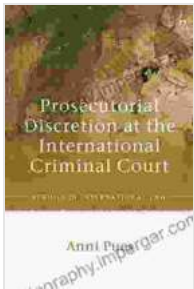


# Prosecutorial Discretion at the International Criminal Court: A Comprehensive Exploration

The International Criminal Court (ICC) is a permanent, independent court that has jurisdiction to prosecute individuals for the most serious crimes of concern to the international community, namely genocide, crimes against humanity, and war crimes. The ICC's mandate is to complement national criminal jurisdictions and to intervene when national authorities are unable or unwilling to investigate and prosecute these crimes.



## Prosecutorial Discretion at the International Criminal Court (Studies in International Law Book 77) by G. Recht

★★★★★ 5 out of 5

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One of the key features of the ICC's legal framework is the principle of prosecutorial discretion. This principle grants the ICC's Prosecutor a significant degree of latitude in deciding whether or not to initiate an investigation or prosecution. The Prosecutor is not bound by any external authority or institution, and he or she may prioritize certain cases or types of crimes based on their own assessment of the facts and circumstances.

The principle of prosecutorial discretion is based on the recognition that the ICC has limited resources and cannot prosecute every crime that falls within its jurisdiction. The Prosecutor must therefore make difficult decisions about which cases to pursue, taking into account a variety of factors, including the seriousness of the crimes, the strength of the evidence, and the potential impact of a prosecution on the victims and the broader community.

The exercise of prosecutorial discretion is a complex and challenging task. The Prosecutor must balance a number of competing considerations, including the need to ensure that justice is done, the need to protect victims and witnesses, and the need to maintain the integrity of the ICC as an impartial and independent institution.

### **The Legal Framework of Prosecutorial Discretion**

The principle of prosecutorial discretion is enshrined in Article 53 of the ICC Statute. This article grants the Prosecutor the power to "initiate investigations on the basis of information on crimes within the jurisdiction of the Court." The Prosecutor is also given the power to "decide whether to initiate an investigation on the basis of information on crimes within the jurisdiction of the Court."

The ICC Statute does not provide any specific guidance on how the Prosecutor should exercise his or her discretion. However, the Prosecutor has issued a number of policy papers and guidelines that set out his or her approach to this issue. These documents make it clear that the Prosecutor will prioritize cases that involve the most serious crimes, that have a significant impact on victims, and that are likely to result in a successful prosecution.

The Prosecutor is also guided by a number of other factors in exercising his or her discretion. These factors include:

- \* The availability of evidence
- \* The potential for cooperation from states and other actors
- \* The potential impact of a prosecution on the victims and the broader community
- \* The need to maintain the integrity of the ICC as an impartial and independent institution

## **The Practical Implications of Prosecutorial Discretion**

The exercise of prosecutorial discretion has a significant impact on the work of the ICC. The Prosecutor's decisions about which cases to pursue shape the court's agenda and priorities. These decisions also have a direct impact on the victims of the crimes that the ICC investigates and prosecutes.

For example, the Prosecutor's decision to prioritize cases that involve the most serious crimes means that the ICC is more likely to investigate and prosecute crimes such as genocide and crimes against humanity. This decision is based on the view that these crimes are the most heinous and have the most devastating impact on victims.

The Prosecutor's decision to prioritize cases that have a significant impact on victims means that the ICC is more likely to investigate and prosecute crimes that have caused widespread suffering and displacement. This decision is based on the view that these crimes have a profound impact on the lives of victims and that the ICC has a responsibility to help them rebuild their lives.

The Prosecutor's decision to prioritize cases that are likely to result in a successful prosecution means that the ICC is more likely to investigate and prosecute cases where there is a strong body of evidence and where the suspects are likely to be apprehended and brought to justice. This decision is based on the view that the ICC should only prosecute cases where there is a reasonable chance of conviction.

## **The Challenges and Opportunities of Prosecutorial Discretion**

The exercise of prosecutorial discretion presents a number of challenges and opportunities for the ICC. One of the key challenges is to ensure that the Prosecutor exercises his or her discretion in a fair and impartial manner. The Prosecutor must not be influenced by political considerations or by the desire to appease certain states or groups.

Another challenge is to ensure that the Prosecutor takes into account the needs and interests of victims. The ICC is a victim-centered court, and the Prosecutor must always consider the impact of his or her decisions on victims and their families.

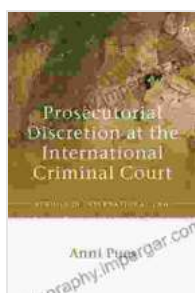
Despite the challenges, prosecutorial discretion also provides the ICC with a number of opportunities. For example, the Prosecutor's ability to prioritize certain cases allows the ICC to focus its resources on the most serious crimes and the most vulnerable victims. The Prosecutor's ability to make decisions based on the evidence and the facts of each case also allows the ICC to maintain its independence and impartiality.

The principle of prosecutorial discretion is a key feature of the ICC's legal framework. This principle grants the ICC's Prosecutor a significant degree of latitude in deciding whether or not to initiate an investigation or

prosecution. The Prosecutor must balance a number of competing considerations in exercising his or her discretion, including the need to ensure that justice is done, the need to protect victims and witnesses, and the need to maintain the integrity of the ICC as an impartial and independent institution.

The exercise of prosecutorial discretion is a complex and challenging task, but it also provides the ICC with a number of opportunities. The Prosecutor's ability to prioritize certain cases allows the ICC to focus its resources on the most serious crimes and the most vulnerable victims. The Prosecutor's ability to make decisions based on the evidence and the facts of each case also allows the ICC to maintain its independence and impartiality.

As the ICC continues to develop and mature, it will be important to monitor the exercise of prosecutorial discretion and to ensure that it is exercised in a fair and impartial manner. The ICC must also continue to work to improve its communication with victims and the broader community so that they can better understand the Prosecutor's decisions and the reasons for them.



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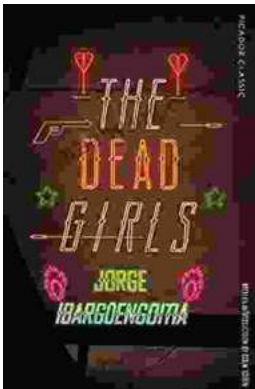
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