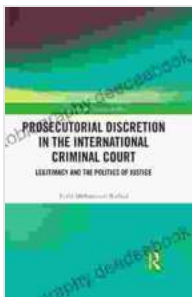


# Prosecutorial Discretion in the International Criminal Court: A Critical Analysis

The International Criminal Court (ICC) is a permanent, independent court established to investigate and prosecute individuals accused of the most serious crimes of international concern: genocide, crimes against humanity, war crimes, and aggression. The ICC's Statute grants the Prosecutor a wide range of discretion in deciding whether to open an investigation, prosecute a case, or decline to do so. This discretion is essential to the effective functioning of the Court, but it also raises important questions about the nature of international criminal justice and the accountability of those accused of international crimes.



## Prosecutorial Discretion in the International Criminal Court: Legitimacy and the Politics of Justice

(Contemporary Security Studies) by Farid Mohammed Rashid

★★★★☆ 4.8 out of 5

Language : English  
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Text-to-Speech : Enabled  
Screen Reader : Supported  
Enhanced typesetting : Enabled  
Word Wise : Enabled  
Print length : 280 pages



## The Scope of Prosecutorial Discretion

The ICC Prosecutor's discretion is set out in Article 53 of the Rome Statute. Article 53(1) states that the Prosecutor shall "have the power to initiate

investigations, prosecute cases and conduct other proceedings before the Court." Article 53(2) provides that the Prosecutor shall "exercise his or her powers independently and impartially, and shall not be subject to any hindrance, instruction or influence from any other person or body."

The Prosecutor's discretion is not absolute. The ICC is a court of law, and the Prosecutor must act in accordance with the Rome Statute and the ICC Rules of Procedure and Evidence. The Prosecutor must also respect the rights of the accused, including the right to a fair trial.

### **The Limitations of Prosecutorial Discretion**

Despite the broad scope of the Prosecutor's discretion, there are a number of limitations on the Prosecutor's power.

First, the Prosecutor can only investigate and prosecute crimes that fall within the jurisdiction of the ICC. The ICC's jurisdiction is limited to crimes that are committed by nationals of States Parties to the Rome Statute or on the territory of States Parties.

Second, the Prosecutor can only prosecute individuals who are accused of crimes that have been committed after the entry into force of the Rome Statute.

Third, the Prosecutor cannot prosecute individuals who are already being prosecuted or have been convicted or acquitted by a national court for the same crimes.

Fourth, the Prosecutor cannot prosecute individuals who are immune from prosecution under international law.

Fifth, the Prosecutor must consider the gravity of the crimes when deciding whether to open an investigation or prosecute a case. The Prosecutor must also consider the impact of the prosecution on the victims of the crimes.

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

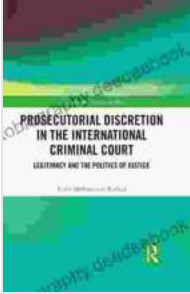
The Prosecutor's discretion has a significant impact on the functioning of the ICC. The Prosecutor's decisions on which cases to investigate and prosecute can have a major impact on the effectiveness of the Court in deterring and punishing international crimes.

The Prosecutor's discretion can also affect the fairness of the ICC's proceedings. The Prosecutor must be impartial and objective in making decisions about which cases to investigate and prosecute. The Prosecutor must also respect the rights of the accused, including the right to a fair trial.

### **The Need for a Balanced Approach**

The Prosecutor's discretion is an essential tool for the effective functioning of the ICC. However, it is important that the Prosecutor exercises his or her discretion in a balanced and impartial manner. The Prosecutor must consider the gravity of the crimes, the impact of the prosecution on the victims, the rights of the accused, and the need to ensure that the ICC is not used for political purposes.

The Prosecutor's discretion is a powerful tool that can be used to promote international criminal justice. However, it is important that the Prosecutor exercises his or her discretion in a balanced and impartial manner. The Prosecutor must consider the gravity of the crimes, the impact of the prosecution on the victims, the rights of the accused, and the need to ensure that the ICC is not used for political purposes.



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