

COMPLEMENTARY VIEWS ON COMPLEMENTARITY

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SUMMARY OF CONTENTS

Preface	V
Table of contents	XI
Abbreviations	XV
Chapter 1 – Frédéric Mégret Why would States want to join the ICC? A theoretical exploration based on the legal nature of complementarity	1
Chapter 2 – Gerben Kor Sovereignty in the dock	53
<i>Comments on chapters 1 and 2 – Bardo Fassbender</i>	73
Chapter 3 – Jann K. Kleffner Complementarity as a catalyst for compliance	79
<i>Comments on chapter 3 – Federica Gioia</i>	105
Chapter 4 – Claudia Cárdenas Aravena The admissibility test before the International Criminal Court under special consideration of Amnesties and truth commissions	115
<i>Comments on chapter 4 – Darryl Robinson</i>	141
Chapter 5 – Rod Jensen Complementarity, ‘genuinely’ and Article 17: Assessing the boundaries of an effective ICC	147
<i>Comments on chapter 5 – Bert Swart</i>	171
Index	177

Chapter 4

THE ADMISSIBILITY TEST BEFORE THE INTERNATIONAL CRIMINAL COURT UNDER SPECIAL CONSIDERATION OF AMNESTIES AND TRUTH COMMISSIONS

*Claudia Cárdenas Aravena**

1. INTRODUCTION

With the entry into force of the Rome Statute,¹ a State's competence to try international crimes remains untouched. According to the complementarity principle, cases of genocide, crimes against humanity, war crimes and (upon definition) the crime of aggression are to be tried by States. The ICC only acts when States do not undertake proceedings or do not do it properly. In order to apply this complementarity principle, the Court has to undertake an admissibility exam² for each case before it.³ This admissibility test de-

* LL.M., Ph.D. candidate, Humboldt University (Berlin). This paper is a synopsis of my doctoral research on the admissibility test. The full text of my doctoral thesis will be published at the beginning of 2005 under the title *Die Zulässigkeitsprüfung vor dem Internationalen Strafgerichtshof: Zur Auslegung des Artikels 17 ISiGH-Statut (unter besonderer Berücksichtigung von Amnestien und Wahrheitskommissionen)*. I would sincerely like to thank Joseph Windsor, LL.M. candidate, for language corrections and various comments, as well as Boris Burghardt, Ph.D. candidate, and Professor Dr. Gerhard Werle for their useful observations and discussion of the article. All views expressed and errors are solely the responsibility of the author. The author can be contacted at cardenascl@yahoo.de.

¹ Rome Statute of the International Criminal Court (Rome Statute) (adopted 17 July 1998, entered into force 1 July 2002) UN Doc. A/CONF.183/9.

² Cf. *ibid.* Art. 53 para. 1c, Art. 53 para. 2c, Art. 19 para. 1. The close relationship between the complementarity principle and the admissibility test is explicitly recognized in Article 17, paragraph 1, of the Rome Statute with reference to para. 10 of the preamble and to Art. 1 of the Statute; cf. J.T. Holmes, 'The Complementarity Principle', in Lee (ed.), *The International Criminal Court: The Making of the Rome Statute* (The Hague, Kluwer 1999) 41, 42; M. Boot, *Genocide, Crimes Against Humanity, War Crimes* (Antwerp, Intersentia 2002) 48, 52; Human Rights Watch, *Justice in Balance* (New York, Human Rights Watch