The word complementarity does not appear in the Rome Statute Establishing the International Criminal Court (ICC) or even the English language. This notwithstanding, the doctrine of complementarity underpins the international legal framework established by the Rome Statute. The doctrine of complementarity informs us that the jurisdiction of the ICC is not automatic. Instead, the jurisdiction of the ICC is complementary to the jurisdiction of national courts insofar as the ICC possesses jurisdiction only where national courts are, under Article 17 of the Rome Statute, ‘unwilling or unable genuinely to carry out the investigation or prosecution’ for the international crimes specified in Article 5 of the Rome Statute.

Although there is a growing literature exploring the meaning of the doctrine of complementarity, Dr. Jurdi’s examination of this doctrine nevertheless provides an important contribution to this area of study. The major benefit of Dr. Jurdi’s book lies in its comprehensive examination of the doctrine of complementarity from both an abstract and practical perspective. Indeed, the book is divided into two parts, the first half assessing complementarity in abstract and the second part complementarity in practice. Given this dual focus, this book will be of great interest to both practitioners and academics alike.

In chapter 1, Dr. Jurdi introduces the basic tenets of international criminal law and outlines the well-known problems associated with this international legal framework. To put it succinctly, that because national authorities are often unable or unwilling to carry out the investigation or prosecution for international crimes, perpetrators of such crimes often go unpunished (p. 5). The author therefore sets the scene for the discussion that follows; the effective enforcement of international criminal law is heavily dependent upon the existence of an authoritative international criminal court. To this end, the question Dr. Jurdi poses in whether the drafters of the Rome Statute have created an international criminal court that is capable of effectively enforcing international criminal law. As Dr. Jurdi appreciates, the answer to this question depends to a large extent upon the way in which the Officer of the Prosecutor (OTP) and the ICC interpret and apply the doctrine of complementarity.

In chapter 2 Dr. Jurdi provides a useful discussion of the legal background to the principle of complementarity. The author provides a detailed examination of the history of the drafting of the Rome Statute (and in particular Article 17), with specific reference to the debates of the Preparatory Committee and its discussions

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1) For example, see Carsten Stahn, The International Criminal Court and Complementarity: From Theory to Practice (Cambridge University Press, 2011).
over what the exact wording of Article 17 should be. This is an illuminating discussion and is a useful read for both international criminal lawyers seeking to uncover the travaux preparatoires of the Rome Statute but also to international legal historians generally who seek to better understand the political wrangling that often precedes the signing of major international treaties. The author then considers the status of the concept of complementarity that is enshrined within Article 17, correctly identifying that, unlike with the ad hoc criminal tribunals in the former Yugoslavia and Rwanda, the ICC’s jurisdiction is complementary to national courts; the ICC does not possess primacy over them. The author concludes the chapter by reviewing existing literature that debates the origins of the doctrine of complementarity, examining the arguments that the historical roots of the doctrine are derived from the principle of aut dedere aut judicare that permeates many aspects of public international law or perhaps even from the principle of subsidiarity that delimits the jurisdiction of the European Union.

It is in chapter 3 that the detailed legal analysis of the doctrine of complementarity begins. This involves an extremely thorough textual analysis of Article 17 and also Article 20, which prohibits an individual from being tried more than once for the same crime unless the trial at the national level was a mala fide attempt to preclude jurisdiction of the ICC. Given that keys terms within Article 17 and Article 20 are not adequately defined in the Rome Statute (highly ambiguous terms such as ‘effective’, ‘investigation,’ ‘prosecution’, ‘genuinely’, ‘independent’ etc) this chapter must be regarded as an invaluable definitional resource for those seeking a better understanding of the meaning and ambit of these articles.

Chapter 4 looks to the de jure and de facto hurdles to the doctrine of complementarity. Dr. Jurdi’s focus is principally upon the problematic area of amnesties. Correctly in our opinion, Dr. Jurdi determines that customary international law does not prohibit the use of amnesties. However, Dr. Jurdi examines whether amnesties for international crimes can be now employed by governments in light of Article 17. After reviewing the relevant academic literature in the area and the important policy documents of OTP, Dr. Jurdi argues that because amnesties often result in shielding perpetrators criminal prosecution, ‘amnesties most probably will not escape Article 17, and they will be, in most cases, admissible before the ICC’ (p. 84). However, the author then argues that Article 53 of the Rome Statute provides OTP with ‘a broad degree of discretion’ (p. 89) and thus confers OTP with the power to dismiss prosecutions previously covered by a national amnesty on the basis that it is in the interests of justice; ‘[i]n the opinion of this author…amnesty could fall under the ambit of ‘interests of justice’, and thus under prosecutorial discretion within Article 53’ (p. 92); ‘amnesty is covered substantially under Article 53(1)(c)’ (p. 100). Although Dr. Jurdi does not fully develop theoretical support for this broad interpretation of the phrase ‘in the interests of justice’ under Article 53 (and this may leave some readers dissatisfied), he does tentatively suggest at pages 73-74 that this is because amnesties can serve