

Book review: Canefe N *Critical Perspectives on Crimes against Humanity: The Limits of Universal Jurisdiction in the Global South* (University of Wales Press 2020)

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Abstract

In the current anti-accountability sentiment that has plagued most of Africa, triggered by the nasty politics of selectivity that is primarily motivated by considerations of *realpolitik* or the interests of specific states, Canefe's book lays bare the fundamental moral, legal and philosophical standpoint that advances the argument that perpetrators of mass atrocities must be held accountable. Unfortunately, the reality is different. She explores the vast (and almost impossible) impediments to attaining such an objective. Recognising the distinct and persuasive voices echoed by scholars from the Global South, the book examines the utilitarian effectiveness of using universal jurisdiction as a means towards this end. The critical views and responses of scholars who belong to TWAIL (an intellectual blog that is hotly and hardly contested by their counterparts from the Global North) expose, debunk and denounce the legitimacy of international law. The book argues that an international legal order that is largely monoculturalistic, developed from selected principles, values and opinions from the West, cannot and should not be taken as a prototype of the global legal order. Instead, legal pluralism as a distinct feature of a diverse and multicultural world requires that a consensus is obtained: this is crucial if the world seeks to achieve what she calls a "neutralized universalization" of international law.

Keywords

Crimes against humanity; legitimacy; TWAIL; universal jurisdiction; international law; ICC.

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1 Introduction

This contribution is a review of a recently published book by Professor Nergis Canefe entitled *Critical Perspectives on Crimes against Humanity: The Limits of Universal Jurisdiction in the Global South*. The title itself arouses a huge appetite in any scholar conversing with the literature, debates and gaps on the pursuit of international criminal justice through the tool of universal jurisdiction to bring to account individuals who participate in the planning, preparation and commission of crimes against humanity. Loaded with technical concepts on which critical perspectives are offered and with a blend of morality, philosophy, history, law and politics, the book advances the literature thereon by providing valuable and priceless insights that can come from only an accomplished scholar of international repute and acclaim.

2 The contents

For any student in international law, the starting point is always the sources of international law:¹ "the general principles of law recognized by 'civilized nations';² and "... the teachings of the most highly qualified publicists of the various nations...."³ Students of international law have always asked what "civilized nations" mean and who rates them as such. The teachings of the "most highly qualified publicists of the various nations": who ranks publicists as the most highly qualified? Such dubieties and controversies do, in part, incite the current attitude and perceptions of international law. Little wonder its legitimacy comes under scrutiny by scholars.

In the current state of legal scholarship, the legitimacy of international law is severely shaken, questioned or rebuked outright in part by some critical voices emanating from veritable and venerated academic dons who, lately, have been compartmentalised as the Global South. The eloquence spewed in their academic outpourings comes with objective and critical insights that usher us to different dimensions of legal history, philosophy and analyses. Scarred by the legacies of slavery and slave trade, colonisation, apartheid, the unconscionable theft of natural resources from Africa, neo-colonisation, the hypocrisy and indifference of the West and international institutions during internecine political crises in Africa, and the

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¹ Article 38(1) of the Statute of the International Court of Justice.

² Article 38(1)(c) of the Statute of the International Court of Justice.

³ Article 38(1)(d) of the Statute of the International Court of Justice.

abject refusal by the perpetrators to offer some atonement for those gruesome and unspeakable acts of dehumanization, TWAILers⁴ argue it will remain a forlorn challenge to forge an international legal order that thwarts and ignores these aspects of African history. The diverse and contentious philosophies nurtured and held by scholars from the Global South are sparked by those negative experiences. They inform their perceptions and understanding of international law and its legal arrangements. A silent battle rages between a Euro-centric, Global North-dominated prescripts of international law and an envisaged world order in which diverse and multiple legal cultures are factored and define the contents therein. History tells us that some of the worst forms of human rights abuses perpetrated against Africans, spanning decades and centuries, were committed by the same disciples of accountability. If a change in times means or warrants a shift in attitude, then, at least, those perpetrators, through state channels, must acknowledge the gravity and horror of the crimes they committed, express remorse for them and find ways to repair such harm. Africa's eternal battle with systemic human rights violations and socio-economic injustices is intimately and intricately intertwined with the past. Therefore, no program or policy will work to diminish these until such systemic injustices are discredited and dismantled.

The notion of accountability, pursued through the debunked and flawed tool of universal jurisdiction, replaced by hybrid courts, and now the International Criminal Court for crimes against humanity, is a thematic, controversial and topical issue that has recently dominated legal discourse in the Global South. A work of this nature finds relevance for many reasons. First, from an ethical, legal and political perspective, it interrogates the reality of some of the principles that constitute the cornerstone of international law and principles.⁵ Secondly, in the case of crimes against humanity, it evokes the issue of whether we can ever have a world devoid of such crimes. At any given time, crimes against humanity are being committed in some parts of the world. Thirdly, with an intimate understanding of the related concepts (universal jurisdiction and crimes against humanity), how does ethics define the functionality of law as a tool to be used to bring perpetrators to justice? Lastly, against a complicated background and within the context of a continent that has documented some of the worst forms of mass atrocities, in part instigated or perpetrated

⁴ The term "TWAILers" refers refers to Third World approaches to international law (TWAIL). It is a critical school of international legal scholarship.

⁵ Cassese *International law* 46-68.

by Europeans and Americans because of their insatiable appetite to explore and extort the natural resources in specific countries, how do state interests and politics drive these man-made catastrophes? How can the tool of international criminal justice be deployed to bring those non-African actors to the dragnet?

David Luban's theory of crimes against humanity helps us understand crimes against humanity: he describes it as a crime with a political character, as the victims are grouped as "political animals" by their perpetrators.⁶ The element of systematicity or widespreadness as one of the *actus reus* in the different definitions of crimes against humanity suggests that its planning, preparation, or commission requires a group of individuals. From the experiences of the former Yugoslavia, Rwanda, Sierra Leone, Cambodia, Iraq, Sudan, and Kenya, these "political animals" are grouped as such because they hold and echo a specific kind of political voice – the dissident political voices that the opposing political grouping finds offensive and thus intolerable. As such, it is argued that crimes against humanity have an innate and immutable political dimension which necessitates the qualification that they are political crimes. That, however, is substantive international criminal law. Prosecuting such crimes goes beyond that: it requires a complex blend of numerous crucial tools (political will, diplomacy, law enforcement, domestic legal institutions, human capacity, etc.). But communities reeling from gross human rights violations hardly possess these or lack the institutional capacity and human resources to deal with them. For some, a compromise is struck between peace and reconciliation. For others, truth, justice and accountability constitute the founding blocks upon which a transitional society can be transformed in a manner that does not ignore but rather builds on the past. The call to prosecute, unfortunately, has always been made by international bodies. Crimes against humanity, per the textbook definition, are being committed in almost every corner of the world. Yet, the international community cannot engage in an unrealistic and ambitious mission to condemn and prosecute all cases of crimes against humanity committed in every corner of the world. Worthy of mentioning is the fact that some of the most egregious cases of crimes against humanity have been committed by autocratic regimes supported by European and American States. Driven by the need to steal their natural resources, they finance and foment those crises by pitting a segment of the population against another segment. The planning, preparation and commission of crimes against humanity in Africa bear the fingerprints of Europeans and

⁶ See generally Luban 2004 *Yale Journal of International Law* 85.

Americans. They play the role of remote actors who direct, order, and guide those atrocities' infliction but never bring them to justice. The examples of Rwanda and Congo are compelling testimonies to this.

Accountability for mass atrocities, whether committed within or without an armed conflict, irrespective of who the perpetrators are, is an issue that cuts across the disciplines of ethics, politics and international law: all at a complex interplay that tests humanity's affirmation as to whether we are all equal and deserve equal protection of the law; the resolve of states on the international plane to partner with others in furthering the respect for human rights, good governance and accountability; the commitment by inter-governmental organisations to uplift and rebuild devastated communities and an acknowledgement of the contributions made by scholars and practitioners who hail from the Global South. Underneath the complex and contentious disciplines of international human rights and international criminal law and justice, and human development and poverty, are numerous and unresolved debates that evoke philosophical, political and moral considerations. They touch on issues such as equality of human beings, an obligation to stop the looting of resources which ultimately ushers millions into crises and poverty, resources exploitation, corruption, rogue political regimes that place their people at their mercy, inter-state relations and how they benefit one another, the political will to fight underdevelopment, and poverty within and without national levels. Angered by the massive human rights violations, the African continent, at any given time, is caught in the crosswinds and consumed in the crossfires on those issues: does the global community share in the belief that all are equal and deserve equal protection of the law? At what point do states as actors on the international scene use their interests to obstruct the conduct of honest debates on issues relevant to the pursuit of global criminal justice as a mechanism for human rights violations when committed? And in factoring those considerations, do African scholars' respectable and diverse views get a fraction of acknowledgement and recognition? Are the words "never again" considered mere rhetoric and will never be backed by concrete action despite the numerous ongoing mass atrocities that plague portions of the world?

These are some of the critical issues that are discussed in this book. In addition, it identifies and critiques the philosophical debates on international criminal law and justice, the notion of accountability for human rights violations, and whether state sovereignty should be a veil to prosecuting perpetrators of mass atrocities. The controversial idea of universal jurisdiction and its relevance and effectiveness in hunting and

penalising perpetrators of crimes against humanity is one aspect that is dealt with elaborately in the book.

The book tackles the complex (and unresolved) issue of universal jurisdiction. Unfortunately, as evidenced by practice, it was a colonial tool used by Europeans to witch-hunt African leaders for mass atrocities while acting in absolute oblivion that those same individuals committed similar and worse atrocities. The politics of universal jurisdiction and its utility in dealing with mass atrocities did not only arouse serious debates about the notion of accountability: it suggested a stratified world order wherein some states would exercise jurisdiction over others in the name of accountability. Political developments in Europe debunked the very "universality of universal jurisdiction": small African states were targeted by the big states. Mutua's dismissive and pessimistic assessment of the legacy of the Nuremberg trials bears testimony. That suspicion, undoubtedly, has not changed over time: it was true then as it is true now.⁷

As argued and concluded, the Global South "began to rise and to overcome the hierarchical and ideological implications of designation at the Third World" (page 28). Suppose International Law would achieve a "neutralized universalization". In that case, scholars and practitioners must drift from a Euro-centric, hegemonic attitude and perspective and embrace the thoughtful insights proffered by scholars from the Global South. This is quite important because no one, at this stage, can challenge the view that scholars from the Global South have risen to key and respectable contributors in the field of international law, human rights, international criminal law and justice.

Recognising some of the key founders of TWAIL, the book gives a synoptic (albeit *en passant*) delineation of the key philosophical underpinnings and objectives of the dimensions that constitute the distinct characteristic (or what she calls the "moniker of alternative approaches") to international law. TWAIL, as an emerging content of approaches to the construction and analysis of international law, contests the current Euro-centric character imbued therein, instigates the need for legal pluralism on the international plane and fights against efforts to reject or deny the contributions of academics from the Global South. TWAIL has thus emerged and settled as an ideological affront to a Euro-centric, hegemonic and dominated area of legal studies. Suppose Africa is "represented" on the international platform. In that case, legal pluralism requires that its principles, values

⁷ Mutua 2000 *Buffalo Human Rights Law Review* 77.

and institutions be seen as capable of influencing the development and adoption of principles that constitute the core of international law. In that regard, general principles of law as practiced by civilized nations must not be limited to European and American civilization: African civilization constitutes an integral part of human civilization and must not be denied, discounted or devalued.

Interestingly, *TWAIL* is explained naturally: presented as a discipline whose ultimate recognition must be accepted. The author touches on the legitimacy of international law. He cites Mutua, an ardent critic of the current international legal order and an erudite African scholar commended by his peers irrespective of their origins; the book touches on an issue which has gained significant attention in non-legal discourses. International law and its offspring, such as the rules and institutions, are bound to be controversial and problematic since international itself is conceived in a controversial and challenging manner.

A repeated truth that the legitimacy of international can only be fostered when ethics and the law guide actions and politics. Also, when all actors play by the same set of rules or when violations anywhere are unequivocally condemned by everyone. Finally, when contributions and insights are assessed by their contents and not the race or nationality of the authors.

A crisis of legitimacy, informed by the sheer absence of morality, drowned by the avaricious interests of the power players. At stake is a conflict between reforming the system or maintaining the status quo. The fierce defence of human rights should be equal and not subjected to the whims of national politics.

3 Conclusion

Canefe's book is superb, brilliantly written in a fascinating language that makes it unputdownable. It is crafted with originality and written with uncommon rigour that can be typified and exemplified only by an academic with the potential and rage to tackle complex legal issues in rare ways. Touching on the key and respectable philosophers on different topics, this monograph enlivens the eternal debates in international criminal justice. However, the inadvertent failure to answer whether Africans, as part of the Global South, deserve an apology for the mass atrocities inflicted on them by Europeans and Americans means that the debate remains, and there

is a need for further research on those burning issues that can hardly be ignored.

Literature

Canefe N *International Criminal Law and Limits of Universal Jurisdiction in the Global South*

Canefe N *International Criminal Law and Limits of Universal Jurisdiction in the Global South: A Critical Discussion on Crimes Against Humanity* (University of Wales Press 2018)

Cassese *International law* 46-68

Cassese A *International law* 2nd ed (Oxford University Press Oxford 2005)

Luban 2004 *Yale Journal of International Law*

Luban D "A theory of crimes against humanity" 2004 *Yale Journal of International Law* 85-168

Mutua 2000 *Buffalo Human Rights Law Review*

Mutua M "From Nuremberg to the Rwanda Tribunal: justice or retribution" 2000 *Buffalo Human Rights Law Review* 77-92

International Instruments

Statute of the International Court of Justice (signed on 26 June 1945)