

# PROSECUTORIAL DISCRETION BEFORE INTERNATIONAL CRIMINAL COURTS AND PERCEPTIONS OF JUSTICE:

HOW EXPANDED PROSECUTORIAL INDEPENDENCE CAN INCREASE THE ACCOUNTABILITY OF INTERNATIONAL ACTORS

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*This article traces the history of the international criminal prosecutor and determines that prosecutorial discretion before the ICC, vis-à-vis ad hoc criminal tribunals, is more clearly articulated by governing instruments, more transparently and proactively interpreted by the Office of the Prosecutor through ex ante guidelines and policy statements, more consistent and cohesive in connection with the mandate of the court as a whole and the Office of the Prosecutor in particular, and subject to more oversight by other organs of the court. As a result, prosecutorial discretion before the ICC is more restricted than in other criminal tribunals, even though the court's jurisdictional and enforcement powers are heavily reliant on consent by other actors. Taking these grounds into consideration, it is argued that, despite numerous reasons to mold prosecutorial decisions in light of peace interests, political maneuvering, and the desire to obtain cooperation by states in the enforcement of arrest warrants, the Office of the Prosecutor would be better served by pursuing its mandate to remain independent and impartial. Doing so forces political actors to be more accountable for the decisions that they make in regards to peace issues and the duty to investigate and prosecute atrocities at the domestic level.*

## I. INTRODUCTION

In February 2010, Luis Moreno-Ocampo, chief prosecutor of the International Criminal Court (ICC), made public his office's Prosecutorial Strategy for 2009–2012.<sup>1</sup> This approach is consistent with a pattern of

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<sup>1</sup> ICC, Office of the Prosecutor, Prosecutorial Strategy: 2009–2012 (1 Feb. 2010).