

Recent publications

E Decaux, A Dieng & M Sow (eds) *From human rights to international criminal law: Studies in honour of an African jurist, the late Judge Laïty Kama*

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From human rights to international criminal law: Studies in honour of an African jurist, the late Judge Laïty Kama is in honour of Judge Laïty Kama who served as President of the International Criminal Tribunal for Rwanda from 1995 to 1999. On the whole, the compilation contains articles on various aspects of international criminal law, using the International Criminal Tribunal for Rwanda (ICTR) as the starting point for most of the articles. The discussion of the cases from various perspectives adds to the relevance of the compilation at a time when international criminal law is starting to come into its own. Regrettably, this author lacks a knowledge of French, the language in which a number of articles in the compilation are written. Therefore, commentary is given on some of the articles written in English in order to provide an overview of the work.

The first article sets the tone of the compilation, entitled 'Judge Laïty Kama: Five cases to develop international criminal law' by Helen Klann and Phillipa McKenzie. It focuses on five ICTR judgments that the learned judge participated in and discusses in detail the substantive law issues that arise from the cases. These include genocide, rape, war crimes and crimes against humanity. A subsequent article, '*The Prosecutor v Laurent Semanza, Case No ICTR-97-20, judgment, Trial Chamber (15 May 2003): A commentary*' by Coline Rapneau, links up with this first article and expands on the discussion on the law. The author examines one of the judgments given by a Trial Chamber differently composed and rendered after Judge Lamy's death. The main question looked at is that of cumulative convictions and the Trial Chamber in this case added the requirement that a double conviction, in

order to be accepted, must be necessary to reveal and represent a complete picture of the criminal conduct of the accused.

The second article, by Charmaine de los Reyes, examines state co-operation and its challenges for the ICTR. The articles that follow look at the accused and his rights. Firstly, there is 'The protection of human rights of the accused before the International Criminal Tribunal for Rwanda' by Wolfgang Schomburg and Jan Christoph Nemitz; secondly, 'Vagueness of indictment: Rules to safeguard the rights of the accused' by Helen Klann; and thirdly, 'The right to legal assistance at the International Criminal Tribunal for Rwanda: A review of its jurisprudence' by Simon M Meisenberg. The use, analysis and discussion of case law make these essays particularly valuable.

Alhagi Morang, Chernor Jalloh and David Kinnecome's 'Concurrent jurisdiction at the ICTR: Should the tribunal refer cases to Rwanda?' discusses the implications of Resolution 1503 of the United Nations Security Council, which urges the ICTR to formulate a detailed strategy '... to transfer cases involving immediate and lower-rank accused to competent national jurisdictions, as appropriate, including that of Rwanda, in order to allow the ICTR to achieve its objective of completing investigations by the end of 2004, all trial activities at first instance by the end of 2008, and all of its work in 2010'. What is particularly appreciated about this work is the authors' practical approach when looking at the realities of concurrent jurisdiction.

'The Rwanda Tribunal and genocide' by Lennart Aspegen and Jamie A Williamson gives a detailed and sometimes harrowing exposition of the Rwandan situation and explains the genocide in relation to the Convention on the Prevention and Punishment of the Crime of Genocide, 1948, and discusses the judicial findings of genocide. The importance of the ICTR's work is emphasised on page 221:

The ICTR provided the first ever judicial definition of the crime of genocide and succeeded in explaining in a judicial context why and how the atrocities occurred in Rwanda. The evidence presented during those early trials resolved one of the first crucial questions, whether genocide had been committed in Rwanda in 1994. Answered in the affirmative in the *Akayesu* case, all subsequent ICTR judgments have reached the same undeniable conclusion.

'Countdown to 2010: A critical overview of the completion strategy of the international criminal tribunal for Rwanda (ICTR)' by Jean-Pelé Fomété is a detailed and highly critical analysis of the proposed completion strategy and concludes in part '... that the completion strategy was largely imposed on the ICTR by the Security Council in order to expedite the closure of costly and somewhat unwieldy bureaucracy ...'. In a compilation that focuses in detail on the legal issues raised in international criminal law, it is important to realise the implications of establishing and running a tribunal for the communities involved. These include the economic impact of the tribunals on the cities that host

them and the possible economic problems that may occur once the work is completed. The article raises questions of cost, efficiency and effectiveness and questions the proposed completion strategy.

'Gender and sexual violence under the Rome Statute' by Fatou Bensouda investigates the development of gender crimes under the Nuremberg and Tokyo military tribunals, which largely ignored gender crimes, the ICTR and at how the International Criminal Tribunal for the former Yugoslavia (ICTY) in its case law influences and analyses sexual crimes in the Rome Statute.

Hassan B Jallow's contribution is 'Challenges of investigating and prosecuting international crimes'. The office of the Prosecutor comes under the spotlight and the practical problems faced by the prosecuting team in the Rwandan context are examined.

'Prohibition against subsequent prosecution: Periscoping the *non bis in idem* principle' by Segun Jegede looks at the principle of double jeopardy in English, Canadian, United States of America and, especially detailed, South African law before moving on to international law. International law is dealt with in much less detail, which is unfortunate as this issue could have been covered in more detail from that perspective.

'Revisiting the Abu Graibh prosecutions from the perspective of the international criminal tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR)' by Geert-Jan Alexander Knoops analyses individual criminal responsibility for the treatment of prisoners and links this to the doctrine of superior responsibility. It is interesting to see here how lessons learnt in the ICTY and ICTR may be applied and carried through in the international criminal law system.

In 'International law, mercenary activities and conflict prevention in Africa' by Adama Dieng and Chile Eboe-Osuji, the OAU Convention for the Elimination of Mercenarism in Africa and the United Nations International Convention against the Recruitment, Use, Financing and Training of Mercenaries are discussed and the author argues cogently that the mercenary activities outlawed in the OAU and UN Conventions should be made crimes over which the International Criminal Court exercises jurisdiction.

Bahame Tom Nyanduga contributes an article entitled 'Addressing impunity: A challenge to the international criminal justice system with specific reference to Africa and the African human rights system'. The author argues that impunity in Africa has manifested itself politically and is recognised through its deeds and consequences, although there is no legal definition of the term. It consists of acts prohibited under international human rights instruments or violations of international humanitarian law. The author links impunity to an analysis of the Rome Statute and finds that criminal legislation, procedures and mechanisms for the administration of justice in African states require updating in order to implement the obligations assumed under the Rome Statute. However,

bilateral impunity agreements, although not discussed in any detail, are found to be a problem area in the conclusion. This article could have benefited from an in-depth discussion of these agreements, as well as concrete examples.

This book is factual and in the various essays sets out the present status of international criminal law. With most of the attention focused, rightly, on Africa and the Rwanda Tribunal, this compilation is a welcome contribution to the body of international criminal law and will further its development and debate in time to come.

J Quigley *The Genocide Convention: An international law analysis*

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Generally, the term 'genocide' conjures up images of Adolf Hitler and the Nazi's, the Yugoslavia and Rwanda atrocities and the recent events in Darfur, Sudan. However, can the new methods of warfare, such as aerial bombings and nuclear weapons, constitute genocide? Is it possible to commit genocide by mistake? These are some of the questions that are tackled by John Quigley in his book, *The Genocide Convention: An international law analysis*. The work consists of 45 chapters, divided into nine parts. The chapters are concise and easy to understand. The first three parts are introductory, explaining how genocide came to be accepted as a legal norm, while the next four parts analyse the intent-element required for genocide. These deal with prosecutions at the domestic as well as at the international level, as well as with lawsuits in the World Court. Part eight examines lawsuits against states for genocide and asks whether states are able to commit a crime, while the final part deals with the question of the utility of genocide as a legal concept.

Part one, titled 'Outlawing genocide', consisting of three chapters, focuses on the origin of the crime of genocide, the drafting history of the Genocide Convention and the Genocide Convention in the criminal codes of various states. The author discusses how Raphael Lemkin's conception of genocide became that which is now known as the Genocide Convention. The author draws a distinction between genocide and crimes against humanity, such as persecution and extermination. In his analysis he notes that the Yugoslav and Rwandan Tribunals con-