

**Intermediary Complexity in Regulatory Governance:
The International Criminal Court's Use of NGOs in Regulating International Crimes**

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Abstract: While regulatory governance can be theorized as a three-party game in which regulators use intermediaries to influence targets, I show how regulatory intermediaries can, through delegation and orchestration, engage their own “sub-intermediaries” to increase their capacity for fulfilling their regulatory mandates, and their influence on regulators and targets. I elucidate how the International Criminal Court (ICC)—the key intermediary in the regulatory regime for international crimes—has used nongovernmental organizations’ (NGOs’) advocacy, expertise, and operational capacities to compensate for its limited capabilities. Through NGO intermediaries, the ICC has aimed to increase its ability to prosecute, punish, and thus regulate international crimes; amplify its influence on state regulators and potential perpetrators; and improve the regulation of international crimes overall.

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Introduction

Regulation is typically conceptualized as a two-party relationship between a regulator (or rule-maker) and a target (or rule-taker). Regulators, however, may turn to intermediaries when they lack direct access to their targets and/or the necessary capabilities for regulating them. The “RIT” model of regulatory governance therefore envisions regulation as a three-party relationship between regulators, intermediaries, and targets (Abbott, Levi-Faur, and Snidal 2017). In this article, I add complexity to the RIT model by theorizing how regulatory intermediaries can engage their own “sub-intermediaries” to fulfill their regulatory mandates and strengthen their influence in regulatory governance. Regulators may engage intermediaries to fulfill regulatory functions such as rule implementation, compliance monitoring, and rule enforcement, but these “primary” intermediaries may use their own “secondary” intermediaries to carry out activities that support their regulatory function and contribute to regulatory governance overall.

Under what conditions do regulatory intermediaries engage their own intermediaries? How do these secondary intermediaries influence regulatory governance? How do relations between primary and secondary intermediaries evolve over time? To answer these questions, I theorize relations between primary and secondary intermediaries using orchestration (Abbott et al. 2015) and delegation (Hawkins et al. 2006) frameworks, and analyze the regulatory regime for international crimes. I develop several theoretical conjectures about how regulatory intermediaries turn to orchestration and delegation, and how they can change their approaches over time to improve regulatory governance. I test these theoretical conjectures by analyzing the International Criminal Court’s (ICC’s) relations with its nongovernmental organization (NGO) intermediaries, based on archival and interview research at both the ICC and key NGOs in the international criminal legal regime.¹

State regulators created the ICC as the focal intermediary for prosecuting, punishing, and thus regulating international crimes, but to fulfill its regulatory mandate with its limited capabilities, the ICC has been heavily reliant on the assistance of NGO intermediaries. The ICC has drawn on NGOs’ support

¹ I have used archival material from the ICC and over a dozen NGOs. I conducted interviews in May-June 2014 at the ICC (in the Office of the Prosecutor, Presidency, and Registry), and five international human rights NGOs that are actively involved in the Court’s work.

for investigating international crimes, developing its institutional policies, promoting states' cooperation with the Court, and a range of other core activities. The ICC's evolving relationship with NGOs elucidates how regulatory intermediaries can use their own intermediaries to enhance their regulatory activities, compensate for weak support from regulators, and address elusive regulatory targets. The ICC case also shows that as conditions in a regulatory regime change, primary intermediaries adapt their relations with secondary intermediaries to ensure that they continue to contribute to desired outcomes in regulatory governance.

Theorizing Primary and Secondary Intermediaries in Regulatory Governance

Relations through Orchestration and Delegation

Intermediaries, selected by regulators to influence targets, may turn to their own intermediaries for assistance in meeting the challenges of regulatory governance. Just as regulators engage regulatory intermediaries for their operational capacity, expertise, independence, legitimacy, and/or their ability to act as secondary regulators (Abbott, Levi-Faur, and Snidal 2017), these primary intermediaries may seek secondary intermediaries that can assist them in performing their regulatory functions and amplifying their influence in regulatory governance.

Primary intermediaries may engage secondary intermediaries through orchestration or through delegation. These two conceptually distinct modes of indirect governance (Abbott et al. 2016) are largely distinguished based on the formality of the relationship between primary and secondary intermediaries, and the primary intermediary's level of control over the secondary intermediary. With orchestration, the primary intermediary uses informal means of influence, including agenda-setting, coordination, and assistance (Abbott et al. 2015, 14-16), to mobilize the secondary intermediary to carry out activities in pursuit of shared regulatory governance goals. The relationship is based on collaboration, rather than control. Orchestration typically has been used to theorize international organizations' (IOs') governance practices, but it equally can be applied to a range of regulatory intermediaries, including national agencies, NGOs, and IOs.

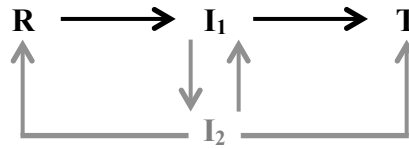
Delegation is more formal and hierarchical than orchestration: a principal (primary intermediary) conditionally grants authority to an agent (secondary intermediary) to act on the principal's behalf (Hawkins et al. 2006, 7). This occurs through some form of agreement ("delegation contract") between the principal and agent. Thus, a primary intermediary may delegate authority to a secondary intermediary to conduct activities that contribute to regulatory governance. The principal-agent relationship between primary and secondary intermediaries is one of control: the principal has various mechanisms for controlling the agent's behavior in the delegation contract (e.g., monitoring, amendment procedures), and the principal can ultimately revoke the agent's authority to act on its behalf. While orchestration and delegation are conceptually distinct, in practice they can blend together (Abbott et al. 2015, 10), depending on the degrees of formality or control in the relationship. For example, if the principal only has weak control over its agent, it may rely on their shared governance goals (as in orchestration) to motivate the agent to fulfill the delegated tasks.

A primary intermediary's engagement of a secondary intermediary adds complexity to the basic $R \rightarrow I \rightarrow T$ model (Abbott, Levi-Faur, and Snidal 2017) and its potential feedback loops. It may result in a simple $R \rightarrow I_1 \rightarrow I_2 \rightarrow T$ configuration,² where a primary intermediary orchestrates or delegates authority to a secondary intermediary to strengthen its regulation of targets. For example, the primary intermediary can use a secondary intermediary to assist targets in implementing rules (e.g., through capacity building), monitor targets for rule violations, or aid in enforcement activities against targets. There is, however, also the potential for feedback loops, where the primary intermediary uses the secondary intermediary for feedback on its regulatory activities, or to influence regulators' rule development or relations with the primary intermediary. Figure 1 elucidates how engaging a secondary intermediary can increase the complexity of regulatory governance (gray) beyond the basic three-party RIT model (black).³

² This configuration mirrors Havinga and Verbruggen's (2017) series circuit model of intermediation.

³ This focuses on primary and secondary intermediaries' influence on regulatory governance, and for simplicity, omits R's and T's potential influences on secondary intermediaries.

FIGURE 1
Primary intermediary's (I₁) potential influence through a secondary intermediary (I₂)



Conditions for Engaging Secondary Intermediaries

Two key conditions facilitate primary intermediaries' choice to use secondary intermediaries in regulatory governance, through either orchestration or delegation.⁴ First, a regulatory intermediary is more likely to turn to a secondary intermediary when the regulatory intermediary has a high level of independence and discretion over how it fulfills its regulatory functions. Minimal oversight and control from regulators creates a permissive environment for the intermediary's entrepreneurship in its regulatory activities and development of relations with a secondary intermediary. As Abbott, Levi-Faur, and Snidal (2017) note, regulators often create and use intermediaries for their independence, so this condition will frequently be met. In addition, in regimes involving multiple regulators with divergent goals, regulators can have difficulty collectively controlling their intermediaries, which increases intermediaries' de facto independence and ability to use secondary intermediaries.⁵ Second, a regulatory intermediary is more likely to engage a secondary intermediary when it lacks sufficient capabilities (e.g., resources, expertise, access) to fulfill its regulatory mandate (e.g., monitoring, enforcement), but can access actors with complementary capabilities. Intermediaries may have inadequate capabilities to fulfill particular regulatory functions because, for instance, regulators are unwilling to invest the necessary authority or

⁴ Here, I assume that primary intermediaries choose to engage secondary intermediaries through their own agency, rather than through regulators' influence, though this is possible. The conditions for primary intermediaries' use of secondary intermediaries are inspired by IO orchestration theory (Abbott, Genschel, Snidal, and Zangl 2016), but are adapted here to cover various types of regulatory intermediaries (beyond IOs), as well as their engagement of secondary intermediaries through both orchestration and delegation.

⁵ This relates to orchestration theory's assumption that "goal divergence" among an IO's member states facilitates IOs' orchestration of intermediaries (Abbott, Genschel, Snidal, and Zangl 2016, 27-29).

resources in such capabilities. A capability deficit generates incentives for seeking assistance from other actors with complementary capabilities.

The confluence of these two key conditions enhances regulatory intermediaries' capacity and incentives to engage their own intermediaries, but further conditions influence whether they use orchestration or delegation. For orchestration, a secondary intermediary must share the primary intermediary's regulatory governance goals to facilitate their voluntary collaboration (Abbott et al. 2015, 22-23). For example, for public interest regulation, civil society organizations (e.g., NGOs) that are active in the issue area and support regulation are likely to be willing collaborators. For delegation, the primary intermediary requires the authority (e.g., based on its institutional mandate) to delegate tasks to a secondary intermediary. The primary intermediary may also require particular capacities (e.g., monitoring) and resources (e.g., funding, legitimacy) to control the secondary intermediary's goals and behavior within the principal-agent relationship, and to ensure that the secondary intermediary performs the desired tasks in regulatory governance.

If circumstances change and affect these facilitative conditions for orchestration or delegation, the primary intermediary will likely alter its approach to using its secondary intermediary. The primary intermediary may face increasing control from regulators, which could constrain its independent entrepreneurship, and strategies of orchestration or delegation. Regulators may, for instance, increase their oversight of the primary intermediary (e.g., by amending a delegation contract), or they may induce changes in the primary intermediary's behavior by using or threatening to use an alternative, competing intermediary. Similarly, if the primary intermediary's capabilities increase, it may abandon its use of a secondary intermediary; or if the primary intermediary's needs change, it may select an alternative secondary intermediary with more appropriate capabilities.

Additionally, a secondary intermediary's goal divergence or deviation from the terms of delegation agreement can induce changes in the primary intermediary's approach to orchestration or delegation, respectively. The primary intermediary may mitigate these developments so that using the secondary intermediary continues to be a viable strategy. For example, with orchestration, the primary

intermediary may use tactics of argumentation and persuasion so that the secondary intermediary adopts its regulatory goals and continues its intermediary role. With delegation, the primary intermediary may increase its control over the secondary intermediary to ensure its activities complement the primary intermediary's needs and regulatory goals. Thus, primary intermediaries can adapt their relations with secondary intermediaries to address evolving challenges in regulatory governance.

The Regulatory Regime for International Crimes

Much of international law generally, and international criminal law specifically, resonates with the concept of regulation—controlling or influencing targets' behavior through the creation and application of rules. With regulation through international law, states are the primary regulators, as they negotiate and consent to international legal rules that regulate states' and, in some bodies of law, non-state actors' conduct. Though international criminal law is not typically discussed in terms of regulation,⁶ and international criminal justice can serve other objectives,⁷ this body of international law clearly aims to regulate individuals' behavior and prohibit the perpetration of core human rights violations. Generally, human rights violations are regulated based on state accountability; however, for a narrow set of core human rights violations, including genocide, crimes against humanity, and war crimes, state regulators have gradually developed a regulatory model based on individual criminal accountability (Sikkink 2009). International criminal law thus regulates the conduct of individuals by criminalizing the most serious atrocities and by facilitating the prosecution and punishment of perpetrators, which can deter violations (e.g., Vinjamuri 2010; Jo and Simmons 2016).

The beneficiaries of regulating international crimes are often interpreted as broadly as the international community or humanity as a whole. For example, the Preamble of the Rome Statute—the ICC's founding treaty—notes that international crimes “deeply shock the conscience of humanity” and

⁶ Several scholars in both political science (e.g., Sikkink 2009) and law (e.g., Cogan 2011) have applied the concept of regulation to international crimes.

⁷ The aims of international criminal law can also include justice for victims of atrocities, recording history, post-conflict reconciliation, etc. For an overview, see Cryer 2010.

“threaten the peace, security and well-being of the world.” More specifically, beneficiaries include communities in conflict, where atrocities may occur or have occurred, and the victims of crimes, who receive justice and potentially compensation and reparations based on international criminal law. Both local and international NGOs often represent these victims in the different phases of the regulatory process, including rule development, monitoring, and implementation (e.g., Clancy 2015; Ullrich 2016).⁸ Still, NGOs can also be considered beneficiaries in their own right when regulation fulfills their goals relating to deterring human rights violations and ending impunity for international crimes. Indeed, many human rights NGOs have consistently advocated for states to increase their regulation of international crimes and campaigned for a permanent international criminal court (e.g., Glasius 2006; Struett 2008).

Before the ICC, state regulators relied on decentralized, ad hoc intermediaries for prosecuting and punishing perpetrators of international crimes. Domestically, states could prosecute international crimes in national courts based on universal jurisdiction—the principle that certain crimes (e.g., genocide, crimes against humanity, war crimes, torture) are so harmful to international interests that any state is entitled (and possibly obligated) to bring proceedings against the perpetrator, regardless of the crime’s location or the perpetrator’s nationality. This decentralized enforcement suffered from collective action problems, and states had minimal incentives to prosecute crimes (Abbott 1999, 374). In practice, the principle of universal jurisdiction has been unevenly applied and highly contested (e.g., van der Wilt 2011).

At the international level, states created ad hoc tribunals and special courts to prosecute crimes in particular conflicts, including the International Criminal Tribunals for Yugoslavia and Rwanda (ICTY and ICTR), the Special Court for Sierra Leone, and the Special Tribunal for Lebanon. But states’ repeated creation of ad hoc tribunals led to “tribunal fatigue,” and UN Security Council members became increasingly opposed to “reinventing the wheel—and financing it—every time an outrage against humanity merits judicial intervention” (Scheffer 1996, 48–49). These tribunals also suffered from

⁸ They therefore act as intermediaries between regulators and beneficiaries, and regulatory intermediaries (e.g., international criminal tribunals, the ICC) and beneficiaries. For further discussion of the representatives of beneficiaries of regulation, see Koenig-Archibugi and Macdonald 2017.

significant regulatory weaknesses. The UN Assistant Secretary-General for Legal Affairs, for instance, called ad hoc tribunals “too costly, too inefficient, and too ineffective” (Zacklin 2004, 545).

The movement toward a permanent international criminal court with global scope was motivated by both efficiency and normative considerations (Fehl 2004). Compared to the ad hoc approach, creating a single, permanently available ICC could increase the efficiency of regulatory enforcement by reducing the transaction costs of international criminal prosecutions. A permanent ICC, with a potentially global membership, could also demonstrate the international community’s normative commitment to regulating core human rights violations through individual criminal accountability.

Thus, state regulators delegated authority to the ICC through the Rome Statute, which the UN Conference of Plenipotentiaries on the Establishment of an International Criminal Court (the so-called “Rome Conference”) adopted in 1998 and which entered into force in 2002. The Rome Statute includes numerous advancements in international criminal justice (e.g., an increased focus on restorative and victim-centered justice), but it also provides a comprehensive system for regulating international crimes, which ultimately targets individuals but also creates regulatory obligations for states parties. The Statute prohibits individuals from committing genocide, war crimes, and crimes against humanity,⁹ where no individual (not even a head of state) has immunity from prosecution. Convicted perpetrators face imprisonment, fines, and other penalties.¹⁰ The Rome Statute’s states parties are obligated to cooperate with the Court’s investigations and prosecutions (e.g., execute arrest warrants, comply with requests for documentation and evidence), enforce its decisions, and pass national laws facilitating the fulfillment of these obligations.¹¹

In terms of its regulatory function, the ICC targets individuals, prosecuting them when states parties (e.g., Uganda, the Democratic Republic of Congo, Central African Republic, Kenya) are unwilling or unable to prosecute perpetrators in national courts, or when the UN Security Council refers a situation

⁹ *Rome Statute of the International Criminal Court*, Part 2. There is also the potential for the ICC to prosecute the crime of aggression, but this has not yet entered into effect.

¹⁰ *Rome Statute*, Part 7.

¹¹ *Rome Statute*, Parts 9 and 10.

with suspected violations from a non-state party (e.g., Sudan, Libya). ICC judges interpret and apply international criminal law, convict perpetrators of crimes, and determine their punishment. The Rome Statute thus creates a global system where the ICC is the focal regulatory intermediary, functioning as a court of last resort with the independence and expertise to legitimately prosecute and punish international crimes. In addition, through the legal authority of its jurisprudence and precedents that develop international criminal law, the ICC can act as “secondary regulator” (Abbott, Levi-Faur, and Snidal 2017) of international crimes.

The ICC consists of four “organs”—the Presidency, Chambers (the judges), the Office of the Prosecutor (OTP), and the Registry (the administrative organ). But in the Rome Statute system, state regulators within the ICC’s Assembly of States Parties (ASP) play an active role in managing and enabling their regulatory intermediary. The ASP elects ICC judges and prosecutors, oversees the Court’s administration, approves its annual budget, and can recommend actions to address states’ non-cooperation with the Court. The ASP also has the authority to adopt and amend the Court’s rules and regulations, and to allow for dynamic rule development within the Rome Statute system (e.g., potentially, with sufficient ratifications, adding the crime of aggression). While support from state regulators in the ASP is crucial for the ICC to fulfill its regulatory function, the ASP is a political body made up of more than 120 states, where considerations beyond the effectiveness of regulatory governance can influence its activities. For example, when the ICC prosecutes state officials, these officials can attempt to influence the ASP’s relations with the Court.¹² Thus, while the ICC’s creation has transformed the regulatory regime for international crimes, it has not fully resolved its underlying issues relating to political interference and enforcement.

¹² For example, Kenya pursued amendments in the ASP, following the ICC’s indictment of Kenyan President Uhuru Kenyatta and Deputy President William Ruto.

The ICC's Use of NGO Intermediaries in Regulating International Crimes

The ICC has a high level of independence from state regulators but has limited capabilities—the two foundational conditions that promote primary intermediaries' engagement of secondary intermediaries. The Court has considerable discretion over how it conducts its activities. Independence, after all, is fundamental to the regulatory function of a court, as political interference undermines the legitimacy of prosecutions and judicial rulings. The Rome Statute thus contains many provisions that protect ICC officials' independence, and support prosecutorial and judicial discretion. The ICC's independence, however, is not absolute: the Court depends on state regulators for resources, cooperation, and enforcement action, and it is subject to some forms of oversight from the ASP. However, within this “constrained independence” that is common to all international courts,¹³ the ICC has the capacity for entrepreneurship and to develop its own institutional policies and practices. Some are court-wide, such as the ICC's “one court” policy for external communications, while others are confined to particular organs, such as the Regulations of the Registry, or the OTP's policies on sexual and gender-based crimes, victims' participation, and so on.

From its inception, the ICC also has suffered from limited capabilities for fulfilling its ambitious, global regulatory mandate—both in terms of its operational capacity and its legitimacy.¹⁴ Notably, the OTP has lacked the operational capacity necessary to investigate and prosecute international crimes. Simultaneously conducting multiple investigations in diverse, potentially insecure contexts demands substantial local knowledge and access, as well as considerable financial resources and personnel. The OTP has struggled to meet these demands with its limited local expertise and institutional resources, and thus has had limited capacity for conducting field operations in support of its investigations and prosecutions.

¹³ Helfer and Slaughter (2005) delineate the various constraints on international judges' independence in adjudication. De Silva (2016) theorizes constraints on international judges' and other court officials' decision-making in their judicial *and* non-judicial activities (e.g., engaging intermediaries).

¹⁴ The ICC faces significant challenges in other areas of its work (e.g., victims' participation and assistance), but this analysis focuses on the ICC's key regulatory activities of prosecuting and punishing international crimes.

Relatedly, the ICC has had significant difficulties obtaining cooperation and resources from states, which has weakened its operational capacity and influence on regulatory targets. Lacking its own police force, the ICC is reliant on states to enforce its arrest warrants—an obligation that states have frequently contravened due to political considerations. Initially, the United States persuaded numerous states to sign bilateral non-surrender agreements, under which states committed not to comply with potential ICC arrest warrants against U.S. nationals (e.g., Kelley 2007). More recently, many ICC states parties have failed to fulfill their obligation to arrest Sudanese President Omar al-Bashir since the ICC issued warrants for his arrest in 2009 and 2010 (e.g., Bosco 2014, 155-59). This lack of cooperation and enforcement undermines the credibility of the threat of ICC prosecution and thus the Court's potential for deterring international crimes.

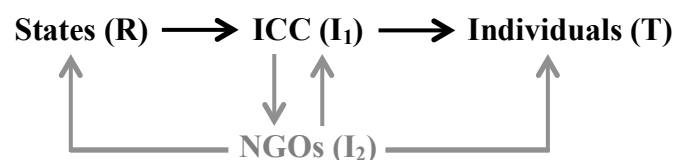
One of the ICC's overarching challenges, which permeates virtually every area of its operations, has been its lack of financial support from state regulators in the ASP. While the ICC's activities have expanded since its creation, state regulators within the ASP and its Committee on Budget and Finance have pressured the Court to limit its budget. Particularly following the 2008 global financial crisis, states parties generally have been less willing to invest in the ICC, and key contributors to the Court's budget have pushed for a budgetary target of "zero nominal growth" (e.g., Evenson 2015). In various forums in which ICC officials engage with representatives of states parties, such as ASP meetings, working groups, and diplomatic meetings, ICC officials have advocated for greater cooperation and resources from states parties, but these core challenges have persisted and undermined the ICC's operational capacity overall.

The ICC has also struggled to legitimize its approaches to implementing the Rome Statute, and to prosecuting and punishing international crimes. As the regulatory process rests on the legitimacy of rules and their implementation, and the Court's legitimacy underpins states' support for it, these legitimacy challenges are highly problematic for the Court. The OTP in particular has faced opposition to how it has exercised prosecutorial discretion. African states, including ICC states parties, have accused the Court of being biased against Africa, as all its prosecutions have targeted Africans (e.g., Hansen 2013). As the ICC Prosecutor has observed, "concerns over loss of support from the Court's largest constituency loom large,

while misperceptions, lack of knowledge and understanding gain ground; anti-ICC elements are hard at work to discredit the Court and lobby for non-support” (Bensouda 2010). The prosecutor has noted the Court’s need for assistance in this area: “the Court itself, as a judicial institution, is not at all well equipped to deal with wide-ranging political campaigning against it” (Bensouda 2010).

Using its discretion over its institutional policies and practices, and aiming to overcome its significant challenges in fulfilling its regulatory mandate, the ICC has developed strategies of orchestrating and delegating authority to secondary intermediaries with complementary capabilities. It has overwhelmingly relied on local and international NGOs as its secondary intermediaries, and the ICC has even applied the term “intermediaries” to the actors, commonly NGOs, that interact with local communities (including witnesses and victims) on its behalf. The ICC’s use of secondary intermediaries, therefore, has been both implicit and explicit, and achieved through both orchestration and delegation. The ICC has sought to use NGOs’ distinct capabilities (e.g., expertise, advocacy, access) to strengthen its ability to fulfill its regulatory function, and increase its influence on both regulators and targets (see Figure 2). Since the ICC’s position is that rule development within the Rome Statute “is foremost a matter for states” (Song 2010a),¹⁵ its orchestration and delegation strategies have primarily focused on improving its operational capacity and legitimacy in regulatory governance.

FIGURE 2
The ICC’s use of NGO intermediaries in regulating international crimes



¹⁵ For instance, in the lead up to the Rome Review Conference, where key amendments to the Rome Statute would be debated, ICC President Song (2010a) clarified to NGOs that “The Court will have no role whatsoever in the discussions on substantive legal amendments to the Statute.”

Orchestrating NGO Intermediaries

For orchestration, the most readily accessible actors with both shared goals and complementary capabilities have been NGOs working on human rights and humanitarian issues, many of which advocated for the ICC's creation through the NGO Coalition for an International Criminal Court (CICC) and contributed their expertise to the negotiations for the Rome Statute (e.g., Deitelhoff 2009; Glasius 2006; Haddad 2013; Struett 2008). These NGOs, such as Amnesty International, Fédération Internationale des Ligues des Droits de l'Homme (FIDH), Human Rights Watch, and the International Bar Association, have continued to be invested in the Court and its effectiveness in their areas of focus. For example, some NGOs, such as Redress, advocate for victims' interests, while others, such as the International Bar Association, are more concerned with the integrity of prosecutions and judicial proceedings at the ICC. Thus, many NGOs have incorporated monitoring and providing feedback on the ICC's activities, and advocating for support for the Court, into their work. The CICC, which has expanded to include approximately 2,500 NGOs, continues to serve as the umbrella NGO for coordinating and facilitating these NGO efforts (e.g., Haddad 2013). The CICC's mission is uniquely dedicated to supporting the ICC,¹⁶ but many human rights NGOs' goals overlap with the ICC's mandate for prosecuting and punishing international crimes. In addition, given their desire to monitor and provide feedback to the ICC, these NGOs are eager to access and collaborate with the Court, which facilitates orchestration.

NGOs also have capabilities that can help to address the ICC's needs for greater operational capacity and legitimacy in its regulatory activities. NGOs' extensive expertise in international criminal law, human rights, and the conflicts and communities relevant to the Court's work is highly valuable for the ICC's operations, including its strategies for investigating and prosecuting international crimes. Many NGOs also possess valuable capabilities in advocating for greater cooperation and resources from state regulators, and legitimizing the Court's activities. NGOs' status as representatives of civil society lends weight to their advocacy. In particular, the CICC believes its capacity to speak on behalf of approximately

¹⁶ Interview with Legal Officer, CICC, The Hague, The Netherlands, 6 June 2014.

2,500 NGOs from around the world strengthens its advocacy efforts.¹⁷ In addition, many of these international NGOs have highly valuable expertise and resources for effective advocacy campaigns at the domestic, transnational, and international levels. They often have offices in multiple regions and are embedded in networks, which they can mobilize in their advocacy efforts. ICC officials are well aware of this resource at their disposal: the ICC president, for instance, has remarked that NGOs “play a vital role in the Rome Statute system with their advocacy and expertise,” and that “this is a great wealth that [the ICC] should make use of” (Fernandez de Gurmendi 2015).

Thus, the ICC has developed policies and practices for orchestrating NGOs to influence state regulators and targets (i.e., individuals who have perpetrated or may perpetrate international crimes), and to inform its approaches for implementing the Rome Statute (see Figure 2). The ICC’s relations with NGOs have been extensive and occurred in multiple forums. In general, given their monitoring and advocacy interests, NGOs have observed and participated in key meetings, such as the annual meeting of the ASP and working groups where representatives from states parties and Court officials discuss institutional issues. The ICC, however, has made a concerted effort to orchestrate NGOs in dedicated forums. On a biannual or an annual basis since 2003, the ICC has convened NGOs in “strategic meetings” at the Court (e.g., ICC 2007, 7). At these meetings, officials from the ICC’s presidency, registry, and OTP engage in dialogue on a range of institutional issues with NGO officials, particularly those from the CICC and key NGOs within its Steering Committee (e.g., Amnesty International, FIDH, Human Rights Watch). In addition, Court officials more informally maintain relations with NGO officials through meetings and communications. Considering the Court’s resource constraints, it has most regularly interacted with the major international NGOs that make themselves available to it, especially those with a presence in The Hague.¹⁸

The ICC’s “regular dialogue” with NGOs “is extremely helpful to [its] work” (Fernandez de Gurmendi 2015), as it allows the Court to access NGOs’ expertise and to influence their advocacy. The

¹⁷ Ibid.

¹⁸ Interview with NGO official, The Hague, The Netherlands, 27 May 2014.

ICC as a whole and its individual organs draw on NGOs' expertise in developing their approaches to implementing the Rome Statute. For example, when the OTP has developed policies concerning its investigations and prosecutions of international crimes, it has circulated draft policies to NGOs for feedback based on their expertise and in the interest of ensuring the policies maximize the OTP's operational capacity for effectively prosecuting international crimes.

The ICC also aims to orchestrate NGOs' advocacy efforts to regulate its targets and persuade state regulators to increase their support for the Court. The ICC encourages NGOs' advocacy against international crimes, in general and with reference to particular conflicts. For example, at the OTP-NGO Roundtable in 2010, the prosecutor encouraged NGOs to "[insist] on the need to stop the crimes in Darfur" (Bensouda 2010). However, given the ICC's dependence on state regulators to support its operational capacity, much of the ICC's orchestration of NGO advocacy focuses on increasing cooperation, enforcement action, and resources from state-regulators, both individually and in the ASP. In its meetings with NGOs, for instance, it identifies key areas where they should focus their advocacy with states. The prosecutor, for example, has explicitly called on NGOs to fulfill their "important role" in encouraging states "to implement the arrest warrants" against Omar al Bashir (Bensouda 2010),¹⁹ and the ICC president has emphasized the Court's need to "secure the necessary resources for parallel trials... so that no trial is delayed due to any shortage of funds" (Song 2010b). As the ICC presidency focuses on promoting states' accession to the Rome Statute (and thus expanding the Court's operational capacity), the president has also encouraged NGOs' advocacy in this area. Notably, the CICC has a dedicated campaign for "universal ratification" of the Rome Statute, in which it coordinates with the Court, targets particular states periodically, and mobilizes civil society within those states to push for ratification (e.g., Haddad 2013, 196–198).²⁰ In addition, to ensure that the ICC can function as a court of last resort, the ICC has encouraged NGOs to continue to "develop the impact of international justice on the national level" and advocate for "the national implementation of Rome Statute crimes" (Song 2010b).

¹⁹ See also Song 2010a.

²⁰ Interview, Legal Officer, CICC.

The ICC also has orchestrated NGOs use of their credibility as representatives of civil society and their expertise in human rights and international crimes to defend the legitimacy of the Court's approaches to prosecuting and punishing international crimes. The ICC has appealed to NGOs to help counter "political attacks" (e.g., Fernandez de Gurmendi 2016), which can undermine its legitimacy and, by extension, its operations. The OTP, for instance, has discussed "strategies for dealing with President Al Bashir's campaign on the alleged African-bias of the Court" with NGOs (Bensouda 2010). Thus, through its broad orchestration of NGOs, the ICC has aimed to mitigate its wide range of operational and legitimacy challenges, improve its ability to prosecute and punish international crimes, and strengthen regulatory governance in the Rome Statute system.

Delegating Field Operations to NGO Intermediaries

Based on its institutional authority, as defined in the Rome Statute, the ICC has justified its policies and practices of delegating key regulatory tasks to local intermediaries, most commonly local NGOs.²¹ While there is no mention of "intermediaries" in the Rome Statute or other subsidiary texts of the ICC, the Rome Statute authorizes the ICC to, "in exceptional circumstances, employ the expertise of gratis personnel offered by States parties, intergovernmental organizations or nongovernmental organizations to assist with the work of any of the organs of the Court."²² State regulators thus gave the ICC the authority to delegate tasks, which would normally form part of the ICC's work, to other actors with complementary capabilities. However, through the ICC's discretion over its institutional policies and practices, what state regulators originally framed as an exception has become the rule: by the Court's own admission, "the assistance of intermediaries is critical to the effective work of the Court."²³

Though it has established field offices with ICC personnel where possible, the Court, due to its limited operational capacity (e.g., resources, access, expertise) has relied on delegating key

²¹ The ICC also uses IOs, grassroots associations, and individuals as intermediaries.

²² Article 44(4), *Rome Statute*.

²³ Prosecution's submissions in response to Trial Chamber's oral request of 10 February 2010, ICC-01/04-01/06-2310-Red, 25 February 2010, at para 14. Available from https://www.icc-cpi.int/CourtRecords/CR2010_01102.PDF.

responsibilities to agents with the capabilities to conduct essential field operations on its behalf. The ICC explicitly refers to these agents, which connect it to relevant local actors (e.g., witnesses, victims), as its “intermediaries.” The ICC has delegated authority to local intermediaries either on an ad hoc basis or by formal agreements (e.g., memoranda of understanding). The Court has remunerated some intermediaries, but considering the ICC’s limited resources, many intermediaries have, more or less, volunteered their services. These intermediaries may be motivated to see perpetrators prosecuted and punished. They may also seek the authority and legitimacy of performing tasks for the Court, which can, for example, help them to attract donor funding or gain status within their respective communities. Thus, the ICC’s strategy of delegating tasks to local intermediaries has depended not only on their complementary capabilities in specific local contexts, but also their willingness to take up tasks, potentially voluntarily or for minimal compensation.

The OTP has been most active in delegating tasks that serve the Court’s mandate of prosecuting and punishing international crimes.²⁴ It has used local intermediaries’ knowledge of and access to local communities to enhance its field presence and conduct activities directly related to investigations and prosecutions. The OTP has frequently delegated authority to local NGO intermediaries to gather witnesses and other evidence of rule violations. While the OTP’s approach to delegation was initially somewhat ambiguous, in the *Lubanga* case the prosecution clarified that, before it recruited any intermediaries, it would make “considerable effort to identify and evaluate intermediaries’ reliability, knowledge, integrity and ability to perform tasks discretely.”²⁵ After delegating to an intermediary, the OTP would “monitor and evaluate their productivity, loyalty, accuracy, security, reliability and honesty.”²⁶ The OTP has depended on these practices of delegating responsibilities to local

²⁴ Other organs of the Court also delegate tasks that are less directly relevant to regulation; for example, the Registry delegates responsibilities for communicating to victims and communities to local intermediaries.

²⁵ Prosecution’s submissions, ICC-01/04-01/06-2310- Red, 25 February 2010, at para 15.

²⁶ *Ibid.*, para 15.

intermediaries, acknowledging that its prosecutions would be “impossible without the assistance of intermediaries.”²⁷

The ICC’s Changing Approaches to NGO Intermediaries

Over its years of operation, the ICC has revised its approaches to orchestrating and delegating authority to NGO intermediaries in ways that match the theoretical expectations previously discussed. Specifically, as issues with NGO intermediaries’ goals, capabilities, and performance have arisen, the ICC has modified its approaches to orchestration and delegation.

Orchestration: Ensuring Goal Convergence

In the initial years after the Rome Statute entered into force, both the ICC and many of the NGOs within the CICC that had advocated for its creation focused on establishing a functional institution that could fulfill its regulatory mandate. Their common goals included developing the Court’s rules of procedure, regulations, and policies, and advocating that states join the Court and implement the Rome Statute in their domestic legislation. However, since the ICC has begun its prosecutions and trials, many NGOs have become critical of the ICC’s performance and advocated for various reforms, depending on their areas of focus (e.g., victims’ participation, fair trial rights). The ICC and its organs have adjusted some approaches based on this feedback (e.g., developing and adapting institutional policies), but in some instances the Court has observed that NGOs have “a lack of understanding of the realities of the Court,” and that NGOs’ feedback often has become “too principled and sometimes very contradictory.”²⁸ Thus, the goals of the ICC and NGOs have subtly diverged over time.

Relatedly, for the Court, the complementarity between its needs and NGOs’ advocacy efforts has slightly declined over time. While the ICC has encouraged NGOs to advocate for action from state regulators on particular issues affecting the Court’s operational capacity, NGOs’ advocacy strategies have

²⁷ Ibid., para 12.

²⁸ Interview with senior official, Registry, ICC, The Hague, The Netherlands, 11 June 2014.

been extended well beyond these areas, including aspects of the Court's work in which the ICC has not desired state regulators' involvement, such as legal aid for the defense and the use of intermediaries.²⁹ For the ICC, NGOs' advocacy with states has had the perverse effect of increasing the ASP's interference and oversight in these areas, and reducing the Court's ability to independently (and, potentially, effectively) fulfill its regulatory function. For example, one ICC official has noted that, through NGOs' advocacy with states, "everything becomes a budgetary issue," where states modify the ICC's regulatory approaches to minimize costs.³⁰

Based on these changes in the compatibility of the ICC's and NGOs' goals, the ICC has revised its approach, and become more selective and strategic in orchestrating NGO intermediaries. When NGOs became critical of the first ICC prosecutor's policies and practices, for example, the OTP reduced the scale of its consultations with NGOs and their access to the OTP.³¹ Particularly with the perceived connection between NGO advocacy and increased state oversight, the Court has continued to be more selective in its engagement, moving from an "open dialogue" with NGOs toward targeted collaborations based on aligned goals and capabilities in particular areas of strategic importance to the Court.³² The ICC, for example, has circulated its strategies to NGOs less frequently and has focused the agendas of the ICC-NGO strategic meetings on specific priorities.³³ The Court has narrowed its approach to orchestrating NGOs while it has expanded its efforts to "build trust" directly with state regulators, particularly regarding budgetary issues.³⁴ Essentially, Court officials have sought to, in the words of one ICC official, "take ownership of the institution"³⁵ and invest effort in improving relations with states parties in the ASP.

²⁹ Ibid.

³⁰ Ibid.

³¹ Interviews with officials from two NGOs, The Hague, The Netherlands, 21 and 27 May 2014.

³² Interview, senior official, ICC Registry.

³³ Ibid.

³⁴ Ibid.; interview with senior official, OTP, ICC, The Hague, The Netherlands, 9 June 2014.

³⁵ Interview, senior official, ICC Registry.

Delegation: Increasing Control and Ensuring Complementary Capabilities

Because the ICC's initial practice of delegating tasks to local intermediaries proved problematic, the Court has also altered its approach to increase its control over intermediaries and ensure their performance complements the Court's needs. In the ICC's first trials, the OTP's delegation of investigatory responsibilities to intermediaries undermined its cases against alleged perpetrators. The defense, ICC judges, and NGO observers all questioned the credibility of the evidence and witness testimony obtained by local intermediaries, some of which were accused of bribing and coaching witnesses. In general, the OTP's use of intermediaries for investigations raised numerous issues for the OTP's prosecutions and ICC trials.³⁶ The Court thus came to see "intermediaries as liabilities" (Ullrich 2016), and it became clear that, for local intermediaries to aid rather than undermine the ICC's prosecution and punishment of international crimes, the Court needed to better regulate and control its local intermediaries. NGOs also expressed concerns regarding the Court's treatment of its intermediaries (e.g., compensation, protection). These issues on both sides of the delegation relationship led the ICC to revise its approach to delegating to local intermediaries to ensure that intermediaries' activities would meet the Court's needs and that they would be willing to accept tasks delegated by the Court.

The ICC therefore developed "Guidelines Governing the Relationship between the Court and Intermediaries," as well as a "Code of Conduct" and "Model Contract" for intermediaries (ICC 2014). The ICC finalized the Draft Guidelines in 2011, and the ASP tabled them for discussion at two consecutive meetings in 2012 and 2013 (ICC 2013). The ASP, however, only adopted them in 2014. The budget-conscious ASP was apparently hesitant to institutionalize the intermediary role (Clancy 2015, 245), and states seemed divided on whether the ASP should support the Court's use of intermediaries.³⁷ The Court, however, reassured the ASP that the use of intermediaries, which "undertake work that would be extremely costly for the Court to perform," was "ultimately cost effective" (ICC 2013). Thus, by

³⁶ The use of intermediaries for investigations also has raised issues regarding confidentiality, disclosure, and the equality of arms between prosecution and defense (Baylis 2009).

³⁷ Interview, Legal Officer, CICC.

adopting the guidelines, the ASP formalized the delegation chain between state-regulators, the ICC (their primary intermediary), and its (secondary) intermediaries.

The guidelines represent the ICC's attempt to tighten control of its intermediaries (e.g., Haslam and Edmunds 2012) so that their performance complements the ICC's needs for operational assistance and legitimacy. Though they are non-binding, the guidelines formalize the delegation relationship between the ICC and its intermediaries, and clarify the "rights and duties for both parties" (ICC 2014, 3). They delineate the selection criteria; forms of accountability; and potential for remuneration, compensation, or reimbursements for intermediaries. The guidelines, particularly the associated Code of Conduct, set clear expectations for intermediaries' performance that ensure that their activities fulfill the Court's needs and meet legal standards. They aim, for example, "to preserve the integrity of the judicial process to the maximum extent possible" (ICC 2014, 3), and provide guidance for conducting activities (e.g., gathering evidence, interviewing witnesses) in support of prosecutions and other areas of the Court's work. Through these guidelines, the ICC has sought to strengthen its control over its intermediaries in the principal-agent relationship and thus improve intermediaries' contribution to its regulatory activities.

Conclusion

The RIT model of regulatory governance highlights how regulation can be decentralized, indirect, and contingent on the agency of different types of actors. Under certain facilitative conditions, regulatory intermediaries can engage their own intermediaries, through orchestration or delegation, to address key challenges in regulatory governance and thus increase its complexity.

The regulatory regime for international crimes faces innumerable challenges, which state regulators have sought to mitigate by creating a permanent, focal intermediary for prosecuting, punishing, and thus regulating international crimes. The ICC, however, has encountered significant problems in fulfilling its regulatory mandate that involve each party in the RIT model. State regulators have failed to provide the necessary cooperation, resources, and enforcement action to support the ICC's prosecution

and punishment of international crimes. The ICC itself has limited capacity to extend its reach to the local communities it serves and to legitimize its regulatory activities. Targets of regulation, particularly state officials, have sought to evade accountability. As a result, the ICC has suffered severe limitations.

The ICC has used its high level of discretion over its institutional policies and practices, and its access to NGOs with capabilities that complement its needs, to engage NGOs as secondary intermediaries, and thus increase its operational capacity, legitimacy, and influence on state regulators and targets. When elements of the ICC's initial orchestration and delegation strategies proved problematic, the ICC adapted its strategies for using NGO intermediaries. There are, however, clear limits to what the ICC can achieve through NGO intermediaries; they can mitigate but not fully solve fundamental issues in the Rome Statute system of regulating international crimes. It is telling that the ICC's use of NGO intermediaries has been weighted toward changing the behavior of state regulators or compensating for their weak support.

This analysis of the regulatory regime for international crimes thus suggests that, despite the influence of intermediation and the analytical value of disentangling intermediary complexity, regulators can retain the greatest influence in regulatory governance. Regulators may develop ambitious rules and delegate authority to intermediaries to amplify their influence, but the regulatory system's effectiveness ultimately depends on continued commitment and support from regulators.

References

- Abbott, Kenneth W. 1999. International relations theory, international law, and the regime governing atrocities in internal conflicts. *American Journal of International Law* 93 (2): 361–79.
- Abbott, Kenneth W., Philipp Genschel, Duncan Snidal, and Bernhard Zangl, eds. *International organizations as orchestrators*. New York: Cambridge University Press, 2015a.
- Abbott, Kenneth W., Philipp Genschel, Duncan Snidal, and Bernhard Zangl. Two logics of indirect governance: Delegation and orchestration. *British Journal of Political Science* FirstView (July 2015b): 1–11.
- Abbott, Kenneth W., David Levi-Faur, and Duncan Snidal. 2017. Theorizing intermediaries in regulatory governance. *Annals of the American Academy of Political and Social Science*.
- Baylis, Elena. 2009. Outsourcing investigations. *UCLA Journal of International Law and Foreign Affairs* 14: 121–47.
- Bensouda, Fatou, Prosecutor of the International Criminal Court. 19 October 2010. “Introductory Remarks,” OTP-NGO Roundtable, International Criminal Court, The Hague, The Netherlands. Available from https://www.icc-cpi.int/NR/rdonlyres/A5205694-1145-4634-A533-2FB728CA276A/282575/OTPNGORoundtable_DPintroductoryremarks.pdf
- Bosco, David. 2014. *Rough justice: The International Criminal Court’s battle to fix the world, one prosecution at a time*. New York: Oxford University Press.
- Clancy, Déirdre. 2015. “They told us we would be part of history”: Reflections on the civil society intermediary experience in the Great Lakes region. In *Contested justice: The politics and practice of International Criminal Court interventions*, eds. Christian De Vos, Sara Kendall, and Carsten Stahn, 219–48. Cambridge: Cambridge University Press.
- Cogan, Jacob Katz. 2011. The regulatory turn in international law. *Harvard International Law Journal* 52: 321.

- Cryer, Robert. 2010. "The objectives of international criminal law." In *An introduction to international criminal law and procedure*, eds. Robert Cryer, Hakan Friman, Darryl Robinson, and Elizabeth Wilmshurst, 22–40. Cambridge: Cambridge University Press.
- De Silva, Nicole. 2016. How international courts promote compliance: Strategies beyond adjudication. PhD diss., University of Oxford.
- Deitelhoff, Nicole. 2009. The discursive process of legalization: Charting islands of persuasion in the ICC case. *International Organization* 63 (01): 33–65.
- Evenson, Elizabeth. 7 August 2015. "The ICC: Too important to let fail." *The Globe and Mail*.
- Fehl, Caroline. 2004. Explaining the International Criminal Court: A 'practice test' for rationalist and constructivist approaches. *European Journal of International Relations* 10 (3): 357–94.
- Fernandez de Gurmendi, Silvia, President of the International Criminal Court. 26 June 2015. "Keynote speech at event marking Day of International Criminal Justice," The Hague, The Netherlands. Available from http://www.icc-cpi.int/iccdocs/presidency/150626_Remarks_at_event_marking_International_Justice_Day.pdf.
- Fernandez de Gurmendi, Silvia, President of the International Criminal Court. 9 June 2016. "International Criminal Court today: Challenges and opportunities," Seminar on "International Criminal Court – the past, the present and the future," Helsinki, Finland. Available from <https://www.icc-cpi.int/itemsDocuments/1600609-Helsinki-keynote-speech-ICC-President-Fernandez.pdf>.
- Glasius, Marlies. 2006. *The International Criminal Court: A global civil society achievement*. London: Routledge.
- Glasius, Marlies. 2009. What is global justice and who decides? Civil society and victim responses to the International Criminal Court's first investigations. *Human Rights Quarterly* 31 (2): 496–520.
- Haddad, Heidi Nichols. 2013. After the norm cascade: NGO mission expansion and the Coalition for the International Criminal Court. *Global Governance* 19: 187–206.
- Hansen, Thomas Obel. 2013. Africa and the International Criminal Court. In *Handbook of Africa's international relations*, ed. Tim Murithi, 165–79. New York: Routledge.

- Havinga, Tetty, and Paul Verbruggen. 2017. Understanding complex governance relationships in food safety regulation: The RIT model as theoretical lens. *Annals of the American Academy of Political and Social Science*.
- Hawkins, Darren G., David A. Lake, Daniel L. Nielson, and Michael J. Tierney, eds. *Delegation and agency in international organizations*. New York: Cambridge University Press, 2006.
- Helfer, Laurence R., and Anne-Marie Slaughter. 2005. Why states create international tribunals: A response to Professors Posner and Yoo. *California Law Review* 93 (3): 899–956.
- International Criminal Court. September/October 2007. International Criminal Court newsletter #17. Available from https://www.icc-cpi.int/NR/ronlyres/9D0C76FB-3950-49B2-91A5-5E10539B4EC7/278448/ICCNL17200709_En.pdf.
- International Criminal Court, Assembly of States Parties. 30 October 2013. Second report of the Court on the financial implications of the draft Guidelines governing the relations between the Court and Intermediaries, ICC-ASP/12/53, Twelfth Session, The Hague. Available from https://asp.icc-cpi.int/iccdocs/asp_docs/ASP12/ICC-ASP-12-53-ENG.pdf.
- International Criminal Court. 17 March 2014. Guidelines governing the relations between the Court and Intermediaries for the Organs and Units of the Court and Counsel working with intermediaries. Available from <https://www.icc-cpi.int/iccdocs/lt/GRCI-Eng.pdf>.
- Jo, Hyeran, and Beth A. Simmons. 2016. Can the International Criminal Court deter atrocity? *International Organization* 70 (3): 443–75.
- Kelley, Judith. 2007. Who keeps international commitments and why? The International Criminal Court and bilateral nonsurrender agreements. *American Political Science Review* 101 (3): 573–89.
- Koenig-Archibugi, Mathias, and Kate Macdonald. 2017. The role of beneficiaries in transnational regulatory processes. *Annals of the American Academy of Political and Social Science*.
- Scheffer, David J. 1996. International judicial intervention. *Foreign Policy*, no. 102: 34–51.

- Sikkink, Kathryn. 2009. From state responsibility to individual criminal accountability: A new regulatory model for core human rights violations. In *The politics of global regulation*, eds. Walter Mattli and Ngaire Woods, 121–50. Princeton: Princeton University Press.
- Song, Sang-Hyun, President of the International Criminal Court. 2 March 2010a. Statement of the ICC President to the NGO Roundtable of the Review Conference Working Group. Available from https://www.icc-cpi.int/NR/rdonlyres/A059FAFF-8F60-413E-89A8-973CBCB77553/281613/100302_RCWG_opening_remarks_to_NGO.pdf.
- Song, Sang-Hyun, President of the International Criminal Court. 18 October 2010b. Remarks at the opening of ICC-NGO roundtable, The Hague. Available from <https://www.icc-cpi.int/NR/rdonlyres/056BEAE1-062D-4470-8403-54BB3D6BE4A9/282558/101018PresidentSongNGORoundtableOpeningRemarks.pdf>.
- Struett, Michael. 2008. *The politics of constructing the International Criminal Court: NGOs, discourse, and agency*. New York: Palgrave Macmillan.
- Ullrich, Leila. 2016. Beyond the “global–local divide”: Local intermediaries, victims and the justice contestations of the International Criminal Court. *Journal of International Criminal Justice* 14 (3): 543–68.
- van der Wilt, Harmen. 2011. Universal jurisdiction under attack: An assessment of African misgivings towards international criminal justice as administered by western states. *Journal of International Criminal Justice* 9 (5): 1043–66.
- Vinjamuri, Leslie. 2010. Deterrence, democracy, and the pursuit of international justice. *Ethics & International Affairs* 24 (2): 191–211.
- Zacklin, Ralph. 2004. The failings of ad hoc international tribunals. *Journal of International Criminal Justice* 2 (2): 541–45.