BOOK REVIEWS

Africa and the Future of International Criminal Justice. Edited by Vincent O. Nmehiell. The Hague, The Netherlands; Eleven International Publishing, 2012. Pp. vii, 445. ISBN 978-94-90947-62-0. €85.00; US$120.00.

The timing for a book on international criminal justice and Africa is ideal. A number of African countries were pivotal to the establishment of the International Criminal Court (ICC). However, it is no secret that many of these same countries continue to grow impatient with it, having come to perceive the Court as biased against Africans. Individual countries are now taking steps to curb, or even end, its reach. At this level, although various countries openly criticize the ICC, Kenya appears to be the first to take the matter further. Kenya, whose current head of state and his deputy are both under indictment, has recently set in motion a process for withdrawing from the ICC, with its parliament approving a motion to that effect.[1] The next step, introducing a bill to repeal the International Crimes Act, a law implementing the Rome Statute, is expected soon.[2] If Kenya actually follows through, it will undoubtedly set a precedent that other countries in the region may start to follow.

African countries have also taken a stand against the ICC collectively through the African Union (AU). In 2009, the AU Assembly of Heads of State and Government adopted a decision vowing not to cooperate with the ICC in enforcing the arrest warrant against President Al Beshir of Sudan.[3] The AU is currently working to have ICC's actions against the Kenyan and Sudanese presidents deferred and to put a stop to the prosecution of sitting heads of State by the ICC.[4]

Africa and the Future of International Criminal Justice puts all these and other issues into perspective. It provides a detailed analysis of the various aspects of the debate in Africa over the efficacy of international criminal accountability mechanisms, particularly the ICC, including questions regarding

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[1] Gabriel Gatehouse, *Kenya MPs Vote to Withdraw from ICC*, BBC (Sept. 5, 2013), http://www.bbc.co.uk/news/world-africa-23969316.

[2] *Muigai Drafts Bill Seeking To Pull Kenya Out of Rome Statute*, Citizen News (Oct. 17, 2013), http://www.citizennews.co.ke/news/2012/local/item/14381-muigai-drafts-bill-seeking-to-pull-kenya-out-of-rome-statute.

[3] Dire Tladi, *The African Union and the International Criminal Court: The Battle for the Souls of International Law*, 34 SAYIL 57 (2009).

[4] Aaron Maasho & Edmund Blair, *AU Calls for Halt to ICC Cases against Kenyan and Sudanese Leaders*, Reuters (Oct. 12, 2013), http://www.reuters.com/article/2013/10/12/us-africa-icc-idUSBRE99A0YT20131012.

whether Africa is being unfairly targeted by the ICC and whether there is a way for African countries to use the ICC mechanisms, particularly the principle of complementarity, to effectively fight impunity and at the same time keep the ICC at bay. Born out of a conference with the same title, the book is a compilation of thirteen chapters around the following five themes.

1) The Impact of the International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone (SCSL) on Impunity in Africa.

Under this heading are two articles by Sigall Horvitz and Mba Chid Nmaju.

Horvitz assesses the impact of the ICTR and the SCSL in the fight against impunity in Rwanda and Sierra Leone, two jurisdictions that have experienced terrible mass atrocities. She argues that efforts through international accountability mechanisms can only succeed if complemented by local accountability mechanisms, in large part because these international mechanisms have limited mandates and resources. The fact that since their inception the ICTR and SCSL have adjudicated only a combined 85 cases is telling. She argues that the success of these mechanisms hinges on the impact they make on domestic accountability mechanisms. She evaluates the impact that the ICTR and the SCSL have had on domestic institutions through the prism of four key areas: the rates and trends in prosecution, application of international norms, sentencing practices, and local capacity building.

Nmaju demonstrates the need for combining restorative and retributive mechanisms in post-conflict societies to effectively restore peace, security, and the rule of law. He uses the SCSL and the Sierra Leone Truth and Reconciliation Commission (SLTRC) to make his case. The SCSL, which was set up to prosecute top-level leaders of various factions of the conflict, was instrumental in documenting facts of atrocities committed and demystifying what Nmaju calls "the perceived aura of invincibility" of top leaders, including former Liberian President Charles Taylor, by simply indicting them. This helped in putting an end to impunity and re-establishing respect for the rule of law. The SCSL fortified its efforts through an aggressive outreach program to educate the public of its activities, which helped quell the desire for revenge, as well as through training programs in conflict resolution tailored for various groups, including traditional leaders, youth, and security personnel. The Court also helped build local capacity in administration of justice through trainings as well as internships.

The SLTRC, which was given a restorative mandate, established a record of the conflict and the atrocities committed by various groups and individuals in a three volume report. Nmaju notes that it helped institutionalize the

accountability process through one of its recommendations, the establishment a human rights commission, which was set up in 2004. Furthermore, it complemented the role of the SCSL in restoring legal order by conducting outreach and training focused on the general public.

2) Africa and the International Criminal Court: Any Genuine Objections or Just a Disregard for Treaty Obligations?

This part consists of four articles by the following authors: Henry J. Richardson, James Nyawo, David Chuter, and Ntombizozuko Dyani.

Richardson evaluates Africa's relationship with and resistance to the ICC. He notes that Africa's relationship with the ICC should be approached broadly—not as a matter of a simple treaty obligation, but as a question of equity for the people of Africa in the global criminal law landscape. Richardson argues that when the relationship is taken in its narrow sense it does a disservice to the equity issue because the language of the process and the resources needed to effectively participate favor the Northern Hemisphere. He identifies three dilemmas facing African policy makers in the debate over whether Africa should cooperate with the ICC. The first is what he calls "the principle of necessary self-help for subordinated peoples," a reference to the need for African countries to continue to engage in the ICC system and use the institution's tools to improve their role and position. He uses the doctrine of complementarity, which is one of the pillars of the ICC system, to illustrate his point, arguing that it is up to the African jurisdictions to define what it means to fully exhaust local remedies. The second dilemma is the challenge of harmonizing international and regional criminal justice system mechanisms. The third focuses on the question of whether criminal accountability should be viewed as something absolute or as part of the process for finding diplomatic solutions to conflicts in which it can be traded, and who gets to make that decision.

Nyawo enriches the discussion by putting the debate regarding the ICC's role in Africa in a historical context. He argues that the sensitivity and suspicion of Africans towards international accountability mechanisms derives from the fact that they have been brutalized through slavery and colonialism with impunity, with international law not offering any protection and at times being used to reinforce their subjugation. He employs a number of examples to illustrate his point, including the Herero Genocide in today's Namibia by the Germans and the atrocities committed by the French in Algeria. However, he insists that historical injustices and the imbalance of power in the current international criminal law mechanisms cannot be justification for impunity. He notes that the best way for African nations to take control of their affairs and push back against undue external interference is to take charge and fight impunity in a meaningful way.

Chuter discusses the politics of the international criminal justice system. He notes that politics have always played a great role in the process of establishing accountability after mass atrocities. The powerful and the victors often evade accountability while the poor and those on the losing end of a war are held accountable. The opposition of Africans to the ICC is in large part a reaction to this skewed landscape. Chuter argues that, although they may be able to do some good, the highly political nature of the circumstances under which all international accountability mechanisms are established means that they will continue to be biased.

In the final article of this part, Dyani takes on the issue of whether the ICC is targeting Africa. After having engaged in a riveting discussion on several issues of the debate regarding the continent's relationship with the ICC, including questions relating to amnesty and immunity, she reaches a similar conclusion as Richardson and Nyawo. She argues that if Africa is indeed being targeted, the only sensible solution is the proper use of the principle of complementarity, one of the centerpieces of the treaty, to stave off the ICC by simply waging a war against impunity.

3) Africa and the Complementarity Principle of the Rome Statute of the International Criminal Court: Implications for Domestic Rule of Law and Justice.

In this part, two articles by Vincent O. Nmehielle and by Caroline Nalule and Rachel Odoi-Musoke look at how effectively Africa has made use of the principle of complementarity in the ICC system.

Nmehielle echoes Dyani, Richardson, and Nyawo in that he argues that putting in place effective local accountability mechanisms is the only way to prevent ICC interference. He notes that although African countries enthusiastically supported the ICC, the politics in the United Nations Security Council and the way the first ICC prosecutor handled cases have caused the relationship to sour. However, he argues, this does not change the fact that atrocity on the continent is commonplace and that impunity is unacceptable. He notes that the complementarity principle of the ICC, which makes the ICC a court of last resort, offers an effective way of avoiding the ICC's involvement. He also addresses the AU's recent attempt at establishing a criminal chamber in the African Court of Justice and Human Rights, which he finds redundant and counterproductive. He argues that the AU should work towards ending impunity by encouraging its member states to set up credible local mechanisms and not by replacing the ICC.

In the second article of this part, Nalule and Odoi-Musoke evaluate the complementarity principle in the Ugandan context. They note that the Ugandan government's attempts to reclaim its jurisdiction over the case against the Lord

Resistance Army (LRA) (the rebel group that has terrorized Northern Uganda for years), having previously referred the matter to the ICC, presents a unique situation. They maintain that the ICC should not stand in the way of Uganda's jurisdiction if it meets the requirements under the principle of complementarity. However, while they recognize Uganda's willingness to prosecute members of the LRA, one of the conditions of the principle, they do not have the same confidence with regard its ability to do so, another condition of the principle. They argue that the country has more to accomplish, including full domestication of the Rome Statute of the International Criminal Court and strengthening of the capacity of its justice institutions, before it can be on a solid ground to invoke the principle of complementarity.

4) The Limits of the International Criminal Court in Achieving Peace and Justice in Africa.

Two articles, by Janine Natalya Clark and by Eric Colvin and Jessie Chella, are offered in this part of the book.

Clark assesses the commonly held belief that the ICC is a roadblock to peace and maintains that the Court can be an instrument of both justice and peace. She discusses a number of challenges that the Court faces, including allegations of political bias and selective justice as well as its reliance on state cooperation. Even so, she argues, it can be more effective in fulfilling its purpose as a tool for justice by introducing clarity to its mandate for more restorative justice, by having a better outreach to affected communities, and by empowering local justice institutions. On the issue of the ICC as an impediment to political solutions to violence, taking the Uganda situation as an example, Clark argues that the view ignores the structural nature of violence, adopts a narrow understanding of peace as the absence of physical violence, and is shortsighted. She argues that the Court can contribute to peace as part of a comprehensive strategy of justice that includes more than just criminal prosecutions.

Colvin and Chella make a case for the introduction of a corporate liability regime. They draw an example from the way domestic criminal justice systems have evolved in response to the increasingly vital role that corporations have come to play in our lives, resulting in the establishment of criminal liability regimes to hold them accountable. They argue that the lack of a similar mechanism in the ICC system, which continues to hold only natural persons accountable while corporations involved in fueling conflicts and perpetuating atrocities go unscathed, puts its legitimacy in question. They conclude by calling for the amendment of the Rome Statute to include non-derivative corporate criminal liability, a responsibility independent of individuals representing the entity.

5) Impunity and Justice: Any African International Criminal Justice Alternatives?

This part of the book features three articles by Godwin Odo, Lutz Oette, and Pacifique Manirakiza.

Odo leads off this part with an evaluation of the roadblocks to the full and successful implementation of international accountability mechanisms in Africa. He does this by discussing a number of resolutions put forward by the AU in response to the perceived biases in and abuses of such mechanisms. Among them is the AU's call for the extension of the jurisdiction of the African Court on Human and People's Rights over international crimes. He notes that this presents a number of problems including: the rate and pace of ratification of the Protocol on the Establishment of the African Court on Human and Peoples' Rights by African States; the capacity of the Court to effectively fight impunity; and what Odo calls the "impunity gap" that may result from having two competing accountability mechanisms in place. He outlines a number of recommendations for quelling criticisms of the current international accountability regime and ending impunity, including through the strengthening of domestic criminal justice systems and fostering of better collaboration between the AU and the ICC.

Oette continues the discussion by examining the AU High-Level Panel on Darfur (AUPD), including its mandate as well as its report and recommendations. He evaluates whether the AU can establish regional mechanisms to deal with international crimes that can be effective in tackling the conceptual and institutional challenges current international mechanisms face. He argues that the AUPD approach in carrying out its mandate, which successfully encouraged consultation with and participation of various stake holders and the general public in Sudan, could be a model for such future endeavors. He argues that the AUPD's proposed approach, which seeks to combine both accountability and reconciliation mechanisms, is a positive step towards addressing the root cause of the conflict in Sudan. Oette, however, does express his ambivalence on the practicality of this comprehensive attempt, pointing to a number of possible roadblocks including the lack of political will on the part of the Sudanese government as well as the AU's capacity limitations and resource constraints.

In a dramatic departure from the positions articulated by Nmehielle and Odo, Manirakiza makes the case for the establishment of a continental criminal court as an additional tool to fight impunity in Africa. He notes that for various reasons both domestic and international mechanisms have remained ineffective in the fight against impunity in Africa. International mechanisms have a limited mandate to focus on what are considered the worst crimes and their focus is

limited to a handful of perpetrators. Local mechanisms, when they are not completely incapacitated in the aftermath of a conflict, are either reluctant to prosecute certain perpetrators or lack the capacity to do so. In addition, both mechanisms have failed to address crimes that are particularly rampant in Africa, including coups, apartheid, slavery, and colonialism-related crimes. Therefore, Manirakiza argues, there is plenty of room to establish a continental mechanism that can complement these systems and help close the existing impunity gap. Manirakiza further argues that, in addition to closing the impunity gap, a continental mechanism could prove more effective by developing norms relevant to the cultures of the affected communities through moving away from western-imposed, foreign doctrines that currently permeate the international justice mechanisms.

The wide spectrum of issues it discusses gives this book a broad appeal, including among students, people that make and/or shape policy at national, regional, and international governmental and non-governmental institutions, scholars, and anyone interested in international law as well as humanitarian and human rights law.

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The title of this book succinctly captures the volume's ambitious scope: to discuss multiple types of intellectual property in both common law and civil law jurisdictions. The book's broad coverage and comparative treatment of intellectual property laws make it a worthwhile acquisition for advanced academic collections of materials on patents, trademarks, and copyright.

The chapters on patents discuss patent eligibility, equitable doctrines, and the relatively recent enactment of the America Invents Act, which moved the United States from its anomalous first-to-invent system to its present first-inventor-to-file system. The chapters emphasize shared elements of patent law in common law systems (generally represented by the United States) and civil law systems (usually the European Union or some of its members). From these chapters I gathered that progress has been made toward international harmonization of patent laws, but obstacles remain that will prevent full harmony for the foreseeable future.