1 July 2007 marked the fifth anniversary of the International Criminal Court. The Rome Statute (“the Statute”) entered into force in July 2002. In 2008, the Rome Conference and the adoption of the Statute date back ten years. The first Review Conference is on the doorsteps. Can we say that these are the “infant years” of the Court?

To some extent, yes. The Court is on its feet and “in motion”, but is still seeking its place in the arena of international criminal justice. Certain concepts are gradually interpreted and filled with normative content (e.g. disclosure, confirmation hearing, participation of victims, interests of justice). Some institutional aspects, including the relationship and cooperation with the UN, EU and the host State, have become clearer at age five. But many directions and choices in jurisprudence and criminal policy are still in flux, or only gradually emerging as issues.

The first years in the short life of the Statute and the Court have certainly been unusual. Hardly anyone expected the “birth” of the Court to occur quite so quickly after “conception” of the Statute. The Statute came into action even prior to the naissance of the institution. It set off a whole chain of domestic implementing legislation.
and shaped the substantive and procedural law of other international(ised) courts (e.g. Special Court for Sierra Leone, the UN established East Timorese panels with ‘universal jurisdiction’) before its actual entry into force, partly due to its contribution to the codification of international criminal law⁹ and its incentive-based system of compliance (“complementarity”).¹⁰

Where does the Court stand now? In generational terms, the Court is widely considered as the successor of the ad hoc tribunals. Its steps are closely watched worldwide, by domestic courts, other international tribunals, the UN, NGOs, governments and military and political leaders. But the Court is still an entity in statu nascendi, both in legal and in institutional terms. Certain “teething” symptoms have been diagnosed in the first practice.¹¹ Some of the ‘grand doyens’ of the discipline have raised doubts about the first steps of the ICC.¹² The practice of the Court has gained some praise, but also some criticism from the NGO community.¹³ All of this rather typical of an entity of relatively young age and could hardly expected otherwise of an institution that is deemed to satisfy the hopes and expectations of so many divergent constituencies.

The institution-building process is ongoing. The Court is located at its provisional site and is waiting for its new permanent home. Unsettled issues from the Rome Conference await clarification. There are different, and sometimes divergent views about the mission and rationale of the Court. They are voiced openly or between the lines. Aspects of the Court’s jurisdiction (e.g. aggression)¹⁴ and its interplay with domestic jurisdictions and other international players (e.g. Security Council, other international(ised) courts and tribunals) are still to be defined.

The Court is a laboratory of creativity and experimentation. The legal and procedural framework of the Court is the object of lively and intense litigation. Different organs of the Court (e.g. Prosecutor, Chambers and Registry) have started to define the scope and limits of their powers, both vis-à-vis each other and external actors. This has sparked a wave of filings and jurisprudence, in which different procedural and methodological choices are advocated, tested and explored. Newly created offices (Office of Public Counsel for Victims, Office of Public Counsel for the Defence) and actors in proceedings (victims) are in the process of identifying their roles and

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⁹ See, in particular, Articles 6 to 8 (with Elements of Crimes) and Part 3 (General Principles of Criminal Law) of the Statute.
¹⁰ See para, 6 of the preamble of the Statute as well as Articles 1, 17-20 of the Statute.
¹¹ See A. Cassese, ‘Is the ICC Still Having Teething Problems’, (2006) 4 JICJ 434. See also below Ch. 3 of this volume.
¹⁴ See below Ch. 35 and 36.