

Examining Prosecutorial Discretion within the International Criminal Court (ICC) and Its Implications on Kenyan Cases

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Abstract

This article examines the prosecutorial discretion within the International Criminal Court (ICC) and its implications on Kenyan cases. In the year 2010 the Prosecutor of the International Criminal Court (ICC), Louis Moreno Ocampo, exercised the first ever proprio motu powers in the Republic of Kenya. Aware of the magnitude of impact of the violence the prosecutor decided to pursue only six suspects for crimes committed during the post-election violence that engulfed the country following the disputed presidential elections in 2007. In the past, the ICC has secured situations through self-referrals and Security Council referrals. However, as the Office of Prosecutor (OTP) continues in the execution of its mandate, there is a sharp dilemma on how the Prosecutor should apply the legal criteria established by the Rome Statute especially when assessing complementarity, gravity and interest of justice requirements before initiating investigations and prosecutions. Moreover, both legal and procedural difficulties have emerged in the Court's first ever proprio motu trigger mechanism which has revealed a number of practical legal challenges in the OTP's practice.

Keywords: International criminal court, prosecutorial discretion, triggers mechanisms, complementarity, jurisdiction, admissibility

Introduction

This article examines prosecutorial discretion within the International Criminal Court by employing its intervention into Kenya as a case study because the current criteria that guides the Prosecutor in deciding on which situations, which persons and which charges to pursue as things stand remain difficult to decipher. It is evident that there is still need for additional guidelines for the exercise of the ICC prosecutorial discretion especially on which situations to investigate and who to prosecute, this is despite the fact that the Office of the Prosecutor has made efforts to come up with guidelines.

This article traces the history of the debate revolving around *proprio motu* powers during the negotiations of the Rome Statute, the necessary compromise and the safeguards while at the same time putting the Kenyan cases into perspective. It is the purpose of this paper therefore to interrogate whether the Rome Statute and the regulations developed by the Office of the Prosecutor provide sufficient guidance for the exercise of International Criminal Court prosecutorial discretion. This is done by using International Criminal Court intervention into Kenya as a case study. The opaque nature of the activities of the International Criminal Court has led to a sharp division on epistemological prescription by different scholars on matters relating to referral of cases, admissibility, complementarity, gravity and interest of justice. The statute gives the Office of the Prosecutor express authority to determine which cases meet admissibility threshold putting into consideration legal and policy considerations.

Prosecutorial Discretion: Isolating Legal & Policy Issues

The problem of how the prosecutor of the ICC should exercise discretion in choosing situations and cases, since the official codification of the Rome Statute, up and until now, remains mysterious and continues to receive significant attention among scholars.¹ For instance, interpreting complementarity, gravity and interest of justice requirements remain inexplicable due to the difficulties in navigating between legal and political considerations. Generally, concerns of inconsistency and selectivity have been raised pointing towards the broad discretion enjoyed by the ICC prosecutor. The Rome Statute borrowed significantly from the *ad hoc* tribunals. It assigns to the Office of the Prosecutor (OTP) the duty of receiving referrals and any substantiated information on crimes within the Court's jurisdiction.² The Statute tasks the Prosecutor with conducting investigations and prosecutions before the Court.³ The Prosecutor is however not under any obligation to initiate proceedings once a situation has been referred to the OTP. The Statute uses the word *may* as opposed to *shall* removing any obligations and depicting broad discretion.⁴ The ICC prosecutor is required to act independently of the Court and this extends to members of his office who are also forbidden from seeking or acting on instructions from any external source.⁵

There are distinct features in the ICC when compared to the *ad hoc* tribunals. The international Criminal Court is a permanent treaty with express jurisdiction on serious crimes of international concern.⁶ Although the ICC is treaty based, it can have jurisdiction over non-party states through a Security Council referral, a mandate closely tied with the UN powers to maintain peace and security under chapter seven of the UN Charter.⁷ Secondly, the ICC is complementary to national criminal institutions, instead of having supremacy over them.⁸ Thirdly, the ICC prosecutor can initiate investigations on his own motion (*proprio motu*) into situations but subject to Pre Trial Chamber (PTC) authorization.⁹ Fourthly, unlike the international Criminal Tribunal for Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), the ICC lacks the urgency and is not subject to a deadline for case completion¹⁰ although there is a convergence in that the ICC policy seeks to target those who bear the greatest responsibility. When it comes to exercise of discretion, the prosecutor's powers seem to be much more restricted than those exercised by a prosecutor in the national systems or *ad hoc* tribunals¹¹ although some scholars insist that the ICC prosecutor still enjoys a broad discretion in certain instances.¹²

Trigger Mechanisms of Investigations.

The ICC provides for a three approaches of trigger mechanism for attaining jurisdiction while at the same time preserving state sovereignty in a ranked structure. The first approach is through a Security Council referral,¹³ second through a State Party referral¹⁴ or third by the Prosecutor himself after receiving a referral from any other source.¹⁵ Investigations launched by the prosecutor *proprio motu* are subject to a stricter procedural safeguard, a compromise that was struck during the negotiation of the Rome Statute.

¹ See for example Brubacher MR, 'Prosecutorial Discretion within the International Criminal Court' (2004) 2(1) JICJ 71;

² Art. 42 (1) of the ICCst.

³ *Ibid.*

⁴ Nsereko (n 8)177.

⁵ See Brubacher (n 8) 138, external sources would also include the court itself.

⁶ *ibid*

⁷ See Oosthuizen GH, 'Some preliminary remarks on the relationship between the envisaged International Criminal Court and the UN Security Council' (1999) 46(3) NILR 313.

⁸ ICCst (n 5) preamble.

⁹ Art. 15 of the ICCst.

¹⁰ O'Brien M, 'Prosecutorial Discretion as an Obstacle to Prosecution of United Nations Peacekeepers by the International Criminal Court The Big Fish/Small Fish Debate and the Gravity Threshold' (2010) JICJ 525.

¹¹ Nsereko (n 8) 138.

¹² Akande (n 12). See Arbour (n 8) 212, noting that prosecutorial discretion in the context of the ICC is considerably larger, and the criteria upon which such prosecutorial discretion is to be exercised is ill defined and complex.

¹³ Article 13(b) of the ICCst. Referrals by the Security Council are not subject to review by the Pre-Trial Chamber, are exempt from the Art. 18 duty to notify states that would normally exercise jurisdiction, and are logically unlikely to be subject to an Art. 16 deferral by the Security Council.

¹⁴ Arts 13(a) and 14 of the ICCst.

¹⁵ Arts 13(c) and 15 of the ICCst

McDonald and Haveman notes that prosecutorial discretion to initiate investigations should be based on an objective rather than a subjective pendulum, although they too admit that it is often very difficult to clearly distinguish the two tests.¹⁶ An objective test would involve a scientific way of assessment involving provable facts while a subjective test is one that has superfluous considerations including emotions, bias and based on opinions.

Distinct from referrals by the Security Council or States, investigations initiated *proprio motu* go through two stages. The first is a preliminary investigation, where the Prosecutor makes an initial assessment as to whether a *prima facie* case exists.¹⁷ If the Prosecutor makes a determination that there is a *prima facie* case, he shall submit the case to the Pre-Trial Chamber for authorization before launching a thorough investigation.¹⁸ It has been noted that this procedure slows investigations initiated *proprio motu*, but in whichever way, it acts as a buffer by ensuring that in the absence of political backing from a state or the Security Council, the prosecutor secures the judicial backing of the Court.¹⁹

Ontological Analysis of Prosecutorial Powers (Proprio Motu)

The debate on whether the prosecutor of the ICC should have powers to initiate investigation on his own motion was highly mooted in the negotiations leading to the adoption of the Rome Statute.²⁰ Brubacher unpacks the debate that shaped the Preparatory Committees into two opposing schools of thought. These two schools were parallel to each other and composed either of the liberalists or the realists.²¹ All through the debate the liberalists championed for the idea of an independent prosecutor with powers to initiate proceedings *ex officio*. This they saw as a condition *sin quo non* to creating an institution with tentacles to hold all persons to account for committing crimes within the Court's jurisdiction regardless of their position in society. The liberalists consisted majorly of NGOs which lobbied using various methods to ensure that the Prosecutor was provided with *proprio motu* powers.²² The liberalists equated the ICC to a legal institution intended to aid in the regulation of mutual obligations between states and thus capable of promoting due process and the rule of law.²³

The first and most important decision to be made before any action is taken is the establishment of whether the Court has jurisdiction.²⁴ Only crimes committed by a national of or in the territory of a Member State will attract the Court's jurisdiction.²⁵ The Court will also have jurisdiction if a State makes a declaration accepting the jurisdiction of the Court. The court has express jurisdiction over crimes against humanity, genocide, war crimes and aggression. These cases can only be prosecuted starting from 2017.²⁶ For the Prosecutor to exercise *proprio motu* powers, the crimes must have been committed after the entry into force of the Rome Statute or after the date of accession by the state concerned.²⁷

¹⁶ McDonald A and Haveman R, 'Prosecutorial Discretion: Some Thoughts on Objectifying the Exercise of Prosecutorial Discretion by the Prosecutor of the ICC' (2003)

¹⁷ Caban P, 'Preliminary Examinations by the Office of the Prosecutor of the International Criminal Court' (2011) CYIL 203.

¹⁸ Bergsmo M and P. Kruger, Article 54, *Commentary on the ICC Statute of the International Criminal Court* (Baden-Baden: Nomo Verlagsgesellschaft, 1999).

¹⁹ Gurmendi (n 20) 56.

²⁰ See generally Kirsch P and Holmes JT, 'The Rome Conference on an International Criminal Court: The Negotiating Process' (1999) 93(1) *The American journal of international law* 2.

²¹ Brubacher (n 8) 72.

²² See for example Pearson Z, 'Non-governmental organizations and the international criminal court: Changing landscapes of international law' (2006) 39 *Cornell Int'l LJ* 243.

²³ Brubacher (n 8) 73.

²⁴ Arts 15 (4) and 19 (1) of the ICCst.

²⁵ Art. 12 of the ICCst.

²⁶ Art. 5 of the ICCst, apart from aggression the other crimes must have occurred after the entry into force of the Statute on 1 July 2002 (See Preamble and Art 1 of the ICCst).

²⁷ Unless the state makes an express declaration accepting the Courts jurisdiction over crimes which occurred before that date Art 11 (2) of the ICCst. It is however not clear if such a retrospective move would be legal and further there would be difficulties in collection and production of evidence.

Determining whether the ICC has jurisdiction or not may appear easy but if compounded with controversial in the Kenyan situation as to whether crimes against humanity as construed by Article 7 (2) were indeed committed especially with regard to non-state actors and the policy requirement.²⁸ Closely related to admissibility is the complementarity principle whereby national courts are given precedence to prosecute international crimes. This principle remains the cornerstone of the Rome Statute as it upholds the long standing principle of state sovereignty. It also informally acts as a check to prosecutorial discretion since it requires the Prosecutor to defer cases to the national jurisdictions unless the affected state is unwilling or unable to genuinely prosecute.²⁹ This topic remains unsettled among scholars.

Factors for determining unwillingness and inability to prosecute are stated in Article 17 (2) and (3). It provides circumstances under which national jurisdictions maybe reluctant or unwilling to prosecute a case. This maybe undertaken for the purpose of shielding the person concerned from criminal responsibility for crimes within the benchmark of international crimes, deliberate delays prosecutions and lack of independence and impartiality of the proceedings,³⁰

Complementarity remains difficult to assess particularly when the ICC prosecutor is exercising *proprio motu* powers. While at the time an investigation is requested, the Prosecutor might not have identified the potential suspects.³¹ Nevertheless, the PTC is required to give a determination on admissibility in which complementarity and gravity under A. 53 (1) are key factors.³² It is not clear whether prospective investigations or promises to investigate and conduct prosecutions can bar admissibility.³³ Furthermore, it appears that the ICC will only accept prosecutions and steps such as traditional justice measures and fact finding commissions cannot pass as genuine investigations or prosecutions. One other challenge concerns the lack of a time frame within which the Prosecutor should grant the concerned State for which to initiate investigations and prosecutions.

There is also an emerging concept pertaining to complementarity termed as positive complementarity or what William Burke calls *proactive complementarity*, a mechanism adopted by the OTP to encourage national jurisdictions to conduct genuine national proceedings. In essence under this new principle the OTP will attempt to take positive measure to ensure that national courts prosecute crimes rather than compete with them for jurisdiction. This mechanism has received mixed reaction among scholars. Firstly, it is argued that the mechanism was not contemplated by the Rome Statute³⁴ and secondly, it might be used negatively as a sword to delay or defeat the ICC process while disguising itself as being genuine.³⁵ It has however been lauded as a means of ending impunity and if well-tailored and implemented, it can be a supplementary strategy owing to the financial constraints facing the ICC.

Recent developments have seen new interpretations of the principle of complementarity beyond its literal meaning which requires the ICC to intervene if a state with jurisdiction is unwilling or unable to investigate and prosecute the crime within its domestic mechanism.³⁶ Two different approaches have been put forward on construing Article 17 although both still remain contentious.³⁷ One interpretation holds that Article 17 renders a case admissible before the ICC if the state with jurisdiction over crimes committed is unwilling or unable to investigate or prosecute. There is a disagreement among commentators on when the unwillingness or inability begins to count.³⁸

²⁸ See dissenting opinion of Judge Kaul, *supra* note 30. See also Hansen, *supra*, note 40, policy requirements in crimes against humanity. 1-14.

²⁹ See Hunt D, 'International Criminal Court-High Hopes, Creative Ambiguity and an Unfortunate Mistrust in International Judges, (2004) 2 JICJ 56, 63.

³⁰ Art 17 (2) (b) of the ICCst.

³¹ Sriram and Brown (n 41) 228.

³² *Ibid.*

³³ *Ibid* 229.

³⁴ Caban (n 189) 206 (although article 93 (10) has been over stretched to accommodate the same).

³⁵ Sriram and Brown (n 41) 230.

³⁶ Hansen (n 200) 3.

³⁷ *Ibid.*

³⁸ *Ibid.*

The second interpretation which the OTP seems to favor posits that mere inaction of a State in the face of crimes within the Court's jurisdiction will lead to admissibility of situations and cases before the ICC. This concept of inactivity, although not mentioned in the Statute can render a case admissible before the ICC.³⁹

A self-referral witnessed in the Ugandan situation would operate differently when compared to the Kenyan situation where Kenya is challenging the admissibility of the cases before the Court claiming willingness and ability to try the crimes. It further claims that it has overhauled the judiciary, the police and the prosecuting agencies and is now willing to conduct genuine prosecutions.

The Gravity Criterion and OTP Interpretation.

Many scholars concur that evaluating or construing the gravity criterion both as a requirement of the admissibility assessment under Article 53(1) and as articulated in Article 17(1) (d) remains mysterious as far as the OTP is concerned. This problem is compounded by lack of clear judicial pronouncements and legal commentary concerning the subject. William Schabas notes that the subject of gravity was not given much consideration during the Rome Conference and only came to the fore as soon as the Court became operational.⁴⁰ It is important to note that apart from complementarity a case may be inadmissible due to insufficient gravity.

The word sufficient is vague as it lacks the basic minimum and maximum and is very subjective. Although gravity is a ground for determining inadmissibility, the criterion for its determination is missing both in the Rome Statute.⁴¹ In 2003 the OTP issued guidelines for determining gravity, stating *inter alia* that; Article 17, dealing with admissibility, adds to the complementarity grounds one related to the gravity of a case. It is the role of the court to make a determination whether there is sufficient gravity to justify necessary action by the court. The concept of gravity should not be exclusively attached to the act that constituted the crime but also to the degree of participation in its commission.

It appears that this criterion is to be regarded as an additional threshold of special additional gravity, since the crimes included in the Rome statute are grave in themselves.⁴² The practical application of gravity assessment by the OTP reveals a number of inconsistencies. In the issuance of arrest warrants to the Uganda's Lords Resistance Army (LRA), the Prosecutor noted that crimes committed by the LRA were many and of a higher gravity than those of the Ugandan Peoples Defence Force (UPDF) counterparts.⁴³ In this particular case the Prosecutor's comparison was between two warring parties in the same country and not between two countries.

In declining to proceed with the allegations of abuse of civilians and detainees in Iraq, the Prosecutor indicated that the crimes committed were relatively small compared to other situations like Northern Uganda, the Democratic Republic of Congo (DRC) and Sudan.⁴⁴ In this instance he compared the Iraq incidence with other countries in Africa. The application of gravity criterion by the OTP continues to retain an aura of mystery. Ohlin having regard to the vagueness of the gravity criterion warns that one can imagine a situation in the future where a prosecutor's decision is greatly influenced by matters of collective peace and security, but the decision is publicly justified by appealing to the gravity of the situation and he warns that Such camouflaging would be easy to accomplish, especially since it is unclear what kind of legal threshold is established by the Rome Statute's use of the term gravity in articles 17 and 53.⁴⁵

Selectivity of ICC prosecutions.

Just like Nuremberg and the *ad hoc* tribunals, the ICC has received criticism of being selective.⁴⁶ This may present itself generally in ICC choice of situations, choice of cases or charges.

Although the Prosecutor has indicated that his duty is simply judicial and non-political, his interpretations of the

³⁹ Hansen (n 200) 4.

⁴⁰ Schabas (n 8) 761.

⁴¹ Caban (n 189) 207.

⁴² See *Prosecutor v Lubanga*, Case No. ICC-01/04-01/06-8, Decision on the Prosecutor's Application for a Warrant of Arrest, 24 February 2006, para. 41 and 45; Letter of the Prosecutor dated 9 February 2006 (Iraq) 8. Articles 5-8 of the ICCst.

⁴³ Statement by the Chief Prosecutor on the Uganda Arrest Warrants, The Hague, 14 October 2005, 2-3.

⁴⁴ Caban (n 189) 208.

⁴⁵ Ohlin (n 8) 200.

⁴⁶ See Amann DM, 'Group Mentality, Expressivism, and Genocide' (2002) 2 Int'l Crim. L.Rev. 93, 116- 117

legal requirement leave so much to be desired. The OTP is currently handling 15 cases in seven situations, and is conducting preliminary examinations in eight additional countries, located on four continents with intervention in Libya and Mali being the latest situations for the ICC. While it would be difficult to justify legally that selectivity exists in situations, the perception would be so difficult to discount. Selectivity on situations often arises in the context of the ICC relationship with the UNSC's referral and deferral powers.⁴⁷ Where a country is not a State Party to the Rome Statute, only the UNSC can trigger the ICC jurisdiction. Not that the UNSC has not exercised its powers but it has exercised this trigger mechanism in a selective manner.⁴⁸ The swift move to refer Libya and Sudan while leaving out crimes committed in the Gaza, the situation in Syria and crimes committed by the US in Iraq amounts to selectivity.

With regard to *proprio motu* powers application, the question of gravity has been used to intervene into Kenya and not with regard to the British soldiers in Iraq, despite that Britain is a State Party to the Rome Statute. Even so, such an intervention can be deferred under article 16 of the Rome Statute as Britain is a permanent member of the UNSC. So it appears that weaker nations have a raw deal as far as international criminal justice is concerned.⁴⁹

Conclusion

The ICC is faced with a challenge of balancing between legal and policy considerations. Also there are challenges of selectivity and this might affect the legitimacy of the Court. The Court has had its first *proprio motu* trigger mechanism ten years after it began its operation. The OTP policy guidelines lack clarity in terms of offering a clear guidance on which situations and persons to investigate and prosecute. Secondly, even the strategy adopted by the OTP has been interpreted and applied inconsistently especially when applying the gravity criterion.

The Rome Statute bestows on the Prosecutor with an ostensibly wide and unchecked discretion. The role of the PTC on the other hand appears to be engaging in judicial activism. This lack of clarity in the assessment of complementarity, gravity criteria and delineation of interest of justice requirement will often result in discriminatory and selectivity of ICC prosecutions if not so a perception thereof. The way Kenyan cases were handled are a replica of unchecked powers of the prosecutor. As a way forward the ICC should employ positive complementarity when handling cases as a way of winning support from national prosecutions.

Bibliography

- Arbour, L., "The Challenges of Litigation in the 21st Century: From the ad hoc Tribunals to the International Criminal Court" (Address to the American Bar Association, Toronto (1998)) [1998] ICTY Yearbook 445
- Arbour & Bergsmo, "Conscious Absence of Judicial Overreach" in von Hebel *et. al.* (T. M. C. Asser Press, 1999).
- Arsanjani, M. & Reisman, M., "The Law-In-Action of the International Criminal Court" [2005] 99 American Journal of International Law 385
- Bassiouni, M. C., *The Legislative History of the International Criminal Court: Introduction, Analysis, and Integrated Text of the Statute, Elements of Crimes and Rules of Procedure and Evidence*, Vol. 1 (Transnational Publishers, 2005)
- Bohlander, M., "Evidence Before the International Criminal Court - Basic Principle" [2005] 4 Academy of European Law (ERA- Forum) 543
- Broomhall, B., *International Justice and the International Criminal Court* (Oxford University Press, 2003)
- Cassese, A., "The Statute of the International Criminal Court: Some Preliminary Reflections" [1999] 10 European Journal of international Law 144
- Charney, J., "Editorial Comment: International Criminal Law and the Role of Domestic Courts" [2001] 95 American Journal of International Law 120
- Corey, A. & Joireman, S., "Retributive Justice: the *Gacaca* Courts in Rwanda" [2004] 103 African Affairs 73

⁴⁷ Amann (270) 117.

⁴⁸ Danner AM, 'Navigating Law and Politics: The Prosecutor of the International Criminal Court and the Independent Counsel' (2002) 55 Stan. L.Rev. 1633.

⁴⁹ Knoops GJA, 'Challenging the Legitimacy of Initiating Contemporary International Criminal Proceedings: Rethinking Prosecutorial Discretionary Powers from a Legal, Ethical and Political Perspective' (Criminal Law Forum Springer, 2004) 388.

- Ellis, M., "The International Criminal Court and Its Implication for Domestic Law and National Capacity Building" [2002] 15 Florida Journal of International Law 215
- Evans, M., *International Law* (Oxford University Press, 2003, 1st ed.)
- Fletcher, G. & Ohlin, J.D., "The ICC- Two Courts in One?" [2006] 4 Journal of International Criminal Justice 428
- Haleem, Sherif, & Daniels (eds.), *Criminal Justice in Islam: Judicial Procedure in the Sharia* (I.B. Tauris, 2003)
- Hayner, P., "Fifteen Truth Commissions-1974 to 1994: A Comparative Study" [1994] 16 Human Rights Quarterly 597
- Holmes, J., "The Principle of Complementarity" in Lee (ed), *The International Criminal Court: The Making of the Rome Statute, Issues, Negotiation, Results* (Kluwer Law International, 1999) "Complementarity: National Courts versus the ICC" in Cassese, Gaeta & Jones (eds.), *The Rome Statute of the International Criminal Court: A Commentary* (Oxford University Press, 2002)
- Human Rights Watch, *Justice in the Balance: Recommendations for an Independent and Effective International Criminal Court* (1998)
- Jain, N., "A Separate Law for Peacekeepers: The Clash between the Security Council and the International Criminal Court" [2005] 16(2) European Journal of International Law 239
- ICC-Office of the Prosecutor, "Informal Expert Paper: The Principle of Complementarity in Practice" (2003)
- Kaufman, Z., "Justice in Jeopardy: Accountability for the Darfur Atrocities" [2005] 16 Criminal Law Forum 343
- Kress, C., "'Self-Referral' and 'Waiver of Complementarity': Some Considerations in Law and Policy" [2004] 2 Journal of International Criminal Justice 944
- Nsereko Ntanda, D., "The International Criminal Court: Jurisdictional and Related Issues" [1999] 10 Criminal Law Forum 87
- Malekian, F., *The Concept of Islamic International Criminal Law: A Comparative Study* (Graham & Trotman Limited, 1994)
- May & Wierda, *International Criminal Evidence* (Transnational Publishers, 2002)
- McCormack & Robertson, "Jurisdictional Aspects of the Rome Statute for the New International Criminal Court" [1999] 23 Melbourne University Law Review 635
- McGoldrick, Rowe, & Donnelly (eds.), *The Permanent International Court: Legal and Policy Issues* (Hart Publishing, 2004)
- Mochochoko, P., "International Cooperation and Judicial Assistance" in Lee (ed), *The International Criminal Court: The Making of the Rome Statute, Issues, Negotiation, Results* (Kluwer Law International, 1999)
- Morris, M., "The Trials of Concurrent Jurisdiction: The Case of Rwanda" [1996-97] 7 Duke Journal of Comparative & International Law 349
- O'Shea, A., *Amnesty for Crime in International Law and Practice* (Kluwer Law International, 2002)
- Olasolo, H., *The Triggering Procedure of the International Criminal Court* (Martinus Nijhoff Publishers, 2005) "Reflections on the International Criminal Court's Jurisdictional Reach" [2005] 16
- Olson, L., "Mechanisms Complementing Prosecution" [2002] 84(845) International Review of the Red Cross 173
- Roach, S., "Arab States and the Role of Islam in the International Criminal Court" [2005] 53
- Sadat, L. N., *The International Criminal Court and the Transformation of International Law: Justice for the New Millennium* (Transnational Publishers, Inc., 2002)
- Sarooshi, D., "The Peace and Justice Paradox: The International Criminal Court and the UN Security Council" in McGoldrick, Rowe & Donnelly (eds.), *The Permanent International Court: Legal and Policy Issues* (Hart Publishing, 2004)
- Schabas, W., *An Introduction to the International Criminal Court* (Cambridge University Press, 2001)
- Schrag, M., "Lessons Learned from ICTY Experience" [2004] 2 Journal of International Criminal Justice 427
- Sheffer, D., "The Rome Conference on an International Criminal Court: The Negotiation Process" [1999] 93 American Journal of International Law 2
- Summers, M., "A Fresh Look at the Jurisdictional Provisions of the Statute of the International Criminal Court: the Case for Scrapping the Treaty" [2001] 20 Wisconsin International Law Journal 57
- Triffterer, O. (ed.), *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article* (Nomos Verlagsgesellschaft Baden-Baden, 1999)
- Werle, G., *Principles of International Criminal Law* (Cambridge University Press, 2005)
- Yee, L., "The International Criminal Court and the Security Council: Article 13(b) and 16" in Lee (ed.), *The International Criminal Court: The Making of the Rome Statute, Issues, Negotiation, Results* (Kluwer Law International, 1999)