribute Video and Documentary	$308,000
OTP Best Practices Manuals	Not available
Genocide Story	$250,000

The multiple legacy projects of the OTP deserve specific mention. ICTR Prosecutor Jallow has explicitly referred to 'legacy products' – products 'aimed at recording the challenges and responses to the investigation and prosecution of these difficult cases and assisting national and international prosecuting authorities in managing the range of challenges as the front line in ensuring accountability for

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[156] See www.unictr.org.

international crimes' (Jallow, 12 June 2013: 2). The objectives of the OTP legacy-related projects are presented as twofold: to identify and capture best practices from the work of the OTP and to share lessons learnt with UN and national tribunals, national stakeholders and human rights organisations (ICTR, undated). Eight projects were identified by the OTP: (1) Sexual and Gender-Based Violence Manual, (2) Referral of International Cases to National Jurisdictions, (3) Genocide Story Project, (4) Appeals Chamber Digest, (5) Tracking and Arrest Manual, (6) International Prosecutors' Best Practices Compendium, (7) Prosecutor's Closing Report and (8) other legacy products (directory of ex-ICTR-OTP staff willing to serve national jurisdictions). Four projects (1, 2, 5 and 6) have already been completed yet further funding for the production, publication and distribution of the products is being sought.

Further best practices manuals have been launched. The launch of the *Best Practices Manual for the Investigation and Prosecution of Sexual Violence Crimes in Post Conflict Regions* took place in Kampala on 30–31 January 2014, conceptualised as an international workshop with roughly 100 participants to develop a training programme using the Manual, with a particular emphasis on prevention, prosecution and partnership. By so doing, the ICTR 'hopes to become the first international court or tribunal to share the lessons it has learned in the prosecution of sexual violence crimes in post-conflict regions' (ICTR-OTP Proposal, undated). The manual launched is the product of the collective and collaborative work of the workshop participants encompassing 100 experts, including judges, prosecutors and defence counsel as well as victim-witness advocates and civil society groups. Financiers of this project included UN Women, the Open Society Justice Initiative, Republic of Rwanda and East African Community. In 2015 ICTR Prosecutor Jallow released a *Best Practices Manual on the Referral of International Criminal Cases to National Jurisdictions for Trial*. This particular manual documents the OTP's experience in securing the referral of indictments to national jurisdictions. In light of the completion strategy, in total two indictments were referred to France and eight indictments to Rwanda (as discussed in Section 6.2).

Another planned legacy project that is increasingly publicised is the so-called 'Genocide Story', a book project initiated by the Prosecutor but with a focus on

narrating the genocide including all adjudicated facts found in the ICTR judgements. An information sheet has been produced which boldly claims 'while there have been and will be other books about the 1994 genocide, this approach will render this book to be viewed as a definitive and authoritative account' (ICTR-OTP information sheet, undated).

The ICTR outreach work can be viewed as continuous legacy creation, a certain form of marketing and proactive legacy production (on ICTR outreach e.g. Peskin, 2005). The Office of the Registrar and External Relations and Strategic Planning Sections have produced several materials for outreach purposes, including a cartoon book '100 Days – In the Land of a Thousand Hills' (ICTR, 2011) aimed at children and youth. This particular legacy recording however has raised concern about the legal accuracy of the ICTR's work and depicted representation of the past (see Mayersen, 2015).[157] For instance, the ICTR's main outreach centre *Umusanzu mu Bwiyunge* in Kigali provides access to public copies of the audio and video recordings and a reference library. The internship program and legal researchers programme can also be viewed as early legacy initiatives even if it was not explicitly framed as such externally. In this context also important to note the Outreach Programme on the Rwanda Genocide and the United Nations, a programme run by the UN Department of Public Information aimed at information and education established by the UN General Assembly on 23 December 2005 (UN A/RES/60/225).[158]

SCSL

The SCSL legacy projects have developed as an evolutionary process since the first mention of legacy projects. Three initial projects were identified in the Legacy White Paper: 1) Site Project (transfer of the Court's 11.5 acre site to Sierra Leone); 2) Radio Justice (radio programme with focus on SCSL proceedings and

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[157] Within the ICTR the publication upset some legal staff which consider the cartoon book incorrectly portrays the law and thus cannot understand why it is still widely distributed at outreach events and conferences such as ICTR Legacy Conference in 2013 and Legacy Symposium in 2014 (personal communication, ICTR official, 08.11.2014).
[158] See http://www.un.org/en/preventgenocide/rwanda/index.shtml.

information on justice and rule of law) and 3) Legal Resources Development Project (transfer of SCSL's specialised library to domestic courts) (Nmehielle & Jalloh, 2006; Jalloh, 2007). It acknowledged time pressure noting that 'only a limited time remains for the Court to transfer its skills, knowledge and resources to national partners' (SCSL Legacy Information Sheet, 2010: 1). *Vis-à-vis* its pending closure and the advanced implementation the SCSL seemed to be moving towards what was characterised as legacy consolidation in the legacy cycle discussed in Chapter 3.[159] Six big legacy projects were implemented (see Table 6.3).

Table 6.3: Overview of main SCSL legacy projects

Projects	Estimated project costs (including partial funding)
Site Project	Not available (including ~$89,000 (EC))
Peace Museum	$600,000 (including $195,000 (UN Peacebuilding Fund))
National Witness Protection Programme	$1,605,000 and $60,000 (including ~$70,000 (EC))
Archives Development Programme	$1,500,000 (including $270,000 (EC))
Capacity-Building: Professional Development Programme	$150,000 (including $55,000 (EC))
Improving Detention Standards and Access to Justice for Women and Juveniles	$100,000

The Peace Museum is commonly referred to by SCSL staff as a showcase project and has been called 'one of the most important tangible legacies' for Sierra Leone.[160] Memorialisation has become a focus in post-conflict peace processes, linking peace and justice and collective memory (see e.g. Halbwachs, 1992; Grosser, 1989; LeGoff, 1992; Osiel, 2000, 2009; Edkins, 2003; Ricoeur, 2004). The origins of the Peace Museum are deeply connected to the Site Project. The ambition is considerable given that 'four objectives – documenting the history of the conflict,

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[159] As elaborated in Section 3.2.2. the cycle of legacies includes three elements: legacy creation, consolidation and contestation (Figure 4).

[160] Interview 1, SCSL official, 20.06.2011. Interestingly, occasionally in parlance it has also been referred to as the 'war' museum rather than 'peace' museum. Museum developments were also confirmed in interviews 40 and 41, 02.03.2012.

honouring the war's victims, building peace, and strengthening the human rights culture – define the mandate of the Peace Museum' (Eyre, 2012: 82). A letter of the Government of Sierra Leone of 24 April 2009 and consultations in 2011 resulted in recommendations that part of the former SCSL premises be dedicated to build a memorial commemorating the war. It is hoped the memorial will help prevent future atrocities as the President of Sierra Leone has been adamant about projecting the image of a peaceful Sierra Leone and 'looking forward' (which was the theme of Sierra Leone's 50th independence anniversary in April 2011): 'We will never allow the violent past to take our country back to the era of gross violations of our rights' (Koroma, 2011). The SCSL obtained $195,000 from the UN Peacebuilding Fund in December 2010 to set up a peace museum in the re-modified SCSL security building. The Peace Museum Project Management Team was formed in January 2011.

The museum contains three components: first, the archives including the public records of the SCSL, TRC and National Commission for Disarmament, Demobilisation and Reintegration, second, an exhibition collection including artefacts relating to the conflict and peace process and, third, a memorial established on the converted car park. For the memorial an open public design competition was launched on 1 March 2011. Out of 20 entries the winning entry was announced in March 2012. The museum project has become increasingly ambitious and is anticipated to draw a wide gamut of beneficiaries, including both Sierra Leoneans and international visitors, for instance researchers and tourists. However, there have been some concerns voiced, for instance fear of alienation given that the museum is located in Freetown, while the capital of Sierra Leone the city remains outside the reach of many Sierra Leoneans living in the provinces. Born out of a SCSL legacy project, the Sierra Leone Peace Museum now is an independent national institution.[161] In a sense the SCSL passed the torch to the Peace Museum which is conceived as a permanent organisation to continue building and preserving its legacies in the future. Fittingly, the opening of the museum on 2 December 2013 coincided with the closing ceremony of the SCSL.

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[161] See http://www.slpeacemuseum.org/.

Three other developments showcase the institutional innovation of the SCSL. First, a new 'legacy' section was added to the SCSL website briefly presenting the six ongoing legacy projects mentioned above. Staff members repeatedly pointed to the designing of a new 'legacy website', which now seems to be the website of the residual court. It contains a full page on 'legacy' and 'legacy projects'.[162] Second, two legacy conferences under the leadership of the SCSL and International Center for Transitional Justice were held in New York (October 2012) and Freetown (February 2013). In this context the International Center for Transitional Justice elaborated a multimedia project and website on 'Exploring the Legacy of the Special Court for Sierra Leone', including information on the conferences, an interactive timeline of the court's development and a podcast series. The website is envisaged to be an educational tool. In that respect the project coordinators highlighted that 'like the legacy of the SCSL itself, this website aims to live longer than the conferences'.[163] Third, the SCSL was involved with preparations for a legacy survey conducted the year following the Taylor trial judgment. The SCSL issued a vacancy announcement for a legacy survey consultancy for a survey that 'will seek to establish the impact of the Special Court on Sierra Leone and Liberia through its judicial proceedings, through its legacy work and through its outreach programme. The assessment will primarily focus on the Special Court's contribution to the post-conflict development of the rule of law in Sierra Leone. This will include its impact on the national judiciary as well as on the general public' (SCSL, 2011: 1). The survey was independently conducted by the Brussels-based NGO No Peace Without Justice in partnership with Manifesto99, the Coalition for Justice and Accountability, the Sierra Leone Institute of International Law and the Liberian NGO network. The survey (SCSL & No Peace Without Justice, 2013) has been widely cited by the court in official statements and at the legacy conferences (see also Hollis, 2015) and can be seen as an impressive first-of-its-kind legacy recording in the immediate phase before closure.

Ongoing initiatives such as the internship programme that provided funding for Sierra Leonean interns can be viewed as an early legacy initiative even if it was not explicitly framed as such. The SCSL outreach programme was conducted by a

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[162] Interview 1, SCSL official, 20.06.2011.
[163] See http://scsl-legacy.ictj.org/.

network of 18 district outreach officers stationed in the 12 districts of Sierra Leone. The outreach programme has conducted hundreds of sessions across the country and has been called the 'crown jewel of the Special Court'[164] (Cassese, 2006: 59). Legacy has seemingly evolved from a concern of primarily the Registry to an area of debate and activity across all organs and sections. The organ-specific legacy activities have been reported separately in the annual reports since 2009. The two notable legacy projects of the OTP include the Sierra Leone Legal Information Institute (Sierra LII, see Warren, 2011)[165] and the above-mentioned joint-tribunal Compendium of Best Practices.

ECCC

Full details of the overall ECCC legacy framework or programme have not been made publicly available. A few projects have been mentioned as flagship legacy projects, namely the so-called Virtual Tribunal and the Legal Documentation Centre and more recently a memorial project (see Table 6.4).

Table 6.4: Overview of main ECCC legacy projects

Projects	Estimated project costs (including partial funding)
Virtual Tribunal	Not available
Legal Documentation Centre	Not available (including $2 million (Government of Japan))
Memorial in Toul Sleng Museum	$88,500 (German Government)

The most prominent and widely hailed ECCC legacy project is the so-called Virtual Tribunal. On 17 February 2010 the Tribunal signed an agreement with the Hoover Institution at Stanford University and the War Crimes Studies Center at the University of California, Berkeley. The Virtual Tribunal was heralded as innovative

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[164] Interview 1, SCSL official, 20.06.2011.
[165] See also www.sierralii.org.

effort to 'link together all these resources and combine them with expert commentary, educational introductions and explanations, interviews and other multimedia resources' and then 'to make it easily accessible for people in Cambodia, information centers where the ECCC Virtual Tribunal can be accessed will be created at schools, universities, law faculties and other sites.'[166] The Virtual Tribunal was conceived as a not-for-profit digital multimedia library. These announcements noted that the Virtual Tribunal was being designed as a tool to enhance the archival legacy of the ECCC with project partner East-West Center in Honolulu. The ECCC launched the Beta version for testing and comment in September 2012 utilising Case 001 data and multimedia applications. Two IT consultants were hired in 2013 to work on search functions of the database. Currently the website is not accessible online.[167] In light of debates over funding, commitment and ownership on the Cambodian side, the project appears to have been deserted, or at least to have stalled, since no update has been published.[168]

The second widely advertised legacy project is the construction of a new Legal Information Centre, a permanent centre for archival preservation and education. It is, however, also emblematic of the challenges the Tribunal faces pertaining to funding, sustainability and the long term political commitment to the transformative potential of its operations. The Japanese government provided $2 million for this ECCC legacy project in 2009 to build a permanent centre for the archives and as an educational platform which would 'keep the outcome of the Tribunal for the Cambodian society as a legacy of the ECCC and will serve as a token of remembrance and non-recurrence of the Khmer Rouge regime' (Wallace, 2014: 1). After provision of the funds to build the facility the Cambodian government is technically responsible for funding its daily operations and maintenance. While the building has been built in Sen Sok district in Phnom Penh, the facility has remained half occupied as funding is still awaited from the Cambodian side. The headquarters of the Bar Association of Cambodia have moved

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[166] See ECCC, 'Virtual Tribunal', *ECCC Website*, http://www.eccc.gov.kh/en/virtual-tribunal.
[167] See http://vt.eccc.gov.kh/.
[168] Here it is important to note that the ECCC Virtual Tribunal was supposed to be the pioneer case. Since a few years interest for the VT as legacy project has also been sounded at the other tribunals, with several meetings between David Cohen and Penelope Van Tuyl of the War Crimes Studies Center at the University of California, Berkeley and tribunal officials and negotiations of Memorandum of Understandings. Similarly to the ECCC, the Virtual Tribunal project at the ICTY and SCSL appears to have stalled as well.

into half of the four-storey building. It remains to be seen when or whether this legacy project will be fully implemented and the archival centre eventually become functional.

In early 2014 another new project was announced: a memorial in the Tuol Sleng Museum. On 10 July 2014 the ECCC and the Ministry of Culture and Fine Arts signed a Memorandum of Understanding to this effect.[169] On 26 March 2015 the ECCC Victims Support Section and the Ministry of Culture and Fine Arts of the Royal Government of Cambodia inaugurated the Memorial to Victims of the Democratic Kampuchea Regime. The non-judicial legacy project in the form of a stupa has a particular cultural resonance in the construction of meaning and remembering in the Cambodian context. Interesting parallels can be seen between this memorial and the SCSL's memorial garden that forms part of the Peace Museum.

Several other initiatives have a legacy dimension while not explicitly labelled as legacy projects by the Tribunal. The extensive ECCC outreach programme deserves specific mention. Through the programme, which facilitates transportation, over 160,000 Cambodians have visited the tribunal and attended hearings. The ECCC's public gallery, a former theatre which can seat up to 500 visitors, is the largest gallery compared to other international tribunals. Thousands have followed the ongoing proceedings via a national television programme and weekly radio show 'Khmer Rouge Leaders on Trial' on Bayon Radio and Radio National Kampuchea (ECCC, 2014b: 10). In 2013 the ECCC Public Affairs section started a blog to fill an information gap and complement its social media strategy (Olsen, 2013). It is worthwhile noting that the tribunals are increasingly monitored and thus information is brought into the public sphere to enable enhance open discussion on a global level through the internet.[170] Some examples concerning the human legacy dimension in terms of skills and cross-pollination in the judicial arena deserve brief mention. For instance, the National Internship Program has been targeting Cambodian students

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[169] The memorial project was to be implemented under the framework of Non-Judicial Measures of the ECCC Reparation Programme which is made possible with funding from the German Ministry of Economic Cooperation and Development through the Victim Support Section. http://www.eccc.gov.kh/en/document/public-affair/inauguration-memorial-victims-democratic-kampuchea-regime-tuol-sleng-genocide.

[170] See http://www.cambodiatribunal.org/about-us/.

and young professionals. Tribunal officials in the Office of the Co-Prosecutors have coordinated smaller legacy projects in various shapes and sizes, for instance training sessions with practitioners and lawyers from the domestic justice institutions and legal education programs.[171] Since summer 2014 the ECCC, in cooperation with the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, hosted a new seminar series on international criminal law and human rights for law students.[172] However, it does not appear that a continuous consultative dialogue has taken place with the government and civil society with regard to priorities, needs and expectations *vis-à-vis* legacy deliverables.

Moreover, the ECCC's Defence Support Section has engaged in a separate legacy programme with a more bottom-up focus on those who can push for change in their respective professions.[173] An attempt to involve practitioners on the ground differs from the ECCC's official approach in which legacy building has been driven by economic considerations and is geared towards legacy recording and documenting of the the work of the ECCC and less to participation by Cambodian professionals. Its seven main components as detailed online are training and capacity building, courses on international criminal law, defending complex cases, case management, mentoring, outreach and regular contact with media, NGO, legal and academic communities.[174] Initiatives which deliberately take a bottom-up approach include the Fair Trial Clubs and national internship program for Cambodians.

Brief comparison

To sum up, comparatively speaking, an institutionalisation of legacy building is clearly discernible across the tribunals. Three levels (projection, professionalisation and projectification) have been distinguished here. All four tribunals have developed their own legacy projects. While the SCSL has already

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[171] For example, in 2014 officials from the ECCC Office of the Co-Prosecutors coordinated a two-day practical advocacy training exercise on sexual offences for Cambodian defence lawyers, sponsored by International Bridges to Justice.

[172] ECCC, 'Seminar series in international criminal law and Human Rights for Law students', *ECCC Website*, http://www.eccc.gov.kh/en/articles/seminar-series-international-criminal-law-andhuman-rights-law-students.

[173] Interview 2, ECCC official, 20.06.2011.

[174] See ECCC, 'Legacy', *ECCC DSS Website*, http://www.eccc.gov.kh/en/dss/legacy.

implemented its biggest projects prior to closure, the ICTY, ICTR and ECCC are still working on projects. Due to shifting priorities and interests, certain developments and projects appear to have stalled. The SCSL was the first tribunal to develop a legacy vision and sense of urgency as legacy leaver and to then engage in 'deliberate legacy planning' (Nmehielle & Jalloh, 2006: 120). The analysis has provided insight into particular developments and attributes the variation to the politics of establishment of the court, timing of court operations, financial constraints, continuous contact with Sierra Leoneans (e.g. through SCIF) and, last but not least, personal interpretations of legacy building by tribunal officials. The strategic dimension deserves greater attention, which is why the next chapter elaborates further on the reasons for the convergence and divergence among legacy strategies and outcomes at the ICTY, ICTR, SCSL and ECCC. Most legacy projects surveyed are aimed at what the previous chapter has described as legacy production and legacy recording. The latter raise the question of the legitimacy and objectivity of writing one's own history. To give an example, the 'Genocide Story' book currently in preparation by the ICTR OTP raises serious questions about attempts of history writing by tribunals and enforcing certain legacies. While the debate on the relationship between law and history is not new (see Arendt, 1965; Wilson, 2011), history writing through tribunal publications rather than judgements shows a new quality of attempted control of legacies as seen by the tribunal actors. By way of summary of this chapter and as guideline for the next chapter on legacy strategies, Table 6.5 provides a succinct overview of legacy developments and activities for the ICTY, ICTR, SCSL and ECCC respectively.

Table 6.5: Comparative overview of legacy activities across tribunals

	ICTY	ICTR	SCSL	ECCC
Term used since	2004	2004	2002	2010
Institutional structure		Legacy Committee (2006 and 2012)	Legacy Working Group (2005), Legacy Committee (2006)	Legacy Working Group (2008), Legacy Secretariat/ Legacy Advisory Group (2010)
	Legacy Officer (2008-2011), Legacy Administrative Officer (2010-)	Legacy Officer (2013-2015)	Legacy Officer (2007- 2009)	External Legacy Consultant (2013)
Projects	Manual of Developed Practices, War Crimes Justice Project incl. transcriptions and capacity-building, Legacy Conferences (two in The Hague and two in the region)	Legacy Conference, Legacy Symposium, Legacy Website (incl. Tribute Video)	Site Project, Peace Museum, National Witness Protection, Archives Development, Capacity-Building, Improving Detention Standards and Access to Justice, Legacy conference	Virtual Tribunal, Legal Documentation Center, Memorial, Legacies Conference
	OTP: Best Practices Manuals	OTP: Best Practices Manuals, 'Genocide Story' project	OTP: Sierra LII, Best Practices Manual	

In retrospect, it seems fair to say, the legacy developments, outlined above, occurred idiosyncratically without continuous systematic coordination and cooperation between the tribunals. That being said, it is important to note common inter-tribunal legacy projects. Two projects have been initiated collaboratively. A joint OTP project that received much media attention and publicity is the so-called *Compendium of Lessons Learned and Suggested Practices from the Offices of the Prosecutors*. The compendium was launched at the 17th Annual Conference of the International Association of Prosecutors held in Bangkok, Thailand in November 2012. The idea had been put forward as early as 2004 at the first Prosecutors' Colloquium hosted in Arusha. The Compendium was developed and produced under the aegis of the ICTR OTP; however, it is clearly the result of a collaborative effort

amongst the OTPs with numerous inter-tribunal meetings over the years. The Compendium is intended as a working document to specifically assist prosecutors worldwide, consequently its distribution has been limited.[175] In light of the interest in developed practices and lessons learned, another project was initiated as an inter-tribunal legacy project. Its guiding theme is collecting and sharing lessons learned with relevant practitioners in the international criminal legal field. Under the leadership of the ICTR President several meetings with colleagues from the other tribunals, including the ICC, have taken place. However, progress seems to have stalled as when the number of participating tribunals grew it became more difficult to bring particular interests and schedules together effectively.[176] The term 'legacy' has wide currency today among practitioners in international criminal law (see Chapter 8). As the tribunals are nearing their mandates and the completion strategies are unfolding, the 'legacy turn' at the tribunals has revealed itself hectic, i.e. both speedy and inchoate as surveyed above.

Conclusion

Legacy building has been traced here as a novel and noticeable area of attention and action within the tribunals. Legacy building is based on a heightened awareness that revolves around the awakened desire and recognised need by particular tribunal actors to leave legacies. The visible development of an institutionalised focus on legacy at the tribunals attests to this fact. In addition, other dynamics have been at work. For instance, an analysis of the projectification of legacy reveals an increased engagement with donor expectations and a view of legacy as resource generation, which has been most pronounced at the ECCC but not absent at the other tribunals. Here it is suggested to return to the two questions that guided the analysis of the present chapter: How has a concept of legacy taken hold of the tribunals? And is there any variation among the tribunals in terms of their approach to legacy?

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[175] The compendium is available with member access on the International Association of Prosecutors website: http://www.iap-association.org/.
[176] Interviews 181 and 187, ICTR officials, 20.09.2013, 24.09.2013.

First, a concern with the idea of legacy has taken hold of the tribunals, rhetorically, structurally and practically. The concept of legacy changed the discourse, institutional structure and field and scope of activity at the tribunals. The process of legacy building has affected the functioning of the tribunals and their social environments. This has become apparent in social positioning within the organisations and style and patterns of communication. Legacy building at the tribunals became outcome-driven rather than process-oriented. The thesis finds an array of tribunal actors and organs that have been actively involved in legacy creation and the perpetuation of the tribunals beyond closure. It is noteworthy that the breadth and depth of the respective legacy visions, professional structures and projects has remained idiosyncratic at each tribunal. The next chapter will show how legacy strategies converged to a certain extent; however, they did not merge given different priorities identified for the respective post-conflict country or region concerned, resources in terms of money and expertise, timing and interests of individuals in the tribunals. This leads to the question of variation.

Second, this chapter has maintained that considerable variation existed and continues to exist across the tribunals in institutionalising a legacy focus and in creating legacies. The topic of legacy became a focal point first within one tribunal organ but then eventually permeated all organs. The first focal point of legacy was not the same across the tribunals: OTP (ICTR), Office of the President (ICTY and also later ICTR) and Registry (SCSL). No focal point on legacy crystallised at the ECCC. In line with the empirical findings this chapter has demonstrated that the SCSL has showcased considerable institutional innovation in this regard since its establishment in a number of firsts (first explicit legacy vision sketched, legacy working group created, legacy officer recruited, legacy projects identified). The specificities of the SCSL, including its most acute 'nearness to death', hybrid nature, location *in situ* and voluntary funding scheme were highlighted as important factors in explaining this variation. The ICTY, ICTR and ECCC tribunals have had peak moments of proactive engagement. Since 2014 the ICTR is the most active in legacy building driven by the existence in parallel of a new Legacy Committee and legacy officer. Overall, the ECCC has been most hesitant with regard to legacy building given a lack of engagement of key tribunal officials and managerial approach to legacy and the politicisation of legacy and the rule of law in Cambodia. While the

explicit engagement with legacy has to some extent waxed and waned at the tribunals, it is important to note that thinking about the impact and consequences of war crimes trials has been long in the making. Pre-existing policies and activities, including outreach and capacity building programmes and local partnerships, before legacy became a buzzword, have informed the preoccupation with legacy and types of activities at the tribunals.

Building on the systematisation of the institutionalisation of legacy building as presented in the above comparative account (for a summary see Table 6.5), the next chapter enquires deeper into the strategic dimension. The emergence of legacy strategies is illustrative of a 'legacy turn'.[177] Chapter 7 now turns to the plurality of legacy strategies and different actors involved, with a particular emphasis on timing, funding and meaning making.

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[177] The view proposed here of a 'legacy turn' has recently been taken up by Stahn (2015).

Chapter 7

Legacy Strategies

Having analysed the completion strategies of the tribunals in Chapter 5, the thesis now turns to an exploration of legacy strategies of the tribunals. The purpose of this chapter is to examine in depth the strategic approaches to legacy creation across the tribunals, drawing on examples at the organisational and individual level. The analysis illuminates issues of both theoretical and empirical significance above and beyond any individual case. The account provided here deliberately goes beyond the anecdotal to the more systematic, with empirical illustrations provided as necessary. The central argument underlying the analysis is that the approach to legacy that crystallised at the SCSL was proactive, continuous and more decentralised, in contradistinction to the approaches prevalent at the ICTY and ICTR which have been reactive, fragmented and more centralised. The approach at the ECCC, finally, has been *ad hoc* and sporadic at best.

This chapter is divided into two parts. First, it enquires into legacy building as a strategic endeavour. The underlying interest in legacy is explored and psychological, ideational and material explanatory factors are distinguished. Following from this, the legacy planning of the tribunals is scrutinised. The main focus is placed on conditions of legacy building and carriers of legacy. Three main conditions are explored: mandate, money and management. Two main carriers of legacy are identified: people and processes. Similarities and distinctions among the developments at the ICTY, ICTR, SCSL and ECCC are highlighted. The recognition of the value of organisational legacy planning but also its limitations needs to take hold more firmly. Second, this chapter examines strategies in action. It is shown that a plurality of legacy strategies have emerged within and between the tribunals, across time and space. The different legacy strategies of particular tribunals, organs and individuals sometimes were complementary, at other times they were in competition. Evidence of attempts to gain control and shape legacies by certain tribunal actors will be highlighted. Finally, the case of the SCSL is examined to show legacy developments, from conception to completion of mandate and from creation to consolidation of legacies.

7.1. Legacy building as strategy

One of the aims of the tribunals has become to have long lasting impact. A shared sense within the tribunals of wanting to leave and create legacies has emerged. Both the tribunals as organisations and individual actors within the tribunals have taken on the role of legacy leavers. The impending closure of the tribunals raises existential questions — at both the institutional and individual level – – about their ownership, legitimacy and *raison d'être*. Potential legacy leavers actively create legacies and attempt to shape how they want to be remembered. The tribunals and tribunal actors – as legacy leavers – seem to be no exception. The consequences and impact of international criminal trials are increasingly questioned. A 'consequentialist turn' in international justice has been identified (Snyder & Vinjamuri, 2004). This is relevant in that it points to consequences as critical dynamics and to the shifting of the pertinent temporal horizon. The term legacy building denotes the constructive component of the process. The metaphor of building is also commonly used when referring to institution building (see e.g. 'building the ICC' (Schiff, 2008)). Legacy building can take on different forms: purposive, opportunistic or contingent.

In contrast to the ICC as a permanent court, the ephemeral of the present has come into shaper relief at the *ad hoc* tribunals. The focus on legacy should be interpreted not as obsession with but rather as a symptom of a growing uncertainty and anxiety about oblivion and meaninglessness. While it may be critically dismissed as new fad and said that media attention shifts rapidly, a focus on legacy has taken hold amongst tribunal observers and stakeholders. Often, however, stakeholders neglected to recognise that serious attention to a tribunal's legacy needs to begin before its very creation, not just before it closes. This was remarkably foreshadowed by former UN Secretary-General Kofi Annan in the *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* (2004: para. 46, 16): 'And 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'. The link between completion strategies and legacies was indicated in Chapter 5. Recently Ellen Margrethe Løj, Special Representative and head of the UN Mission

in Liberia, echoed this by stating that exit strategies, whether fully formulated or not, need to be embedded into a mission from the outset, 'Otherwise, the mission will act like a ship without a clear destination.'[178] Here it is important to bear in mind the distinction between intended legacies and realised legacies (introduced in Section 3.2.2, see Figure 3.4). The chapter now turns to two important strategic steps of legacy building: Providing direction (Section 7.1.1) and focussing efforts (Section 7.1.2).

7.1.1. Providing direction: Interest in legacy

A focus on legacy redirects attention to the future. Legacies are considered timeless, hence it seems to matter more what an individual or organisation accomplishes and stands for. In short, institutional persistence is seen to depend on legacy building (as discussed in Section 2.1). Here the chapter picks up the analytical framing presented in Chapters 2 and 3 to specifically refine and anchor it for the specific cases under examination. The thesis has already identified a 'legacy turn' in the realm of the tribunals in the form of an institutionalisation of legacy building (as elaborated in Chapter 6). A clear indication can be seen in the interest in sustainable developments beyond legal procedures and judicial proceedings at the tribunals (see a discussion of 'legacy projects' in Section 6.3). The 'legacy turn' is characterised as 'hectic' for two main reasons. First, the focus on legacy became prominent in view of the completion strategies. Second, the approach appears to have been hectic in the sense of disparate, fragmented and discontinuous. However, the argument is nuanced in that the hectic 'legacy turn' best characterises the ICTY, ICTR and ECCC whereas the SCSL's approach was coloured by this legacy turn but took a different direction since the establishment of the court (see Section 7.2.2). But first the underlying interests in legacy at the tribunals deserve some attention.

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[178] Cit. in www.un.org/apps/news/story.asp?NewsID=33754.

Interest in legacy

Three considerations motivate the overall interest in legacy at the tribunals. In the following, psychological, ideational and material factors are identified. In psychological terms, all tribunal officials interviewed shared a desire to see something lasting and contribute to institutional persistence. In ideational terms, the instillation of norms of rule of law, accountability and justice have fueled legacy planning. In material terms, the international climate of tribunal fatigue and pressure towards performance and marketisation has generated further interest in legacy creation.

Psychological factors

Active involvement in legacy building has been considered important by individuals interviewed, across all levels of management and staff involved, to bring stability in the face of organisational decline and death. The desire to see something lasting has been expressed in every interview with tribunal officials across the tribunals, without exception. The research showed that there is an individual as well as a collective and institutional interest in legacies as a certain self-justification or self-legitimation. The desire of participants to convince oneself that the tribunals were involved in a worth-while exercise is evident. From a critical perspective, interest in the topic is heightened in light of strategic mobilisations of the idea of legacy leaving as what has been seen as 'self-justificatory motive of wanting to convince ourselves we were in involved in worthwhile exercise'.

In terms of psychological underpinnings of legacy creation nearness to death has been shown to be one driving force (see Section 3.2). Comparatively, this is of particular significance in the context of the tribunals whose life spans are coming to an end after historically short time periods of 10 and 20 years respectively. As mentioned, the search for meaning and significance leads to attempts at post-death image maintenance and memory shaping (see Hunter & Rowles, 2005). Legacy efforts are currently fueled by the impending closure of the tribunals, a kind of symbolic 'death' (see Section 2.1.1 on 'organisational death'). This has been most

pronounced for the SCSL which has been the nearest towards closure all along and was the first to actually close down in December 2013. In this sense, the current cross-institutional focus on legacy at the tribunals is an attempt to face mortality by transcending it and re-constructing 'the end'.[179]

On the individual level, legacy construction involves the self-examination of life's purpose. The thesis distinguishes between an internal and external motivation for legacy creation.[180] Internal motivation points to engagement on legacy as a means to an end such as reputation, fame, personal gains and longevity of funds, projects and jobs. This recognises the economic function of legacy creation and of legacy as a 'lifeline' for particular individuals within the organisations. This motivation has been seen critically by some who have not part of legacy structures such as committees.[181] A letter request by SCIF presented by a civil society representative to US Ambassador Rapp in February 2013 suggests another dynamic of meaning making and self-perpetuation. Asking for extending funds so that the forum could be kept alive and continue working on rule of law and justice issues and thus uphold court legacies also points to concrete material and financial interests in terms of prolongation of existence.[182] External motivations may foreground legacy building as an end in itself with a genuine interest in leaving legacies for local or global constituents. Examples provided elucidate the interplay between internal and external motivation of legacy creation.

Moreover, legacy has become a recent focus in terms of meaning making at the *ad hoc* tribunals. As one interviewee reflected:

> We are talking so much [about legacy] because we forgot about it. The very reason for creation was to assist in peace and reconciliation, when you are focusing on cases you don't make link with affected communities. Because we do only realise now we are closing now and we try to make known what we did and to give sense to what we've been doing.[183]

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[179] Interview 15, defence counsel, 27.06.2011.
[180] This draws on a distinction in the psychology literature between a so-called egoistic and altruistic impulse for legacy creation (see e.g. Kivnick, 1996; Rubenstein, 1996; Newton, Herr, Pollack, & McAdams, 2014).
[181] Interview 6, ICTR officials, 21.06.2011.
[182] Fieldnotes, February 2013.
[183] Interview 18, ICTR official, 28.06.2011.

Legacy creation is thus an important moment in meaning making, i.e. giving sense to one's work. Giving sense to one's work is linked to identity construction.

Legacy building represents a powerful coping strategy for individuals *vis-à-vis* the spectre of organisational decline and death. Several interviewees at the SCSL clearly echoed this: 'I would like to see the SCSL remembered for its legacy programmes... If we invest in legacy programmes, we will invest in life after death'[184] or 'I wouldn't say birth and death, if it is death that will mean nobody will remember the court. The fact that it is leaving these legacy programmes behind, whatever successes they are able to make, will have to be attributed to court.'[185]

By focusing on continuation rather than solely completion and closure and thus engaging in legacy planning the tribunals are affirming their relevance for today and for tomorrow. The striving towards institutional persistence is a prominent contemporary example of organisational meaning making. It is the tremendous psychological appeal of both organisational legacies and individual legacies (see also Section 7.2.1 on individual legacies) that drives legacy building at the tribunals. Ideational and material factors are also underlying interests.

Ideational factors

The interest in legacy is also linked to ideational factors. In ideational terms, legacy is about exemplifying and extending norms and values which then remain and live on after any given organisation shuts down. In official discourse, tribunals are portrayed as beacons symbolising the rule of law, accountability, justice and fight against impunity. The tribunals seem interested in leaving legacies as their own existence is premised upon the importance seen in the values they are seen to stand for and perpetuate. The UN Secretary-General 2004 report stated

> Our experience in the past decade has demonstrated clearly that the consolidation of peace in the immediate post-conflict, as well as the maintenance of peace in the long term, cannot be achieved unless the population is confident that

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[184] Interview 17, civil society member, 27.06.2011.
[185] Interview 77, SCSL official, 08.10.2012.

redress for grievances can be obtained through legitimate structures for the peaceful settlement of disputes and the fair administration of justice. (UN S/2004/616)

For our purposes here, it is paramount to underscore that actors concerned with particular visions or blueprints of peace and reconciliation are also prominently involved in legacy building of the tribunals. This is an example of the emergence of not one legacy but different legacies depending on the interests and actions of actors beyond the tribunals as legacy leavers. The link between the maintenance of peace and security and the prosecution of persons responsible was originally included in the UNSC resolutions establishing the *ad hoc* tribunals pursuant to Chapter VII of the UN Charter. It is this wider aim that has also been called the 'strategic purpose of the ICTY' and 'peace-justice-security nexus' (Futamura & Gow, 2014: 15, 25) that colours many legacy assesments. The tribunals ultimately may be seen as producing legacies of the international criminal law regime or even the liberal peacebuilding paradigm as a whole. It is important, however, here again to acknowledge the salience of views surrounding the compatibility of peace and justice, epitomised by the so-called 'peace versus justice' debate highlighting the perceived tensions between the two, especially during ongoing conflict.

From the viewpoint of the international community, as part of the liberal peacebuilding paradigm, many actors, prominently the UN, key donor states and donors as well the tribunals themselves appear vested in seeing their own organisations as a success and thereby demonstrating the value of international justice. As Bingham noted,

> It is this symbolic function of the Tribunals, so apparent in the rhetoric of their creation, that is most threatened by the prospect of their permanent closure. In other words, not only will the Tribunals no longer be "out there," they will also face the difficult task of closing without unravelling or distorting their role as a "symbolic validation" of the international community's commitment to bringing war criminals to justice. (Bingham, 2006: 691)

This thesis does not subscribe to the classic model of legacy creation as a stand-alone final phase in an individual's or organisation's development. Instead, as explicated in Chapter 2 legacy creation is considered a lifelong endeavour. That

being said, legacy building certainly may come to the forefront of attention and activity in the final years.

There has been a realisation in recent years by the international community that simply pronouncing ten, twenty or one hundred individuals as responsible or not and locking those found guilty away does not allow the full potential for the desired dissemination and instillation of norms and impact more broadly on post-conflict countries transitioning to societal stability, peace, and reconciliation to be realised. Hence, pressure on the tribunals grew to demonstrate successes and lasting contributions 'outside the narrow confines of the courtroom' (Nmehielle & Jalloh, 2006: 110-111). Tribunal officials also have particular interests to increasingly encourage debate and promote norms such as the rule of law and accountability for instance through concrete projects.[186] It is important to appreciate though that ideational factors always reflect underlying social and material processes. Material considerations complement the interest based on ideational, and more immaterial, considerations of legacy.

Material factors

Material interests also drive legacy creation. Given the international climate of tribunal fatigue and criticisms of international trials as too slow and too expensive (see Chapter 5), the tribunals have been increasingly under pressure to point to successes and lasting contributions. The question of 'value for money' hovered over the tribunals. Given the growing expenditure of criminal trials, expectations regarding output became increasingly high. The emphasis on the financial factors and interests needs to be carefully considered as no unequivocal assessment or perception of the value of tribunals or a given trial exists nor of a single possible measurement. In sum, since 1993 the international community will have spent an estimated $6.3 billion by the end of 2015 (Ford, 2011, 2015; see Section 4.1. for details). It is worth noting that using a cost-benefit analysis to assess criminal courts renders the assessment simplistic and one-dimensional. The surfacing of the logic of

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[186] Interview 26, SCSL official, 22.08.2011.

'marketisation' or 'marketing culture' in international criminal law has unsurprisingly not been without its critics (Schwöbel, 2014).

In economic terms, legacy is first and foremost about investments and returns. This is linked to the material interest to justify public expenditure by pointing to investment longevity in the form of legacies. Such an approach has been internalised to a certain extent at the tribunals. This was echoed by tribunal officials across the tribunals: 'We cost a lot of money and we should give something back' or 'Also part of the ICTY to pay back. We should give back as we cost a lot of money'[187] or 'Because something should stay. If you work for something like eight years, you would regret that lot of money has been spent and nothing stays' or 'All the time and money has been spent, there must be something left to communities in the former Yugoslavia.'[188] The justification of expenditures is cited as a main factor by tribunal staff, across all organs at the tribunals. Senior tribunal officials recognise as one senior official at the ICTR put it 'We have invested a lot of money, man power and feelings'.[189] In addition, legacy work became a 'lifeline' for certain individuals working on legacy who could anticipate an extension of contract, and even for the organisation as a whole. This is the case of the ECCC where material factors and cost became an important defining factor of discussions on legacy. These instrumental factors in terms of money, jobs and careers are explored further below in relation to funding.

Moreover, there has been increasing focus on leaving a material or 'tangible' legacy. Tangible legacy has been understood in a large sense, not only including the obvious physical material such as buildings and archives but also capacity-building and training. One SCSL official conceded, 'It was very soon that we started to come up with training programmes. A little selfish maybe, if we have better prosecutors, we have better results, but it was the right direction: give something lasting.'[190]

In sum, three different factors (psychological, ideational and material) have shaped the interest in legacy at the tribunals. At first sight, the most prominent signs of legacies are material. But ideational factors seem more long-lasting. In practice,

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[187] Interview 19, ICTY official, 28.06.2011.
[188] Interviews, SCSL and ICTY officials, 06.2011.
[189] Interview 181, ICTR official, 20.09.2013.
[190] Interview, SCSL official, 08.2011.

however, the interest has not been uniform or constant across the tribunals. This calls for a more detailed analysis of when and how the tribunals engaged in a strategic approach to legacy. It is to these particular legacy strategies that the thesis turns next.

Notion of legacy strategy

When analysing the role of strategies in legacy building an important factor is the perception of the actors involved. Two internal discussions are worth highlighting: First, the perception of an existing legacy strategy by actors within the tribunals and, second, the value of having or designing a tribunal legacy strategy as perceived. When asking tribunal officials at each tribunal, whether the tribunal has a clear strategy, responses revealed a mix of expectations, not specific to any single tribunal, but conflicting views co-existing. The answer for some seemed apparent: 'Of course there is a strategy.'[191] A caveat was recurrently added in that interviewees may not know details of the strategy but showed conviction that a strategy must exist.[192] For others, hesitation was palpable and it was revealed that no strategy exists, or rather that the interviewee was not privy to the existence of such a strategy (see Section 7.1.2. on communication and transparency).

Two opposing views on the necessity and appropriateness of legacy strategies have been uncovered by this research. For some, legacy strategising is an expression of leadership, professional management of an organisation and strategic long-term planning and good governance. Legacy building is even framed as ethical responsibility. Efforts aimed at legacy preservation by the tribunals themselves have been likened to those of a loving parent:

> If you have your child and you did a lot to raise him or her, the day you realise you will lose control, the first reflex I have is protect the child or provide protection. Legacy has been discussed in this way. What are we doing to protect our work, we have been our own protagonist, what protection

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[191] Interviews 7 and 67, SCSL and ICTY officials, 22.06.2011, 25.09.2012.
[192] Interview 179, ICTR official, 19.09.2013.

metchanism can we put in place to protect our achivements.[193]

There is a sense within the tribunals which underscores that 'only we know our legacy'.[194] In other words, legacy creation is the task of the tribunals as 'main work would have to be done by institution'.[195] For others, the concepts of legacy and strategy do not sit well together. In this view differences between courts and corporations are emphasised, thus a legacy strategy is seen as too business-oriented or image driven. In addition, the organic process of legacy formation is recognised by some. For instance, it has been noted, 'You cannot say this must be the strategy. The activities and events dictate the pace […] Based on what has been done you will have to compile experience for others to learn from.'[196]

For critical observers, the tribunals' engagement with legacy goes either not far enough or too far. For instance, defence counsel have lamented the lack of open discussion on real lessons learned and also questioned the intensive focus on legacy as a cosmetic exercise. There is no clear sense that the tribunal has a legacy strategy.[197] It has been noted 'it looks like ICTY does not have a strategy' as it appears 'more like an NGO with a lot of embellishment in reports.'[198] Finally, one can critically ask whether legacy building and legacy strategising is at all a task for a tribunal or whether it should be. All three tribunals seem to have answered in the affirmative as legacy has become an increasingly institutionalised endeavour with concrete legacy projects (as detailed in Chapter 6). The next section of the thesis discusses the relationship between core work and non-core work and the mandates of the tribunals as conditions of legacy building.

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[193] Interview 3, ICTR official, 21.06.2011.
[194] Interview 183, ICTR official, 23.09.2013.
[195] Interview 19, ICTY official, 28.06.2011.
[196] Interview 1, SCSL official, 20.06.2011.
[197] Interview 20, defence counsel, 28.06.2011.
[198] Interview 13, defence counsel, 23.06.2011.

7.1.2. Focusing efforts: Legacy planning

Strategic approaches to legacy planning have focussed efforts at each tribunal. Legacy planning has crystallised as centre of attention. As elaborated in Chapter 3 legacy formation remains ongoing regardless of any level of planning; however, strategic legacy building depends on legacy planning. As foreshadowed in an early report, it is important 'to be strategic and not to expect benefits to accrue without planning or proactive policy' (International Center for Transiitonal Justice & UNDP, 2003: 1). The depth, breadth and pace of institutionalisation of legacy building (see Chapter 6) are a reflection of the legacy strategies as developed by the tribunals. Bureaucratisation has accompanied and reinforced this process. The institutionalisation and concurrent bureaucratisation has neither been complete nor completed. It is important to take note of what have been called unrealised strategies and emergent strategies (Figure 3.4, see also Mintzberg & Waters, 1985). These will be noted in the case of the SCSL in Section 7.2.2.

Legacy building has become framed as an imperative. It is widely agreed by tribunal officials and observers that tribunals 'must' leave behind a legacy and ensure legacy. The Independent Expert Report on the SCSL by Antonio Cassese (2006: 61) already noted: 'This is the question of a tribunal's legacy: tribunals must leave something useful behind.' But what this 'something useful' is or should be remains disputed. The different existing definitions and expectations of legacy will be discussed in Chapter 8. The next section examines certain conditions of legacy building and carriers of legacy.

Conditions of legacy building

Legacy planning and building at the tribunals has not been uniform or constant as evidenced in the different institutionalisation processes (elucidated in Chapter 6). Leadership and personalities have played a key role (see Section 7.2.1), however certain conditions have shaped actions and perceptions of what was possible. Three main conditions of legacy building are explored here: mandate, money and management.

Mandate

There is an ongoing controversy inside and outside the tribunals over whether legacy work should be part of a tribunal's mandate at all (OHCHR, 2008b). This debate exposes and juxtaposes different legacy visions and perspectives on the purpose of these institutions. On the one hand, it can be suggested that only a core judicial mandate is appropriate for criminal courts, and that legacies can be sustainable even if not explicitly mandated. On the other hand, it seems these institutions have aspired to do more than just prosecute and conduct legal proceedings for a dozen or several dozen individuals. Without an explicit mandate and genuine political and financial support, legacy building may be considered a distraction or side project. None of the tribunal founding document contained any explicit mention of the term 'legacy'; however, they refer to wider aims such as 'dealing with impunity' and 'developing respect for the rule of law'. In terms of language use, it is important to note that the term legacy only became a buzzword in 2003 (see Section 8.1.1), i.e. after all four founding documents had been written. For example, the SCSL has come to see legacy as a core commitment in line with its mandate (UN S/RES/1315; UN S/2000/915: § 7; SCSL legacy booklet, 2005). According to SCSL Appeals Judge Renate Winter, 'the Court has, since its inception, understood the creation of a durable legacy as a significant component of its mandate' (Winter, 2011: 119). It was confirmed early on that 'the court's desire to plan and leave a solid legacy in Sierra Leone […] is consistent with its mandate' (Nmehielle & Jalloh, 2006: 111).

The fundamental basis of the legacies of a tribunal is its core work as a judicial institution – i.e. investigations, trials and judgements. Constructing legacy as a secondary luxury and not as a task of a criminal court strictly speaking suggests an artificial divorce between the tribunal's core work and its legacies. Indeed, if the term 'legacy' is reserved or restricted as a label for specific projects or identified solely with the work of one organ taking the lead on legacy, such a narrow perspective may distort the overall legacy picture. One tribunal official rightfully insisted that 'almost everything we do is legacy. The judicial work is our biggest legacy: it is not a special project, but our everyday work.'[199] Criticisms that tribunals

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[199] Interview 25, ICTY official, 01.07.2011.

are doing 'too little too late' need to be reviewed in this light. How opposing narratives are already constructed in the courtroom was explored recently by examining the discourses of the Prosecution and the Defence in the case of Charles Taylor (Glasius & Meijers, 2012). Different constructions of legitimacy are underpinned by conflicting discourses about one's own self-understanding, the trial, defendant, court and conflict itself.

The relationship between the mandate and core judicial work and the legacy of a tribunal remains debated. Tribunals will be judged for the quality of their judicial work, decisions and judgments. Given the allegations of corruption and political interference, this question is particularly sensitive in the Cambodian context. The ECCC's legacy will not solely be shaped by its judicial performance in terms of procedural and substantive justice and outcomes in two, or possibly three or four cases. Even before the ECCC started its work, other actors already influenced constructions of legacy with regard to timing, institutional design, funding modalities or political pressure.

Vis-à-vis the impending closure, the tribunals as legacy leavers seem to be moving toward legacy consolidation. However, legacies aren't solely created by a few projects before closure but are shaped and constructed every day since the tribunals' creation, which certainly depends on different interpretations of mandate.

Money

Inadequate funding seems to be an endemic challenge for legacy efforts at international tribunals generally. Legacy projects require resources in terms of time and money that do not exist in overabundance at an organisation that is winding down. The shortage of money for legacy projects has been a common theme in legacy building. Still, specific contexts, perceptions of legacy and economic concerns have shaped discussions on the role of the tribunals as respective legacy leavers. In this sense, the role of the UNSC, Management Committee and Group of Donors could be significant for legacy production, recording, and enforcement, provided that the tribunals are backed politically, financially and rhetorically in their

legacy efforts, constructively monitored, and encouraged by the major supporters early on. Importantly, there seems to be an obvious gap between certain ambitious expectations and objectives created for the Court and ultimate resources or tools invested to contribute to the wider goals of justice, peace, and reconciliation in Sierra Leone as advertised. The perception of legacy as a 'plus' to be added at the whim of the donors and the tribunals themselves depending on resources and capacity has generated considerable criticism.

The importance of legacy financiers is crucial for legacy building as their support shapes how enabling the work environment for legacy actors is. Providing seed money and funding to maintain momentum is paramount. Funding has proven a delicate issue for the tribunals, especially the SCSL and ECCC (see Section 6.2). Also, at the ICTR there has been a similar perception: 'there is no money for legacy projects' (but see discussion on legacy projects and funding in Section 6.3).[200] While legacy financiers are rarely included in any analysis, their enabling function for legacy production, enforcement, and recording is critical for legacy creation. Legacy financiers of the SCSL include the government of Canada, European Commission (EC), Ford Foundation, MacArthur Foundation, Oak Foundation, Open Society Institute, Rockefeller Foundation and UN Peacebuilding Fund. The Court's precarious funding situation (see e.g. O'Shea, 2003; Kendall, 2014) exists not just for its legacy work but also its core work; thus 'the decision to use donations to fund this important justice initiative proved to be a bane to the operations and ultimate legacy of the SCSL.' Viewing legacy as a secondary luxury for a criminal court has been the view of key political and financial actors. The SCSL Management Committee, which advises the Court on non-judicial matters and oversees financial issues, purportedly did not provide full support for its legacy work from the start. The view that legacy building, put crudely, was a secondary luxury that the Court could not afford to consider prior to completion of its judicial core work was harboured within the committee in order to keep the fund-raising required for the core budget as low as possible. Originally this view stemmed from early discussions within the UNSC and interested states regarding the first voluntary budget projections and is still reflected in the most recent budget discussions. Until all indicted persons are apprehended and prosecuted, and judicial proceedings are

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[200] Interviews 180, 181 and 193, ICTR officials, 20.09.2013, 30.09.2013.

completed, donors seem reluctant to finance what they considered a side project. From within the SCSL it has been observed,

> in defence of the tribunal, in phases "creation" and "operation", donors don't want to hear about legacy. They want to hear about how many cases you are prosecuting. When a prosecutor is prosecuting a case, they cannot work on legacy. If you want a legitimate legacy from the start, give money to staff that are not involved in core mandate stuff.[201]

Against the backdrop of the tribunals' funding schemes and critiques of expenditure, funding requirements for legacy have stirred considerable debate, both in terms of supply and demand. On the one hand, legacy was seen as a rhetorical boost and leitmotiv with purchasing power to gain donors' interest. On the other hand, given the precarious financial situation overall, it was made clear that legacy was seen as a kind of luxury and not a priority given the financial insecurity for the judicial work of the institution. Funding uncertainty has plagued the SCSL and ECCC from the start. Initially, the ECCC was expected to cost $60 million in total and to be a three-year operation (Maguire, 2010). The estimated total expenditure of over $230 million by February 2015 far exceeds this figure and the tribunal has faced various financial crises where funding has been short on several occasions (Tortora, 2013).

From a different perspective, the focus on legacy may be viewed as a public relations tool and source of extra funding for particular actors. Tribunal personnel became involved in fundraising and generating funds. Certain private organisations have a specific position of legacy fundraiser. The case of the ECCC is particularly illustrative in this regard. To explain the newly displayed interest of the ECCC in its legacy in 2012, commentators from civil society critically suggested that inter alia 'dollar signs are seen behind the term legacy', that tribunal officials 'think it is a chunk of money' and 'they see if they don't get involved now, the funding will go to the NGOs'.[202] Two developments illustrate that funding considerations and budget prospects had indeed entered the equation and taken centre stage in legacy discussions. First, the Chief of Budget and Finance, Taung Socheat, was appointed Head of Legacy at the ECCC. This appointment generated a mix of reactions ranging

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[201] Interview 40, SCSL official, 02.03.2012.
[202] Interviews, civil society staff and UN official, 04.09.2012, 10.09.2012, 11.09.2012.

from astonishment and amusement to bewilderment among commentators.[203] It clearly sends the signal that his skills are deemed necessary and appropriate for the ECCC's legacy which suggests a managerial view on legacy building. Second, the ECCC drew up an extensive budget for legacy and presented it in the core budget. The 2012-13 budget included a so-called Legacy/ Residual Team comprising five positions for an ECCC Legacy Unit and a Virtual Tribunal Team. This included $492,500 for the Legacy/Residual Component as this component was frozen during the 2012/2013 budget approval process. The 2013 requested budget was $412,500.[204] The 2012-2013 budget amounted to $89.6 million in total and was approved in March 2012 with two conditions. One condition directly concerned legacy activities: 'Activities under Component (D) of the budget related to Legacy and Residual Issues should be deferred until such time that sufficient funding for both the international and national components has been secured, in addition to additional time to study the Legacy proposal, including the funding requested by the international component.'[205] These two institutional developments point in the direction of an instrumental if not opportunistic approach to legacy, seeing it as a mere means to obtain further funding.

Different approaches appear to contest the amount of funding required to realise a tribunal's potential as legacy leaver. On the one hand, an additional focus on legacy is believed to incur considerable costs for which there is simply no extra budget before the conclusion of judicial proceedings. Taking this perspective, legacy work is viewed as time-consuming, resource intensive and undertaken at the expense of core budget work. David Scheffer, UN-appointed Special Representative of the Secretary-General, seemed to follow this logic of sequencing when stating at the ECCC Legacies Conference: 'We have to be patient. Legacy is a long term endeavour. […] Now is not the time to press for large donations by governments for legacy. I have been pressing donors to keep the court alive, literally' (Scheffer, 2012b). Here legacy seems to be portrayed as a long term endeavour of a tribunal. In this sense, finances have to be prioritised for the immediate core judicial activities of the ECCC. Nevertheless legacy building is not just an additional activity as any core

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[203] Interviews, ECCC staff and civil society staff, 4-15.09.2012.
[204] ECCC, 'Revised Budget 2012-2013'. Retrieved from
http://www.eccc.gov.kh/sites/default/files/RevisedBudget2012-2013w-annexes.pdf.
[205] See ECCC, 'ECCC Budget for 2012-2013 Published', *ECCC Website*. Retrieved from
http://www.eccc.gov.kh/en/articles/eccc-budget-2012-2013-published.

activity contributes to legacies unfolding. In this sense, the perception of legacy as a 'bonus' to be added at the whim of the donors at the end of the lifecycle and of the tribunals themselves depending on resources and capacity has unsurprisingly divided critics.

On the other hand, legacy work does not have to involve high costs provided there is commitment and a willingness by actors involved. In this sense, legacy building becomes part of everyday work and is not understood as divorced from already ongoing activities. For instance, tribunal staff may give up their own time to help with training, mentoring, advocacy and outreach. James Heenan, the then Head of the OHCHR country office, is an advocate for meaningful legacy activities within time, space and budget restraints. He stated, 'I am a believer that legacy is cheap, can be cheap' (Heenan, 2012). Pointing to funding constraints from this perspective almost exposes limited commitment, creativity, innovation or collaboration efforts.

The sustainability of the tribunals' legacy work has become a matter of concern. Given the dire financial climate overall and realisation of the limitations to legacy planning, this concern seems legitimate. In early 2014, ECCC spokesman Lars Olsen confirmed that legacy activities have been discontinued due to budgetary constraints. A particular resource-driven conception of legacy work has become visible in certain statements by court officials: 'They wouldn't give us the budget. They didn't approve'[206]. It is expected that funding come from conventional donor channels. Decisions to discontinue legacy activities if such funding fails to materialise seem myopic. It suggests a passive stance on behalf of the court as legacy leaver. Simply pointing to budget cuts with regard to the legacy projects does not portray the ECCC in a very ambitious, imaginative and proactive light as legacy leaver. Other tribunals have sought and succeeded in obtaining extra-budgetary funding for legacy initiatives (details given in Section 6.3), for instance from foundations, states and IOs and collaborated with project partners without having a staff team working full-time on legacy. By 2008 the SCSL for example had established a specific fund for legacy projects (see Table 7.1 below) which could be a model for other tribunals.

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[206] Interview, ECCC official, 12.09.2012.

Management

An underlying assumption often encountered is that if well managed, legacies will be positive and long lasting. Such a managerial approach to legacy creation is found to varying degrees across the tribunals. It has been observed that the 'toolbox' of transitional justice reflected 'the conviction that all problems, including the "management" of war crimes, had managerial solutions' (Hazan, 2010: 47).

In terms of management, the role of communication is paramount, inside the organisation to its members and outside to a wider public. The tribunals' legacy work and strategies have quasi systematically shown a certain opacity, whether intended or non-intended. Attempts to control their own legacies coupled with the rhetoric of 'managing expectations' and fears of too ambitious expectations or unnecessarily inflated expectations abound. There seems to be a paradox here: The tribunals may act outside the public sphere while ultimately the reception of legacies occurs in the public sphere. In the light of ever greater demands for transparency and accountability in modern governance this practice seems to raise serious questions about the tribunals' claims of inclusiveness. With regard to legacy this discrepancy between the goals expressed and the unintended, often inefficient communication policies illustrates the 'pathologies' of IOs (Barnett & Finnemore, 1999), i.e. the unanticipated and unintended goal-shifting compared to the agreed aims of the international community at the time of creation of the organisation.

It is striking that there is no public disclosure regarding membership of legacy working groups and any working documents produced. This raises questions of concern both inside and outside the tribunals. At the SCSL for instance the Initial Legacy White Paper has never been available to the public. Rather, it appears it was written as an internal document to prompt court-wide discussions on legacy.[207] Every institution may have sensitive internal working documents considering funding pressures, sensibilities of stakeholders and importance of managing expectations. There seems to have been legitimate reasons not to publicise it because if projects go unrealised, the Court's position or performance may be viewed as compromised in the eye of many Sierra Leoneans. Given the precariousness of its overall voluntary

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[207] Interviews 40 and 95, SCSL officials, 02.03.2012, 19.10,2012.

funding scheme, lack of funding was not an unrealistic concern. However, the Court did publish a booklet entitled 'A Commitment to Legacy' (SCSL, 2005b). Similarly, the ICTY policy documents on legacy are not available except the Report of the ICTY President on the 2010 Legacy Conference (Robinson, 2010).

Regarding the legacy working groups, there seems to be concern by internal tribunal staff about the working methods. On the one hand, there seems to be lack of knowledge in the Chambers of the institutional developments regarding legacy at the Court. A SCSL legal officer for instance noted, 'I didn't know there was a legacy working group in court. I don't know who is member, I am aware of some legacy projects, the peace museum and so on, but as chambers we are not concerned with legacy. You should talk to […] outreach people.'[208] On the other hand, there seems to be opacity regarding membership and activities of the working groups. For instance, several ICTR staff members confirmed this observation: 'It is like a secret society. [...] There are just friends speaking to friends calling themselves the legacy committee. What qualifies them? It is just a committee of people. I don't know how it was selected, when and how they meet' or 'I don't know who is on the committee. It was a survival issue, if you are on the committee you get your contract extended.'[209] As outlined above there exist a number of critical issues which seem to challenge the legacy strategies from inside and outside of the tribunals and directly affect the politics of legacy formation, namely the creation, control and contestation of legacies.

Furthermore, claims, real or perceived, were made with regard to who is authorised to speak about or work on legacy. A significant number of interviewees preferred to defer to the President's office and legacy officer to speak about legacy strategy. It was formulated as such: 'Legacy Committee deals with legacy. I am not informed or consulted'[210] or 'I know some members' or 'That committee is taking care of legacy'[211]. It seems that the legacy working bodies have not provided staff with detailed feedback as they were still working on issues. Furthermore, many staff

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[208] Interview 10, SCSL staff, 22.06.2011.
[209] Interview 6, ICTR staff, 21.06.2011.
[210] Interview 5, ICTR staff, 21.06.2011.
[211] Interview 23, ICTR staff, 30.06.2011.

had concluded that 'legacy' has been appropriated by particular individuals and organs as a specific area of expertise rather than a notion that can be contested.

In sum, the conditions of legacy building have played a crucial role in shaping expectations and actions of legacy actors. Structurally favourable, or enabling, conditions are an important foundation for legacy creation and any strategic legacy planning. As the above highlights, three major structural constraints – lack of mandate, lack of funding and lack of leadership – are cited time and again.

Carriers of legacy

Legacies are created and carried forward. The question arises how legacies are transmitted, received and sustained. For the process of legacy formation to be sustainable, multiple and diverse carriers are necessary. Here two main carriers are dicussed: people and processes.[212]

People

The social dimension of advocacy and international criminal justice is central. Given the disparity in space and time across the tribunals, Benedict Anderson's (2006) concept of 'imagined communities' originally developed in the context of nation states seems valuable. Different interests, be they psychologically, ideationally or materially motivated, bring tribunal officials together in terms of legacy building of one tribunal or of all tribunal together, bound by rule of law and human rights. Communities have been seen at the tribunal level in terms of a 'community of courts' (Burke-White, 2002) and at the individual level in terms of a 'war crimes community' (Eltringham, 2008). The mobility of individuals working at the tribunals has been caricatured as 'tribunal-hopping of war crimes justice junkies' (Baylis, 2008: 361). However, in relation to tribunals, specific socialisation patterns

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[212] The extensive case law and jurisprudence of the tribunals act as another carrier of legacy, but an analysis of the legal plane of legacy building is beyond the scope here.

remain to be researched through systematic studies of attitudes and socialisation at the individual level.[213]

What may be called 'human legacy', i.e. legacies of individuals and their expertise, experiences and memories, has not been the focal point of legacy building across the tribunals. This emphasis on individuals is in some ways reminiscent of the 'Justice with a Human Face' programme championed by ICTR Registrar Agwu Ukiwe Okali.[214] Some attempts at storing and saving knowledge and organisational memory have been made sporadically above and beyond the numerous developed practices manuals (discussed below). For instance, an oral history project at the ICTY was envisaged, however seems to not have made headway after a pilot phase. Attempts to capture organisational memory via 'exit interview' recordings of staff leaving the ICTR were made. But it seems this was not an effort on a systematic level. Staff attrition has been highlighted time and again by senior management as a significant challenge for the tribunals. Staff attrition at a closing organisation appears an under-examined version of 'brain drain'. The final SCSL Annual Report reads in part like a dedication to its staff. It amounts to a photo album of staff which is a departure from the usual format of its annual reports (SCSL, 2013b).

Particular projects are emblematic of the recognition of people as carriers of legacy. For instance, the ICTY Staff Union has taken initiative to capture organisational memory. It produced a photo book entitled *ICTY Staff: A day in the life of the tribunal* that visibly resorts to the organisational lifecycle metaphor (ICTY, 2009). ICTY Staff Union organised a staff celebration on the occasion of the 20th anniversary of the tribunal. It advertised the 31 May 2013 afternoon celebration and photo project thus: 'On the occasion on the ICTY reaching the milestone of 20 years of existence, the Staff Union would like to take the opportunity to celebrate what we believe is its biggest asset: YOU! the dedicated and hardworking individuals who contribute so much to the success of this great institution' (ICTY, 2013). The slogan was '1993-2013: Working together for peace and justice', i.e.

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[213] It is worth noting that recent studies on the socialisation of those working in the European Parliament (Scully, 2005), EC (Hooghe, 2007) and EU Council of Ministers (Beyers, 2005) have challenged commonplace assumptions and revealed a limited role of socialisation within IOs.
[214] Interview 6, ICTR official, 21.06.2011.

clearly highlighting the peace and justice nexus (see discussion on ideational factors in Section 7.1.1).

There is a clear link between work by individual staff members and legacy, whether acknowledged or not. It was expressed that 'Staff members will have legacies to leave. Many will write memoirs'. Some of the longest-serving ICTR staff members lamented a lack of recognition of their 20-year commitment to the organisation. At its peak the ICTR boasted staff members from 84 countries. One ICTR staff member stated: 'I was asked to write an institutional memory for ICTR by Prosecution. But feel I should be treated better, not just milked for memory and information. I would like to become ICTR legacy officer but knows that others are also keen'. Another interviewee in Chambers reflected: 'Because legacy is about what we conclude, in that sense I am participating, but otherwise I don't see it yet. Never thought about it... Not sure I participate in legacy, but needs more thinking.' When asked about personal legacy visions some officials had a very clear idea (see Section 7.2.1 below on individual legacies). Others seemed caught by surprise and answered that this had not yet been a consideration. For instance, it was noted, 'I haven't thought about that at all, but would like to leave a legacy.' Yet for others, no personal legacy vision existed. 'No, I feel like I am a part and I do what is best. Not about me or personal things.' This is illustrative of the diversity of actors as carriers of legacy and their own realisation and interest in legacy building at an organisational or individual level.

Another way individuals act as carriers of legacy is through knowledge transfer and what has been called capacity building. In this sense, people become carriers of legacy through the knowledge, skills and trainings they hold. For example, at the SCSL national police officers were trained as part of ongoing legacy programme (explored in more depth in Section 72.2). This has been considered 'the most successful legacy to date, as it has already fed expertise back into the national system' (Perriello & Wierda, 2006: 40). However, the limitation of people as legacy carriers needs to be recognised. Indeed, capacity building or skills transfer cannot only be about individuals but also about multiplier effects. The risk of individualising legacy has become an issue at the tribunals. For instance, an SCSL outreach officer noted 'It is also important that we look at how these things i.e.

trainings, have benefited Sierra Leone, rather than how the have benefited individuals. Otherwise a person could reasonably ask, "These trainings have helped other people to get jobs, but what has the Special Court done for the rest of us?"' (Fatoma, 2010: 2). Moreover, references to victims as legacy recipients have been on the rise (see Kamara, 2009). Imageries of victimhood however can often be simplistic, one-dimensional or politicised (see e.g. Clarke, 2009; Kendall & Nouwen, 2013; Fletcher & Weinstein, 2015). In this context legacy projects that recently sprung up in other organisations are noteworthy. For instance, the Peace Corps announced a Legacy Project on 15 July 2015. Through a series of short videos, the project highlights the role of people as carriers of legacy: 'In this video series […] we interview prominent people from around the world who were influenced by a Peace Corps Volunteer. Now they are engineers, doctors and government leaders. This is our legacy.'[215] The ambition of wanting to influence a large portion of a population or an entire nation can however stand in the way of recognising the numerous individuals that already act as carriers of legacy.

Processes

Central processes concern both legacy creation and legacy preservation. For example, the capturing and sharing of lessons learned has become a centre of attention across all tribunals. It has been remarked, 'By sharing ideas, these are all sister institutions. No institution has a monopoly over a specific idea.'[216] And yet, it has been observed from a senior ICTR official that 'some kind of competition with other closing tribunals about sharing practices' exists.[217] A discussion of specific examples of lessons learned projects and developed practices manuals and their meaning are provided in Chapter 6. The tribunals are not the first organisations to wish to provide a version of their work or history. Other IOs have also engaged in history projects. Prominent examples include the UN Intellectual History Project[218]

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[215] See http://passport.peacecorps.gov/2015/07/01/sneak-peek-the-peace-corps-legacy-project/.
[216] Interview 22, ICTY official, 14.05.2014.
[217] Interview 181, ICTR official, 20.08.2013.
[218] See http://www.unhistory.org/.

and the International Labour Organisation Century Project, a UNDP commissioned study by Murphy.[219]

Archiving seems to have been the gateway to greater reflection on legacy. Archiving is an essential process since archives are the premier keepers of records. People, as carriers of legacy, are not permanent. Indeed as has been recognised, 'memories will fade. People will pass away.'[220] Archiving has become a key focus in light of the completion strategies as discussed in Chapter 5.2.2. Those involved in archiving seemed aware of the significance of their work. For example one interviewee showed pride in that 'day to day I am building the legacy'.[221] The tribunal archives are one of the most obvious tangible legacies. Whereas the tribunals are temporary with a finite lifespan, their records are permanent (Peterson, 2006). Their special value worth preserving for generations to come was confirmed in 2005 when the judicial records of the ICTR were nominated for the UNESCO/ Jikyi Memory of the World prize. Being among the seven short-listed collections, the value of this unique collection of records of the Rwandan genocide was recognised.

Another central process has been facilitating trials at the national level. Both *ad hoc* tribunals have sent cases to national judiciaries through formal procedures such as Rule 11*bis* (for details see Section 5.1). With regard to the ICTY, some tribunal officials see the biggest legacies in relation to the War Crimes Court in Bosnia and Herzegovina.[222] With regard to the SCSL, The Independent Expert Report's third recommendation on 'forging an enduring legacy' was that 'copies of evidence collected by the Special Court's Prosecution should be handed over to Sierra Leone's Director of Public Prosecution to facilitate trials of alleged mid-level perpetrator and the so-called notorious criminals' (Cassese, 2006: 71). In light of the Lomé Peace Agreement this did not happen. It is important to note though that in terms of UN architecture, the tribunals are dealt with separately from transitional justice and justice sector reform assistance (see UN Office of Legal Affairs and UN Rule of Law).

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[219] See http://www.ilo.org/century/lang--en/index.htm.
[220] Interview 5, ICTR official, 21.06.2011.
[221] Interview 5, ICTR official, 21.06.2011.
[222] Interview 25, ICTY official, 01.07.2011.

It is important to bear in mind the different interests, and explore the main conditions of legacy building and carriers of legacy. To provide more empirical illustrations, this chapter now turns to strategies in action with an emphasis on the actors involved.

7.2.   Strategies in action

Legacies mean different things to different actors within and across the tribunals. Moreover, institutions are not black boxes but tribunals have 'social lives' (as emphasised in Section 2.1). Following Eltringham (2014a) the thesis disaggregates 'the Tribunal' wherever possible. The role of particular organs and individuals are disentangled below. Senior tribunal officials, including the principals, have become aware of their own role as legacy leavers as significant moment in legacy creation. Before turning to a discussion of the SCSL where legacy building by tribunal actors has been most advanced and most prominent in comparison to the ICTY, ICTR and ECCC (see Section 7.2.2) this chapter sheds light on some political and social dimensions of strategic legacy building, drawing on three factors introduced in Section 3.2.

7.2.1   Plurality of strategies

It may be assumed that each tribunal has developed one legacy strategy. This thesis challenges the conventional portrayal of a single legacy strategy, in time and space, and across all tribunals. For example, the Report of the President on the Assessing the Legacy of the ICTY Conference 2010 (2011: 3) presents the strategy as a single process. Rather, the present research has shown that legacy building has evolved from a concern of one organ, namely the Registry, OTP or Office of the President, to an area of preoccupation and activity across tribunal organs. The pace, scope and direction of the legacy work and strategies are significantly shaped by conditions and carriers of legacy identified above (see Section 7.1.2), but also, and importantly, by the different actors.

Plurality of actors

This chapter now turns to different actors within the tribunals. This illuminates the constructive dimension of legacy building within and across the organisations. Different legacy leavers inside the tribunals are identified. As a starting point it is important to note the different profiles of different organs. The institutional focal point for legacy is located within the Office of the President at the ICTY whereas it has migrated from the Office of the Registrar to the Office of the President at the ICTR. At the SCSL it lies within the Registry whereas at the ECCC the main focal point is on the national side of the Office of Administration. The initial question is whether a common legacy strategy across the tribunals is discernible.

Common legacy strategy?

No discernible common legacy strategy exists across the tribunals. To be sure, the political contexts, origins, modes of establishment and opportunities and challenges for each tribunal have been different. However, on closer inspection there have been moments of cooperation and common positioning. For instance, the Legacy Symposium in 2007 was a unique example of a legacy conference initially intended to look at tribunals in Africa rather than any single tribunal as all subsequent conferences. Another moment, although initiated by an outside actor (the International Nuremberg Principles Academy), was the 'Building a Legacy Conference' in Nuremberg in November 2013. Here common legacies were underscored. For instance, Will Smith, ECCC International Co-Prosecutor stated 'But the common legacy for all the courts, I think, is the implementation of the end of impunity.'[223] Another example was ICTR President Joensen's (2013) keynote address at the ICTR Legacy Conference in Johannesburg in 2013.

Furthermore, there has been some overlap and exchange in the early days when thinking on legacy started to crystallise at the ICTY, ICTR and ECCC. A notable moment was SCSL Registrar Vincent's visit to the ECCC in 2006. On the

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[223] See http://www.phnompenhpost.com/national/eyeing-krt%E2%80%99s-legacy-future.

occasion of a conference on the future of international criminal justice in Turin an off-site meeting of the Presidencies, OTPs and Registrars was organised at the Castello del Valentino on 15 May 2007 (see ICC, 2007). The topic of the meeting was 'The Legacy of the International Tribunals'. On this occasion, Amelie Zinzius, Senior Legal Officer in the Appeals Chamber, underscored that the SCSL differs from other *ad hoc* tribunals in that its legacy programme is innovative and that its completion strategy has considered legacy issues is a model for other courts (see ICC, 2007). In this context, it is important to note that with regard to archives there has been ongoing cooperation and contact between the *ad hoc* tribunals. A common Advisory Committee on the Archives was formed.

Despite the rhetoric of 'twin tribunals' and 'sister institutions' legacy building is underwritten by individual actions by particular actors within each tribunal. There is no discernible common inter-tribunal strategy. Instead legacy building is characterised by a certain demarcation and specialisation. However, it bears recalling here (as discussed in Section 6.3) that two inter-tribunal legacy projects developed resulted from sustained coordination (Compendium of Best Practices (OTP) and Best Practices project (Chambers)). Different organs of the tribunals, including Chambers, OTP and Registry and individual tribunal officials as well as defence and outside actors, have engaged in positioning themselves and their work. The construction of authority and identity plays no minimal role in the process of legacy building.

Intra-organ interest vis-à-vis legacy

The development of legacy strategies did not occur without friction or tension, between organs and individuals. It is noteworthy that the importance and creative productive power of 'the sense of dissonance' (Stark, 2011) has not been recognised or appreciated in this process. By way of illustration certain turf wars and leadership claims are examined next.

To take the example of the ICTY, internal debates between ICTY Office of the President and outreach section in the Registry on the purpose of the tribunal

surfaced. From within the Office of the President the view has been voiced that the tribunal is 'a criminal court and not a development agency' and thus should focus its efforts.[224] Office of the President has retained ultimate control. As it reserves the right to read every communication and material before publication the chef de cabinet closely monitors draft publications and releases. The 2011 Legacy conference organised by the ICTY President's office had a strong focus on jurisprudence. This was seen by officials in other tribunal organs to indicate the idea of legacy prevalent in Chambers: legal legacy and case law.[225]

President Pocar started to take legacy seriously and initiated several projects in terms of capacity building and publication of the tribunal's practices (see War Crimes Justice Project and Manual of Developed Practices detailed in Section 6.3.1.). Towards the end of his presidency (2005-2008) he explicitly linked legacy to the reconceptualisation of the completion strategy into what he coined a 'continuation strategy' or 'strategy of continued legacy building' (Pocar, 2008). This rebranding of the completion strategy in light of legacy considerations can be linked to attempts to bolster the relevance of the tribunal at the time and interests by Pocar himself. Under the Presidency of Patrick Robinson (2008-2011) legacy was used more to attract both public and media attention. The two legacy conferences organised in 2010 and 2011 respectively were his main projects. The 2011 Global Legacy conference was fittingly held on President Robinson's last day of term. Starting with Judge Meron's Presidency in November 2011 legacy has no longer taken such centre stage. In response to the two The Hague conferences, two regional conferences were held in Sarajevo and Zagreb in November 2012. The 20th anniversary commemoration events were organised in 2013 and the Srebrenica commemoration events in July 2015. The fact that President Meron had only visited the region once since his second Presidency starting in 2011 has not gone unnoticed by other tribunal officials and civil society in the region.[226]

In particular the ICTY OTP has done most legacy development in the region, in interaction with national prosecutors. Notable developments are too numerous to go into depth here. Innovations have included the establishment of a transition team

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[224] Interview 225, ICTY official, 14.05.2014.
[225] Interview 14, ICTY official, 24.06.2011.
[226] Interview 157, ICTY offiicial, 20.08.2013.

since 2001-02 and a system of assistance to national authorities, a so-called Liaison Prosecutor Project, 10 junior lawyers, OTP staff on loan in region, and the Rule of the Road project.[227] A tribunal official observed that while other organs only began developing their strategies the 'OTP legacy strategy derived from necessity' due to the nature of its work and close contact with prosecuting authorities in the region.[228]

To take the example of the ICTR, members of the new Legacy Committee were aware of the limited scope of its mandate and limited resources available.[229] The Legacy Committee Concept Note clarified that it did not intend to supplant or interfere with any efforts undertaken or planned by particular organs such as the OTP and the MICT. Indeed, the OTP had made clear that it would continue its own legacy programme. In light of the pioneering and prolific work of the OTP in the area of knowledge sharing and dissemination of practices across tribunals, the International Association of Prosecutors conferred a Special Achievement Award on the ICTR OTP on 9 September 2013. It recognised, inter alia, the 'significant and important work that the OTP of the ICTR has pursued in the fight against impunity for the most serious crimes and for taking the initiative to establish a manual of best practices' as a useful guide for national and international prosecutors around the world who may be engaged in the prosecution of international crimes.'[230]

Within the SCSL uniform interest in the various legacy projects seems difficult to perceive. At first glance, it appears that the Office of the Registrar is the organ of expertise and responsibility. However, the division of labour on legacy has been a bone of contention among the different organs. There has been an appropriation of legacy, real or imagined, under the aegis of the Registry. In 2006 there was a tension between the Office of the President and the Office of the Registry over who should have responsibility over the Court's legacy programme. It appears that President King and Registrar van Hebel and Deputy Registrar Mansaray were not on speaking terms. As mentioned in Chapter 6, two different groups dedicated to legacy were created. On 23 November 2006, the SCSL judges adopted a resolution noting the importance of the issue of legacy, especially the future use of

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[227] Interviews 14 and 166, ICTY officials, 24.06.2011, 23.08.2012.
[228] Interview 14, ICTY official, 24.06.2011.
[229] Interviews 187 and 193, ICTR officials, 24.09.2013, 30.09.2013.
[230] See www.unictr.org/tabid/155/Default.aspx?id=1360.

the court site and archiving (SCSL, 2006). The intra-organisational debate was eventually resolved in favour of the Registry after the situation had been raised with the SCSL Management Committee.[231] Repeatedly, over the years the different SCSL Presidents continued to underscore that legacy 'must be one of the Court's top priorities' and 'continues to be one of the Court's topmost priorities' (SCSL, 2007: 6; SCSL, 2010: 6). Strikingly, the recent legacy conference in Freetown in February 2013 did not particularly focus on the judges' perspective.[232]

Broadly speaking, given the prominence of the role of the Prosecutor and the President, the role of the Registrar is usually relegated to margins of representations. The role of the administration and especially of the Registrar of a tribunal however deserves much more attention, in particular in light of bureaucratisation. The Registry keeps the lowest profile. A former tribunal official has called it 'the "engine room" of the Tribunal, unseen but providing the essential support that allows the other organs to function' (Tolbert, 2004: 480). In contrast to writings on jurisprudence, substantive and procedural law and prosecutorial policies, the court administration has attracted less scholarship and attention. Notable exceptions include practitioner accounts by key architects of the Registry at the ICTY and SCSL (Tolbert, 2004; Vincent, 2007; see also Commonwealth Secretariat, 2012). Also, guidelines for the ICC have been written (Holthuis, 2001). Recently a memoir of the Registry is being planned as legacy project at the ICTR (Kilemi, 2014). However, with regard to the perception of the Registry's role in a tribunal, from within the OTP it has been observed 'We are their costumers, they need some customer feedback. They should do a project on lessons learned, but please contact us first.'[233] Given the interest and activities in the Registry at the tribunals, the omission of legacy, and completion, as relevant topics and fields of engagement for Registrars of international tribunals in a recent international practice handbook issued is particularly striking (Commonwealth Secretariat, 2012).

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[231] Interviews 161 and 164, SCSL and ICC officials, 21.08.2013, 22.08.2013.
[232] Only one Trial Chamber judge, Justice Teresa Doherty, who was in Freetown for contempt proceedings against Prince Taylor anyhow, was a conference speaker. The Appeals Chamber judges sent a video message to all participants but due to technical difficulties the sound was not fully understood in all corners of the room.
[233] Interview 180, ICTR official, 20.09.2013.

Judges undoubtedly play a key role in legacy building, alone through their judicial work. To be sure, judges have at times been foregrounded as legacy leavers (e.g. 2011 ICTY Global Legacy Conference). Former President Kirk McDonald launched the ICTY outreach programme in 1999 which arguably has an important function in legacy formation. Existing research on the selection and authority of judges has examined the prominent role of judges (Danner & Voeten, 2010; Darcy & Powderly, 2010). A former ICTY judge stated,

> In the end, it is the caliber and performance of the judges that determine the reputation and the worthiness of a court. […] In those pioneering situations, the attitudes and aspirations of the judges, the way they interact with one another, the improvisations they adopt to get on with their jobs, their relationships with the other players in the courtroom, the prosecutor and defense counsel, and their involvement with the public can all assume an importance equal to their more formal judicial functions. (Wald, 2006b: 1559)

Legacy building has evolved from a concern of primarily the OTP to an area of debate and activity across all tribunal organs. Once final trials were ongoing and thus the level of judicial activity became less prominent tribunal officials in Chambers, and, specifically, the Office of the President began taking a more active role in taking the lead on legacy.[234] Both in Chambers and the Registry focus turned to sharing lessons learned regarding the judicial management of cases and the administration of a tribunal.[235] This development clearly indicates a shift from intended to deliberate legacy (see Figure 3.4). On the one hand, the fact that the idea of legacy permeated all organs of the tribunal shows the pervasiveness of the concept and the shared responsibility, input, and creativity in relation to considering what legacy to leave and how. On the other hand, the organ-specific initiatives may be an expression of a limited overarching policy direction and a reflection of the role and activity of different organs and fragmentation already in existence in legacy construction. *Vis-à-vis* its pending closure and the advanced implementation, the tribunals as legacy leavers seem to be moving toward legacy consolidation in the cycle of legacies. However, it seems that planned legacies and realised legacies do

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[234] Interviews 180 and 181, ICTR officials, 20.09.2013.
[235] Interview 187, ICTR official, 24.09.2013.

not necessarily coincide as multiple actors and social dynamics are involved in the construction of legacies.

Moreover, in addition to recognising multiple legacy leavers at the tribunals, multiple recipients also need to be considered. A shift is taking place from building a legacy for the institution, i.e. the tribunals themselves, to also and perhaps first and foremost building a legacy for the victims (see e.g. Hodžić, 2010). The latter process includes an even greater debate with an ever-increasing number of voices from the post-conflict countries in question. This is important in light of growing interest in 'lessons learned' studies (see Stone, 1999). While the above analysis focused on the role, agency and leadership taken by particular organs, including inside clashes or squabbles within the tribunals, it is centrally recognised here that legacy building across the tribunals has been personality driven rather than organ specific.

Individual legacies

Legacy building at the individual level has been a significant but often underappreciated dynamic. There is a missing link in the public portrayal between the everyday work and legacies. For some, this is immediately obvious and they pointed to linkages. To others, it appeared to be a surprising question as apparently they had not thought about any such link. Some do not even see an explicit link.[236]

Certain legacy projects are mediatised, not least because they serve as objects of prestige for the tribunals and particular individuals. Certain legacy projects began as brainchild or 'pet project' of particular individuals within the organisations. Some demonstrated high levels of commitment, leadership and expertise and were successful in gaining traction so that a particular project became an institutional legacy project. Examples at the SCSL include Saleem Vahidy, Chief of Witness and Victims Unit and Chief of Security, and the National Witness Protection Programme and Judge Renate Winter and the Sewing Project. In addition, some were involved with a particular project in the role of project manager, formally or informally, that they became identified with the project. Examples of this include Maria Warren and

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[236] Interview 19, ICTY official, 28.06.2011.

the Sierra Lii project or Joseph Dumbuya and the Peace Museum on the SCSL site.[237]

The role of leadership plays a crucial role in shaping communication patterns and sense of worth of individual legacies. Leadership is about enabling capabilities of all individuals involved in an organisation. This type of leadership requires strong commitment to communication. This view is in contrast to leadership driven by individual abilities and accomplishments. The construction of legacy here is seen as social activity but not dependent on individual leadership but on context. Individual accomplishments and grievances have a place but it becomes problematic when legacy building for the institution is mixed with building one's own record as it risks a sense of 'grandiosity' and 'fame'. As Dobel put it convincingly,

> Yet the desire to stamp a legacy with one's name can cause several problems. First, the approach can encourage organizational rigidity. Second, it misunderstands the importance of memory and limits of control. Third, it tempts people to grandiosity. Fourth, it tempts people to focus on the physical rather than the human. Finally, it encourages people to confuse fame with legacy. (Dobel, 2005: 240)

In this sense, Dobel rightly states that legacy building cannot be dependent on individuals' egos.

A brief survey reveals a sense of competition between actors enacting the 'heroic scripts' and actors enacting the quotidian 'bureaucratic scripts' is important (Neumann, 2005). At the tribunals, like in any organisation, the latter far outnumber the former. Among some of the 'unsung heroes' there is a sense of frustration which could be interpreted as a lack of communication and organisational culture.[238] A systematic analysis of individual actors *qua* legacy leavers is considered beyond the purview of this study. A balance between 'methodological individualism and methodological structuralism' (Meierhenrich, 2008a: 290) has yet to materialise in scholarship on the tribunals. Individuals have to date not figured very prominently in (for exceptions see e.g. Hagan, 2003; Christiansen, 2015).

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[237] Interviews 77, 84, 161 and 162, SCSL officials, 10.02.2012, 12.10.2012,21.08.2013.
[238] Interview 238, ICTR official, 09.11.2014.

However, two key figures are chosen to demonstrate how individual legacies live on: Antonio Cassese and Robin Vincent. Cassese served as first ICTY President and later as STL President. He is recognised for his 'unrivalled talent' and as 'a giant of international criminal justice' (The New York Times, 2011). At the STL Appeals Chamber staff organised a tribute attended by approximately 350 guests to focus on Cassese's legal legacy (STL, 2012).[239] In addition, the 2011 ICTY Global Legacy Conference took place in the immediate wake of his death. As a result, tributes were made and as one senior ICTR official observed, the conference became a Cassese tribute conference.[240] Recalling Antonio Cassese's role as Independent Expert on SCSL and his report on challenges facing the court which included insight and foresight on timely considerations regarding completion and legacy SCSL, then SCSL President Kamanda stated in October 2011: 'With the completion of our mandate in sight, the Special Court for Sierra Leone will be the first to transition into a Residual Special Court. Other tribunals will also build on Judge Cassese's legacy as they too complete their work.'[241] Cassese thus imprinted at least three of the tribunals given his different roles at the ICTY, SCSL and STL.

Vincent's role as legacy leaver became apparent to many inside and outside the court when he left the SCSL in 2005. He engaged in his own legacy recordings in the form of an administrative manual and a recorded lecture in the UN Audiovisual Library in International Law Lecture Series on 'The administrative challenges to be faced in setting up an international war crimes court and the lessons learned' (see Vincent, 2007; Vincent, undated). SCSL officials were full of praise for him and especially commended his vision and dedication. Following his passing in 2011 the official press release quoted the SCSL Registrar Mansaray saying: 'although there have been three Registrars in the years Robin Vincent departed the Special Court, they have largely followed the path that he set out' and concluding 'The Special Court is his legacy' (SCSL, 2011c: 1). Similarly, the NGO No Peace Without Justice that had been deeply connected to the court since establishment issued a press release underscoring the importance of his dedication and the role of legacy recipients to carry on:

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[239] See STL webpage 'Tributes to Antonio Cassese' including selection of reactions, obituaries: http://www.stl-tsl.org/en/about-the-stl/biographies/antonio-cassese-1937-2011.
[240] Interview 181, ICTR official, 20.08.2013.
[241] Cit. in http://www.sierraexpressmedia.com/?p=31364#sthash.pEcF0qES.dpuf.

> His tireless efforts successfully disproved the idea
> that International Courts cannot be embedded in the social
> fabric of the country is designed to serve, playing its part in
> post-conflict reconstruction and peace-building. […]
> International criminal justice has lost a friend and advocate
> this past weekend. We mourn Robin's passing and urge all
> who knew him and whose lives he touched to carry on his
> legacy. (No Peace Without Justice, 2011: 1)

The topic of how the memory of those individuals who were part of a process at the beginning are being perpetuated is an relevant in light of individual legacy creation (see e.g. Constantin, 2011)

Indeed, legacies of individuals live on. But legacy formation depends on the engagement of other actors and how legacies are received, activated, honoured, inscribed and commemorated. A prominent example is former UN Secretary-General Dag Hammarskjöld and memorial initiatives to explicitly honour his legacy.[242] Another example is the Robert H. Jackson Center whose 'mission is to advance the legacy of Robert H. Jackson […] through education and exhibits, and by pursuing the relevance of his ideas for future generations'.[243] In terms of cementing legacies of particular individuals who have worked at international tribunals, the 'Buy a brick – Build a legacy' project launched in 2015 is noteworthy. By donating $750 an honorary brick will be inscribed with a name in recognition of their contribution. To date, many prosecutors, past and present, of the different international tribunals, from Nuremberg Tribunal to the ICC already have their own a brick.[244] It is a donation campaign for the centre combined with material legacy recording of individual legacies. Next the chapter turns next to the defence perspective in legacy strategising.

Defence as legacy actor

Defence counsel represent necessary actors of trial proceedings in legal system. Alongside the three tribunal organs analysed above, the defence has played

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[242] See 'Legacy' page, which in itself resembles a legacy recording, on special commemorative website launched in 2001: http://www.un.org/depts/dhl/dag/legacy.htm.
[243] https://www.roberthjackson.org/staff/.
[244] See https://www.roberthjackson.org/donation-campaign/buy-a-brick-build-a-legacy/.

an important role. Hence, the oversight in conventional portrayals of legacy and legacy strategies deserves some scrutiny. Interestingly enough, there is no mention of defence activities in the SCSL Annual Reports although the Office of the Principal Defender (Defence Office) created at the SCSL is considered the Court's so-called 'fourth pillar'. It seems that the SCSL defence counsels have not been particularly vocal and cohesive in developing an integrated defence legacy strategy or any concrete projects. This may be linked to the restricted number of defence counsel given the low overall number of SCSL cases and that many counsel moved on to other tribunals.

At the ICTY, the Association of Defence Counsel practicing before the ICTY (ADC-ICTY) has acknowledged and agreed upon the importance of preserving the legacy of the defence.[245] This is a prominent example for the plurality of legacies. The ADC-ICTY has been proactive with regard to legacy, has developed its own strategy. It created its own *ad hoc* Legacy Committee with three members: President of the ADC-ICTY Colleen Rohan and Bath-Shéba van den Berg.[246] In addition, two concrete legacy projects were initiated. The first project envisaged a compilation of short stories about 'what really happened' written by Defence Counsel about their experience at the ICTY. It was decided that the deadline for submission would be September 2011 and publication would be by November 2011 to coincide with the planned ICTY Global Legacy Conference. However, the initial enthusiasm for the project did not result in concrete action largely due to time constraints. Only a few texts were compiled by the ADC by November 2011, thus publication was delayed.[247] Consequently, an example for legacy recording has yet to be published (but see legacy recordings by individual defence counsel, e.g. Karnavas, 2011).

The second initiated project was the publication of a Manual on International Criminal Defence. The manual, produced by UNICRI together with the ADC-ICTY, was launched in November 2011 (ADC-ICTY & UNICRI, 2011). The aim was to produce a publication that provides an overview of the 'most effective and innovative practices developed by defence counsel representing accused before the ICTY' and 'intended to be a reference tool for defence counsel defending cases of war crimes, crimes against humanity and genocide before national courts in the

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[245] See http://adc-icty.org/adc_legacy.html.
[246] See http://adc-icty.org/adcgovernance.html.
[247] Interview 29, ADC-ICTY official, 14.11.2011. No update has been published.

former Yugoslavia'.[248] It seems the ADC-ICTY is developing its own legacy strategy to shape the tribunal's legacy but also preserve its own legacy as separate from the tribunal's legacy.[249] This was reinforced by a legacy conference that was organised by the ADC-ICTY in The Hague on 29 November 2013.

At the ICTR there is no well organised ADC like at the ICTY. An example of proactive defence counsel coming together is the holding of a conference on 'International Criminal Tribunal for Rwanda: An independent conference on its legacy from the defence perspective' held on 15-16 November 2009.[250] The conference was set up in response to the 2007 ICTR Legacy Symposium held in Arusha (Section 8.3. looks in greater detail at conferences). For example, at a recent trial management meeting at the ECCC Kong Sam Onn reiterated that the defence team sensed that 'the effectiveness of the defence' was on the line in not being able to do things in parallel and was intent on working for a 'legacy for Cambodia and the world' (cit. in Fearn, 2014).

Overall, legacy building is shaped by different actors as well as legacy building techniques. The result of legacy building is a plurality of legacies in timing and content encompassing a repertoire of techniques and legacies. Politics of legacy building are notable at three levels: among individuals (micro politics), among intra-organisational groups or units (meso politics) and among different organisations and actors (macro politics). The first level reflects interaction and possible power struggles over legacy work among individual tribunal officials and staff who may wish to advance their own careers, place a personal imprimatur on the organisation and leave their own legacies. The second level refers to the relationship between different organs of the tribunals, or sections within organs, and how they have interacted or not interacted. The third level then points to the larger tribunal landscape and the level of engagement, cooperation or competition, between the tribunals and other organisations.

Following the above analysis it is important to note the different dynamics and drivers of legacy building. What is at the heart of legacy planning and legacy

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[248] See http://wcjp.unicri.it/deliverables/manual.php.
[249] Interviews 12, 20 and 29, defence counsel and ADC-ICTY official, 23.06.2011, 28.06.2011, 14.11.2011.
[250] See http://www.tpirheritagedefense.org/Archive_Conference1_En.html.

building is the goals and purposes of international criminal justice. As Stark (2011) argues dissonance of diverse principles can lead to innovation. In short, 'creative friction yields organizational reflexivity' (Stark, 2011: 18). The emphasis on the value of ambiguity and uncertainty is relevant for the tribunals, but remains to date underappreciated by officials. However, the strategic approach variably at the tribunals tends to overemphasise intention and deliberation. Indeed, it might be critically asked whether tribunals can and should create or write their own legacies. Legacy planning is not a linear function of legacies. Indeed, unintended legacies, unrealised legacies or emergent legacies develop important dynamics for legacy leavers (see Figure 3.4). Prior to that, the chapter turns to an analysis of the SCSL.

7.2.2.   SCSL as legacy pioneer

The SCSL provides a very interesting case for deeper exploration. The SCSL is identified here as a legacy pioneer whose approach has shown innovation from the start (see Dittrich, 2014a, 2014c). Moreover, the SCSL is the only tribunal examined that has already closed its doors; thus, the analysis can trace legacy strategies by legacy leaver from the beginning to the end over a course of a decade. The SCSL was by far the least expensive court of the three tribunals compared here. Still, it seems that it has faced the highest expectations in terms of contributions and legacy. This may be linked to the thitherto unique character of the court compared to the twin tribunals. The very nature of the court with international and national elements, its creation *in situ* and voluntary funding scheme seems to have produced different expectations as well as different approaches and outcomes. It would seem worthwhile to further explore the connection between the unique characteristics of the SCSL in terms of monetary payments and expectations (see Kendall, 2011 on 'donors' justice'). Nearly a decade ago it was already observed that 'The court's desire to plan and leave a solid legacy in Sierra Leone is pragmatic, innovative, and consistent with its mandate' (Nmehielle & Jalloh, 2006: 111). Two dynamics are in particular explored: timing (from conception to closure) and intensity and scope (from creation to consolidation).

From conception to closure

From the establishment of the SCSL in 2002 until its closure in 2013 tribunal officials have prominently taken up the idea of legacy. In this regard, in contrast to the ICTY, ICTR and ECCC, the approach to legacy has been characterised by reflexivity of leaving a legacy in particular for the domestic constituents in Sierra Leone.

Blazing the trial

Since 2002 the SCSL has developed its legacy vision (see Section 6.1). The year 2004–2005 was pivotal. Weightier efforts got underway and a more concrete SCSL legacy vision was revealed.[251] In addition, the National Victims Commemoration Conference organised by the Court in Freetown in 2005 appears to have foreshadowed that the issue of legacy may be or become a bone of contention for some Sierra Leoneans and the institution itself:

> In general, victims were less concerned about the indictments and potential convictions of some of the perpetrators than they were about the potential legacy of the Court. Many victims at the workshops were wondering what the Court will leave behind for them when it is all said and done. […] There is a sense amongst victims, and Sierra Leoneans in general, that the money spent on the Court would have been better spent on the national legal system. (Wierda, 2009: 1)

Going forward the Court began to take the challenge of leaving a lasting legacy for Sierra Leoneans increasingly seriously and the institutionalisation of legacy building made real headway (see SCSL, 2005).

By 2005, a third so-called legacy phase was officially envisaged by the Court, following the completion and post-completion phase to focus on the long-term impact of the Court's presence in Sierra Leone. It appears that

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[251] By March 2005 three out of four trial proceedings had begun. The Civil Defense Forces case began on June 3, 2004, the Revolutionary United Front case began on July 5, 2004, and the Armed Forces Revolutionary Council case began on March 7, 2005.

> The central thrust of the Legacy Phase is to address the
> concerns of the many Sierra Leoneans who feel that the
> restoration of the national judiciary, civil society, and the rule
> of law are critical. [...] In that sense, the Legacy Phase may
> be said to reflect the popular will of Sierra Leoneans, which
> did not explicitly make it into the points for negotiation
> between the UN and Sierra Leone preceding the
> establishment of the courts and its founding instruments.
> (Nmehielle & Jalloh, 2006: 111)

On November 23, 2006, the SCSL Judges adopted a resolution noting the importance of the issue of legacy, especially the future use of the court site and archiving (SCSL, 2006: 11). Repeatedly, the SCSL President has underscored that legacy 'must be one of the Court's top priorities' and 'continues to be one of the Court's topmost priorities' (SCSL, 2007: 6; SCSL, 2010: 6). Moreover, the outreach work can be viewed in light of the Court's overall legacy planning as outreach is a certain legacy promotion, a certain form of marketing and proactive legacy production. Such efforts became specifically important in light of the decision to move the Charles Taylor trial to The Hague (see e.g. Human Rights Watch, 2012) and exposed limitations of the *in situ* character of the court.

Paradoxically, immediately prior to the closure, at a time when new legacy efforts could be anticipated to peak, it seems that in light of the completion strategy the SCSL does not have more time and resources dedicated to legacy work. Within the court it has been observed that the scope for legacy-type work has decreased given recent staff attrition and loss of expert skills.[252] Nonetheless there is still a strong focus today on the successful implementation of ongoing legacy projects. Vis-à-vis its pending closure and the advanced implementation, the SCSL as legacy leaver seems to be moving toward legacy consolidation in the cycle of legacies. Time pressure is acknowledged as 'only a limited time remains for the Court to transfer its skills, knowledge and resources to national partners' (SCSL, undated: 1). The widely distributed SCSL outreach leaflet *Wetin Na Di Speshal Kot?* concludes: 'The Special Court is the people's Court. It exists for the good of all Sierra Leoneans' (SCSL, undated).

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[252] Interview 40, SCSL official, 02.03.2012.

Promoting sustainable and positive legacies for Sierra Leone became a leitmotif in the Court's public discourse. The SCSL attempted to engage in a regular dialogue with the Sierra Leonean public, for instance via its outreach program and the National Victims Commemoration Conference in 2005. The establishment of the SCIF, a forum for exchange between NGOs and tribunal officials, can be seen as necessary steps in this direction. A 2005 Human Rights Watch study observed that the 'Special Court's existence creates enormous opportunities to leave a meaningful legacy in Sierra Leone and West Africa […], harnessing the opportunities to identify and impellent feasible initiatives to create an appropriate legacy is unquestionably a difficult task' (Human Rights Watch, 2005: 33). It has been emphasised that 'the Special Court is not, nor should it be expected to serve as, a national justice reform project' (Human Rights Watch, 2005: 34). However, it is striking how little contact exists to the actual Justice Sector Reform Office which sits in the Guma government building in downtown Freetown (see 'Bridging the Gap' project, University of Nottingham Human Rights Law Centre, 2012). Moving the trial of Charles Taylor to The Hague has been a matter of contention (see Suma, 2009) at the local level.

Strategic partnerships

The court's location *in situ* provided the court with unique opportunities to directly and regularly engage with actors in Sierra Leone (see Smith, 2013). As Kelsall (2009: 32) notes, the 'Court was also intended to leave a powerful legacy in Sierra Leone'. The SCSL forged strategic partnerships with the Government of Sierra Leone and national institutions as well as civil society (see SCIF). Starting with its Annual Report in 2008-09 the SCSL distinguishes between legacy projects *per se*ction and identifies respective national partners. Principal legacy initiatives and projects of the Registry, OTP and Chambers are detailed overview is provided in Table 7.1.

Table 7.1: Detailed overview of SCSL legacy projects and activities[253]

Annual report: year	Legacy projects	Legacy activities
1: 2002-2003	- Development of international court site - Development of SL staff - Internship programme for SL	
2: 2004-2005	- Transfer of court site - Four two-day regional conferences	- Legacy Phase envisaged
3: 2005-2006	- Number of legacy oriented Outreach projects: Initiating a Grass Roots Campaign; establishing forums for various rule of law stakeholders; establishing Accountability Now Clubs; producing booklets on IHL; developing national SCSL staff; providing national internships; assisting national judicial monitoring - Site Project - Radio Justice - Virtual Tribunal Project	- Establishment of Legacy Working Group - Publication of Legacy Booklet ('A commitment to legacy')
4: 2006-2007	- Communicating Justice in the Mano River Union - Site Project - Witness Evaluation and Legacy Project - Sierra Leone Rule of Law and Capacity Building Project	- Establishment of Legacy Committee - Trips by SCSL officials to raise profile of its legacy programme - Resolution on legacy by SCSL Judges
5: 2007-2008	- Communicating Justice Project i. Grassroots Awareness Campaign ii. Strengthened Media Coverage Project - Strengthening the Capacity of SC employees - Witness Evaluation and Legacy Project - Site Project	- Establishment of a Special Project Fund for legacy programme
6: 2008-2009	**Registry:** - Site Project - Witness Evaluation and Legacy Project - Communicating Justice - Archiving Project - Capacity-building for legal associates and interns	
7: 2009-2010	**Registry**: - Site Project - Witness Evaluation and Legacy Project - Communicating Justice - Archiving Project - Capacity-building for legal associates and interns **OTP**: - Training the Police Prosecutors - Archival and Records Management Training - Sierra Leone Legal Information Institute (Sierra LII) - Training workshop on IHL **Chambers**:	- Handover of detention facility to the SL Government - Courtesy calls by SCSL President to major donor states to discuss legacy projects

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[253] Based on SCSL Annual Reports (2002–2013).

	- Site Project meeting - Transfer of detention facility to the Government of Sierra Leone - Commission of Inquiry into allegations of rape and sexual abuse - Juvenile Justice training program - Training for War-affected Women	
8: 2010-2011	**Registry:** -Transfer of Court's records to The Hague -National Witness Protection Unit in SL police -Professional development -Conference on Forced Marriage in Conflict Situations -Site Project	- Peace Museum preview exhibition - Sierra Leone Prison Service took possession of detention facility
9: 2011-2012	**Registry:** - National Witness Protection Unit - Legacy survey (conducted by NPWJ) - Legacy conferences (in partnership with ICTJ) - Site Project - Training of Accountability Now Club members **OTP:** - Sierra Leone Legal Information Institute (Sierra LII) - International Prosecutors' Best Practice Project	- Judges attended ICTY Global Legacy Conference, November 2011 - President delivered key note at launch of 'Bridging the Gap' Best Practice Guide handbook - Sierra Leone Law School takes over containerised office block on site
10: 2012-2013	**Registry:** - National Witness Protection Unit - Site Project (peace museum and war memorial) **OTP:** - Sierra Leone Legal Information Institute (Sierra LII) - International Prosecutors' Best Practice Project - Police Capacity-Building Programme **Chambers:** -Case Book Project	- Court hosted two legacy conferences in partnership with ICTJ in New York (2012) and Freetown (2013) - Launch of legacy survey (conducted by NPWJ) in The Hague and Freetown - Record archiving - Building handed to Sierra Leone Police for National Witness Protection Unit
11: 2013	**Registry:** - Handover of court site - Gender book **OTP:** - Sierra Leone Legal Information Institute (Sierra LII) - International Prosecutors' Best Practice Project	- Closing ceremony

In terms of leadership and strategic thinking resulting in a vision for legacy, the first SCSL Registrar Vincent showed foresight. When Vincent left the court he was praised for his commitment and engagement with the local community by SCIF members (Mansaray, 2005). Registrar Robin Vincent has been described as 'legal

pioneer' and 'unsung hero of the international justice movement' who 'had found his mission – to bring justice to places where it had been absent for too long' (Robertson, 2011). In an obituary, Geoffrey Robertson, the first SCSL President, also recounted, 'Asked the secret of his successful court management, he said: "A registrar should be like the referee at the football match which ends with the crowd asking 'where's the ref?' Because he did such a good job, they never noticed him." (Robertson, 2011). It has been further observed that 'Transparency was a feature of his management style' (Robertson, 2011). The presence and leadership by Sierra Leoneans, including in senior management levels such as Registrar Binta Mansarey, Deputy Prosecutor Joseph Kamara, Head of Defence Claire Carlton-Hanciles has impacted legacy building. As a consequence, Sierra Leoneans had a driving seat in legacy creation at the SCSL which has been a unique feature in comparison to other tribunals.

From creation to consolidation

Different actors inside the SCSL but also Sierra Leonean officials have been actively involved in creating and consolidating legacies. Ideational and material factors have shaped the approach taken by the government of Sierra Leone. Already at the formal opening of the court house on 10 March 2004 former President of Sierra Leone, Ahmad Tejan Kabbah, highlighted the bifurcation of the Court's purpose and constituents as follows:

> This is a Special Court for Sierra Leone, a symbol of the rule of law and an essential element in the pursuit of peace, justice and national reconciliation for the people of Sierra Leone. It is also a Special Court for the international community, a symbol of the rule of international law … the Special Court is good for Sierra Leone. It is also good for the world today. (Kabbah, 2004: 1)

The government of Sierra Leone showed active interest in preserving and promoting the legacies of the SCSL. Ernest Bai Koroma, President of Sierra Leone, enthusiastically noted on 20 February 2008, 'Around 2010, when the Special Court is expected to complete its mandate, it will leave behind for posterity and generations yet unborn this magnificent and imposing legacy' (cit. in SCSL, 2008: 39). Former

President of Sierra Leone Kabbah (2004: 1) already eagerly anticipated that 'at the end of its mandate the Special Court will leave a legacy in the annals of the administration of justice in Sierra Leone and in the international community. It will also bequeath to the people of Sierra Leone a citadel of justice in the form of this beautiful courthouse'. The government has taken direct interest in the legacies of SCSL it seems as part of an effort of an African state to showcase commitment to accountability, the rule of law, justice and peace, cooperation with the international community and political will to be viewed as a post-conflict 'success story'. In the case of Sierra Leone, former President Kabbah (2004: 1) emphasised that the brutal acts committed had 'tarnished the image of Sierra Leone, a small but peaceful, friendly and enlightened nation.' The Peace Museum, which grew out of a SCSL legacy project, demonstrates on the one hand, an official Sierra Leonean commitment to peace and coming to terms with the past, and on the other hand, openness towards international exchange and tourism. The museum is a good case in point for legacy consolidation (see Figure 3.3) as linked to wider dynamics of the politics of memory.

At first glance it may seem that the court was active on legacy in 2004-2005 and then did not follow up on the initial interest. Indeed, a 2006 study on the SCSL concluded there was 'no formal or coherent approach' to legacy, 'partly because there is no explicit mandate for the court to do so' (Perriello & Wierda, 2006: 39, 40). While it highlights positive developments on legacy in terms of infrastructure, professional development, demonstration effect, impact on civil society and substantive legal reform, the latter 'is taking place, but not necessarily with the direct involvement of Special Court officials' (Perriello & Wierda, 2006: 39). Yet it seems important to fully appreciate that identifying, preparing and implementing projects involves considerable behind-the-scenes work including drafting proposals, obtaining funding and working with donors and partners. Table 7.1 above illustrates the evolution of legacy planning at the SCSL. This overview shows that there has been continuous activity. Paradoxically, immediately prior to the closure, at a time when legacy efforts could be anticipated to peak, it seems that in light of the completion strategy the court has increasingly less time, resources and staff solely dedicated to legacy work. Within the court it has been observed that the scope for

legacy-type work has decreased given staff attrition and loss of expert skills.[254] Until closure a strong focus remained on the successful implementation of the ongoing legacy projects.

First, it seems different strategies have developed depending on the institutional focus at a given time. The SCSL seems most innovative regarding legacy work and projects. The pending 'nearness to death' (see section 2.1) has promoted attempts to consolidate legacy. A SCSL official notes, 'in fairness, this institution looked at legacy a long time ago, because it was in contact with civil society, but now there is a consolidation approach everywhere, inside and outside and from an academic perspective.'[255] Criticisms that what the tribunals are doing today is 'too little, too late' need to be reviewed in this light. As Abdul Tejan-Cole, former member of the SCSL Office of the Prosecution and former head of the Anti-Corruption Commission in Freetown, notes, 'I think the hybrid concept is excellent. But you don't just start legacy when you are about to end. It has to be from the start' (cit. in Cruvellier, 2009: 36). However, although the explicit term 'legacy' is not specifically incorporated into the SCSL mandate, it is not necessarily to be seen as incidental.

Leaving a legacy does not appear as a mere afterthought, however the current consolidation approach to legacy has certainly been coloured by the court's pending closure. *Vis-à-vis* criticisms that 'Legacy does not seem to have ever been a full priority' (Cruvellier, 2009: 44) the solution proposed is to develop a more effective legacy strategy or maximise the legacy is more planning (see OHCHR, 2008b). Indeed, inadequate planning has been referenced as main impediment to the court's realisation of its legacy vision (Cruvellier, 2009: 3). Given the limits to deliberate legacy planning emphasised below, this 'solution' seems questionable. The tribunals' technocratic and bureaucratic approach to legacy planning may be partly seen as impediment to effective implementation of the projects which alludes to possible 'pathologies' of legacy strategies at the tribunals. One particular aspect or consequence thereof is the low level of transparency. Many Sierra Leoneans apparently regard lack of resources as a poor and unconvincing excuse for not 'doing

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[254] Interview 40, SCSL official, 02.03.2012.
[255] Interview 7, SCSL official, 22.06.2011.

more' (see Lincoln, 2011). In their eyes the SCSL seems a comparatively wealthy internationally funded institution, showcased in its state-of the art courthouse, much praised and endowed with ambitious objectives. Consequently, certain actors (see e.g. Penfold, 2009) believed that the court could achieve more than it was ultimately given the tools to do, and certain constructions of legacy are colored by disenchantment.

Second, at the SCSL different organs of the tribunals have engaged in legacy efforts and developed legacy projects depending on their respective interest and expertise. It seems that different actors within the court demonstrate no uniform interest or support of the various legacy projects. For example, in Chambers there appears to be a different understanding of legacy. The question arises whether there is a lack of communication or fundamental conflict of interest between different understandings of the objectives and role and responsibility of the tribunals (see narrow v broader understanding). The value of jurisprudence in terms of norms and rule of law suggests an interest in ideational rather than material factors. The legal legacy while not eclipsed certainly has been relegated to specialist circles and those who understand the minutiae of trial complexity. As some interviewees lamented, judgements are not widely read, in whole or even in part.[256]

A rather outcome-focused approach to legacy is prevalent at the SCSL. Legacy risks being viewed not as the spin-off of the quotidian work across all sections of the court but as a specific outcome of projects mainly promoted by an institutional focal point, most often the Registry. A view that has been repeated in Chambers reveals scepticism towards legacy as a specialised task of a criminal court. It seems to reflect a strict understanding of a court as an exclusively judicial institution which should consequently not attempt performing NGO-type work in parallel.[257] Commenting on this state of affairs, for instance one SCSL official emphasised what was perceived as legacy bias: 'Legacy often focuses on buildings, archives… for me it is legal impact' and further stated 'I don't sense there is a fascination with the legal legacy, it seems to be only about buildings, archives. I cannot interfere there; I have no competence and no interest. Our work is to give a

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[256] Interview 195, former ICTR official, 30.09.2013.
[257] Interviews 9 and 10, SCSL officials, 22.06.2011.

fair trial in a reasonable amount of time. What comes after that, I don't take any interest in, it is not my focus. I do my work as best as I can.'[258] Alternatively, it seems to suggest that within Chambers the ideational rather than the material is privileged. Some staff working in Chambers described their impressions as follows: 'Is legacy our task? No. The Special Court was supposed to deliver "cheap, fast, effective, fair" justice [...] It is a criminal court which is often forgotten, not a legacy institution' and 'The Legacy of Nuremberg emerged, they did not have a peace museum or archives project' Also, when asked about legacy it was noted: 'We do not work on legacy, we are not the right people to speak to. You should speak to the Registry and outreach people'.[259] In addition, they seemed keen to distance themselves from what they perceive as the court's official legacy work. These statements should not be mistaken for a display of indifference; however, some interviewees simply did not see legacy as their task. The question arises whether there is a lack of communication or coordination between court organs or a fundamental conflict of interest between a narrow and broad understanding of the objectives and self-understanding of the court as an institution and each organ's role therein.

Conclusion

Concerns about what will remain of one's existence and presence exist at the individual and organisational level. Questions such as how the tribunals will be remembered and what impact will be made are driving forces for actors involved in legacy creation. Legacy building has a clear strategic dimension at the organisational level. First, this chapter enquired into legacy building as a strategic endeavour. Three factors of the underlying interest in legacy were identified, namely psychological, ideational and material factors. While psychological and material factors seem to fuel legacy building in the short term, ideational factors are increasingly important for legacy formation in the long term. Moreover, three main conditions of legacy building (mandate, money and management) and two main carriers of legacy (people and processes) were identified.

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[258] Interview 8, SCSL official, 22.06.2011.
[259] Interviews 9 and 10, SCSL officials, 22.06.2011.

Furthermore, this chapter turned to strategies in action. In particular, different elements of strategies were explored, including the plurality of strategies, multitude of actors, attempts of control of legacy and particular interests. Particular shortcomings and limitations of the tribunals' approaches to legacy as well as challenges of solely analysing their legacy strategies in isolation have been indicated. The legacy strategies are certainly the most forward-looking and long-term oriented strategies developed by the tribunals. Strategic legacy planning has emerged as a new field of activity at the tribunals. The turf wars between individuals and perceptions of conflict over the power of interpretation at the tribunals seem to suggest a lack of recognition of the productive and creative role of dissonance within organisations. In addition, uncritical legacy planning, on the one hand, overestimates intended goals and deliberate legacies and, on the other, underestimates unintended consequences and emergent legacies.

A central finding of this chapter is that no uniformity of experience and strategies exists across the tribunals. The SCSL has embraced its unique strategic role *vis-à-vis* its legacies from its establishment. Its approach to legacy has been proactive, continuous and more decentralised. This is in contrast to the approaches shown by the ICTY, ICTR and ECCC, where tribunal officials have more ambiguously embraced their role as legacy leavers, are by and large characterised as reactive, discontinuous and more centralised. This calls for a more sophisticated exploration of the discourse of legacy. Chapter 8 is therefore dedicated to shedding light on the identified legacy discourse.

Chapter 8

Legacy discourse

The notion of legacy has permeated tribunal parlance. Against the backdrop of the analysis in Chapters 6 and 7 the point of departure of this chapter is precisely that the term is now commonly used at the tribunals and has become a framing device for particular efforts and activities. The idea of legacy has taken hold of the tribunals, rhetorically, structurally and practically (as demonstrated in Sections 6.1 and 6.2). Hence, a critical examination of its usage and the meanings attached to the term legacy in official discourse is warranted.[260] The analysis that follows is dedicated to a closer look at narratives surrounding legacies of the tribunals. By looking into different facets and functions of the discourse the chapter seeks to ascertain vocabulary, compare definitions and understand certain tropes in order to shed light on how the term and rhetoric of legacy began and officially took hold and how concepts and narratives of legacy are used to consolidate and contest legacies.

The chapter is divided into two parts. First, the establishment of the notion of legacy at the tribunals is traced. Two main factors explain the term's sticking power: the term itself struck a chord with tribunal officials and a demand for legacy emerged from outside actors. When tracing the emergence of legacy as new buzzword (Section 8.1.1), the focus is on increased frequency, a critical examination of the 'ways of defining' (directly) and of 'qualifying' (by means of modifiers) the notion of legacy. As a result, three shortcomings of the 'legacy parlance' within the tribunals are explored: lack of specificity, rigid uniformity and focus on end results. Further insight is provided into the meaning attribution of narratives about the past and future of tribunals' legacies (Section 8.1.2). It is demonstrated that the term legacy occupies a central and essential role in the vocabulary of the tribunals. However, different conceptions among the tribunals are apparent. It is concluded that tribunal officials have viewed legacy as an end result rather than a social construct.

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[260] It is important to note that discourse here is not used in a methodological sense based on formal discourse analysis, properly understood, but rather in the sense of communication and narration lending itself to thematic analysis here.

Thus, the discourse demonstrates a limited reflexivity of the tribunals in their role as legacy leavers.

Second, so-called legacy conferences are chosen as a focus for a closer look at legacy discourse. Conferences as discourse fora have served two main functions: presentation and self-representation (Section 8.2.1) and debate and contestation (Section 8.2.2). Different actors have engaged in legacy creation, consolidation and contestation which became visible in defining moments of so-called legacy conferences. The analysis focuses on the privileging of interpretation by the tribunals as legacy leavers and the role of other legacy actors and their legacy narratives. Finally, sustainability concerns raised at conferences about legacy building efforts and actual legacies in the making are explored.

8.1. Legacy as newly established and appropriated term

In light of the interplay between continuity and discontinuity, increasing talk about legacy reflects how tribunal officials are grappling with the prospect of impermanence and institutional persistence through legacy building. Whether legacies are intended, i.e. talked about repeatedly, legacy formation is an ongoing process of social construction. That being said, meaning and constructions of legacy are importantly captured through the use of language and communication with a view to create, consolidate or contest legacies. The tribunals' strategic approach and individuals' desire to see something lasting and give work meaning was already discussed in light of organisational and psychological factors underpinning legacy building at the tribunals (see Section 7.1). Hence, what is of immediate interest here is how the idea of legacy took hold in tribunal parlance.

8.1.1. A new buzzword

Originally, the idea of legacy entered the universe of international tribunals when the term began being associated with the Nuremberg Tribunal. The first article

explicitly discussing legacies against the backdrop of war crimes trials was David Luban's (1987) 'The Legacies of Nuremberg'.

A small epistemic community, comprising civil society organisations, first and foremost the International Center for Transitional Justice, some UN staff and tribunal staff, seems to have helped popularise the term at the tribunals. The term legacy first emerged in public discourse surrounding the SCSL at the beginning of the new millennium. The earliest publication dedicated to legacy dates back to the immediate wake of the establishment of the SCSL (see International Center for Transitional Justice & UNDP, 2003). The concept was then taken up in *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* (UN S/2004/616). Engagement on legacy was even formulated as political imperative within the Report: 'And 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' (UN S/2004/616: para. 46, 16). In addition, the topic of legacy was hotly debated at the National Victim Commemorations Conference in Freetown in 2005, co-organised by the International Center for Transitional Justice. A conference report, written by a staff member, noted: 'How the Court handles the issue of legacy will determine whether it is perceived as a failure or a success by the people of Sierra Leone' (Wierda, 2009). In short, the topic of legacy was squarely placed onto the agenda of the tribunals whose legitimacy and *raison d'être* became bound up by demands for legacy. The publication of a policy tool by the OHCHR (2008) went further in suggesting that it is not merely about leaving a legacy but about maximising legacy.

The SCSL itself took up the term and was proactive in laying the foundations for leaving a legacy (see Sections 6.1, 6.2 and 7.2.2). The language of commitment was mobilised as evidence by a brochure entitled *A Commitment to Legacy* (SCSL, 2005b). Already the First SCSL Annual Report used the term and 'consider[s] the important issue of the legacy the Court will leave behind' (SCSL, 2003: 4). (see Section 7.2.2). Importantly, a legacy vision was sketched. In the court's own words, the vision was to

> provide a legacy for this recovering nation not merely by
> building and leaving behind an impressive, modern

> courthouse and by providing training and experience for local lawyers, investigators and administrators, but more importantly, by encouraging respect for the rule of law (SCSL, 2003: 3).

The SCSL formulated high hopes that it would have an enduring impact on the legal system and the legal profession in the future. The vision that 'the legacy of the Special Court will be reflected in the sectors of human rights, international humanitarian law, rule of law, civil society and in the legal profession' was expressed repeatedly (SCSL, 2006: 28).

Starting with the SCSL, the *ad hoc* tribunals have also taken up the new buzzword. This is reflected in the language in the annual reports (Figure 8.1).
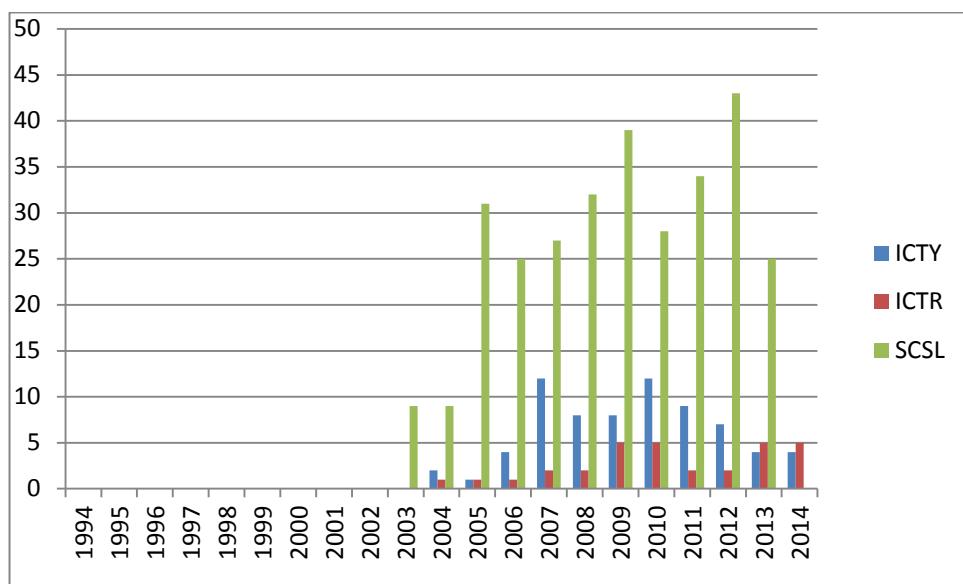
Figure 8.1: Frequency of 'legacy' in Tribunal Annual Reports (1994-2014)[261]

The SCSL clearly had a leading function. In contrast to the SCSL, and to a lesser extent the ICTY, the ICTR annual reports barely mention the term 'legacy' (less than five references to the term per year). When interpreting the frequency data for the ICTY and ICTR, it is important to bear in mind the confusion and collapse between the terms legacy and residual functions at the *ad hoc* tribunals in the early

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[261] For the SCSL the final report was published when the court closed in 2013 (SCSL, 2013).

years prior to the establishment of the MICT (see Section 5.2). It was only in 2007-08 that a discursive shift occurred and clarification between legacy and residual functions took place. However, a caveat is in order. The annual reports are only one source of official documentation. In addition, while the tribunal annual reports share the same function at first glance, namely annual reporting on work and activities, their audience and format are not strictly comparable. The ICTY and ICTR annual reports are text documents submitted to the UN Secretary-General and UNSC (as per the reporting requirement in Article 34 of the Statute of the Tribunals (see S/25704 and Corr.1, Annex). In contrast, the SCSL annual reports resemble high gloss multi-coloured brochures with photos submitted to the SCSL Management Committee and widely distributed by the court for outreach, public relations and fundraising purposes. That being said, annual reports are certainly important documents as most prominent regular legacy recordings by the tribunals and thus give an indication of language use.

Numerous tribunal documents refer to 'legacy issues' (see Tribunal Annual Reports). Speaking of 'issues', however, suggests that there are simply objective, technical matters to be dealt with accordingly. What is more, the issues are often discussed in apolitical and ahistorical terms (see e.g. Nader, 2010). Indeed, the fact alone of referring to 'issues' appears to shift the focus onto the mechanics of dealing with an 'issue' rather than the politics surrounding the topic itself. A mechanistic approach eclipses questions of agency, deliberation and power.

Certain activities and projects (with a focus on outreach or lessons learned) which already started prior to this shift in terminology have been brought under the 'legacy umbrella'. Calling it 'legacy umbrella' here means that attempts are noticeable to build a common theme to leave something behind. For example, from within the ICTY, it has been observed that

> These ideas are by no means new; the Tribunal has been assisting national judiciaries for many years and has been participating in various educational programmes aimed at increasing the awareness and capacity of lawyers in the former Yugoslavia since the first Outreach Symposium in 1998 (ICTY, 2010: 3).

Attempts to bring activities under the 'legacy umbrella' have been accompanied by internal squabbles and office politics between tribunal organs and individuals (see also discussion in Section 7.2.1; see also Gold & Gold, 2013). Notwithstanding, the idea of legacy came to shape debates and activities (as elaborated in Section 6.2) and has become a prominent feature of the official discourse at the tribunals.

Legacy definitions at the tribunals

Legacy has become a buzzword and has been used in various unconnected if not perfunctory ways in both popular and academic writings on the tribunals (see Section 3.1.2, Figure 3.1 on frequency of term legacy in academic publications). Hence it is important to take a closer look at the definitions adopted and used at the tribunals to better understand the crystallisation of thinking about legacy leaving and fathom differences and limitations of understanding of the concept across the tribunals.

Defining legacy

No uniform or single definition seems to exist across all tribunals. Definitions started being provided relatively late, in a temporal comparison to the emergence of the term as buzzword. The first to provide a definition was the ICTY in 2010. The SCSL for the first time referred to a definition in 2011 and the STL provided one in 2012. Table 8.1 provides a comparative overview.

Table 8.1: Definitions of legacy at the tribunals

	ICTY	ICTR	SCSL	ECCC	STL
Definition of legacy provided (in year)	'that which the tribunal will hand down to others' (2010)	/	'a lasting impact on bolstering the rule of law' (2011)	/	'the impact on a domestic or international level that an international or hybrid tribunal leaves behind after its work is complete' (2012)

The broadest definition is provided by the ICTY that defines legacy as 'that which the Tribunal will hand down to successors and others'. An often-cited much narrower definition, introduced by the UN High Commissioner for Human Rights (OHCHR, 2008b: 4-5) policy tool *Maximizing the Legacy of Hybrid Courts*, defines legacy as a 'lasting impact on bolstering the rule of law [...] by conducting effective trials to contribute to ending impunity, while also strengthening domestic judicial capacity'. A number of publications have taken up this definition making it the most common definition for hybrid courts. For instance, the SCSL explicitly adopted this definition in its 8th Annual Report in 2011. It is also the most used definition in the Cambodian context given the involvement and activities of the OHCHR country office in Phnom Penh, yet the ECCC as an institution has not officially provided a working definition. It seems, however, that the OHCHR definition is unnecessarily limited to a very narrow, albeit perhaps practical, conceptualisation. It ultimately neglects to encapsulate the spectrum of possible legacies of a hybrid court which the publication, according to its title, seeks to maximise (OHCHR, 2008b). The STL defines legacy in its online glossary as follows:

> The impact on a domestic or international level that an international or hybrid tribunal leaves behind after its work is complete. For example, on a domestic level, a tribunal can help to build the skills of local lawyers, prosecutors, and judges, while on an international level, a tribunal can leave a rich body of jurisprudence that will inform future courts and judges (STL, 2012b: 72, 180).[262]

Importantly, the STL definition acknowledges both the domestic and international dimension which is missing in the OHCHR (2008b) definition quote above.

When comparing the definitions it becomes obvious that more than one concept of legacy exists. At least two concepts can be discerned. A broad concept, which may include contributions to law, justice, peace, reconciliation and beyond, stands in contrast to a narrow notion solely covering the legal and judicial arena. Questions of purpose and interpretation of the legal, political, social, economic or

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[262] It is noted that the STL glossary is not an official document but only for reference and information purposes. Still it is relevant here as concerns the public representation of the tribunal.

cultural components of international tribunals hereby take centre stage. The juxtaposition of a conservative definition and a broader definition has informed recent accounts (see Cole, 2012; Gozani, 2015). The tribunal definitions of legacy leave the geographical or spatial remit open (either by omission (ICTY and SCSL) or by inclusion of the international and domestic level (STL)). What is most obvious overall, are the different conceptions of legacy within and across the tribunals. This confirms the emphasis on construction and conceptual framework advanced in this thesis in the sense that legacies are actively produced, not passively acquired (see Section 3.1).

In light of the three conceptualisations of legacy identified in Section 3.1 (bequests, remains and lessons), it becomes apparent that legacies conceived as remains and as lessons are most often encountered in legacy talk. As the tribunals are judicial institutions it is not surprising that international lawyers may have a fascination with the term due to their familiarity with legacy as legal concept. However, in the context of the tribunals the term is not used in a strictly legal sense in terms of bequests. As Mégret (2011: 1014) notes: 'legacy is not a legal term of art or a specifically legal term'. Legacy is instead understood as remains or lessons. The nexus between legacies and lessons learned has prominently featured in several publications on the international tribunals (see Scharf, 1995; Scharf & Kang, 2005; OHCHR, 2008b). Former ICTR President Byron (2011) also conceived of lessons and legacies as synonyms. Statements declaring lessons abound. For example, 'Rwanda has also provided practical lessons' (Rapp, 2006). Legal, procedural, administrative lessons have been identified at the tribunals and various Best Practices Manuals have been produced (see Section 6.2).

Qualifying legacies

Resorting to the language of legacy leaves open the question of what defining attributes of legacy are. The term legacy is revealing and yet not revealing at the same time. It is revealing because its usage demonstrates the underlying assumption that someone or something is deemed worth talking about and remembering. However, it is not revealing in the sense that simply acknowledging someone or

something as having a legacy is somewhat void of meaning, as it provides no indication of attribution of significance. Hence, it is common to encounter specific qualifiers and qualifications, or 'labels', attached to legacies.

When analysing legacy accounts specific qualifiers in relation to legacy can be identified. Legacy qualifiers have mainly been (1) temporal, (2) spatial and (3) substantive. In the following some examples (extracted from Tribunal Annual Reports, press articles and scholarly accounts) are given to illustrate the spectrum of rhetorical devices:

(1)   Temporal: e.g. enduring, lasting, continuing, living, forgotten, ephemeral, unfinished, transient

(2)   Spatial: e.g. local, regional, global

(3)   Substantive: e.g. magnificent, effective, ambiguous, contested, questionable, controversial, mixed, uncertain, bitter, tainted, troublesome, special, undervalued, unclaimed, neglected, unexpected, reverse

Notwithstanding the degree of precision these qualifications confer the given legacy, critically examining such qualifications reveals that their meaning is not necessarily apparent or constant over time. This highlights the importance and centrality of interpretation and production of meaning by legacy actors. In a sense, this is reminiscent of the characterisation of the usefulness of the concept of civil society as 'analytical hat stand' (van Rooy, 1998), on which policy makers can hang a wide range of ideas. The resultant discourses on legacy can be complementary or at times clashing (see also discussion of different definitions and conceptualisations).

Legacies remain in the making. Paraphrasing Wendt: Legacy is what tribunals make of it. But also what all other actors make of it. And different actors give different meanings to different legacy labels or assign different legacy labels all together. For instance, labelling a legacy as 'enduring' or 'transient' raises the question of what this means. Wang Gungwu (2007: 4) observes

> The enduring ones, at least on the surface, looks like those
> that keep on being talked about year after year, and nobody is
> ever ready to forget. Is that what we mean by enduring? [...]
> What is transient? Is anything really transient if we can

remember it? Does transient mean that those things that we
quite easily forget or want to forget?

In fact, the qualifiers as well as the legacies themselves are not static but change meaning depending on the viewer and perspective and depending on the tension between remembering and forgetting. Indeed, what may be a transient legacy for some, may not be one for others, and what is a transient legacy in one realm, may not be in another. This highlights once more the highly constructible and constructed nature of legacies (see Section 3.2).

The L word

It is worth pausing for a moment and reflecting on the perception of the term legacy itself. The underspecification of the language of legacy has been identified as a source of frustration at the tribunals. Statements such as 'I cannot hear it anymore' or 'There was a time when everything was legacy' show the casual usage of the term in everyday parlance.[263] Indeed, the confusion between residual functions and legacy was confusing (as mentioned in Section 5.2). However, the politics of using legacy language have been summed up by analogy: 'It looks and smells like a rose, even if you don't call it a rose, it is still a rose.'[264] It seems there is no coherent and uniform understanding of the concept which in turn means that some actors prefer to avoid the term all together. While consolidation is an important dynamic, contestation is an equally important part of the cycle of legacies (see Figure 3.2).

While at first sight the term itself may seem uncontroversial, its usage, and perhaps over-usage in the tribunal context, has rendered the language of legacy itself a site of contestation. Different views exist on the appropriateness of the term range from the conventional to the extreme. During the research for this study several interviewees provided a word of caution regarding the topic of legacy or the 'L word' as some called it.[265] For instance, on one occasion it was suggested that the topic of legacy itself would prevent certain individuals from responding favourably: 'Do not say you are researching legacy, he will not meet with you' as 'He is allergic

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[263] Interview 7, SCSL official, 22.06.2011.
[264] Interview 184, ICTR official, 23.09.2013.
[265] Interviews 20, defence counsel, 28.06.2011.

to the word legacy'.[266] Mediagenic representations and legacy accounts as mere public relations exercise raise the question of representation of fact and fiction. Many tribunal legacy reports and conferences privilege solely positive planned legacies and apply a certain positive 'legacy gloss'. In this sense, the identification of a certain 'magical/ managerial discourse' (MacAloon, 2008) seems not farfetched in the tribunal context. At the ICTR this was reflected upon by some tribunal officials below the level of senior management. It was observed that legacy is used to only refer to 'positive contributions'.[267]

Within the tribunals attempts at controlling the legacies left behind can be observed which is translated into restriction, real or perceived, of speaking about legacy work. The professionalisation of legacy (as discussed in Section 6.1) has led to the establishment of focal points for legacy within the organisations, i.e. the Office of the President for the ICTY and ICTR and the Registry for the SCSL. It seems an appropriation of legacy, real or perceived, occurred within the tribunals by a particular section which is now seen as section of expertise and responsibility rather than that all staff members are involved and able to speak to the legacy. Legacy building seems not viewed as the spin-off of the quotidian judicial work of the tribunals but as a grand specific task carried out by specific staff members within the tribunals. In short, a certain division of labour becomes visible. Interestingly, when interviewees were asked whether they see an explicit link between their work and legacy, several were hesitant or stated that they had not thought of it in those terms.[268] Many interviewees regarded those officials and staff members directly working on legacy projects as solely competent and authorised to speak about the legacy of the tribunal. The fundamental basis of the tribunals' legacies is its core work, i.e. investigations, trials and judgments. If the term is restricted as a label to specific projects or identified solely with the work of the Registry, then this may distort the overall legacy discourse of a tribunal. An ICTY staff member insisted that 'Almost everything we do is legacy. The judicial work is our biggest legacy; it is not

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[266] Interview 20, defence counsel, 28.06.2011.
[267] Interview 179 and 187, ICTR officials, 19.09.2013. 24.09.2013.
[268] Interviews 18 and 56, ICTR and ECCC official, 28.06.2011, 11.09.2012.

a special project, but our everyday work.'[269] Such observations of language need to be viewed in wider discussion on mandate and legacy (see Section 7.1.2).

Legacy in other languages

Here it seems opportune to consider another issue of language that has cropped up across the tribunals. When leaving the English language and translating the term the question arises whether it is possible to accurately translate the term legacy or whether other meanings are created in the process. In French there seem to be no exact semantic equivalent. Both French and English are official languages of the *ad hoc* tribunals, thus a relevant aspect to consider here.

Translations include *le legs,* juridically speaking, and *l'héritage* and *les séquelles* figuratively speaking. By far the most common term encountered in Francophone documents on and from the tribunals is *héritage*.[270] Their ostensible similarities might lead to the conclusion that legacy and *héritage* are semantic equivalents. Such a cursory comparison, however, seems a superficial and dangerous supposition as it ignores the different semantic weighting in the respective language (MacAloon, 2008). Indeed, 'In actual usage, the French is more encompassing and more weighted in more contexts toward the accumulated capital of the past arriving in the present, while the English term is narrowly specified – e.g. through its legal referents – and tilted towards the present's contribution to the future' (MacAloon, 2008: 2067). It is noteworthy that in the English language legacy and heritage are neither used interchangeably nor regarded as synonyms. Semantically, *le legs* appears closest to legacy when referring to legacies as bequests yet is far less frequently used in Francophone discourse relating to legacies as remains or lessons. *Les séquelles* presumably comes closer to the English term aftermath, generally used in the context of legacies of violence or war. Another example is a UN policy tool entitled *Maximising the legacy of hybrid courts* in the English version whereas the French version was entitled *Valorisation des enseignements tirés de l'expérience des tribunaux mixtes* (OHCHR, 2008a). Here the English title refers to legacy whereas

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[269] Interview 26, ICTY official, 01.07.2011.

[270] For instance, the STL Outreach and Legacy Section is called in French *La Section de communication et de l'héritage.*

the French title foregrounds 'lessons learned' (*enseignements tirés*). This brief discussion shows that translating legacy is a more problematic issue for the tribunals than is generally acknowledged. This is of direct relevance for the argument made since legacies are being constructed in multilingual settings, where particular meanings might get 'lost in translation'.

Although an analysis of regional and local languages relevant to the tribunals is beyond the scope of this chapter, suffice it to say that the issue has confronted the tribunals. Especially in their outreach work and reporting on legacy activities, the tribunals have encountered the challenge of conveying the idea of legacy in the context of the tribunals' work. Identifying what notion of legacy is used is crucial for effective communication and understanding. This becomes more complicated in a multi-lingual setting. By way of illustration, let us turn to the ECCC. Khmer is the official language at the ECCC and Khmer, English and French are official working languages at the ECCC. The Khmer expression often used is *morodok* which can be translated as 'what is left behind'.[271] However, as local term it was a new concept for many Cambodians to grapple with used in connection with a court. Legacy planning and legacy building has been mainly considered relevant for an audience at the international level. The OHCHR policy tool *Maximizing the Legacy of Hybrid Courts* was originally published in English and French. The Khmer version of the OHCHR was first distributed and launched by James Heenan, Head of the OHCHR Cambodia office, during the ECCC Legacies Conference on 13 September 2012. This was four years after the English version was published. For future empirical legacy studies in the regional settings of the respective tribunals it is thus crucial to be mindful of translation issues and of shifts in meaning when navigating research sites with multiple languages.

Limitations of the language use

Here it is opportune to return to the three limitations of legacy discourse (see Section 3.1.1). All three limitations (the term used in the singular, to solely depict an end result and as imprecise umbrella term) are seen at play here. First, the term

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[271] Interviews 53 and 54, civil society members, 10.09.2012, 11.09.2012.

legacy is dominantly used in the singular (see Tribunal Annual Reports). As elaborated in Section 3.1.1., to avoid reification it seems appropriate to speak of legacies and highlight their construction process. A notable exception is an outreach lecture on the topic of the SCSL 'legacies' in the plural (Fatoma, 2010). An interesting example is the ECCC conference held in Phnom Penh in September 2012, entitled 'Hybrid Perspectives on the Legacies of the Extraordinary Chambers in the Courts of Cambodia'. It has been reported that the pluralistic approach as suggested here[272] has been taken up by civil society actors in Cambodia and the notion of legacies in the plural has shaped recent discussions. The plural notion of legacies has been used in legacy update meetings by OHCHR Cambodia country office and civil society actors.[273] Legacies in the plural have been rarely taken up in the title of academic publications (for exceptions see Luban, 1987; Campbell & Wastell, 2008; Gow, Kerr, & Pajić, 2014). The latter is also the first book on any tribunal to list 'legacy' at all as an index word.

The legal dimension, i.e. legal legacies, has not been clearly privileged both inside and outside of the tribunals. One edited volume on the ICTY has almost exclusively focused on legal and procedural issues (Swart, Zahar & Sluiter, 2011). The notion of legal legacy speaks to broader arguments about jurisprudence, history writing (see Wilson, 2011). On the one hand, the tribunals' legacies are often discussed solely regarding two main aspects, namely dissemination of norms and the rule of law capacity-building. Such a view neglects that trials also may be about politics, history, memory and reconciliation in a broader context. The ICTY Conference Concept Paper 2010 recognised that the process of dealing with the past, or *Vergangenheitsbewältigung*, was 'still lingering' with a 'distant goal' being reconciliation. On the other hand, overly ambitious expectations have been generated regarding the achievements of the international courts and tribunals, in particular regarding their role in transforming post-conflict societies and creating peace and reconciliation (see e.g. Gallimore, 2008; Jalloh, 2011). Perceptions within the

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[272] The author of this study presented the conceptual framework (developed here in Section 3.2.) and plural notion of legacies at the ECCC conference. Informal comments were suggested that the term 'legacies' instead of 'legacy' was seen as a valuable conceptualisation (see ECCC conference report; personal communications, ECCC officials, 09.2012, e.g. 'So you are the inspiration for the title of the conference').
[273] Interview 231, UN official and civil society member, 30.09.2014.

tribunals, even after 20 years of existence, are not uniform about primary mandate (see discussion in Section 7.1.2).

Second, marginal attention is paid to the legacy process as legacy is simply presented as product of deliberative action and agency by the tribunals in question. A notable example is found in statements by President Pocar highlighting 'the legacy that the ICTY is "building" in the region of the former Yugoslavia and worldwide', the ICTY 'has been working to ensure its legacy through the compilation of best practices', 'these new initiatives will ensure that the legacy […] will be secured' (Pocar, 2008: 658). Underlying assumptions are a certitude that legacy will happen and that it is highly malleable by the organisations *per se* which does not mirror the complexity of the legacy process (see Section 3.2).

Third, especially at the outset, the term legacy has been used as an umbrella term. Indeed, residual functions and residual mechanisms were subsumed under a discussion on legacy, until at least 2008. This however was highly misleading and gave rise to the view that the 'decisions on the legacy of the Tribunal are decisions to be made by the Security Council, it must be recalled, so the Tribunal's role in this area is limited to providing answers to questions coming from an *ad hoc* Working Group established by the Security Council' (Pocar 2008: 664). Certainly there are aspects that cut across the residual mechanism and legacy, for instance the archives. The management of archives is the residual issue here but there is also the archival legacy to be considered. There still seems to be some confusion between residual functions and legacy. One court official pointedly observed, 'The discourse has improved. At the beginning everything was legacy, it was confusing and inaccurate.'[274] Although legacy may temporally overlap both with completion and residual or post-completion issues, it is important to clearly distinguish between these interrelated but separate matters. The success of any buzzword, such as the term 'legacy', calls for closer scrutiny. Two perspectives in the discourse are distinguished here: building legacy and preserving legacy.

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[274] Interview 8, SCSL official, 22.06.2011.

8.1.2. Significance of legacy discourse

Legacy narratives, whether recounted in the courtroom or outside, represent a legitimising strategy. It is an opportune moment to consider the role of narratives and how particular actors such as the tribunals themselves, their successor organisations and other tribunals are portrayed in light of the notion of legacy.

Narrating legacy formation

Narrating one's life has a comforting ring to many individuals in terms of identity construction, image maintenance, power of interpretation and editorial control over the story line. In any narration the line between fact and fiction is a fine one. It was once remarked, 'Since fiction seems a more comfortable environment than life, we try to read life as if it were a piece of fiction' (Eco, 1994: 118). It is argued that legacies are not fictional but socially constructed; yet, the notion of storytelling is relevant. The notion of long narratives chimes with the idea of 'continued legacy building' (Riznik, 2009). The term legacy struck a chord with tribunal officials and outside actors (see discussion of psychological underpinnings of legacy creation in Section 7.1).

One such long narrative arch is the human rights movement since Nuremberg and the generational suite of international tribunals. A mainstream depiction inserts the establishment of the ICC and *ad hoc* tribunals in a narrative of international law's linear progress. 'From Nuremberg to The Hague' is a dominant refrain in academic research, political discourse and media reporting (see overview in Koller, 2012: 99). But such a narrow linear portrayal obscures certain influences, contestations, fissures and delays in the history of international criminal prosecutions. A critical analysis of an 'exercise in metaphorical cartography' underscores that 'the path which led to the creation of the ICC was not one but multiple: all roads led to Rome' (Koller 2012: 111).

Indeed, long narratives require critical engagement. Gilbert (2008) draws attention to the importance of questioning long overarching narratives in the context

of European integration. Two reasons are foregrounded for a critical stance: first, the tendency of over-simplified and unhistorical narratives and second, the blindness to alternative narratives in light of the 'aura of success', coinciding with a preferred long narrative (Gilbert, 2008). The social construction of historical narratives and the role of collective memory was already pointed out in Section 2.1.1 (see Zerubavel, 1993; 2003; see also Zerubavel, 2013 on narration of exit).

In this context, it might be remarked that legacies of international tribunals emerge but that the tribunals themselves are also legacies of other historical developments and progenitors (on this double legacy phenomenon see also Dyreson, 2008). Thus, according to this logic, to fully apprehend legacies a retreat to the far past is indispensable However, here it is argued that this is an example of infinite regress and thus represents a logical fallacy that is best avoided. The topic of prognosticating legacies is of immediate interest.

Tribunals as legacy previewers

Any preview or prediction of legacies of the international criminal courts and tribunals prior to their closure seems premature and oxymoronic at first glance (as elaborated in Section 3.1). Certainly it is doubtful that the legacies will be seen in the same way in ten, twenty or fifty years. But such 'legacy previews' (Byrne, 2006: 485) are far from absurd or valueless. Rather than dismissing legacy previews as precocious this study sees their value in what they say about *desiderata*, or intended legacies. Following Byrne (2006) and Mangan (2008), legacy previews indeed merit attention – not so much for their empirical accuracy but for what they reveal about underlying assumptions and the demands of the present. Legacy previews could be seen as biased, inaccurate and error-prone due to reliance on guestimations and little methodological rigour beyond anecdotal evidence. Examples of early perceptions and forecasts of different tribunals abound (see Sadat, 2002; Kirk, 2007; Wierda, Nassar, & Maalouf, 2007).

Such early prognostications and evaluations however can prove useful and insightful for the tribunals as legacy leavers not least for raising constructive

concerns, alerting the public to contradictions and lacunae and stimulating official action aimed at re-shaping certain perceived legacies (Mangan, 2008). Regarding the legacies of the international tribunals, Byrne exposed a paradox: 'In theory, the verdict on legacy should still be out, so to speak, at least until all of the Tribunals' verdicts are in. In practice, conclusions proliferate on the impact of the *ad hoc* international criminal tribunals, from the conventional to the extreme' (Byrne, 2006: 486). As Peterson (1994: 27) cautioned with regard to Abraham Lincoln's legacy, 'The immediate aftermath of his death was hardly the time to form a just estimate of Lincoln's place in history; nevertheless, editors, politicians, poets, portraitists, and preachers essayed that task'. In this sense, legacies in light of narrative structures have an ever-changing character depending on communication and interpretation of various actors involved.

An air of confidence accompanies many official legacy previews or prognostications by tribunal officials. The frequent use of the future tense, rather than the conditional, indicates certainty. Just recently ICTY President Meron declared in his address to the UNSC: 'when the history of the ICTY is written, it is this legacy, not limited delays in projected delivery dates, that will be remembered and, I believe, celebrated' (Meron, 2015: 1). Regarding the successor organisations of the UN *ad hoc* tribunals, for instance Rapp (2006) early on confidently asserted that the legacy of the tribunals will be beneficial for future institutions. This confidence may be tempered in the long run. The ICC for instance does not seem to have entirely modelled itself on the tribunals. One of the famous prognostications of the Nuremberg legacy was provided by US Prosecutor Jackson in his opening address to the tribunal. Moreover, 'the language of the Court's Judgment is itself imbued with a consciousness of its own future resonance' (Cohen, 1995: 532). On the investment of meaning with regard to the Nuremberg legacy Cohen (1995: 532) aptly noted, 'It is rather that its meaning resides in the discursive and interpretative practices which assert or deny its significance in a given context, contest or justify its legitimacy as a legal and political watershed […]'. Unsurprisingly, and in light of the generational metaphor of tribunals often used, the so-called Nuremberg legacy has become a reference point of legacy discourse at the tribunals.

'Nuremberg legacy' as reference point

Originally, the idea of legacy entered the universe of international tribunals when the term began being associated with the Nuremberg Tribunal. The first article explicitly discussing legacies against the backdrop of war crimes trials seems to be David Luban's (1987) article 'The Legacies of Nuremberg'. Luban makes a contribution in at least two respects. He underscores the not immutable nature of legacies and thus recognises ongoing legacy formation. Legacy is defined as

> the potential of its principles for growth and development, for extension and precedent setting, for adaptability to changed political circumstances, for underlying moral commitments that are not so much the logical implications of the principles as they are their "deep structure" (Luban, 1987: 789).

Furthermore, Luban speaks of legacies in the plural. To be certain, he privileges the legal dimension, yet he recognises multiple overlapping legacies. The plurality of legacies is a central theme of this study (and has been taken up e.g. in Lu, 2013) and is returned to in the discussion on legacy conferences below. Moreover, Heller (2011) has shown the Nuremberg Tribunal did not operate in isolation even if the Nuremberg Tribunal often eclipsed attention given to the Nuremberg trials.

The creation and achievements of the *ad hoc* tribunals have been viewed particularly through the prism of Nuremberg. It has aptly been observed that the Nuremberg legacy 'is often mentioned but its meaning has never been coherent, changing from time to time, context to context' (Futamura, 2008: 14). The attribution of meaning and construction of legacy was elaborated at length in Section 3.2.2. The so-called Nuremberg legacy is a case in point (see e.g. Luban, 1987; Jones & Strong, 1995; Bassiouni, 1998; Ferencz, 1998; King, 2002; Burchard, 2006; Shattuck, 2006; Teitel, 2006; Tomuschat, 2006; Wald, 2006b; Blumenthal & McCormack, 2008; Ehrenfreud, 2007; Meron & Galbraith, 2007; Ratner, Abrams, & Bischoff, 2009; Kaul, 2013). However, as Futamura (2008) highlights, its problematic universalisation and decontextualised application call for a re-examination of the so-called Nuremberg legacy itself. As Scheffer (2015) recently recalled when speaking about the origins of the ICTY: 'The legacy of Nuremberg and its focus on individual criminal responsibility reasserted itself as we labored to

build a new tribunal.' Many of the above-mentioned scholarly accounts seem to suggest that legacy assessments have been contingent on consequent events, not least the development of international criminal law and the establishment of the *ad hoc* tribunals and the permanent ICC.

Residual mechanisms as guardians of legacy

The responsibility for legacy building and legacy preservation is being shifted from the tribunals as legacy leavers to the residual mechanisms. As successor organisation of the ICTY and ICTR the MICT presents itself as tasked with 'maintaining the legacy of both institutions'.[275] The image of the residual mechanism as preserving and carrying forward the legacies of the *ad hoc* tribunals has etched itself into collective imagery of tribunal staff (see discussion on organisational death and *Nachleben* through the mechanism in Section 5.2). An official video on the construction of the new MICT archives facility in Arusha boldly asserts: 'It will house the ICTR legacy'.[276] On the occasion of the laying of the cornerstone for the MICT Premises in Lakilaki, Tanzania, on 1 July 2015, MICT Prosecutor Jallow boldly stated:

> Today's occasion is symbolic in many ways: it marks another important chapter in the legacy of the *ad hoc* tribunals, as well as symbolising the beginning and growth of something new – the international criminal justice system. It marks a new and historic phase in the system. (Jallow, 2015: 1)

The metaphor of opening and closing chapters of legacy suggests an understanding of legacy over time with new meanings created sequentially which have significant bearing on the consolidation of legacy building. Moreover, and importantly, the prognostication of 'the international criminal justice system' evidences a strategic view of legacy and shows visionary foresight (see also Joensen, 2013 who gave a keynote address on 'The legacy of the *ad hoc* tribunals and the future of international criminal justice' at the ICTR Legacy Conference in Johannesburg on 30 October 2013).

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[275] See http://www.unmict.org/en/about.
[276] See http://www.unmict.org/en/about/construction-arusha-facility.

ICC as new legacy leaver

An important new development is that talk about exit strategies and legacy has emerged at the ICC. Although the permanent court is not concerned with organisational closure, first judgments issued, end of cases and finite amount of resources and attention may mean that some situations will be closing. In this context the 'legacy turn' has also reached the ICC (see Mayerfeld, 2004; Evenson & Smith, 2015).

The notions of 'completion strategy', 'residual functions' and 'legacy' have gradually become part and parcel of tribunal parlance and activities (see Tribunal Annual Reports). However, for the ICC such vocabulary was, until recently, regarded as blue skies thinking. While the ICC itself may be a permanent body, there are still elements that are ephemeral and finite: staff appointments expire, decisions or cases completed, certain milestones achieved, review conferences held and anniversaries celebrated. The timing and modalities of ICC engagement and disengagement though remain under-examined. It was reported that the ICC is 'therefore closely following the discussions about completion strategies, residual functions and legacy in the other tribunals and courts, with a view to building on their experience and knowledge.'[277] Tribunal officials have observed a certain 'immature' competition between the ICC and the *ad hoc* tribunals.[278]

The notion of legacy has been remarkably absent in ICC vocabulary (see Dittrich, 2014b). At the *ad hoc* tribunals, legacy has become a leitmotiv in their activities and reports. For the ICC, the issue of legacy, if explicitly discussed at all, is seen as future consideration rather than current preoccupation:

> In the future, […] consideration could be given to addressing, in a timely manner, relevant legacy issues such as preserving and developing the Court's impact on the national judicial system, where appropriate, taking into account the lessons learnt from other international jurisdictions, in dialogue with the Assembly (ICC, 2012: § 20).

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[277] See http://www.icc-cpi.int/NR/rdonlyres/3358BCD6-6DC3-42D6-91F8-ABC5FFED3CA6/0/ICCASP912ENG.pdf, §23.
[278] Interview 15, 54 and 67, ICTY officials, 24.06.2011, 11.09.2012, 25.09.2011.

The ICC has become a reluctant legacy leaver which hesitantly came to see the significance of the idea of legacy even for a permanent institution. A recent development evidences that the term has now entered the vocabulary of the ICC (see No Peace Without Justice, 2012). The new ICC Records and Retention Policy refers to a new category of records, so-called 'ICC legacy records' (ICC, 2015: 2). These are defined as

> ICC Records that contain information determined to be of historical value which maintain the legacy of the Court for the future. This category may apply, inter alia, to any ICC Records (in any medium or form) of investigations and prosecutions, the administration of Chambers, public communications of the Court that are appraised to be of historical value and any other category of records as decided by the Registrar or the Prosecutor, as appropriate. (ICC, 2015: 2).

This new policy underscores the nexus between records, archives and legacies. Importantly, it is recognised that not only judicial records, but also public communications and any other category of records may maintain the legacy of the court. This is an important point as it suggests that not only the legal legacy is privileged. Indeed, the concept of complementarity has become central to discussion of legacy within the ICC. For instance, while the legacy of the first ICC Prosecutor, Luis Moreno-Ocampo, will arguably be interpreted in light of the ability to open investigations and start cases, the legacy of the current Prosecutor, Fatou Bensouda, is likely to be assessed in terms of the ability to complete and close investigations (see discussion on the so-called 'ICC's exit problem' (Hamilton, 2014)).

Overall, legacy talk is heard not only in the corridors of the tribunals but in formal communication with outside actors. Moments that drew most attention to the topic of legacy were so-called legacy conferences organised or initiated by the tribunals themselves to which the chapter turns next.

8.2. Legacy conferences as discourse fora

Conferences have distilled as particular public fora for legacy discourse. Indeed, conferences provide a useful window of analysis as all tribunals have organised, co-hosted or initiated their own so-called legacy conferences. The analysis by no means suggests a uniformity of experience as the conferences were different in numerous respects; however, the choice of the same format to engage with the public is noteworthy and deserves some scrutiny. Other discourse fora include the official websites, outreach events and meetings with UN officials, government representatives and civil society, which are, however, beyond the scope of this chapter. Over 25 conferences has been organised since 2005, mainly concerned with a single tribunal, ranging from the Nuremberg Tribunal to the ICC, or concerning international tribunals in general (see Table 8.2).

Table 8.2: Conferences on 'legacy', including 'impact' and 'lessons learned' per tribunal in historical order (2005-2014)

Date	Title	Location	Organiser
Nuremberg Tribunal			
2005, March 27-29	The Nuremberg Trails: A Reappraisal and their Legacy	New York, US	Benjamin N. Cardozo Law School (Professor Michael J. Bazyler)
2005, Nov 3-5	Pursuing Human Dignity: The Legacies of Nuremberg for International Law, Human Rights and Education	Boston, US	Harvard Law School, Facing History and Ourselves
2006, Feb 17-18	Fulfilling the Legacy: International Justice 60 Years After Nuremberg	Seattle, US	University of Washington School of Law in Seattle, Amnesty International USA
ICTY			
2010, Feb 23-24	Assessing the Legacy of the ICTY	The Hague, Netherlands	ICTY, Government of the Netherlands and the Sanela Diana Jenkins Human Rights Project at UCLA School of Law
2010, April 2	The Unfinished Business of the UN ICTY and ICTR: The Future Role of the EU and its Member States	Brussels, Belgium	REDRESS, International Federation for Human Rights and International Criminal Law Services, with the support of the European Parliament, EC and Party of European Socialists
2010, Dec 16	The Legacy of the ICTY and Societies in the	Belgrade, Serbia	Belgrade Centre for Human Rights and Field Office Belgrade in cooperation with

	Territory of the former Yugoslavia		ICTY Outreach Programme
2011, Feb 24	The Legacy of the ICTY and Societies in the Territory of the former Yugoslavia	Zagreb, Croatia	Belgrade Centre for Human Rights in cooperation with Zagreb Law Faculty and the Croatian Society for European Criminal Law, with the support of ICTY Outreach Programme
2011, April 11	The Legacy of the ICTY and Societies in the Territory of the former Yugoslavia	Sarajevo, Bosnia and Herzegovina	Belgrade Centre for Human Rights in cooperation with ICTY Outreach Programme
2011, Nov 15-16	ICTY Global Legacy	The Hague, Netherlands	ICTY
2012, Nov 6	Legacy of the ICTY in the former Yugoslavia	Sarajevo, Bosnia and Herzegovina	ICTY
2012, Nov 8	Legacy of the ICTY in the former Yugoslavia	Zagreb, Croatia	ICTY
2013, Nov 29	ICTY Defence Legacy	The Hague, Netherlands	ADC-ICTY
ICTR			
2007, Nov 29 - Dec 1	The Legacy of International Criminal Courts and Tribunals for Africa with a Focus on the Jurisprudence of the ICTR	Arusha, Tanzania	ICTR, Brandeis University, East African Law Society
2009, July 9-11	ICTR: Model or Counter Model of International Criminal Justice? The Perspective of the Stakeholders	Geneva, Switzerland	Geneva Academy of International Humanitarian Law and Human Rights , the Graduate Institute of International and Development Studies and the Institute of Economic and Social Development Studies, Panthéon-Sorbonne Paris I University
2009, Nov 14-15	The Legacy of the ICTR	The Hague, Netherlands	ICTR Defence Counsel
2010, April 2	The Unfinished Business of the UN ICTY and ICTR: The Future Role of the EU and its Member States	Brussels, Belgium	REDRESS, International Federation for Human Rights and International Criminal Law Services, with the support of the European Parliament, EC and Party of European Socialists
2013, Oct 30 - Nov 1	The Legacy of the ICTR	Johannesburg, South Africa	University of Johannesburg, School of Law (Professor Mia Swart)
2014, Nov 6-7	ICTR Legacy Symposium	Arusha, Tanzania	ICTR
SCSL			
2012, April 19-21	Assessing the Contributions and Legacy of the SCSL to Africa and International Criminal Justice	Pittsburgh, US	University of Pittsburgh, School of Law (Professor Charles Jalloh)

2013, Feb 6-7	Assessing the Legacy of the SCSL	Freetown, Sierra Leone	ICTJ, SCSL
ECCC			
2012, Sept 13-14	Hybrid Perspectives on the Legacies of the ECCC	Phnom Penh, Cambodia	Cambodian Human Rights Action Committee, ECCC
ICC			
2014, Dec 11-12	Impact and Effectiveness of the ICC	The Hague, Netherlands	The Hague Institute for Global Justice, Grotius Centre for International Legal Studies
General			
2008, March	Promoting the Legacy of International Tribunals	Turin, Italy	UNICRI
2009, June 15-16	Promoting the Legacy of International Tribunals: Regional Conference	Sarajevo, Bosnia and Herzegovina	UNICRI in cooperation with ICTY
2010, May 14-16	Best Practices and Lessons Learned in Knowledge-Transfer Methodology on Processing War Crimes	Sarajevo, Bosnia and Herzegovina	OSCE Mission to Bosnia and Herzegovina, ODIHR
2010, May 21-23	Lessons from the Defence at the *ad hoc* UN Tribunals and Prospects for International Justice at the ICC	Brussels, Belgium	ICTR Defence Counsel
2012, Sept 29	International Criminal Justice – Justice for whom?	Montréal, Canada	ICTR Defence Counsel
2013, Nov 7-8	Building a Legacy: Lessons Learnt from the OTPs	Nuremberg, Germany	International Nuremberg Principles Academy

The purposes of legacy conferences have been manifold. Senior tribunal officials have come to see conferences as significant moments of self-presentation and discussions with stakeholders. A central theme of conferences has been on 'lessons learned' as seen in Table 8.2, with a more recent focus on legacy building (see the 'Building a Legacy' conference in Nuremberg in November 2013; Dittrich, 2013; generally on lessons learned see Boas & Oosthuizen, 2010; Jorda, 2004).

While conferences provided a platform for a consultative process inviting numerous actors to share experiences and practices and engage in evaluative

exercises, they were also intended as platform for airing official accounts or for cementing certain legacies. Actors variably engaged in legacy creation, consolidation and contestation (see cycle of legacies in Figure 3.3; Section 3.2). Two main functions of conferences are explored here, namely presentation and debate, to explore the central dynamics of legacy consolidation and contestation. A comprehensive analysis of all aspects of all conferences is beyond the scope of the chapter. An emphasis below is placed on the large conferences organised or initiated by the tribunals themselves, in particular the two ICTY conferences held in The Hague in 2010 and 2011 respectively.

8.2.1. Presentation and self-presentation

How legacies are received, carried forward and honoured posthumously is of immediate interest to individuals and organisations. The underlying interplay of self-preservation and self-redemption is indicative of identity construction and image maintenance (see Section 3.1). It is common practice for public figures, politicians, business leaders or sports professionals, to consciously attempt to shape their own image and meaning, during their lifetime and beyond. The fashionable notion of branding and an understanding of organisations and individuals as brands seems relevant here. But, it is important to recognise that 'one's legacy, in the sense of how one will be remembered, is largely out of one's own control. History renders the verdict, which will be reevaluated over time' (Kane, 1996a). This chapter now turns to how the tribunals used conferences for the purposes of self-presentation and to what extent they embraced the role of legacy leavers.

Claiming prerogative of interpretation

A strong sense of prerogative of interpretation may result in a canonical representation of legacies. The significance of legacies intimately entwines with the attribution of meaning to the past, present and future. In this sense, determining and constructing a legacy implies an attribution of significance, grandeur or gravitas to the respective legacy leaver (see Section 3.1). The interplay between self-

preservation and self-redemption (see Dahlstrom, 2007) also coloured legacy efforts at the tribunals. Over time legacies take on a specific role in terms of meaning and identity creation especially as part of collective memory, a 'part of culture's meaning making apparatus' (Schwartz, 2000: 17). Some tribunal officials have underscored an exclusive understanding of legacy: 'Only we know our legacy'.[279] However, as elaborated in the conceptual framework there is no prerogative as a multiplicity of actors are involved in legacy constructions (see Section 3.2). This is an important dynamic in light of the 'multiplicity of justice' (Goodale & Clarke, 2010: 1).

Unsurprisingly, tribunal officials have used conferences to present their achievements and contributions. In a strategic move, like at end of politician's mandate, problems are camouflaged and mistakes erased.[280] As the tribunals are closing many judges actually are approaching the end of their professional careers. Thus, presenting the legacies of the tribunals is akin to looking at their own *oeuvre* and lifetime achievements. In this sense, organisational legacies intertwine with their individual legacies (see Section 7.2).

Claims of a prerogative of interpretation coupled with the attraction of long narratives may however lead to over-claiming of credit for particular developments. This tendency by SCSL officials to claim credit for judicial reform initiatives in Sierra Leone has been called out at several times during conferences.[281] Caution has been called for: 'Be careful. The SCSL likes to take credit for all what happened. All is legacy. This is not true.'[282] It is then highlighted that, for example, the Gender Acts and the establishment of the Anti-Corruption Commission in Sierra Leone rather have their origins in the recommendations by the Truth and Reconciliation Commission and engagement by civil society. A realisation of the limitations of presenting an authoritative account of one's own legacies was revealed by some controversial discussions during conferences as explored shortly. But first a brief word on 'editorial control' and the orchestration of conferences.

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[279] Interview 184, ICTR official, 23.09.2013.
[280] Interview 15, ICTY official, 24.06.2011.
[281] Interviews, civil society member, 2012.
[282] Interview 17, civil society member, 27.06.2011.

Remembering and being remembered

A certain dynamic of mimicking is discernible between the tribunals and the conferences they organised or co-hosted. The format of at least one conference to be organised at the seat of the tribunal was chosen. The chronology of conferences is revealing. The two main ICTY Legacy Conferences were held in The Hague in 2010 and 2011, the ECCC Legacies Conference was held in Phnom Penh in 2012, the SCSL Legacy Conference in 2013 and the ICTR Legacy Symposium in Arusha in 2014.

Attempts of retaining editorial control over form and content of conferences are visible. Conferences are orchestrated events with a clear performative dimension. The selection of speakers and audience, topics and venues is given considerable thought and attention. It was observed that inter alia the selection of speakers and programme organisation of the more academic conferences held at universities, such as the SCSL Legacy Conference held in Pittsburgh in 2012 and the ICTR Legacy Conference held in Johannesburg in 2013, was the source of considerable discontent by tribunal officials.[283] When orchestrated, conferences are seen as occasions for 'friends talking to friends, talking to colleagues'.[284] Some tribunal officials and conference participants have expressed the view that conferences did not unearth new perspectives. Rather, hardly any surprises occurred as the views of most speakers were known before. Token 'critical' voices were invited, such as hand-picked defence counsel or civil society members. The performativity of legacy at the conferences would deserve greater attention. A prolific avenue for future research thus would be the study of legacy building in terms of international and bureaucratic practices and the role of language.

The timing of the tribunal conferences has been both strategic to strive for maximum impact and opportunistic, depending on resources, calendars and preparation time needed. Tribunal officials identified opportune moments for conferences, in light of the symbolism of anniversaries or particular milestones such

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[283] Interviews 84 and 98, SCSL officials, 12.10.2012, 20.10.2012. Fieldnotes, Kampala, 31.01.2014.
[284] Interview 183, 23.09.2013.

as an important judgment. Anniversaries arrest attention and provide valedictory settings conducive to retrospection. On the occasion of the 50th and 60th anniversary of the Nuremberg Tribunal, conferences were organised (see Table 8.2). Conference programmes and questions debated indicated at least a theoretical desire to revisit the Nuremberg legacy. The ICTR Legacy Symposium held in November 2013 coincided with the tribunal's 20th anniversary commemoration events which framed the festive and commemorative setting and tone of the conference. Still, legacy conferences have been both designed and revered as fora for debate and contestation.

8.2.2. Debate and contestation

While affording tribunal actors with fora for self-presentation and presentation and specific moments of introspection and retrospection, legacy conferences have equally served the function of debate and contestation. As such, such conferences reveal the complex simultaneous interplay between legacy creation, consolidation and contestation.

Invitation to debate

Conferences represent orchestrated events for self-presentation and dissemination of one's work and lessons learned, but they can also be framed as an invitation to debate. The relevance of kickstarting a process and generating momentum for legacy building has for instance been emphasised regarding the ECCC Legacies Conference: 'The ECCC kicks off public debate on legacies' (ECCC, 2012). Two points are worth noting: the court as legacy leaver is mentioned as driving actor of such a discussion and the debate is characterised as public. Indeed while the creation of legacies can take place 'behind closed doors' given a certain opacity, the reception of legacies and legacy consolidation and contestation take place in the public arena.

The ICTY Legacy Conference 2010 which took place in The Hague on 23-24 February 2010 issued an explicit open invitation for debate: 'The Tribunal wishes to

hear the participants' ideas of the Tribunal's legacy' and 'The Tribunal welcomes all ideas and proposals in relation to the development of a comprehensive legacy vision and strategy' (ICTY, 2010: 11). The 2010 and 2011 ICTY Legacy Conferences held in the World Forum, the building just opposite the tribunal, were the largest legacy conferences ever held by a tribunal, with approximately 350 participants each. In particular, the Office of the President advertised and characterised its 2010 'Assessing the Legacy of the ICTY' conference as

> a platform for the Tribunal and relevant stakeholders to share their respective views of the Tribunal's legacy and their respective visions of how best to utilise its legal and institutional legacies, as well as how to exchange information about the legacy work that is being carried out by the Tribunal, other UN and international organisations, national governments and courts, non-governmental organisations and scholars.[285]

Some conferences have been explicitly framed as an evaluative exercise. The titles of some conferences are telling in this regard: for instance, the 'Assessing the Legacy of the ICTY' 2010 conference and the 'Exploring the Legacy of the SCSL' conference in February 2013.

For example, a closer look at the title of the 2010 ICTY Legacy Conference is instructive. The editor of the resultant publication, also entitled 'Assessing the Legacy of the ICTY', reflected upon the meaning of the assessment rendered and the stake and interest in participating in legacy construction. While the title 'suggests a dispassionate, scientific, positive, or empirical evaluation', it was observed that 'this book is neither strictly dispassionate nor exclusively evaluative' (Steinberg, 2011: 3) However, the title is a misnomer. Conference participants did not assess but assert or proclaim legacies. To be sure, a practitioner conference does not share the same ambition as scholarship and empirically rigorous research, yet evidence remained anecdotal if claims were at all substantiated. That being said, while transparency and critical assessment are claimed in theory, conferences organised or hosted by the tribunals as legacy leavers seem hardly the right setting for a rigorous methodologically sophisticated assessment of their work.

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[285] http://www.icty.org/sid/10293.

An early such initiative which deserves attention is the 'Symposium on the Legacy of International Criminal Courts and Tribunals in Africa', held on 29 November – 1 December 2007 in Arusha. The event was prepared by the Continuing Legal Education Program at the ICTR and a conference booklet was produced to document and disseminate discussions (see ICTR & Brandeis University International Center for Ethics, Justice and Public Life, 2008). Two more ICTR legacy conferences were organised, in 2013 and 2014. Former ICTR Registrar Dieng (see Dieng, 2011) initiated a Memorandum of Understanding with the University of Johannesburg and a conference 'The Legacy of the International Criminal Tribunal for Rwanda' was held in Johannesburg, South Africa, on 31 October – 1 November 2013, under direction of Professor Mia Swart. ICTR officials only received the final draft programme and did not have editorial control over the programme.[286] Participants, including scholars and practitioners took stock of the ICTR and highlighted achievements and limitations in multifarious thematic panels. Ten ICTR officials, from all three organs, including all three principals, were present and participated in the debates. During each panel inter alia they provided the institutional perspective and enriched the debate with insider accounts, thereby responding and deflecting criticisms. Attempts at legacy enforcement by tribunal officials who found themselves in the defensive became apparent in several confrontational moments of legacy contestation by conference participants.[287] Some senior officials have welcomed such opportunities to see oneself through the eyes of others. It has been remarked that 'sometimes when you sit inside your own house, you forget how it smells' which led to the conclusion: 'We need a conference like that'.[288]

As a counterpoint to the 2013 ICTR Legacy Conference, the ICTR then organised its own Legacy Symposium held in Arusha a year later, on 6-7 November 2014. The symposium fittingly coincided with the ICTR 20th anniversary commemoration and was seized as an opportune moment for reflection and introspection. The conference was prepared in large part by the Legacy Officer and the Legacy Committee and tribunal officials retained editorial control over the programme, speakers and guests. The symposium brought together many ICTR

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[286] Interview 189, ICTR official, 23.09.2013.
[287] Fieldnotes, Johannesburg, 01.11.2013.
[288] Interview 182, ICTR official, 20.09.2013.

officials, past and present, and expert practitioners who placed an emphasis on 'lessons learned' and personal accounts. A publication based on conference papers is currently being prepared, representing another legacy recording (ICTR, forthcoming). In the closing session on 7 November 2014, Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs and United Nations Legal Counsel emphasised the role of the tribunal actors themselves, in a sense considered carriers of legacy, in contributing in a collective way to the ICTR's legacy and its endurance. He noted:

> We thus have the advantage of surveying the legacy of an almost fully complete corpus of case law. … On behalf of the Secretary-General and on my own behalf I wish to congratulate all who contributed to the ICTR's work to fight impunity and to bring about an age of accountability, in particular the judges, the prosecutors, the defence lawyers and their respective staff. Their collective accomplishments have guaranteed such an enduring legacy. (De Serpa Soares, 2014: 1)

The cacophony of voices is a defining feature of conferences. While may be disruptive for official self-presentation purposes by the tribunals such moments of tension, negotiation or conflict important and necessary moments of legacy formation.

Cacophony of voices

Conferences provide rare opportunities to actually hear the cacophony of voices, on the same day together in one room. Criticism and contestation of legacies is an inevitable part of legacy formation. While this may be a discomforting thought for any legacy leaver, certain individual tribunal officials have concluded that friction is a necessary dimension: 'You are always going to have supporters and opponents of these institutions' and 'No one and nothing is without dissenters'.[289] Within the tribunals there has been some controversy and irritation over the question of participation in panels and attendance by tribunal staff members across the

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[289] Interviews 7, SCSL official, 22.06.2011.

different sections.[290] Similarly, outside the tribunals there has been some discontent expressed about the content and format of the conferences. A trade-off between including marginal voices and inviting the 'usual suspects' has generally privileged the latter.

A memorable moment of legacy contestation occurred during the ICTY 2010 Legacy Conference: harsh opposition from victim groups. This is an image that many when thinking of the conferences recalled with ease.[291] This has been interpreted as a clear disconnect of two groups, tribunal officials and stakeholders and victims in the region of the former Yugoslavia, which seems all the more grave since 'one pretends to speak on behalf of the other'.[292] The mere holding of the conference or absence of voices from the region at the second 2011 ICTY Global Legacy Conference was also criticised (see conference transcripts). In addition, a small protest demonstration against the ICTY was staged in front of the World Forum, the conference venue just opposite the ICTY main building, on the first day of the conference on 15 November 2011. Such moments of contestation and clashing perceptions during conferences illustrate the multiplicity of voices on the legacy of the tribunals which reflect the multiplicity of actors involved in legacy constructions (see Vucetić, 2013).

Clashes of perceptions and views on achievements and failures have been defining moments in certain conferences. Following the 2010 ICTY Legacy Conference President Robinson addressed criticisms of failures head on. In unusually direct language, ICTY President Robinson openly acknowledged: 'From the contributions made by victim groups, it is clear to me that there is a perception amongst victim communities that the Tribunal has failed to deliver all that was expected' (Robinson, 2011c: 268). Moreover, participants lamented that discussions on ICTY achievements and impact have overwhelmingly centered on Bosnia and Herzegovina. This was acknowledged by the side of the ICTY President:

> One issue that was noted in the conference as a failing was
> the absence of Kosovo, resulting from a variety of factors.
> […] many asked how the Tribunal could consider its legacy

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[290] Interview 157, ICTY official, 20.08.2013.
[291] Interviews 22 and 74, ICTY officials, 30.06.2011, 01.10.2012.
[292] Interview 15, defence counsel, 25.06.2011. See also Interview 19, ICTR official, 28.06.2011.

vision in the region without hearing the voice of Kosovo. The Tribunal shares the concern (Robinson, 2011c: 269).

Opposing narratives on the legacies reveal different definitions, or the absence of a definition, and different meanings and constructions of significance. The ICTR legacy is a case in point (see Eltringham, 2014b). In earlier years, a Legacy Symposium held in Arusha in 2007 emphasised the ICTR's jurisprudence and legal precedent as legacies. In contrast, at a workshop on the 'ICTR Legacy from the Defence Perspective' organised in The Hague in 2009 the ICTR's legacy was equated with unfair practice and 'victor's justice'. This chapter shortly returns to the place of the defence in official legacy discourse.

'Where's our story?'

Conferences reveal particular accents on certain legacy dimensions and narratives. Several actors have not felt fully included in the conferences which is seen as emblematic of a lack of recognition as central actors in legacy formation. This has been the case of actors inside the tribunals and outside actors.

Within the tribunals, certain actors or organs of the tribunals seem favoured to get the spotlight, not least depending under whose aegis such conferences are organised. This again exemplifies that attention to those enacting the 'heroic scripts' such as Judges and Prosecutors supersedes attention to those enacting the quotidian 'bureaucratic scripts' (Neumann, 2005) (see also discussion on individual legacies in Section 7.2). To take the example of the ICTY Global Legacy conference again, this was seen as project by the Office of the President rather than of the tribunal has a whole, with particular agenda setting focusing on Chambers and the ICTY's jurisprudence. Panels mainly included judges and legal scholars. Given that many outside guests were invited to attend, the OTP, Registry and Defence received 15 day passes each for staff. This privileging of jurisprudential legacies has not gone unnoticed by officials in the OTP and Registry and caused considerable irritation internally.[293] For instance, the language sections and archiving units have not figured prominently in any conferences. However, their work clearly is essential for legacy

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[293] Interview 158, ICTY official, 20.08.2012.

formation, namely interpreting in the multilingual courtrooms and making documents available in the official languages.[294] Here it is worth noting that one of the legacies of the Nuremberg Tribunal was the invention of simultaneous interpretation in courtrooms.

Another group of actors that has felt unduly overlooked is the defence. Defence conferences were held in response to tribunal conferences, on the ICTR legacy in 2009 and the ICTY legacy in 2013. Several defence counsel recall a battle for recognition. The example of the 2010 ICTY legacy conference is once more illustrative. It seems that not a single defence counsel was invited until an official complaint by the President of the ADC. The ICTY President allegedly sent an apology for 'this oversight' and invited the President of the ADC-ICTY.[295] A sense of urgency exists amongst some defence counsel to 'get defence story out', in response to what is seen as a one-sided story by tribunal called 'propaganda'. The ICTY is criticised for 'the arrogance of writing its own history. It is a very dangerous history, one-sided story.'[296] From the side of defence counsel the tribunal fears the 'other story' as there is a sense that the defence is seen as 'troublemakers'.[297] While a great heterogeneity of defence counsel is to be recognised who themselves claim the privilege of interpretation as expressions such as 'crazy defence counsel' and 'the angry ones' reveal.[298] Some defence counsel have observed that 'the defence' does not have a legacy strategy, unlike the tribunals, as 'we are fighting for survival. We have no money or time to spend on legacy'. Still, there is a sense of active participation as necessary legacy actor: 'Legacy without us is incomplete'.[299] It is concluded 'It's time they started talking to us'.[300] These impressions of the legacy discourse amongst defence counsel at the ICTY gives an indication that this remains a critical challenge for the tribunals while spinning their legacy narratives.

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[294] Interview 4, ICTR staff, 21.06.2011.
[295] Interview 12, defence counsel, 23.06.2011.
[296] Interviews 13 and 16, defence counsel, 23.06.2011, 24.06.2011.
[297] Interview 17, legal assistant, 27.06.2011.
[298] Interview, 16, defence counsel, 24.06.2011.
[299] Interviews 17 and 16, legal assistant and defence counsel, 27.06.2011, 24.06.2011.
[300] Interview 21, defence counsel, 28.06.2011.

Sustainability of legacy creation

Conferences are held as one-off events at a particular moment in time in a particular location with a particular selection of participants; hence, the sustainability of discussions and proposals made at these occasions is not immediately apparent. A member of civil society at the SCSL Legacy Conference in Freetown brought these concerns to a point when asking: 'What will be the legacy of the legacy conference?'[301] Conferences may serve as points of crystallisation and momentum generation for legacy consolidation and contestation. It has been noted that 'a conference will not only focus attention on an issue, but also incentivize participants to generate an outcome in order to justify their attendance at the conference' (Mathiason, cit. in Bowhuis, 2014: 96-97). However, the outcome has not always been apparent. As a side product, official photographs were taken of participants at the legacy conferences (e.g. at SCSL Legacy Conference in Freetown in 2013 infront of court site and the ICTR Legacy Symposium in Arusha in 2014). Photographs taken at legacy confernces can be seen as *memento mori* in a double sense (freezing a moment in time and rendering visible the finiteness of a tribunal's existence; see discussion of photographs as *memento mori* by Sontag (1979) in Section 2.1.2). In terms of documentation and the visual dimension of legacy building, efforts have been made to make available conference reports and books and video capture.

Publications on legacy conferences provide a unique window into the institutional history and legacy formation. In addition, they represent valuable legacy recordings as detailed conference proceedings capture defining moments of legacy creation, consolidation and contestation. The ICTY has provided an impressive amount of documentation of legacy conferences showing an interest in transparency and wide dissemination of discussions. Recordings range from conference videos to an edited volume (Steinberg, 2011) to book-length documentation of conference proceedings put together by the outreach section. A multi-coloured conference report including photographs was also published about the ECCC Legacies Conference (ECCC & Cambodian Human Rights Action Committee, 2012) and an edited volume is in print (Meisenberg & Stegmiller, forthcoming). The ICTR has been planning a conference publication based on papers presented for some time (ICTR,

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[301] Conference notes by the author.

forthcoming). It is too early to tell whether the fate of the conference publication is similar to the SCSL conference report that was never published.[302] The conference publications, whether published or not, provide interesting insight into the legacy discourse and the topic of allocation of resources and attention to such initiatives as well as editorial control to shape the public message.

In sum, conferences have allowed some tribunals officials to engage in mediagenic presentation to a wider public and self-representation. Besides an apparent need to remember and to be remembered with a view to legitimisation and meaning making, a sense of prerogative of interpretation emerged at the tribunals. From an institutional point of view, the progressive process of professionalisation of legacy (analysed in Section 6.1) also responds to this need. From a narrative point of view, and in light of the importance of narratives for meaning making (see Section 8.1.2), the 'editorial control', which plays a substantial role in the conference organising activities, responds to the same need. However, conferences also served as an arena for evaluative exercises and critical assessment to a certain extent. Potentially disruptive moments of the self-editing process thereby occurred when legacies were contested by other actors; however, since the conferences were organised, or attended by the tribunal officials themselves they were part of the dialectic of the process itself. Attempts of 'self-editing' were not always harmonious. For instance, the selection of participants and arrangement of panels caused − as predictable given the underspecified notions of legacies (see Section 8.1.1) − clashes and disagreement.

No tribunal alone can build its own definitive legacy as collective interaction and multiplicity of voices are part and parcel of the construction of legacies, both inside but also outside the tribunals. There have been calls for instance for viewing the SCSL 'not as a driver but as a catalyst for motivating a broader set of actors or initiatives that may contribute to legacy' and feel vested in the legacy process (UN S/2004/616; OHCHR, 2008: 6). It has been emphasised that 'Effective legacy must be a result not just of the policies and actions of the tribunals themselves but of a multiplicity of actors that seek to ensure that the tribunals have a lasting impact'

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[302] The report was written by an external consultant and was reviewed by senior officials at the International Center for Transitional Justice, but then needed to be authorised by the SCSL and donors before final publication. Interview 138, civil society member, 16.04.2013.

(Reiger, 2009: 4). While recognising the multiplicity of actors, the underlying assumption of the homogeneity and convergence of actor interests and legacy visions is problematic. The diversity of actors and social dynamics involved in legacy construction has hitherto been largely overlooked. Such a dynamic view has recently been supported by Mégret's (2011) recent descriptive-explorative account of legacy as a collection of complex narratives of different actors. Prior to the closure of the tribunals, and beyond their closure, their legacies already have become sites of discussions and struggles over the tribunals' definitive meaning for the post-conflict country or region and international criminal justice.

In a wider perspective, the thesis briefly turns to legacies in the making. It returns to the case of the SCSL to illustrate ongoing dynamics of legacy formation over time and beyond a legacy leaver's presence. At the closing ceremony of the SCSL this was taken up as central theme:

> Although the Special Court closes, it is most fortunate that its legacy lives on in Sierra Leone in the years to come. It lives through the justice it has delivered, through the vitality of its jurisprudence and through the legal professionals now working in Sierra Leone whose skills it has enabled and strengthened. That is a powerful legacy, a legacy that makes a real and practical difference. It is a legacy of which we can justly be proud. (De Serpa Soares, 2013: 7)

The SCSL site project is a case in point. Lengthy discussions over how to use the site were held over years in dialogue with the government of Sierra Leone (see Section 6.3 on SCSL legacy projects). Recent developments of the external environment outside of the control of the court have shaped certain intended legacies. The outbreak of ebola and mass epidemic in Sierra Leone dramatically and suddenly shifted the centre of attention of many actors in Sierra Leone, including those in the judiciary and judicial sector,[303] and priorities of the government with regard to the use of the site. The National Ebola Response Centre moved into what is known as the 'Former Special Court Complex'. In this sense, language use, in this case retaining the name of a closed organisation for a present site, keeps the reference to the SCSL alive in everyday parlance. These developments, coupled with

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[303] Personal communication, senior official in Ministry of Justice, 2014.

anecdotal evidence with which this section started regarding the legacy of legacy conferences and legacy recordings, emphasises the unpredictability of strategic endeavours of legacy building in light of the complex interplay between intended and realised legacies in the long term.

Conclusion

Since the emergence of the term legacy around 2002 as a new buzzword in the realm of the international tribunals, the term has been firmly established in official discourse. The tribunals have, to varying degrees, used and appropriated the term for their own purposes of legacy narration. To some extent, a certain hype surrounding legacy has been observed. It is important to note that there is no uniform or single definition used across the tribunals, but that since 2010 three tribunals (ICTY, SCSL and STL) have indeed provided definitions. The usage of the term reveals a traditional understanding of the concept. The common depiction of legacies as objectively measurable end results coming to light after the death of the legacy leaver is challenged in this thesis. Rather, the social construction of legacies and their active production and active reception deserves greater attention is highlighted. The analysis shows that there is a limited understanding at the tribunals of the role of legacy leavers as central, albeit limited amongst panoply of actors. The politics of language use of the term legacy, which is referenced by some as the 'L word', shows that the term is used strategically to define various roles, such as who is given the role of communicator or who has the authority to talk about wider issues, such a legacy. In this sense, the communication process about legacy has become an instrument for the politics of memory.

This chapter exemplarily examined so-called legacy conferences as discourse fora which afforded the tribunals with key moments of self-presentation and debate. From the perspective of the legacy leaver conferences serve multiple functions simultaneously: to present to the world a developing legacy vision, to encourage debate and receive feedback, to rectify the record and promote its legacies. In short, conferences as discourse fora have been used, strategically and otherwise, for the purposes of legacy consolidation and legacy contestation, not only by the tribunals as

legacy leavers but also other legacy actors. The result is a cacophony of voices. Discourse shapes which legacies are being talked about, consolidated and contested. The interplay of remembering and forgetting shapes legacy discourse and ultimately legacy formation. The significance of legacies intimately entwines with the attribution of meaning to the past, present and future. The findings draw attention to the fact that legacy formation is ongoing and legacies remain in the making. For this very reason, rather than concentrating on attempts to provide a mere definition of legacy, a multi-perspective process-oriented framework has been forwarded in this thesis. In particular with regard to discourse, understanding how the term 'legacy' is mobilised and how meaning is allocated to legacy building and legacies by the legacy leavers and multiple actors is paramount. In this sense, the mulitiplicity of actors and different voices, as evident at various conferences, shapes the variability of legacy building.

Chapter 9

Conclusions

By way of conclusion, this chapter summarises the main findings of the thesis and considers implications. The import of the findings and their future relevance is highlighted in light of the wider role of legacy building in international politics and law.

9.1. Main findings

The thesis provides the first systematic theorisation of legacy and the first comparative empirical study of the process of legacy leaving and building at the tribunals. The main focus is on the conceptualisation of legacy and the social construction of legacies. The thesis provides a framework for understanding and explaining legacy creation, in particular from the vantage point of the tribunals as legacy leavers. Legacy building has been identified as an institutional strategy aimed at legitimisation, meaning making and, ultimately, institutional persistence. The analysis has revealed a plurality of legacies and the variability of legacy building between and across the tribunals. The thesis proposes to 'accompany' the tribunals' final years and be 'present at the completion' and renders visible the broader picture of how the tribunals as organisations and particular organs and individuals inside the organisations portray and project themselves in light of how they want to be remembered and leave something behind. Different aspects of legacy building are disaggregated. The thesis examines the tribunals' legacy strategies in terms of actors and processes in light of institutional closure in lieu of empirically assessing and measuring the effectiveness of the tribunals *per se*.

The main findings can be summarised as follows: In theoretical terms, 'legacy building' has been conceived as an unexamined yet central coping strategy *vis-à-vis* organisational demise. By deliberately shifting the focus to the demise of organisations the starting point of the thesis is the spectre of organisational decline.

The research demonstrates that organisational decline has been anticipated, announced and orchestrated at the tribunals. Each tribunal has devised formal completion strategies, to varying degrees and at varying points in time, which provide guiding principles for managing decline. It is demonstrated that legacies are actively produced, not passively acquired. Consequently, the common depiction of legacies as objectively measurable end results is challenged. The analysis unpacks what conventional accounts take as a given: the existence of legacies. Constructing legacies in the light of the impending closure of IOs lays bare the grappling with existential questions — at both the institutional *and* individual level — about ownership, legitimacy and *raison d'être*.

The concept of legacy that is shown to have become central in tribunal debates and activities seems to be engulfed in a paradoxical situation: it is understudied, yet rhetorically overused. It became evident that the term legacy itself, as well as its usage, needs to be problematised. To address this paradoxical situation, here, a more systematic conceptualisation of the process of legacy formation has been suggested. The notion of legacies in the plural recognises the construction of meaning, the variety of contributions and the multiplicity of actors involved. The contours of a new framework depicting a notional legacy process are outlined, with a focus on the cycle of legacies and actor diversity. Legacy building is ongoing inside and outside the tribunals and the legacies of the tribunals remain in the making. The creation of the tribunals, their judicial work and non-judicial activities all shape perceptions and impact. This thesis suggests opening the perspective beyond jurisprudence, which is pivotal for legacy creation, and demonstrates that that the use of a nuanced legacy lens enriches our understanding of the workings and role of the tribunals.

This thesis represents the first comprehensive, comparative mapping of the institutional creation of legacies. The institutionalisation of legacy building at the tribunals is traced rhetorically, structurally, and practically. The work and impact of a tribunal starts before the first day of trial; similarly, legacies do not simply emerge after closure. The timing, mode and momentum of the tribunals' creation and subsequent judicial work and other activities shape perceptions, impact and legacies. While increasingly engaged in legacy planning it appears no tribunal can build its

own authoritative legacies as collective interaction and multiplicity of voices are part and parcel of the construction of legacies. Prior to closure, legacies already have become sites of debate and contestation over the tribunals' definitive meaning. So-called legacy conferences provide a unique window into these dynamics. Analysis of the conference setting shows that at least one major legacy conference was organised at the seat of each respective tribunal. Such events provide a unique setting in which the complexity of the actor landscape is apparent, with legacy leavers, producers, enforcers and recipients coming together in the same space, and legacy creation, consolidation and contestation taking place almost simultaneously. The complimentary, competing and conflicting nature of legacy constructions has been elucidated.

The tribunals certainly play a central role, albeit limited role. Legacies may be pre-structured, but not pre-determined. Legacy formation is inevitable, indispensable and indeterminable. Enhanced reflexivity is seen as a critical feature for organisational development. Reflexivity at the tribunals has become heightened, but not always effective. How tribunal actors engaged in introspection and retrospection in terms of their role as legacy leavers, and especially of individuals in this process, reveals a new self-understanding of organisational continuity and discontinuity in terms of mandate completion and institutional persistence. However, structural constraints, political dynamics and internal friction have revealed that the implementation falls short in practice.

The topic of legacy surfaced a decade ago in the realm of the tribunals. An acute awareness of the importance of legacies both inside and outside of the tribunals is discernible. The limited life span of the *ad hoc* tribunals as legacy leavers has triggered more serious attention to organisational discontinuity and continuity. The impression by tribunal officials that time is running out is palpable and a pressing 'countdown effect' has set in. Regarding legacy formation, particular attention was paid to legacy planning and the institutionalisation of legacy building at the tribunals. Three processes have been most visible, namely projection, professionalisation and projectification. Concrete efforts have been undertaken to leave legacies and actively shape these legacies. The creation of professional posts of legacy officers, formation of legacy committees or working groups and publications

of legacy strategies or programmes are telling. Furthermore, the role of legacy narratives as well as discursive practices mobilised for legacy consolidation and contestation is traced. Unsurprisingly, tribunals, like other IOs, provoke criticism. Efficiency in terms of time and resources spent, performance and impact are the most common themes of perceived deficiencies or 'failings' of organisations.

In the wider actor landscape, a panoply of actors is to be recognised in the local, national and international arena. Ultimately, legacy is what the tribunals make of it; but also what all other actors make of it. High and conflicting expectations exist regarding what the legacies of an international criminal tribunal or hybrid court are and should be. The complex interplay, if not tension, between the national and international plays out differently per tribunal. The tribunals have been torn between leaving legacies for the international community and international tribunals and leaving legacies for domestic constituents. The wider complex landscape of legacy actors in every tribunal and in the respective post-conflict settings reveals that no monolithic perspective on legacy exists – neither at the international nor local level. Constructing legacies is entangled in wider dynamics of political positioning, nation building and ownership. The idea of legacy has variably shaped the closing process and interpretation of the demise of the tribunals.

The comparative analysis of the ICTY, ICTR, SCSL and ECCC reveals a hectic 'legacy turn' in the work of the tribunals. The uncovered variability and differential nature shows the social construction of legacies and illuminate the social lives of the tribunals. The research findings show considerable variation across these processes of social construction. The SCSL has shown the most distinctive engagement and pattern of legacy creation. It has been shown that the SCSL has had a pioneering role, establishing many firsts in the process, ever since its establishment in 2002. The approach to legacy prevalent at the SCSL has been proactive, continuous and more decentralised. This is linked to the nature of the tribunal, its location, leadership by tribunal officials, contact with civil society, national ownership and buy-in from the government in Sierra Leone. In contrast, variations have been identified at the ICTY and ICTR. Their approach to legacy has been reactive, discontinuous and more centralised. Over time there has been variability. Factors shaping such variability include the international nature, the remoteness of

locale and the internal positioning and role of organs and individuals of the tribunals. At the ECCC, legacy building has been less prominent in comparison to the other tribunals. An absence of consolidation is recognised since central actors have showed ambiguity *vis-à-vis* how and when the tribunal's legacies live on. Still, individuals connected to the ECCC have acted as entrepreneurs and have endeavoured, succeeding to a certain extent, to carve a space for debate and for the sustainability of legacies in Cambodia.

Findings show that the idea of legacy has affected the functioning and social lives of the tribunals. While not necessarily an explicit concern in the everyday functioning of the tribunals as judicial bodies, the turn to legacy has shaped the tribunals as organisations and bureaucracies. It is shown that legacy has been appropriated by particular actors as an area of direct action and explicit engagement and institutionalised efforts in addition to the judicial function of the tribunals. Legacy building, in addition to primary mandate completion, has been seen as pivotal for the tribunals geared towards institutional persistence. Legacy building is understood and mobilised as a strategy aimed at meaning making, legitimisation and memory building with a view to self-preservation and perpetuation. In short, a focus on institutional persistence beyond formal closure unravels the interplay between organisational continuity and discontinuity.

Importantly, international tribunals do not operate in a political vacuum, thus debates over the power of interpretation and control over their legacies are inevitable. Indeed, ultimately, debates about the tribunals' legacies are both a reflection and a side show of broader debates about the tribunal's *raison d'être*, the *ad hoc* model, the international community's involvement in post-conflict peacebuilding and meanings of justice, locally, regionally and globally. In this sense, it is highly recommended that a starting point for legacy building be a clear understanding of legacy formation, preparedness for introspection and reflection, and attuned self-understanding of one's own role in legacy formation.

It is important to conclude with a qualification. The thesis examined ongoing, contemporaneous developments. Of the four cases examined, only the SCSL has actually closed. Current projections anticipate that the ICTR will conclude its final case by 2016, the ICTY by 2017 and the ECCC by 2019. Hence, in the next five

years to come until mandate completion, it will be seen how the tribunals continue to engage, purposively and otherwise, with varying degrees of intention and deliberation, in legacy building and how legacies continue to be created, consolidated and contested over time. A deeper analysis of the broader actor landscape and the social and political dynamics underlying legacy constructions – in Arusha, Freetown, Phnom Penh, The Hague and elsewhere – is indispensable. It is important to appreciate that the significance and meaning of the tribunals' legacies is not only a legal question but above all political. But the research findings are relevant beyond international criminal law. The findings speak to the broader question of how international IOs portray—and perpetuate—themselves upon the completion of their mandate.

9.2. Implications and outlook

The theoretical and empirical arguments of the thesis are not solely relevant for the tribunals; indeed, their significance goes beyond international criminal law. First, *ad hoc* or temporary tribunals are not a nearly a thing of the past as the present creation of a new Kosovo tribunal demonstrates. To be sure, they no longer seemed the rage from the onset of the new millennium given an international climate often characterised as 'tribunal fatigue', the *ad hoc* model was criticised and the new, permanent ICC was seen as the 'future' of international criminal justice. However, current developments have rekindled interest in temporary forms and international justice mechanisms. Although the current tribunals are closing, they are not losing relevance.

Second, all IOs, including those considered permanent or non-temporary, would benefit from critical introspection and renewed focus on temporariness, persistence and sustainability through a legacy lens. Many insights could be gleaned from more systematically interrogating the notion of sustainability in IO scholarship. The notion of 'sustaining sustainability in organisations' (De Lange, Busch, & Delgado-Ceballos, 2012: 151) seems relevant in this regard. The topic is of relevance not only for temporary organisations as legacy construction does not solely begin once organisations cease to exist. All organisations are bound in time and space in

one way or another. Even permanent IOs have finite elements or endings, whether big or small, sooner or later, and become an actor of object of legacy formation. In short, this thesis suggests a more fluid understanding of organisational continuity and discontinuity, of permanence and impermanence of organisations.

In response to abbreviated readings of the significance of the topic of legacy, based on a narrow or everyday understanding of legacy in the existing literature, this thesis seeks to establish the relevance of the concept for IR scholarship on IOs and, thus, fill a gap. The research illuminates larger questions of the prospect of closure and eventual loss of meaning as exemplified by legacy building at IOs aimed at self-legitimisation, meaning making and ultimately self-perpetuation. Furthermore, the notion of legacy has been readily embraced by tribunal officials, practitioners and scholars alike.

In the following some implications for both policy and research are briefly sketched. The theoretical and practical concerns raised are of relevance for the establishment and closure of other tribunals and organisations. Rather than producing a comprehensive 'lessons learned' manual or a 'how to build legacy' or 'how to maximise legacy' guide, this thesis usefully gestured towards the construction of legacies and the central, albeit limited role of tribunals in this process. Indeed, the politics of establishment and the founding documents deserve to be scrutinised in light of the priority to consider completion and legacy as identified already a decade ago in the UN Secretary-General's 2004 *Rule of Law Report*. As the findings show, there is no single format of legacy building. A one-size-fits-all understanding of legacy is not particularly useful given the idiosyncrasies of different settings. It has been shown that it would seem erroneous to assume a monolithic perspective on legacy, both within the organisations and outside. Still, a better understanding of legacy building may result in better informed and thus more sustainable policy making when establishing, designing, supporting and winding up future tribunals at the international or national level. The STL provides an interesting case. As the tribunal is still in the midst of its judicial work, yet has formally already taken up the topic of legacy, it will remain interesting to see if and how the STL engages in legacy building. Another interesting example that will grow in significance is the ICC. Over the course of the research, most significantly, a new

development has materialised: the topic of legacy has come to be considered by ICC officials as a relevant concept and as an area of self-reflexivity even for a permanent organisation. Future developments regarding the conception and implementation of situation-specific exit strategies will likely significantly shape legacy building and legacy construction at this permanent court. The focus on legacies and legacy building also is relevant for other IOs and transitional justice mechanisms, such as truth and reconciliation commissions.

The theorisation and conceptualisation of legacy developed in this thesis has already garnered interest and found resonance by practitioners and scholars alike. By sowing the seeds for future research the topic of legacy formation indeed has the potential to develop into a new, multidisciplinary research agenda. Future studies could usefully probe different facets of legacy formation. Such studies may draw on the conceptualisation of legacy as proposed in this thesis and further develop ways of conceptualising and capturing legacy formation. Legacy building is significant for socialisation processes within organisations, politics of memory, norm diffusion and for wider questions of legitimacy, effectiveness and sustainability of organisations. Weberian questions of historical significance and effectiveness in the context of organisations and bureaucracies could further guide future research.

With a view to other disciplines, the legal dimension of legacy building deserves greater scrutiny in international legal scholarship. The tribunals' jurisprudence as carrier of legacies deserves utmost attention. Future research for instance focussing on cross-citation of judgments between international criminal tribunals and in other legal contexts would provide invaluable insights into the active reception of the jurisprudence. Also, further sociological research might generate invaluable insights into social mechanisms at play, practises in legacy formation and the role of individuals as carriers of legacy. Systematic research, inter alia in the form of 'collective biographies' or different forms of prosopography, might illuminate the role of multiple actors in legacy construction over time. In addition, psychological research might examine in more depth the psychological underpinnings of legacy creation at organisations and the cognitive processes of individuals in light of individuals' memory formation as well as communication patterns. Also, the role of leadership and hierarchies of organisations in relation to

legacy building merits further investigation. This could be usefully taken up by research in management and administrative science. The topic of legacy formation and institutional persistence, at the nexus of international law and politics, would benefit from different research perspectives and fresh insights into organisational developments towards completion and closure but with a view to the continuation of practices beyond institutional termination.

Future lines of research might include a focus on the construction process and legacy actors or also 'lessons learned' and memorialisation: A focus on the highly constructible and constructed nature of legacies. While the present research foregrounded the multiplicity of actors, a main emphasis was placed on the legacy leavers. By gauging legacy creation from the vantage point of legacy recipients and other actors involved future research would fruitfully point to interaction dynamics and contribute to painting a fuller picture of ongoing legacy formation. In light of the material and immaterial dimension of legacies the politics of memorialisation of international crimes and tangible legacies is to be interrogated systematically. The omnipresence of talk about 'lessons learned' seems highly relevant in light of the burgeoning constructivist literature on the role of norms and social processes in IR theory. Especially the interaction and organisational learning between temporary tribunals and the permanent ICC deserves systematised attention. In addition, the process of designation, preservation and memorialisation of tribunal sites and architecture is to be comparatively examined. Also, the creation of museums on former tribunal premises, including project history and curatorial practices, is critically assessed in light of memorial and museum practices. Two initial case studies could include the 'Memorium Nuremberg Trials' in Nuremberg and the 'Sierra Leone Peace Museum' in Freetown, opened in 2010 and 2014 respectively.

Finally, on a more general note, perceptions, conclusions and constructions of legacies will certainly evolve over the next years and decades if the ongoing debates on the legacies of the Nuremberg and Tokyo Tribunals are any indication. Long after the organisational demise of the tribunals their legacies continue to be re-produced, re-enforced and re-recorded by future generations of policy makers, lawyers, political scientists and historians and to be continuously received. Put simply, legacies remain in the making. Legacies of the tribunals will likely continue

to serve as reference points in discourse and practice in the future development of international law and politics. In the history of mankind remembering and transferring experiences from ancestors to successors became essential or even the decisive mechanisms of continuously constructing and reconstructing human cultures and their interaction. In this sense, attempts at creating legacies, be it in the political, legal or cultural domain, are to be the very base of politics of memory and the interplay between international law and politics, at the international and local level – resonating with the broader questions of who and what IOs represent, why IOs are in existence, what IOs became in the process and what variable meanings IOs take on in the course of their existence and, most importantly, beyond – their legacies.

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Appendix

Appendix 1:

List of interviews in chronological order (2011-2014)

In line with anonymity requirements the table detailing the interviews has been removed from the public version of the thesis. Throughout the thesis the term 'official' is used when referencing interviews in footnotes.

Appendix 2:

List of conferences with a focus on 'legacy' attended by the author of the study[304]

Date	Title	Location	Organiser	Role
2011, November 15-16	ICTY Global Legacy Conference	The Hague, Netherlands	ICTY	Participant
2012, April 19-21	Assessing the Contributions and Legacy of the Special Court for Sierra Leone to Africa and International Criminal Justice Conference	Pittsburgh, US	Pittsburgh School of Law (Charles Jalloh)	Presenter
2012, September 13-14	Hybrid Perspectives on the Legacies of the ECCC Conference	Phnom Penh, Cambodia	Cambodian Human Rights Action Committee and ECCC	Presenter
2013, February 6-7	Assessing the Legacy of the SCSL Conference	Freetown, Sierra Leone	ICTJ and SCSL	Participant
2013, April 10	UN General Assembly Thematic Debate on the International Criminal Tribunals	New York, US	Office of the President, UN General Assembly	Participant
2013, October 30-November 1	The Legacy of the ICTR Conference	Johannesburg, South Africa	School of Law, University of Johannesburg (Mia Swart)	Presenter
2013, November 7-8	Building a Legacy: Lessons Learnt from the Offices of the Prosecutors Conference	Nuremberg, Germany	International Nuremberg Principles Academy	Presenter
29 November 2013	ICTY Defence Legacy Conference	The Hague, Netherlands	ICTY-ADC	Participant
2014, January 30-31	Prosecution of Sexual Violence Crimes in light of the ICTR's Experience Workshop	Kampala, Uganda	ICTR	Participant
2014, June 10-13	Global Summit to End Sexual Violence in Conflict	London, UK	UK Government	Participant
2014, November 6-7	20th Anniversary ICTR Legacy Symposium	Arusha, Tanzania	ICTR	Presenter
2014, December 11-12	Impact and Effectiveness of the ICC Expert Meeting	The Hague, Netherlands	The Hague Institute for Global Justice and Grotius Centre for International Legal Studies	Presenter

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[304] A full overview of conferences organised on the topic of legacy is provided in Table 8.2

Appendix 3:

Tribunal timelines[305]

ICTY timeline[306]

Date	Event
1993, May 25	UN Security Council establishes the ICTY
1994, November 7	First indictment issued against Dragan Nikolić
1995, November 16	Radovan Karadžić and Ratko Mladić indicted for genocide
1996, May 7	First trial commences (Duško Tadić)
1996, July 6	Exhumations
1996, November 29	First judgement (Dražen Erdemović)
1997, February 6	Enforcement of sentences
1997, June 27	First arrest operation on behalf of the ICTY (Slavko Dokmanović)
1998, November 16	First judgement in a case involving multiple accused (Zdravko Mucić, Hazim Delić, Esad Landžo and Zejnil Delalić)
1999, May 24	First indictment for a sitting head of state (Slobodan Milošević)
1999, June 25	Kosovo investigations
1999, October 1	Outreach programme set up
2000, March 2	Sexual enslavement as a 'crime against humanity' (Radomir Kovač, Dragoljub Kunarac and Zoran Vuković)
2001, August 2	First genocide conviction (Radislav Krstić)
2002, October 2	Former President of Republika Srpska pleads guilty (Biljana Plavšić)
2003, December 4	Guilty plea for the shelling of Dubrovnik (Miodrag Jokić)
2004, January 27	Milan Babić pleads guilty
2004, December 31	Final indictments
2005, March 9	Transfer of cases
2005, March 15	FYROM indictments (Ljube Boškoski and Johan Tarčulovski)
2005, November 30	First judgement for crimes committed in Kosovo (Fatmir Limaj, Isak Musliu and Haradin Bala)
2006, March 14	Termination of proceedings against Slobodan Milošević
2006, November 30	First life sentence handed down by the Appeals Chamber (Stanislav Galić)
2008, July 30	Karadžić in tribunal custody
2009, July 20	Life sentence against Milan Lukić
2011, May 26	Ratko Mladić arrested
2011, July 20	Final fugitive arrested (Goran Hadžić)
2013, July 1	MICT begins work in the Hague
2014, January 23	Convictions for Kosovo crimes upheld for four senior Serbian officials (Nikola Šainović)
2015, January 30	Conclusion of the largest ever ICTY trial
2015, April 8	Z. Tolimir sentenced to life imprisonment for genocide

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[305] It is important to note that it was deliberately decided to present timelines here which include those milestones and dates the tribunals themselves include in an overview of their own history (ICTY and ICTR).

[306] Based on 'ICTY Timeline' produced by ICTY. Retrieved from http://www.icty.org/action/timeline/254.

ICTR timeline[307]

Date	Event
1994, November 8	UN establishes the ICTR
1996, May 26	First detention facility of the United Nations
1997, January 9	First genocide trial (Jean-Paul Akayesu)
1997, July	Creation of a unit for gender issues and assistance to victims of genocide
1997, July 18	Arrest of seven suspects in Nairobi
1998, May 1	First guilty plea for genocide (Jean Kambanda)
1999, February 12	Mali becomes the first country to sign an agreement on enforcement of ICTR Sentences
2000, September 25	ICTR opens information centre in Kigali
2000, October 23	Beginning of 'The Media Case' (Jean Bosco Barayagwiza, Ferdinand Nahimana, and Hassan Ngezer)
2003, August 28	ICTR completion strategy
2006, June 16	Genocide beyond dispute
2011, May 23	Evidence preservation hearings commence (Félicien Kabuga)
2011, June 24	First woman convicted for rape as a crime against humanity (Pauline Nyiramasuhuko)
2011, December 18	First case referral to Rwanda (Jean-Bosco Uwinkindi)
2012, July 1	Mechanism starts operations
2012, December 20	ICTR delivers final trial judgement (Augustin Ngirabatware)
2013, September 9	Office of the Prosecutor receives Special Achievement Award
2014, September 29	MRND politicians held Responsible for crimes by their youth wing

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[307] Based on 'ICTR Milestones' produced by ICTR. Retrieved from http://www.unictr.org/en/ictr-milestones.

SCSL timeline[308]

Date	Event
1999, July 7	Lomé Peace Accord signed
2000, June 12	Sierra Leone requests special court
2000, August 14	UNSC passes Resolution 1528
2002, January 16	Agreement signed to create special court
2002, March 29	Parliament ratifies court agreement
2003, March 7	Indictment of Alex Tamba Brima (AFRC)
2003, March 7	Indictment of Johnny Paul Koroma (AFRC)
2003, March 7	Indictment of Issa Hassan Sesay (RUF)
2003, March 7	Indictment of Brima Bazzy Karmara (AFRC)
2003, March 7	Indictment of Sam Hinga Norman (CDF)
2003, March 7	Indictment of Morris Kallon (RUF)
2003, March 7	Indictment of Foday Saybana Sankoh (RUF)
2003, March 7	Indictment of Sam Bockarie (RUF)
2003. March 7	Indictment of Charles Taylor (Taylor)
2003, April 16	Indictment of Augustine Gbao (RUF)
2003, May 4	Court call on Liberia to arrest fugitives
2003, May 7	Liberia announces death of fugitive Sam Bockarie (RUF)
2003, May 13	Court calls on Liberia to transfer Bockarie's body (RUF)
2003, May 15	Court believes Bockarie's family murdered (RUF)
2003, June 1	Court takes custody of Bockarie's alleged body (RUF)
2003, June 4	Chief prosecutor unseals Taylor's indictment (Taylor)
2003, June 11	Medical officer suspects Sankoh suffered stroke (RUF)
2003, June 23 - 26	Switzerland freezes Taylor's bank accounts (Taylor)
2003, June 26	Indictment of Allieu Kondewa (CDF)
2003, June 26	Indictment of Moinina Fofana (CDF)
2003, July 6	Taylor accepts offer of asylum (Taylor)
2003, July 29	Sankoh dies in custody (RUF)
2003, August 11	Taylor steps down (Taylor)
2003, August 18	Peace agreement signed in Liberia (Taylor)
2003, September 3	Court releases Bockarie's body (RUF)
2003, September 16	Indictment of Santigie Borbor Kanu (AFRC)
2003, September 17	Nigeria warns Taylor on conditions of asylum (Taylor)
2003, October 21	Headquarters agreement signed
2003, December 4	Interpol issues red notice for Taylor (Taylor)
2003, December 8	Sankoh and Bockarie indictments withdrawn (RUF)
2004, February 28	Joint trial ordered for indictees (RUF)
2004, February 28	Joint trial ordered for indictees (CDF)
2004, February 28	Joint trial ordered for indictees (AFRC)
2004, May 31	Court rejects motion to quash indictment (Taylor)
2004, June 3	Case opened (CDF)
2004, July 5	Case opened (RUF)
2005, March 7	Case opened (AFRC)
2005, July 14	Prosecution concludes its case (CDF)
2005, November 11	Security Council passes Resolution 1638 (Taylor)
2005, November 21	Prosecution concludes its case (AFRC)
2006, January 19	Defense opens its case (CDF)
2006, March 17	Liberia requests extradition of Taylor (Taylor)
2006, March 17	Prosecutor issues amended indictment (Taylor)
2006, March 29	Taylor is detained and transferred to the court (Taylor)
2006, March 31	Court dismisses motion for acquittal (AFRC)

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[308] Based on 'Interactive Timeline' (available until 2012) produced by ICTJ for a multimedia website ('Exploring the Legacy of the Special Court for Sierra Leone') established in context of organising two SCSL legacy conferences. Retrieved from http://scsl-legacy.ictj.org/timeline-scsl.

2006, April 3	Taylor pleads not guilty (Taylor)
2006, April 13	Court signs memorandum of understanding with ICC
2006, June 5	Defense opens its case (AFRC)
2006, June 16	Security Council passes Resolution 1688 (Taylor)
2006, June 20	Taylor transferred to the ICC (Taylor)
2006, August 2	Prosecution concludes its case (RUF)
2006, October 18	Defense concludes its case (CDF)
2006, October 27	Defense concludes its case (AFRC)
2006, November 28-30	Closing arguments (CDF)
2006, December 7-8	Closing arguments (AFRC)
2007, January 17	Norman and Sesay transferred for medical treatment
2007, February 22	Hinga Norman dies in custody (CDF)
2007, March 28	Hinga Norman autopsy results (CDF)
2007, May 3	Defense opens its case (RUF)
2007, May 21	Cour terminates proceedings against Hinga Norman (CDF)
2007, June 4	Prosecutor makes opening statements (Taylor)
2007, June 20	Defendants found guilty (AFRC)
2007, July 19	Brima and Kanu receive 50 years, Kamara 45 years (AFRC)
2007, August 2	Defendants found guilty (CDF)
2007, October 9	Fofana sentenced to 7 years, Kondewa 8 years (CDF)
2008, January 7	Prosecution opens witness testimony (Taylor)
2008, February 22	Appeal Chamber upholds sentences (AFRC)
2008, May 28	Appeal judgement (CDF)
2008, June 25	Defense concludes its case (RUF)
2008, August 5	Closing arguments (RUF)
2009, January 30	Prosecution concludes its case (Taylor)
2009, February 25	Defendants found guilty (RUF)
2009, February 27	Prosecution rests (Taylor)
2009, April 8	Sesay receives 52 years, Kallon 40 years, Gbao 25 years (RUF)
2009, May 4	Motion for acquittal dismissed (Taylor)
2009, July 13	Defense opens its case (Taylor)
2009, October 26	Appeals Chamber upholds convictions (RUF)
2009, October 31	Transfer of prisoners to Rwanda
2010, May 19	Handover of detention facility to police forces
2010, June 14	Secretary-General Ban Ki Moon visits the court
2010, August 5-10	Prosecution reopens its case (Taylor)
2010, November 12	Defense concludes its case (Taylor)
2011, February 8 - March 9	Closing arguments (Taylor)
2011, February 17	Handover of security from UN peacekeepers
2011, April 29	New Peace Museum opens preview exhibition
2012, April 26	Taylor found guilty on all counts (Taylor)
2012, May 16	Sentencing hearing (Taylor)
2012, May 30	Taylor receives 50 years prison term (Taylor)
2012, June 4	Court makes history with all women principals
2012, July 20	Appeals filings (Taylor)
2012, October 1	Appeal briefs (Taylor)

ECCC timeline[309]

1997, June 21	Cambodian Co-Prime Ministers request United Nations assistance in organising the process for the Khmer Rouge trials
2001, August 10	The ECCC Law promulgated
2003, June 6	Signing of the ECCC Agreement
2004, October 19	ECCC Agreement ratified by Cambodia
2004, October 27	Amendments to the ECCC Law promulgated
2005, April 29	ECCC Agreement entered into force
2006, February 6	First staff members take up duties
2006, July 3	Swearing in of judges and co-prosecutors
2007, June 12	ECCC Plenary adopts Internal Rules
2007, July 18	Co-Prosecutors request investigation of five suspects
2007, July 31	Kaing Guek Eav placed in provisional detention
2007, September 19	Nuon Chea arrested and placed in provisional detention
2007, November 12	Arrest of Ieng Sary and Ieng Thirith
2007, November 19	Khieu Samphan arrested and placed in provisional detention
2008, August 8	Co-Investigating Judges indict Kaing Guek Eav alias Duch
2008, December 5	Pre-Trial Chamber affirms and partially amends the indictment of Kaing Guek Eav
2009, February 17	Initial hearing in Case 001
2009, March 30	Opening statements in Case 001
2009, September 7	International Co-Prosecutor requests investigation of five additional suspects
2010, July 26	Kaing Guek Eav alias Duch found guilty of crimes against humanity and grave breaches of the 1949 Geneva conventions
2010, September 15	Co-Investigating Judge indict Nuon Chea, Khieu Samphan, Ieng Sary and Ieng Thirith
2011, January 13	Pre-Trial Chamber affirms and partially amends Case 002 indictments
2011, June 27	Case 002 initial hearing
2011, November 21	Opening statements in Case 002
2012, February 3	Kaing Guek Eav sentenced to life imprisonment by the Supreme Court Chamber
2012, September 16	Ieng Thirith released from provisional detention
2013, March 14	Ieng Sary dies
2014, August 7	Khieu Samphan and Nuon Chea sentenced to life imprisonment

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[309] Based on 'Key events' produced by ECCC. Retrieved from http://www.eccc.gov.kh/en/keyevents