he regards as currently worthy of attention, including human rights, the principle of mutual recognition, the impact of the principle of non-discrimination on the grounds of nationality, and the European Public Prosecutor. On each of the issues the analysis is short but the questions raised and recommendations put forward are at least worthy of further consideration by practitioners, policy-makers and scholars alike. There is no doubt that this book makes a timely and valuable addition to a still relatively short bibliography of books devoted to EU criminal law.

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**Jann K Kleffner, COMPLEMENTARITY IN THE ROME STATUTE AND NATIONAL CRIMINAL JURISDICTIONS**
Oxford: University Press (*www.oup.co.uk*), 2008. xxvii + 385 pp. ISBN 9780199238453. £60.

A matter of fundamental importance for the drafters of the Rome Statute (1998) of the International Criminal Court (ICC) was striking the correct balance between the role of the ICC and that of "states parties" in the prosecution of crimes covered by the Statute: genocide, crimes against humanity, war crimes and, perhaps in the future, aggression (collectively, "ICC crimes"). When should the ICC itself prosecute an individual for violations of these crimes – thereby taking on a role which previously had been exercised (to the extent it was exercised at all) by sovereign states – and when should a prosecution be left to the states themselves? If the Rome Statute's rules for ICC involvement in a case had been too strict, the ICC would have been precluded from prosecuting a case even where the apposite national court was unwilling to do so – perhaps for reasons of corruption, political expedience or inability – thereby denuding the Court of much of its *raison d'être*. If the requirements for the ICC taking on a case were not strict enough, states would have been highly unlikely to have signed up to the Rome Statute, for fear that they would be giving away authority over an area considered to be a sovereign prerogative.

The result was the principle of complementarity: the jurisdiction of the ICC is to be exercised in a way that does not usurp the pre-existing jurisdiction held by states but, rather, complements it. The Rome Statute envisages that the national state has primary competence to investigate and prosecute ICC crimes and forecloses the ICC from deciding a case (by deeming it inadmissible) where the matter is being (or has been) dealt with by the national state with jurisdiction – unless the state is (or was) unwilling or genuinely unable to investigate or prosecute a matter. As Kleffner observes, the principle of complementarity "reflects the intention that the international is designed to supply the deficiencies of the national. The ICC is envisaged as the mechanism through which any gaps left by the deficiencies of domestic suppression are filled, or at least significantly narrowed." Thus, it is only in unusual circumstances that the ICC will become engaged in a prosecution. Indeed, it was the complementarity provisions that led the late Robin Cook (then UK Foreign Secretary) to advise the House of Commons that the UK had nothing to fear in signing the Rome Statute: "Members on both sides of the House should have a robust confidence that the British legal system has adequate remedies … and can satisfactorily demonstrate to the International Criminal Court that any such allegations have been properly investigated and, where appropriate, prosecuted. In short, British service personnel will never be prosecuted

by the International Criminal Court because any bona fide allegation will be pursued by the British authorities" (HC Deb 3 April 2001, col 222).

While, on its face, the concept of complementarity sounds simple enough, the content of the concept is not always clear. It is this content that Kleffner sets himself the task of clarifying in his excellent book. He meets this brief admirably: the book provides an extremely valuable, thoughtful and carefully-argued study of the concept of complementarity. Closely linked to Kleffner's focus on the relevant provisions of the Rome Statute and their impact on the functioning of the ICC is his consideration of the role of states in the investigation and prosecution of ICC crimes. After all, with complementarity, it is states and not the ICC which are envisaged as the primary actors in the prosecution of the ICC crimes under the Rome Statute.

In his first substantive chapter, Kleffner considers the national enforcement of ICC crimes prior to the establishment of the Rome Statute. His analysis outlines the many shortcomings on the part of states in this regard, influenced, as they so often are, by the vicissitudes of national politics. In the next chapter, he provides valuable background by examining the emergence of the doctrine of complementarity in the Rome Statute. His analysis of the work of the International Law Commission on the issue and the preparatory work leading to the Rome Statute is rich in detail, making this part of the book an invaluable resource. In the same chapter he contrasts the complementarity approach in the Rome Statute with previous approaches to the relationship between national and international criminal jurisdictions. Here he considers the Nuremberg Trial after the Second World War and the *ad hoc* international criminal tribunals for the former Yugoslavia and Rwanda, established by the United Nations Security Council in 1993 and 1994 respectively. We see that with these earlier international tribunals matters were simpler: their statutes gave them primacy over the national judicial systems.

More complicated, of course, is the system of complementarity where the authority to prosecute is shared between the ICC and states parties. It is the complicated mechanics of complementarity – its content and how it should be used in practice – which are the focus of chapters IV to VI of the work. Chapter IV explores complementarity as a legal principle (as set out in the preamble and article 1 of the Rome Statute) and as criteria for admissibility (as provided at articles 17 and 20(3)), chapter V considers procedural issues relating to complementarity, and chapter VI addresses complementarity and the obligation of states parties to investigate and prosecute ICC crimes. In chapter VII, Kleffner considers complementarity as a catalyst for compliance; he argues that complementarity provides a mechanism through which states parties may be induced to comply with the obligation to investigate and prosecute discussed in chapter VI.

In a final chapter Kleffner offers some conclusions in relation to the wider implications of complementarity for the suppression of ICC crimes, in particular (1) its potential to fill the gap left by ineffective national enforcement of the prohibition of ICC crimes, and (2) its likely impact on the suppression of ICC crimes by national criminal jurisdictions. On the first issue, he is not optimistic; he observes that, his conclusions in chapter VII notwithstanding, "it is more than likely that significant obstacles to an effective national suppression of ICC crimes will persist" (341). As to the second issue, while he observes that the uniform obligation on states parties to investigate and prosecute ICC crimes provides a valuable tool for national suppression, he concludes that much will depend on the underlying attitude of the state concerned.

Of course, the meaning of complementarity under the Rome Statute has been developed through the jurisprudence of the ICC in the time since this book was written in early 2008. Nevertheless, this excellent study of the nature and content of the complementarity regime – and the related question of its likely impact at the national level – remains invaluable

to anyone who wants to get to the heart of the concept, be they a student, an academic or counsel making representations to the ICC.

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**Hilary Earl, THE NUREMBERG SS-EINSATZGRUPPEN TRIAL, 1945-1958: ATROCITY, LAW, AND HISTORY**

Cambridge: Cambridge University Press (*www.cambridge.org*), 2009. xv + 336 pp. ISBN 9780521456081. £50.

The particular focus of Earl's book is *The United States of America v Otto Ohlendorf et al*, (1947-48), popularly known as the *Einsatzgruppen* case. Notwithstanding that intelligence and security work lay at the heart of the original *Einsatzgruppen* formations, it is for their association with mass murder that these groups are best remembered. Their acts of barbarism are hauntingly recorded in numerous black-and-white photographs depicting shootings on the fringes of open graves. On average, 100,000 people per month were rounded up and murdered between July 1941 and July 1942. However, Earl cautions against simplistic analyses of responsibility, making specific mention of the role of local auxiliaries, notably at the infamous Babi Yar massacre.

The *Einsatzgruppen* case took place subsequent to the Nuremberg International Military Tribunal (IMT) and was US-run. It very nearly did not happen. Earl notes the "[s]heer good luck" of investigators, in stumbling across one of the only surviving copies of the *Einsatzgruppen* reports. Clearly, a general trial of the SS would not suffice. The *Einsatzgruppen*'s activities demanded their own particular trial. Given the IMT's focus on the crime of aggressive war, this book offers a valuable analysis of legal proceedings whose focal point was instead the Final Solution. Twenty-four individuals were indicted on three charges: crimes against humanity, war crimes, and membership of illegal organisations. Crimes against humanity quickly emerged as the key crime.

For historians willing to extrapolate from it, trial material is a rich reservoir. This is clear from the work of Lawrence Douglas and Donald Bloxham regarding law's role in the construction of memory and the unsettled relationship between law (in particular courts) and history. It is within this new tradition that Earl locates this book. She acknowledges the controversies over war crimes trials' didactic functions and the historical value of trial testimony. Casting a historian's forensic eye over early appearances of such testimony (in interviews) and its evolution to trial stage is illuminating. However, trial testimony is not inevitably historically accurate. Earl considers historians were too accepting of Ohlendorf's IMT testimony, and that the *Einsatzgruppen* trial testimony actually complicated historical understandings of the origins of the Final Solution.

When lawyers and historians analyse trials, their approach is different (though complementary): the lawyer's narrow focus contrasts with the historian's broader contextualisation. Earl's collective biographical method focuses upon war crimes trials as testimonial sites and "what trial testimony reveals about perpetrators of genocide". Prosecutors may have been uninterested in the defendants' motives or their identities as human beings. However, these are key lines of inquiry for Earl who rejects simplistic characterisations of genocide's participants and is particularly interested in the roles played by elite members of German society. Earl charts *Einsatzgruppen* Commander Ohlendorf's career-path, looking for