

CONTENTS

Foreword	page xv
Preface	xvii
List of abbreviations	xix
Map of ICC situation countries in July 2012	xxi
Prologue: in the line of fire	1
1 Complementarity from the line of fire	8
The story of complementarity's catalysing effect in Uganda and Sudan	10
Complementarity's double life	14
The <i>dramatis personae</i> of complementarity's catalysing effect	21
Assumptions underlying the expectation of a catalysing effect	24
Normative, theoretical and methodological perspective	26
The choice of a line-of-fire perspective	30
The road ahead	33
2 The Rome Statute: complementarity in its legal context	34
The key provisions setting forth complementarity	35
Three popular assumptions	36
An obligation to investigate or prosecute pursuant to the Rome Statute?	36
An obligation to criminalise in domestic law?	40
A prohibition on amnesties?	41
The substance of complementarity: the criteria for inadmissibility	43
The inadequacy of the shorthand description	43
The 'same case' requirement: same person, same conduct, same incidents?	45
Reasons to depart from the same-conduct test	51
The requirement of an 'investigation'	59
A decision not to prosecute	61
Where domestic proceedings have been initiated: unwillingness and inability	62

CONTENTS

Low punishment or a pardon is not a ground for admissibility <i>per se</i>	66
The ICC is not a human rights court overseeing compliance with fair trial rights	67
The procedural aspects of complementarity	70
Complementarity contains a primary right for <i>all</i> states	71
The Prosecutor must assess complementarity prior to opening an investigation	71
The complementarity assessment is case-specific	72
Complementarity must be assessed irrespective of the trigger mechanism	75
A state can directly influence the scope of the ICC's investigation on grounds of complementarity	76
A state cannot force the Prosecutor to end an investigation	78
A state's jurisdiction to adjudicate is unaffected by ICC intervention	78
The complementarity assessment is dynamic	79
The ICC does not have a conditional deferral procedure like the ICTY and ICTR	83
Looking for a catalysing effect: the potentially confounding and intervening variables	86
Other jurisdictional provisions: the triggers	86
Other jurisdictional provisions: a deferral requested by the Security Council	90
Other jurisdictional provisions: the admissibility criterion of gravity	90
No ICC proceedings because of the 'interests of justice'	91
The OTP's prosecutorial policy	92
The policy of positive complementarity	97
Conclusion: complementarity and its potential catalysing effect	104
3 Uganda: compromising complementarity	111
The context for catalysis	114
The ICC in Uganda: a joint enterprise	114
Uganda and the ICC: a marriage of convenience	116
Compromised complementarity	120
The conflict in northern Uganda – and far beyond	124
Peace-making in the shadow of the ICC	129
Complementarity: the linchpin of the agreement	133
The ICC: sword of Damocles	136
Cracks in the marriage: the opening for complementarity's catalysing effect	137

Effects catalysed	141
Promoting the study of local justice practices	141
Putting accountability and transitional justice on the peace-talks agenda	159
Stimulating a debate on transitional justice	162
Broadening the approach to the conflict to include a legal dimension	171
Stimulating the establishment of a Ugandan international crimes division	179
Increasing the attention paid to 'international standards'	187
Shaping the International Criminal Court Act?	194
Discouraging amnesties	206
Effects expected but not catalysed	228
Encouraging more trials, prosecutions and/or investigations?	228
Conclusion: complementarity's catalysing effect in Uganda	234
4 Sudan: complementarity in a state of denial	244
The context for catalysis	245
Sudan and the ICC: souring relations	247
Complementarity: less than a secondary response	252
Complementarity: the views of the ICID and the ICC	258
The Darfur conflict	261
Effects catalysed	266
Fostering interest in transitional justice	266
Triggering the establishment of domestic accountability mechanisms	279
Motivating the adoption of laws on international crimes	284
Putting accountability on the agenda of peace negotiations	291
Providing a boost for traditional justice	299
Effects expected but not catalysed	306
Broadening the approach from the military and political to the legal?	306
Discouraging immunities and amnesties?	316
Encouraging more trials, prosecutions and/or investigations?	320
Conclusion: complementarity's catalysing effect in Sudan	328
5 Paradoxes unravelled: explanations for complementarity's weak catalysing effect on domestic proceedings	337
Complementarity's normative character	338
Complementarity as primary right: confusion, ambiguity and misrepresentation	339
Complementarity as big idea: a responsibility to investigate and prosecute?	344

The normative paradox of complementarity	345
Pro-ICC ideology countering a political expectation on states to conduct proceedings	352
A domestic context inhospitable to a responsibility to conduct proceedings	361
Complementarity and the state's cost–benefit analysis	367
High cost of action: obstacles to domestic proceedings	369
ICC involvement has not reduced the costs of domestic action	378
Low costs of inaction	385
Costs of inaction can be avoided by means other than the invocation of complementarity	389
Paradoxes of complementarity: cost–benefit analyses combined	392
Conclusion: unravelling the paradoxes	396
 6 Complementarity in the line of fire	 406
Epilogue: beyond complementarity in the line of fire	411
<i>Bibliography</i>	415
<i>Literature and documents from states and international organisations</i>	415
<i>Cases and procedural documents</i>	465
<i>Legal instruments</i>	486
<i>Index</i>	494