

## **INDEX**

Ad Hoc Committee of the General Assembly, 32 ad hoc tribunals complementarity, influence on development of, 38 completion strategies, 45-47 Adler, Emanuel, 29, 58, 61, 62, 65, 296 admissibility, 14 Appeals Chamber statement on, 68 Article 17 definition of, 34-38 concrete investigative steps requirement, 84 controversy regarding test for, 35 evidentiary threshold, 85-90 ICC, challenges to admissibility at, 69 national proceedings, assessment of, 69 one-step test, 35 procedural limitations, 81–85 Rome Statute criteria for, 34 'same case' test, 70-81 two-step test under Rome Statute, 35 unwilling or unable, definition of, 54 admissibility challenges, 71, 78, 84, 85, 86, 88, 90, 96, 98, 127, 204, 251, 252 restriction on scope of, 69 Afghanistan, 278 African Association for the Defence of Human Rights, 176 African Charter on Human and Peoples' Rights, 254, 262 African Commission on Human and Peoples' Rights, 262 African Court of Justice and Human Rights, 288

African Union (AU), 173 Assembly of Heads of State, xii ICC, relationship with, xii, xx Kenya, engagement with, 115 Panel of Eminent African Personalities, 115, 252 al Bashir, Omar, xii, 255, 289 Alaso, Alice, 161 al-Senussi, Abdullah, 69, 77, 78, 79, 90, 91, 92, 93, 94 Alter, Karen, 5, 294, 295 American Bar Association, 219 Rule of Law Initiative, 219 amnesty, xiv, 79, 81, 168, 169, 171, 259, 260, 262, 271 Colombia, 129 international law obligations, consistency with, 261 judicial review, lack of, 260 Kwoyelo, Thomas, 168, 258, 259, 260 Uganda, 263, 264 Uganda, Constitutional Court's call to revoke amnesty applications in, 169 Uganda, shift in policy in, 266 Uganda, support for amnesty in, 168, 191 Ugandan ICC Act, position in relation to, 161, 167 Amnesty International, 59, 63, 149, 154, 155-56, 169, 207, 219, 295 Annan, Kofi, 115, 122, 125, 252, 267, 269, 278 Appeals Chamber (ICC) admissibility, assessment of similarity of cases in, 79



INDEX 329

admissibility, narrowing scope of review of, 81 assessment of domestic investigation, statement on, 76 Arbia, Silvana, 53 arrest warrant, xii, 17, 46, 50, 72, 73, 82, 85, 87, 134, 146, 158, 197, 215, 254 admissibility, restriction on, 69 Gaddafi, Saif, 79 Katanga, Germain, 86 Lubanga Dyilo, Thomas, 70–72 universal jurisdiction, use of, 289 Assembly of States Parties, 14, 27, 50, 70, 96, 100, 101, 113, 130, 132, 134, 139, 140, 141, 142, 144, 145, 210, 231, 276, 279, 291 assessment of national jurisdictions, due process, role of, 90-94 investigations, 75-78, 83 same conduct test, 73 Avocats sans Frontières (ASF), 59, 65, 177, 179, 219, 235, 239, 242, 243, 244

Bambi Lessa, Luzolo, 212, 213 Bassiouni, Cherif, 30, 44 Baylis, Elena, 61, 64, 138, 235, 240, 284 Bemba, Jean-Pierre, xvi, 17, 70, 84, 105, 137, 176, 277, 278 Bensouda, Fatou, xix, 9, 47, 105, 114, 129, 130, 131, 139, 140, 141, 277 OTP policy, changes in, 139–42 preliminary examinations, investment in, 114 Bitti, Gilbert, 82, 85, 87 Blaak, Mirjam, 159 Boesenecker, Aaron, 59 Bosnia and Herzegovina, 4, 46, 175 Broomhall, Bruce, 48 Brussels Declaration, 295 Burke-White, William, 4, 43, 45, 60, 142, 210 Burundi, xx, 128, 268

Cáceres, Berta, 286 Carpenter, Charli, 268 catalytic effect, definition of, 19 Cattin, David Donat, 54, 153 Central African Republic (CAR), xvii, 17, 70, 82, 110, 132, 136, 168, 211, 277 preliminary examination in, 110 child conscription, 174 civil litigation, 239 Clark, Phil, 88, 143 Coalition for the International Criminal Court (CICC), 64, 149, 150, 154, 163, 176, 177 Global Advocacy Campaign for the International Criminal Court, 154 coercive complementarity, 8, 48-50, 209, 276 DRC, 188 Kenya, 117 presumptions underlying catalytic potential, 50 Colombia, 17 ICC, interactions with, 129 Justice and Peace Law, 112 positive complementarity, example of, 112 preliminary examination in, 110, 128 - 30Commission of Inquiry on Post-Election Violence (CIPEV), Kenya. See Waki Commission Commonwealth Model Law, 154 communities of practice, 29, 61, 62, 151, 230, 296 Comoros, Union of, 109, 110, 111 complementarity Ad Hoc and Preparatory Committees, role of, 32-34 ad hoc tribunals, 4 ad hoc tribunals, influence of completion strategies of, 28, 45 - 47burden sharing, 103, 138, 209 catalysing civil society, 255–57 coercion strategy, 48-50 constructivism, 58-59 cooperation strategy, 43-47 definitions and interpretations of, 13, 51-57, 67 duty for states, 51–57, 270, 272 human rights organizations, role of, 154 - 57



330 INDEX

complementarity (cont.) ICC, instrument of policy at, 27 ICC and ad hoc tribunals, differences in approach between, 28 inducement and facilitation, as, 43 international actors and civil society organizations, relationship between, 64 jurisdictional forfeiture, 49 'justice cascade' and origins, 3 legalism, limitations of, 274-77 mirroring effect and ICC, 15, 287-90 national jurisdictions, primacy over, 28 NGO community, embrace of concept by, 39 non-state actors, effects on, 14 non-state actors, influence of, 53, 67, 151, 185, 188, 238, 245-48, 268-71 norm entrepreneurs, role of, 59–61 OTP investigations, 130-42 OTP preliminary examinations, 106 - 30pluralist approach, 287-92 policy goals, 55 qualified deference approach, 280 - 82retributive model of domestic justice, 9 scholarly approaches to, 42-50 scholarly development, 3-7 'slogan version' of, 35, 37, 67, 85 transnational advocacy networks, development through, 61-67 Congo, Democratic Republic of (DRC), 17, 275, 297 1940 penal codes, 174 complementarity as competition, 224 - 27ICC, coercive effect of, 194 implementation, motivations for, investigation teams, size of, 131 military criminal code (MCC), 174, 175, 178, 181, 183, 184, 190 non-state actors, role of, 245-48

OTP investigation in, 131–38 Rome Statute, implementation of, Rome Statute implementation bill 2010, 175-80 Rome Statute implementation bill 2015, 180-84 Sun City Accords, 208 cooperative complementarity, 8, 43-47, positive complementarity, relationship with, 101 corruption, 161 Cote d'Ivoire. See Ivory Coast crimes against humanity, 9, 30, 55, 71, 78, 80, 94, 116, 118, 129, 134, 153, 159, 160, 164, 174, 178, 182, 195, 203, 208, 218, 235, 242, 245, 251, 254, 286, 290 destruction of natural heritage, 175 Uganda, expanded definition in, 160 Damaska, Mirjan, 293 Dawkins, Richard, 15, 233, 234 Selfish Gene, The, 15 death penalty, 49, 56, 95, 156, 157, 161, 166, 178, 179, 180, 184, 189, 233, 251 abolition as condition for referral to national jurisdiction, 49 Uganda and Rome Statute implementation, 161 Delmas-Marty, Mireille, 292 detention facilities, 56 domestic implementation of Rome Statute, 54, 273 coercive effect, 156 human rights organizations, role of, 154 - 57ICC, role in enabling advocacy by, 185 obligations in Rome Statute, 52 political process, 187 standardization of law, 152-57 symbolic function, 187 DRC. See Congo, Democratic Republic of (DRC) Drumbl, Mark, 9, 68, 102, 150, 157, 189, 190, 230, 280, 281, 292



INDEX 331

due process, 41, 46, 49, 55, 56, 92, 93, 235, 244, 262, 265. See also fair trial rights admissibility, as condition for, 38 national jurisdictions, assessment in, 90–94

economic crimes, 192
Ekanya, Geoffrey, 160, 161
El Zeidy, Mohamed, 2, 29, 30, 37, 39, 82, 85, 87
Elebe ma Elebe, Nick, 217
Ellis, Mark, 30, 46, 53, 54, 55, 57, 94, 221, 230
European Convention on Human Rights, 281, 294, 295
European Court of Human Rights (ECHR), 52, 281, 295, 296
Extraordinary African Chambers,

Senegal, 290

fair trial rights, 7, 11, 29, 50, 51, 55, 67, 91, 92, 93, 94, 156, 157, 177, 219, 223, 243, 244, 262 condition for referral to national jurisdiction, 49 due process, assessment in national jurisdictions of, 90–94 Finnemore, Martha, 5, 60, 233 Fletcher, George, 230 Gaddafi, Saif, xiii, 69, 77, 78, 79, 80,

85, 90, 91, 92, 93, 94, 99, 202, 282
Gbagbo, Laurent, 73, 75, 80, 84, 105, 112, 131, 278
Gbagbo, Simone, 80, 81, 90, 282
gender-based violence. See sexual violence
Geneva Conventions, 155, 163, 199, 258, 259, 261
Common Article 3, 261
Commonwealth Model Law, 155

Georgia, xix, 66, 128, 268 Germany, 139, 283 prosecution of Rwandan nationals in, 139 Gioia, Frederica, 37, 39, 44, 51, 95 Glasius, Marlies, 14, 63, 136 Guatemala, 257, 285, 286 Guinea, 56, 66, 113, 130, 290

Habré, Hissène, 290
Haddad, Heidi Nichols, 64
Heller, Kevin Jon, 34, 53, 55, 64, 72, 80, 91, 153
Holmes, John, 33, 34
Howse, Robert, 274
Human Rights First, 176
human rights violations, 11, 95, 116, 118, 256, 263
Human Rights Watch, 10, 39, 59, 63, 66, 112, 113, 115, 130, 132, 134, 141, 154, 156, 176, 180, 181, 193, 200, 215, 221, 227, 228, 239, 249, 251

Imanyara, Gitobu, 120, 121, 123
immunity
head of state, 160
ICA Act (Kenya), difference of Rome
Statute provisions with, 166
incorporation into domestic
legislation, 54
Kenya, compromises concerning
immunity in, 127
informal expert paper, 40

informal expert paper, 40
The principle of complementarity
in practice (2003), 40–42
Institute for Security Studies, 37, 56,
117, 175, 228, 289
Inter-Congolese Dialogue (I-CD), 208,

213 Interdisciplinary Group of Independent Experts (GIEI), Mexico, 287

intermediaries, 105, 135–38, 143, 279 changes in use of, 140 ICC definition of, 136

International, Impartial and
Independent Mechanism (IIIM)
for Myanmar, 291

International, Impartial and
Independent Mechanism (IIIM)
for Syria, 290
International Advisory Group of

Experts, 286



332 INDEX

International Bar Association, 54, 56, 227 national proceedings, views on assessment of, 56 International Center for Transitional Justice (ICTJ), 1, 36, 59, 63, 88, 101, 177, 179, 199, 228, 240, 241, 242, 263, 296 International Centre for Criminal Law Reform, 154 International Commission against Impunity (CICIG), Guatemala, 285, 286 international crimes aggression, xi, 30 basis for domestic implementation, economic and environmental crimes, 288 international standards for domestic implementation, 153 ordinary crimes, difference as basis for Rome Statute implementation, 53 standardization in national law, 152-57 International Crimes Division (ICD), Kenya, 204-8, 264, 272 International Crimes Division (ICD), Uganda, xiv, 11, 193, 195-202, 259, cooperative programs with international courts, 228 criticism of, 264 funding issues, 228 ICC, early relationship with, 201 integration with Ugandan High Court, 227 jurisdiction, 195 structure, 200 International Criminal Court (ICC) admissibility, reluctance to develop pro-active approach to, 102

27-28, 99-103 cooperative relationship in complementarity, 8 development of theory of ICC as catalyst, 3-7 encouragement of local judicial systems in DRC, 221 future performance and place-based approaches, 277-80 Kenyan opinions of ICC, 125 national jurisdictions, decision not to grant primacy over, 28 non-state actors, effect on, 185 Office of the Prosecutor, early approach to complementarity of, 40 - 42origins of complementarity at, xiii, and perception of work in DRC, xvii reverse complementarity, 282 role in mediating domestic proceedings, 238 Rome Statute, influence on domestic implementation of, 150 - 51transitional justice mechanism as, International Criminal Legal Services, International Criminal Tribunal for Rwanda (ICTR), xii, 28, 40, 49, 50, 78, 152, 282 complementarity, influence on development of, 28, 30, 38 distinction between international and domestic crimes, 152 national jurisdictions, change in relationship with, 49 reverse complementarity, 282 International Criminal Tribunal for the former Yugoslavia (ICTY), 4, 13, 28, 40, 45, 46, 49, 78, 135, 152, 279, 285 1996 Rome Agreement, 46 catalytic effect on national law, and, 4 complementarity, influence on development of, 28, 30, 38, 46

complementarity as ICC policy,

admissibility challenges, 81

complementarity, and, 8

complementarity, strict approach

challenges, 267-68

to, 70

coercive effect of, 194

coercive relationship in



INDEX 333

distinction between international and domestic crimes, 152 national jurisdictions, change in relationship with, 49 relationship with national jurisdictions, change in, 45, 46 reverse complementarity, 282 International Law Commission (ILC), 30, 31, 32, 33, 34, 52, 153 draft ICC statute (1994), 30 ICC, views on relationship with national jurisdiction, 31 International Refugee Rights Initiative (IIRI), 135, 138 investigations at ICC, xii, xvii, 4, 11, 13, 17, 47, 51, 71, 96, 104, 105, 124, 128, 130-41, 210, 271, 272, 275, 277 complementarity as ICC policy, 99-103 intermediaries, use of, 135-38 OTP methodology, 132–38 positive complementarity, 142-45, 271 strategy, changes in, 138-42 Ivory Coast, 68, 75, 80, 105

Justice Law and Order Sector (JLOS), Uganda, 159, 169, 199, 201, 214, 229, 235, 263 justice meme, 15, 24, 195, 230, 234, 236, 237, 287

Kabila, Joseph, 71, 86, 173, 176, 182, 188, 209, 210, 213, 215, 216, 218, 271 Kambala, Olivier, 173 Kambale, Pascal, 133, 135, 138, 178, 209, 210, 216, 217 Kampala Conference, xi, 29, 65, 95, 144, 150, 159–62, 167, 185, 242, 258, 273 Kampala Declaration, xi, 7, 29 Karua, Martha, 118, 119, 120, 121, 122, 127, 165, 172, 203 Katanga, Germain, 69, 70, 71, 72, 73, 74, 76, 82, 83, 84, 85, 86, 87, 88, 89, 94, 95, 96, 97, 100, 101, 137, 211, 214, 217 admissibility decision, 85-90 Kawanga, John, 160 Keck, Margaret, 62

Kengo wa Dondo, Leone, 216 Kenya, 17, 20, 50, 69, 75, 157, 275, 297 admissibility challenge, 84 admissibility decision, 97-99 Armed Forces Act, 163 Article 15 decision, 123 catalytic effect of ICC in, 127-28 coercive complementarity in, 117, 118, 122 Commission of Inquiry on Post-Election Violence, 203 constitutional and judicial reform, 252 - 53domestic criminal tribunal, establishment of, 10 ICC, perspectives on, 171-72 ICC, threat of withdrawal from, 173 ICC Act, 252 implementation, motivations for, 185 International and Organised Crimes Division of the Kenyan High Court, 206, 207 International Crimes Act 2008 (ICA), 120, 160, 163–67, 171, 172, 185, 186, 188, 189, 205, 251, 252, 255, 273 judicial reform, 252 Kenyan National Commission on Human Rights, 163 Kenyan Penal Code, 163 Law Reform Commission, 118 Orange Democratic Movement, 115 OTP investigation in, 131-38 OTP preliminary examination, problems with, 123-30 OTP preliminary examination in, 104, 115-22 outcomes of domestic courts, 249 - 51Rome Statute implementation in, 150, 164 specialized national courts, use of, 204 - 8symbolic function of domestic implementation, 186

Kenya National Human Rights

Commission (KNHRC), 118, 143



> 334 INDEX

Kenya's Independent Police Oversight Authority, 254 Kenyatta, Uhuru, xviii, xix, 36, 76, 88, 97, 105, 106, 115, 126, 128, 131, 136, 172, 191, 206, 207 Kibaki, Mwai, 115, 117, 119, 123, 163, 251 Kiiza, Akiki, 231 Kilonzo, Mutula, 119, 120, 122, 204 Kinshasa High Military Court, 74, 86 - 87Kleffner, Jann, 28, 31, 32, 33, 34, 43, 44, 48, 49, 53, 60 Konrad Adenauer Foundation, 57 Kony, Joseph, xix, 81, 90, 152, 158, 168, 196, 197, 198, 202, 232, 258, 277 Kwoyelo, Thomas, xiv, 24, 162, 167, 168, 169, 187, 199, 200, 229, 232, 235, 236, 239, 257–66, 272 Constitutional Court's decision to halt trial of, 169 petition to African Commission on Human and People's Rights, 262

Labuda, Patryk, 175, 176, 177, 182, 213, 215, 243, 283 Lavigne, Bernard, 131, 132, 133 Leebaw, Bronwyn, 11, 12, 272 Legal Tools project, ICC, 155 legalism dominance in human rights, 11-12

limitations in complementarity of, 274 - 77

Liberia, 290

Libya, xiii, 37, 47, 54, 69, 75, 77, 78, 79, 84, 89, 91, 92, 93, 94, 98, 103, 111, 278, 282, 283, 284

Lord's Resistance Army (LRA), xiv, xix, 11, 24, 50, 90, 152, 157, 158, 161, 169, 171, 194, 195–202, 215, 238, 239, 247, 257, 258, 261, 263, 264, 257-66, 271

Lubanga Dyilo, Thomas, xvii, 9, 70, 71, 72, 86, 88, 95, 131, 132, 133, 136, 137, 210, 211, 214, 279

admissibility considerations in, 71, 72 arrest warrant decision, 70–72 Lynch, Gabrielle, xviii, 115, 116, 127,

189, 207

Maalim, Farah, 165, 166 Malabo Protocol, 149, 288, 289 Mbarushimana, Callixte, 139 Mbuya, Mutumbe, 176 McAuliffe, Padraig, 51 McEvoy, Kieran, 11, 52, 127, 167, 291 Mégret, Frédéric, 39, 64, 66, 91, 99, 269, 287, 288 Meierhenrich, Jens, 107, 145, 146 Mendez, Juan, 47, 112 mirroring effect, 15, 21, 102, 174, 190-91, 230, 233, 276, 284, 287, 288 Mission to Support the Fights against Corruption and Impunity in Honduras, 286 mobile military courts, DRC, 24, 194, 218-22, 224, 238, 284 Ankoro case, 242 burden-sharing with ICC, 221 cooperative approach with ICC, 221 criticism of, 243-44 disruption of domestic justice institutions, 226 history, 218-19 notable convictions, 242 outcomes, 239-40 rape, definitions of, 243 Rome Statute, direct application of, 242, 243 sexual violence, 220 subject matter jurisdiction, 240-41 Mochochoko, Phakiso, 106 modes of liability, 288

aiding and abetting, 156 corporate criminal liability, 288 direct and public incitement, 156 MONUSCO, 226, 227, 241, 242, 265 Joint Investigative Teams and

Prosecution Support Cell, 241 Moreno-Ocampo, Luis, xii, xix, 27, 40, 104, 117, 121, 123, 126, 128, 130, 132, 133, 138, 146, 210, 211, 246

coercive complementarity, adoption of, 50

complementarity, coercive approach to, 22 positive complementarity, 9 Mosse, David, xx



INDEX 335

Mugatana, Danson, 224 Murwanashyaka, Ignace, 139 Musila, Godfrey, 118, 121, 126, 175, 176, 209 Musoni, Straton, 139 mwene Songa, Nyabirungu, 176, 180, 214 Myanmar, xix, 268, 227, 280, 291

National Implementing Legislation Database (NILD), 155 Nderitu, Wilfred, 223, 224 ne bis in idem, 30, 34, 38, 52, 72, 78, 94 ICC and national courts, influence on relationship between, 33 negative complementarity, 43 Ngoy, Eliwo, 210, 242 Nichols, Lionel, 15, 122, 255 No Peace Without Justice, 63, 93, 154 non-state actors, 185, 245-48, 268-71, 278 complementarity, influence on, 23, 53, 67 influence of ICC, 271 Nouwen, Sarah, 2, 10, 13, 14, 34, 36, 40, 44, 51, 52, 58, 64, 96, 102, 157, 158, 159, 167, 195, 196, 197, 202, 229,

246, 247, 275, 276, 287 norm entrepreneurs, 58

Ocampo Six, xviii, xix, 249 Odinga, Raila, 115, 119, 123 Odwong, Jane, 132, 133 Office of the High Commissioner for Human Rights (OHCHR), 56, 94, 175 Office of the Prosecutor (OTP), ICC, 276 2013 policy paper, 66 agreements with states, 176 'basic size' proposal, 141, 142 coercive complementarity, adoption of, 50 Colombia, mutual influence of, 129 complementarity, balancing coercive and cooperative strategies of, 14 complementarity, early approach to, complementarity, policy changes in, 145 - 46country experts, failure to use, 135 executive committee, 134 first policy paper, complementarity in, 7 focused investigations policy, 131, 138 Guinea, impact in, 130 influence of ad hoc tribunal policy intermediaries, use of, 135-38 International Cooperation Section, role of, 106 investigation strategy, changes in, 138 - 42investigative methodology of, 132 - 38invited referrals policy, 47 Jurisdiction, Complementarity, and Cooperation Division (JCCD), 42, 106, 107, 125, 131 Kenya, preliminary examination in, 117, 122-23 national jurisdictions, relationship building with, 138-40 nature of role within ICC, 104 positive complementarity, 66, 138 positive complementarity in investigations and preliminary examinations, 142-45 preliminary examinations, 123 preliminary examinations, length of, 109-11 preliminary examinations, problems with, 143 preliminary examinations, structure of, 112-14 prosecutorial discretion, importance to complementarity of, 271 public nature of preliminary examinations, 113 resources, basic size proposal, 142 resources, issues with, 129, 134 situation analysis section, role of, small teams, use of, 131

27,40-42



336 INDEX

Office of the Prosecutor (OTP), four-phase procedure, 108-9 ICC (cont.) judicial oversight, lack of, 109 Special Tribunal for Kenya, coercive Kenya, problems in, 123–30 effect on, 117 legal framework, 108, 107-14 staffing of investigation teams, 132 outcomes, 111 structure of, 106 positive complementarity, 114 Ogoola, Judge Munange, 199, 230, 231 public approach, coercive effect of Okuta, Antonina, 163, 164, 250, 251 adopting, 112 Ongwen, Dominic, xix, 152, 197, 202, time limits and reasonable time, 229, 236, 261, 263, 279 109-11 Oola, Stephen, 162, 169, 198, 199, 229, 260 Pre-Trial Chamber (ICC) Open Society Foundation (OSF), xx, admissibility, broad approach, 97, 133, 157, 173, 188, 201, 217, 218, 219-20, 221, 240, 244, 254, 255, International Crimes Division (Uganda), request to, 202 265, 285, 286 preliminary examinations, length Orange Democratic Movement, 165 of, 110 Palestine, xix, 111, 113, 279 pre-trial detention, 55, 259, 262 Parliamentarians for Global Action private prosecution, 239, 252, 253, 256, (PGA), 54, 154, 157, 162, 165, 176, 257 178, 179, 181, 215 Kenya, 253-54 Rome Statute, influence in domestic Prosecutor v. Abdullah al-Senussi implementation of, 55 (ICC), 69, 77-80, 93 Pellet, Alain, 52 Prosecutor v. Ahmad Harun (ICC), 72, Pinochet, Augusto, 4, 296 pluralism, 189, 273, 288, 292 Prosecutor v. Ali Kushayb (ICC), 73 Politi, Judge Mauro, 44 Prosecutor v. Callixte Mbarushimana positive complementarity, 27, 49, 66, 67, (ICC), 13469, 94, 99, 101, 103, 114, 144, 145, Prosecutor v. Francis Kirimi Muthaura 232, 241, 270, 271, 286, 287, 291 (ICC), 36, 76, 106 aims of, 13 Prosecutor v. Germain Katanga (ICC), Colombia, 112 xxvii, 72, 73-74, 82, 85, 87, 97, criminal justice reform, role in, 56 137, 211 development by OTP, 9 admissibility decision, 82-84, DRC and Uganda, 105 85-90, 95-97 human rights and rule-of-law actors, Prosecutor v. Laurent Gbagbo (ICC), 73, 56 74, 75, 84 ICTY, influence of, 46 no case to answer, 278 IIIM model, 291 Prosecutor v. Mathieu Ngudjolo (ICC), investigations and preliminary 70, 71, 74, 87, 97, 131, 134, 214 examinations, 142-45 Prosecutor v. Saif Gaddafi (ICC), 69, OTP, 47 77-80, 85, 92, 99 preliminary examinations, 142 Prosecutor v. Simone Gbagbo (ICC), statutory basis for, 69 80-81,90 Uganda, xv Prosecutor v. Thomas Lubanga Dyilo preliminary examinations, 104, 106 (ICC), 70–72, 133 coercive effect of, 114 Prosecutor v. Uhuru Muigai Kenyatta

complementarity, 112-14

(ICC), 88, 99



Prosecutor v. William Samoei Ruto et al

INDEX 337

al Ruto, William, xviii, xix, 36, 76, 77,

(ICC), 75–77, 97 admissibility decision, 97-99 Protection International, 57 Review Conference of the Rome Statute. See Kampala Conference Revolutionary Armed Forces of Colombia (FARC), 112 Robinson, Darryl, 35, 36, 37, 50, 51, 52, 53, 64, 72, 85, 100, 152, 269, 271, 283 Rome Statute of the ICC, 3, 53, 288, 296 Article 8(2)(e), 260 Article 14, 37, 47, 122, 123, 223 Article 15, 107, 108, 109, 113, 118, 122, 123, 143 Article 17, 21, 22, 34, 35, 36, 37, 38, 40, 43, 55, 56, 68, 72, 75, 78, 81, 83, 84, 85, 86, 91, 97, 103, 109, 221, 269, 280, 282, 284 Article 18, 38, 282, 283 Article 18(2), 283 Article 19, 38, 43 Article 19(1), 72, 81, 232 Article 19(2)(a), 73, 97, 270 Article 19(2)(b), 75 Article 19(5), 84 Article 20(3), 52, 72, 79, 153 Article 25, 156 Article 53(1)(a)-(c), 108Article 93, 21, 34, 44, 69, 94, 95, 96, 97, 98, 103, 114, 291 Article 93(10), 21, 34, 44, 69, 95, 96, 97, 98, 103, 114, 291 Article 94, 283 Articles 89, 283 coercive effect of, 156 development of complementarity distinction between international and domestic crimes, 152 drafting history of, 29-39 duties of complementarity in, 8, 51 implementing legislation in DRC, xvii relationship with national courts, horizontal relationship with, 38

84, 89, 115, 119, 128, 135, 172, 191, same case test, 70, 77, 79, 80, 81, 92, 98, 283 jurisprudence, 70-81 same conduct test, 21, 34, 53, 72, 73, 74, 75, 76, 77, 78, 79, 80, 89, 93, 100, 153, 280, 281, 282 substantially same conduct, assessment of, 78 Sang, Joseph, 135 Serbia, 4, 13, 45, 285 sexual violence, 123, 174, 175, 220, 221, 225, 226, 240, 244, 254 DRC, 225 Shklar, Judith, 11, 12, 102, 267, 268, 275, 276, 293, 294, 296 Sikkink, Kathryn, 3, 5, 6, 60, 62, 257, 296 Simpson, Gerry, 7, 39, 63 situation-specific investigation assistants, 144 Skouteris, Thomas, 6, 7 South Africa, 161, 208, 228, 240, 253, 289, 291 Southern Africa Litigation Centre, 154 sovereignty, 28, 34, 39, 49, 178, 186, 203, 217, 269, 276, 281, 295, 296 complementarity as condition of sovereignty, 67 Special Chambers, DRC, 151, 180, 188, 194, 212-17, 224, 225, 273 complementarity, influence of, 213 Special Criminal Court (CAR), 211, 277, 291 Special Tribunal for Kenya (STK), Kenya, 116-28, 146, 186, 193, 203 - 7communication with OTP, effect on, 122 ICC's coercive effect on, 118 legislative history of, 117–22 political opinions on, 119-22 STK bill, 124, 171–72 Stahn, Carsten, xviii, 2, 27, 32, 38, 42, 43, 44, 54, 60, 75, 98, 103, 111, 112, 114, 144, 153, 282, 283

Ruhindi, Freddie, 158, 159, 167, 202



338

INDEX

Stahn, Carsten (cont.)
complementarity, as theory for
managing interactions between
court and states, 42
Subotić, Jelena, 16, 264, 270
Sudan, 255
norm entrepreneurs, role of, 58
Sudan (Darfur), 2, 10, 13, 17, 121, 138,
141, 168, 196, 258, 278, 290, 293
Syria, 290
Tashobya, Stephen, 161

Teitel, Ruti, 9, 274 transitional justice, xiv, xx, 10, 11, 12, 18, 127, 129, 161, 167, 186, 190, 198, 207, 223, 224, 227, 229, 235, 246, 264, 270, 284, 287, 291

Truth and Reconciliation Commission, South Africa, 291

Truth Justice and Reconciliation Commission (TJRC), Kenya, 116, 123

Uganda, 17, 20, 50, 157, 275, 297 Accountability and Reconciliation Agreement, 197, 198, 201, 208 Amnesty Act, the, xiv, 161, 162, 167, 169, 170, 171, 258, 259, 260, 63 Amnesty Committee, 161 complementarity, changing understanding of, 185 complementarity, perceptions of, 57 complementarity as burdensharing, 202 complementarity state, image of Uganda as, 168 Constitutional Court, 169 Final Peace Agreement, 198 Geneva Conventions Act of 1964, 261 ICC Act, 159–62, 167, 170, 171, 172, 185, 187, 189, 191, 199, 261 immunity, status in domestic law of, 160 Justice Law and Order Sector (JLOS), 170 norm entrepreneurs, role of, 58

OTP investigation in, 132–38 Parliamentary Committee on

Defence and Internal Affairs, 170

Penal Code Act, 199 Rome Statute, implementation of, 150, 157-59, 186 Rome Statute, ratification of, 263 specialized national courts, use of, 195-202 symbolic function of domestic implementation, 186 Uganda Coalition for the International Criminal Court (UCICC), 57, 158, 170, 235 Uganda Law Society, 201, 229 Uganda Victims Foundation, 231 Ugandan Coalition for the ICC, 57 Ugandan High Court, xiv, 90, 102, 160, 195 Ugandan Penal Code (UPC), 161 United Nations 2010 Mapping Report, 186 Joint Human Rights Office, 241 United Nations General Assembly, 30, 31, 290 United Nations Security Council, 46, 47, 49, 203, 209, 213, 278, 290, 293 universal jurisdiction, 53, 289, 290, 296 Germany, 139 University of Pretoria's Centre for Human Rights, 57 Urueña, Rene, 112, 128, 129, 130 Ušacka, Judge Anita, 79, 80, 89, 98, 99

van den Herik, Larissa, 49, 54, 153
Venezuela, 111, 268
victims, xviii, 108, 135
expectations of participation, 229
implementation of participation at
domestic level, 156
incorporation into domestic
proceedings in Kenya, 119
Vinjamuri, Leslie, 59

Waki Commission, 115–22, 123, 125, 126, 143, 150, 164, 171, 185, 186, 203, 223, 273 recommendations of, 116–17 Waki Report, 120, 121, 123, 166 Wako, Amos, 164, 172 Wanyeki, Muthoni, 117, 119, 125, 204



INDEX 339

war crimes, 20, 30, 46, 55, 94, 129, 139, 153, 159, 168, 174, 178, 179, 182, 195, 201, 208, 210, 218, 221, 231, 235, 258, 260, 288, 290 obligation to punish under Geneva Conventions, 259

War Crimes Division, Uganda. See International Crimes Division (ICD), Uganda Wenger, Etienne, 29, 61

Yekatom, Alfred, 82