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Book Review: Takeh B.K Sendze, Adesola Adeboyejo, Howard Morrison and Sophia Ugwu (eds), *Contemporary International Criminal Law Issues: Contributions in Pursuit of Accountability for Africa and the World* (T.M.C Asser Press 2023) pp. 452

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Abstract: *This edited book provides a comprehensive analysis of various aspects of the international criminal justice system, focusing on the significance of international criminal law in achieving accountability for Atrocity Crimes in Africa and globally. The contributors examine the complexities and challenges involved in holding individuals accountable for these crimes, addressing concerns about legitimacy, the regionalisation of justice, the application of universal jurisdiction, and the importance of international cooperation. While acknowledging the marginalisation of female experiences in conflict, and the investigation and prosecution of conflict-related sexual and gender-based violence, it underscores the need for a thorough understanding of gender dynamics in conflict-related crimes and advocates for urgent action to address accountability gaps. Interestingly the themes of the book accentuate the sustainability of international criminal law. There is a demand for justice and accountability in Africa, highlighting the importance of engaging in productive conversations to develop and implement successful approaches to achieve these objectives.*

Key words: *atrocity crimes, gender-based violence, international criminal justice, international cooperation, legitimacy, universal jurisdiction*

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1. Introduction

The international criminal justice system has experienced an evolution in its scope, progressing from the Nuremberg and Tokyo tribunals to the establishment of ad hoc tribunals and, subsequently, the International Criminal Court (ICC). The establishment of the ICC marked a significant milestone in the evolution of international criminal law (Bassiouni 1995; Ferencz 1992). The ICC, the world's first permanent international criminal court, was a legal development and a political decision that profoundly impacted the trajectory of international criminal justice (Chazal 2016; Scharf 1996). Chazal stresses how states constructed the ICC through their political interests and ideas.¹ The book accentuates the intricate web of contemporary international criminal law and its evolving nature. It addresses several themes such as the viability of regional African criminal court, the legitimacy, the challenges in prosecuting international crimes, state sovereignty, domestic jurisdictions, universal jurisdiction and human rights. In addition, the edited volume also considers the historical, cultural and political contexts of global justice. Given that the book conveys the recent developments in international criminal law, it is crucial to acknowledge an alternative perspective that raises doubts about the efficacy and feasibility of international criminal justice. Opponents sometimes contend that international criminal law is prone to notable politicking, wherein influential nations exploit it to advance their interests while overlooking the crimes committed by their allies or themselves.

Moreover, the considerable logistical constraints involved in prosecuting persons in different jurisdictions and political systems raise doubts regarding the practical applicability of international criminal law (Kaleck 2015). Furthermore, universal jurisdiction has been the topic of intense controversy due to concerns regarding its possible infringement on state sovereignty and the potential for prosecutions driven by political motives (Krings 2012). These differing perspectives serve as a reminder of the boundaries of present-day international criminal law, requiring cautious assessment and clarification.

Furthermore, the edited book, which is structured into two sections, focuses on the sustainability of international criminal justice. Part I of the book is devoted to international criminal law in Africa, while Part II delves into matters of convergence that have more extensive ramifications from a global lens. The edited collection provides a comprehensive analysis of eleven chapters, delving into topics including the legitimacy of the

¹ See Chazal, Nerida. (2016) *The International Criminal Court and Global Social Control: International Criminal Justice in Late Modernity*. London & New York: Routledge: 36-40. The book extensively analysed the role of states and Civil society in the establishment of the ICC.

International Criminal Tribunal for Rwanda, the law of genocide, universal jurisdiction, the preliminary examination process of the ICC in Nigeria, international co-operation in criminal matters, the potential establishment of an African regional Court for international crimes, the development of the investigation and prosecution of Sexual and Gender-Based Violence (SGBV) in the international criminal justice, marginalisation of slavery in international criminal justice and the evolution of guilty pleas. The edited volume offers a roadmap for readers to navigate through the collection.

This book is a must-read for anyone interested in comprehensively understanding international criminal law. The book's in-depth discourse on the prospect of international criminal law is useful for academics, legal researchers, legal practitioners, judges, students and others working in areas related to international criminal law, human rights, and international humanitarian law practitioners. The contributors effectively incorporate theoretical perspectives and real-world scenarios, making this book an invaluable resource for students and professionals. A detailed examination of the most serious crimes affecting the international community provides an intensive understanding of international criminal law's challenges and nuanced nature. The chapters are skillfully integrated and structured in an organised pattern that mirrors the sphere of international criminal justice. Moreover, this volume is an addition to international criminal law and a reference for individuals willing to gain insights into international criminal justice and its effects in practice.

2. Chapter Commentaries

The opening chapter serves as an introductory section of the book, effectively acquainting readers with the main themes and issues in international criminal law that the book aims to elucidate. This chapter sets the stage for assessing the multifaceted challenges of implementing and enforcing international criminal law in today's modern global landscape. While this chapter establishes the context for assessing the criminal justice system's intricacies, its cursory analysis may not be as effective in articulating the critical issues beyond the surface.

Chapter two offers a compelling sift probe into the ICC's pursuit of justice for the atrocities committed by Boko Haram in Nigeria. Arthur Traldi contextualises the Boko Haram faction and their infamous abduction of female students in Chibok, which drew international attention through the BringBackOurGirls movement. The chapter subsequently explores the ICC's preliminary examination process in Nigeria, analysing both the framework and implementation of this process. The author also examines the broad range of international crimes committed by Boko Haram, including acts of violence against civilians, the kidnapping and

imprisonment of civilians, attacks on educational institutions and students, the recruitment and deployment of child soldiers, gender-based crimes, attacks on religious buildings, and violence on humanitarian personnel. According to Traldi, Office of the Prosecutor (OTP) has identified seven potential cases of allegations against members of Boko Haram. These cases encompass diverse patterns of criminal conduct. The initial case pertains to attacks on non-combatants and the killing of civilians. The second scenario pertains to the forcible removal of numerous citizens and their confinement in camps and cities under the authority of Boko Haram. The third scenario pertains to assaults on educational facilities, educators, and pupils. The fourth case relates to the enlistment and deployment of child soldiers, while the fifth case concerns acts of violence targeting females, particularly women and girls. The sixth case pertains to the intentional targeting of religious buildings. The seventh case involves attacks on humanitarian personnel or objects and the act of taking hostages. Set against this background, Traldi evaluates each case, accentuating the gravity and complementarity principle and, emphasising the severity and interdependence of the crimes. The chapter concludes with an analysis of the subsequent developments in the ICC investigation and its potential significance for future situations, especially its consequences for ICC and African relations. Traldi underscores the relevance of prompt actions, their impact on the preliminary investigation, and the synergy between Africa and the ICC. Succinctly, chapter two demonstrates the inherent challenges associated with pursuing accountability for the Atrocity Crimes committed by this extremist group. The conclusion provided in chapter two is forward-looking and briefly outlines the ongoing challenges and potential solutions for achieving justice in Nigeria. However, it is suggested that the author should have expanded on the conclusion and put more effort into reiterating the points stated earlier.

The ICC has played an integral part in addressing and ensuring accountability for atrocities committed in several African countries. Nonetheless, African leaders and scholars have consistently voiced their concerns about the perceived bias and power imbalance within the ICC (Ross 2018). These criticisms have prompted demands for the creation of an alternative court, specifically the African Regional Court (ARC), to handle cases of international crimes committed in Africa. The idea of establishing an African Regional Court as a substitute for ICC is based on the understanding that the current international criminal justice system is often perceived as being controlled by Western powers and does not effectively address the specific issues and complexities of the African situation (Ba 2023). As outlined in the Malabo Protocol of 2014, the ARC offers a possible alternative to the ICC (Ba 2023). The African Regional Court and its potential as an alternative to the ICC are the primary focus of Chapter three, which explores the concept of regionalisation of criminal court. Notably, the relationship between the ICC and the

African States has been complicated.² Ikpatt proposes four alternative approaches to regionalisation: the establishment of a regional criminal court, the introduction of regional sessions of the ICC, the implementation of the universality principle at a regional level, and the use of specialist domestic courts with regional judges. One of the chapter's strengths is its comprehensive assessment of the ARC and the specific mandates outlined in the Malabo Protocol. Ikpatt emphasises that the Protocol encompasses several kinds of international crimes (fourteen), including genocide, crimes against humanity, war crimes, and crimes of aggression. It also incorporates aspects from other international criminal tribunals and conventions. This demonstrates the ARC's commitment to established international norms and practices. The chapter recognises the potential for overlap and conflicts between the two institutions: the ICC and the ARC. It emphasises both the progressive provisions and drawbacks of the court. The court's mandate is perceived as overstretched, which may impact its effectiveness. Moreover, the court's jurisdiction is excessively broad, raising concerns about its capacity to adjudicate on a non-exhaustive list of crimes efficiently. Critics argue that granting immunity to high-ranking state officials violates international law and restricts the court's jurisdiction. Overall, the chapter's sentence structure expresses apprehensions over the court's capacity to achieve its objectives and effectively administer global criminal justice.

Furthermore, the chapter would have sufficiently addressed the political context and consequences surrounding establishing the ARC. The author briefly acknowledges the scholarly criticism, concerns, and the impression that the court may be seen as a "Rebel Court" to shield African states from the ICC investigation. Nevertheless, a more robust comprehensive analysis of these concerns, encompassing the possible impact on state collaboration, regional harmonisation, and the court's credibility, is still pending. For instance, the author could delve into the possible impact of establishing the African Regional Court on the willingness of African states to cooperate with the ICC and whether it could lead to a fragmentation of international criminal justice. The author could have also considered incorporating and legitimising the ARC's mandate and operations with extant regional and global frameworks. Finally, an in-depth appraisal of the court's legitimacy within Africa and globally would be essential for determining its feasibility as a viable substitute for the ICC.

In chapter four, Ikpatt delineates two notable legitimacy challenges the ICTR encounters. The initial impediments pertain to the case of Jean-Bosco Barayagwiza, a key figure in the Rwandan genocide, whose case management prompted inquiries into the ICTR's legitimacy. The controversies and subsequent acquittal of Barayagwiza evoked indignation

² South Africa's refusal to arrest the former Sudanese President Omar al-Bashir during his visit to South Africa in 2015.

and scepticism, which impacted the ICTR's reputation and credibility for fairness and objectivity. The second constraint pertains to the dismissal of Carla Del Ponte, the chief prosecutor of the ICTR. She was reportedly dismissed in response to pressure from the Rwandan government, which had suspended co-operation with the ICTR in the wake of the Barayagwiza case. Such a situation raised apprehensions regarding the autonomy of the ICTR's independence and its capacity to operate unfettered from political influence.

The points above highlight distinct legitimacy concerns regarding the ICTR. These concerns include the ICTR's geographical location, its focus on prosecuting individuals from the Hutu ethnic group, its recruitment of former génocidaires, and the acquittals and early releases of those deemed most responsible for the 1994 genocide. Boost recommends that efforts aimed at legitimisation—developing a positive image, transparent communication, and adherence to established standards and norms—are stressed as essential for managing legitimacy. One interesting point about chapter four is that it emphasised specific cases and broader institutional concerns that jeopardised the ICTR's reputation and capacity to administer justice efficiently. It is inferred that the legitimacy of the ICTR is a combination of internal and external factors. Although, they are not mutually exclusive, the absence of legitimacy might put into question the normative and structural content underlying the sustainability of ICTR. By analogy, international criminal tribunals and courts' legitimacy is indispensable to their effectiveness and ability to attain their mandate. The language is unambiguous and easily understandable, catering to a broad spectrum of readers.

Furthermore, chapter five analyses genocide and the atrocities committed against the Namibian Herero and Nama atrocities in the twentieth century, following a discussion of the historical background of genocide, including the Holocaust and the Armenian Genocide. Dermont Groome then focuses on the Herero/Nama genocides as the first genocides of the twentieth century. In addition, the chapter highlights Germany's recent recognition of its crimes against the Herero and Namaqua tribes as genocide. It assesses the implications of this recognition, including the government's commitment to create a fund and return stolen parts as a form of reparations. A noteworthy feature of the chapter is its extensive analysis of the legal elements of genocide. This chapter addresses the necessary mental state (*mens rea*) and physical acts (*actus reus*) requirements for genocide. It outlines the prohibited acts acknowledged in Article II of the Genocide Convention. It integrates historical evidence, such as direct quotes from primary sources and narratives of the atrocities committed against the Herero and Nama peoples.

Interestingly, this approach adds depth and emotional dimension while contextualising the legal concepts and exemplifies the real-world

application of the law of genocide. It thoroughly analyses the topic by skillfully merging legal analysis with historical evidence. Nevertheless, the chapter's organisation might be enhanced. Although the general progression is coherent, the transitions between the historical context, the discussion of the Herero and Nama Genocides, and the legal analysis could be more seamless. Moreover, certain sections of the chapter could be improved by adopting a more concise and efficient writing style to sustain the reader's interest. Overall, this chapter provides a substantial addition to the comprehension of the Herero and Nama Genocides and the legal aspects of genocide. Groome's adeptness in seamlessly integrating legal analysis with historical evidence is a notable asset, rendering this work a helpful reference for scholars, policymakers, and everyone interested in the intricate and significant subject of genocide.

The sixth chapter discusses international criminal co-operation, focusing on Africa's relationship with the ICC. Kemp investigates the various interactions between African states and the ICC, such as the drafting of the Rome Statute, the referral of African cases to the ICC, and the drawbacks caused by the failure to arrest Sudanese President Omar Al-Bashir. The chapter also discusses Pan-Africanism as a paradigm for international criminal justice in Africa. It addresses modalities of co-operation, such as mutual legal assistance and extradition. It also examines the Malabo Protocol as a manifestation of African solutions to African shortcomings and the implications for mutual legal assistance and co-operation in combating transnational crime. It accentuates the complexities of immunities, particularly those affecting heads of state, and probes South Africa's failure to arrest President Al-Bashir despite ICC arrest warrants. This chapter does an excellent task of assessing the subject matter from every angle, covering African international criminal justice's horizontal and vertical dimensions. Kemp analyses many levels of co-operation, including national, sub-regional, regional, and international, to illustrate the intricacies and boundaries of international criminal justice in Africa.

Furthermore, chapter seven explains the concept of universal jurisdiction and how it operates in international law. It emphasises the debates and controversies regarding universal jurisdiction, particularly among African states. James Nyawo inquires into the historical background of universal jurisdiction, which has its roots in the punishment of pirates. Nyawo additionally examines the principles of criminal jurisdiction under international law, such as territoriality and active personality jurisdiction. Examples and case studies are among the chapter's strengths, as they elucidate the application of universal jurisdiction. The discussion of the Eichmann Trial and the indictments against Rwandan and Congolese government leaders deepens the analysis. However, the chapter could benefit from a more balanced discourse on the rationale for and against universal jurisdiction. While the Nyawo acknowledges the hurdles and

opposition surrounding its enforcement, it tends to portray African States as the principal opponents of universal jurisdiction. Including a broader range of thoughts and viewpoints from scholars and practitioners from different regions would have been beneficial. Furthermore, the chapter could have delved more into universal jurisdiction's practical challenges and limitations, particularly jurisdictional conflicts, diplomatic tensions, and the balance between international justice and state sovereignty. Therefore, providing a deeper examination of these issues would have enhanced the chapter.

Moreover, the invisibility and marginalisation of female experiences of conflict concerning International Humanitarian Law (IHL) and International Criminal Law (ICL) is covered in chapter eight. Priya Gopalan advocates for a more nuanced understanding of gender in conflict-related crimes and underscores the necessity of addressing accountability gaps for specific kinds of crimes, victims, and perpetrators. The chapter commences by addressing the historical neglect and impunity surrounding sexual violence against women in armed conflicts. It also highlights the accomplishments achieved through prosecutions by ad hoc tribunals and the ICC in bringing to light Conflict-Related Sexual Violence (CRSV). This recognises the significance of gender analysis in this process but urges the need for an elaborate and futuristic understanding of gender as an analytical framework. Chapter eight argues against the conflation of gender with women, which constrains gender analysis to a binary approach of male vs female. Gopalan contends that this narrow perception of gender disregards the experiences of males in conflict, specifically with sexual violence. She underlines the fact that instances of sexual violence against males are frequently underreported, under-documented, and under-acknowledged, resulting in accountability gaps for male victims.

Gopalan additionally stresses the scarcity of gender analysis about crimes against men and sexual violence perpetrated by women. Besides that, chapter eight explores the emphasis on sexual violence as the primary violation against women, which hinders the analysis of non-sexual gender-based violations experienced by women. Gopalan advocates for a better understanding of the effects of gender on non-sexual violations and emphasises the importance of acknowledging the diverse range of sexual violence, its victims, and perpetrators. Gopalan additionally points out the significance of including LGBTQI+ individuals within the analysis of gender-based violence in conflicts, specifically addressing sexual orientation and gender identity. Furthermore, the chapter discusses the challenges associated with classifying and documenting multiple kinds of sexual violence, as well as the underlying motivations and victims. It critiques the inclination to focus on penetrative rape as the paradigmatic articulation of sexual violence against men. Instead, it advocates for a broader comprehension of diverse kinds of sexual violence and trauma experienced by men. The chapter also delves into the participation of

female perpetrators in international crimes and the stereotypes and narratives associated with their cases. To summarise, chapter eight presents various thought-provoking arguments regarding the constraints of existing gender analyses in comprehending and addressing conflict-related crimes. The arguments stress the significance of recognising the intricate nature and diverse motivations driving sexual violence, as well as the necessity to shift away from gender stereotypes and binary understandings.

Chapter nine, written by Natasha Bracq discusses the ICC's Approach to Sexual and Gender-Based Violence (SGBV) by analysing the Rome Statute's legal framework for addressing SGBV. Bracq recognises the progress made in international criminal law, however, chapter draws attention to acknowledging these crimes and implementing specific legal procedures, evidence, organisational structure, and staffing requirements to guarantee fair and effective justice for the victims. Bracq's assessment of the ICC's relevant policies, such as the Policy Paper on Sexual and Gender-Based Crimes, underscores the court's commitment to addressing these issues. Nevertheless, the chapter does not hesitate to pinpoint notable weaknesses in the ICC's approach. It rightly criticises the absence of sexual violence charges in high-profile cases such as **Lubanga** and **Al Madhi** despite compelling evidence. Bracq criticises the ICC's selective charging of SGBV, arguing it undermines substantive and procedural justice, and fails to hold SGBV perpetrators accountable fully. Also the chapter underscores the complexities of investigating and prosecuting SGBV, highlighting evidentiary issues, insufficient resources, and procedural shortcomings, and calls for effective prioritisation of the investigation and prosecution of SGBV by the new ICC Prosecutor. The court is admonished for perpetuating a historical tendency to overlook sexual violence and failing to uncover relevant evidence during investigations.

One of the strengths of chapter nine is its thorough review of the historical development of SGBV crimes in international criminal law, starting from the Nuremberg and Tokyo trials to the establishment of ad hoc tribunals, and it effectively demonstrates how the ICC built upon the legacy of these tribunals in recognising and prosecuting SGBV as international crimes. In summary, it accentuates the role of the new ICC Prosecutor in continuing to investigate and prosecute SGBV crimes effectively.

Having analysed the chapter commentaries, the strength of the edited volume lies in its comprehensive analysis of contemporary international criminal law issues and its relevance to Africa and the international community. The book provides a critical analysis of various topics, including the role of African States in promoting international criminal justice, spotlighting the imperative of justice and accountability in the African context, emerging trends in the jurisprudence of international criminal law, the role of politics and power play, as well as the enforcement

of international criminal law, universal jurisdiction and complementarity and their implications for the future. One of the outstanding flaws of international criminal law is gaps in enforcement. The gaps in enforcement question the system's effectiveness and raise concerns about whether the future of international criminal law is truly domestic.

In conclusion, it is worthy of mention that the themes of this edited volume emphasises the urgent requirement for justice and accountability in Africa, calling for immediate attention to this situation, which underscores the significance of fostering meaningful dialogues to develop effective strategies, spotlighting the necessity for collaboration and participation from governments, civil society organisations, and the global community to tackle these issues and drive positive change.

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