

Richard Gaskins. *The Congo Trials in the International Criminal Court*. Cambridge: Cambridge University Press, 2020. Pp. 475. £85.00. ISBN: 9781108488013.

1 A ‘Laboratory for Global Justice’

The conclusion of the Rome Conference in 1998, the adoption of the eponymous Rome Statute and the subsequent inauguration of the International Criminal Court (ICC) signified a paradigmatic change for international (criminal) justice.¹ More than 50 years after the International Military Tribunals at Nuremberg and Tokyo and still under the impression of adjudicative experiences obtained at the ad hoc International Criminal Tribunals for the former Yugoslavia and Rwanda, the establishment of the ICC seemingly heralded the end of an era too often characterized by impunity for the most atrocious crimes known to humanity.

While scores of publications have since addressed most of the different facets of the ICC – including its institutional framework, its legal foundation and its external role and activities – it has, in many ways, remained an enigmatic institution attracting scholarly attention and emerging as a prime object of interdisciplinary research. Richard Gaskins’ monograph squarely fits into this strand of scholarship and protrudes as a meticulously researched study that not only elucidates the Court’s inner functioning and legal *telos* but also provides a comprehensive account of the so-called *Congo Trials* – that is, the set of cases stemming from the Democratic Republic of Congo (DRC) that were ultimately adjudicated upon by the ICC’s Appeals Chamber.

Although Gaskins does not provide a truly novel account of the ICC as such, he offers a fairly nuanced appraisal of the institution. Accordingly, he frames the Court as a genuine legal forum, providing ‘a unique formula for applying legal principles to concrete cases’ (at 60), that has ‘gained custody of ... extravagant hopes, inheriting the historic task of creating an enduring international structure’ and that has remained mindful of ‘limits on [its] power to preempt national trials; limits to prosecutorial zealotry; [and] limits to any attempt to go back and revisit past atrocities’ (at 130). Being aware of these legal-institutional caveats, Gaskins telescopically zooms into the legal-judicial playground demarcating the Court’s range of activities, in general, and within the DRC context, in particular. Examining the Court’s role as a distinct actor in a dynamic and constantly changing (international) environment, Gaskins skilfully weaves in his scholarly expertise in both law and philosophy: Chapter 6 (‘ICC Structures, Dynamics, Tensions’) exemplarily highlights his interdisciplinary orientation and conceptually broad understanding of the Court as a multifaceted entity. Scrutinizing the Court’s activities particularly in the Congo context, Gaskins thus claims that the ICC constitutes a judicial entity governed by the dynamics of law rather than an international organization of a *sui generis* character. This foundational

¹ Rome Statute of the International Criminal Court 1998, 2187 UNTS 90.

understanding is subsequently expounded on in the book's four main parts: after introducing the ICC as a novel international justice institution, Gaskins develops his narrative by starting with the constitutive conflict in Ituri over the Hague-based court, leading into the three Congo trials, before providing some concluding observations.

2 The Conflict in Ituri

The substantial gem in Gaskins' book distinguishing it from the myriads of publications addressing the ICC is its comprehensive depiction of the legal-political ramifications stemming from the conflict in Ituri: a remote and war-torn province situated in the north-eastern extension of the DRC, Ituri has constituted the locus for many of the crimes adjudicated upon by the ICC in the Congo trials. It is thus particularly laudable that Gaskins has devoted two substantial chapters to this oftentimes neglected region, which can be conceived of as a panopticon of international justice, comprising a wide array of international crimes, modes of criminal liability and questions pertaining to criminal procedure. Here, Gaskins elaborates upon both the macro- and micro-variables, explaining persisting inter-communal violence in and beyond Ituri, including land disputes, natural resource extraction and ethnic tensions – primarily between the agriculturalist Lendu and the pastoralist Hema groups – as well as the involvement of external actors such as, most importantly, Uganda.

A core characteristic of Gaskins' assessment of the Ituri conflict is his balanced description of the attempt to bridge the gaping chasm between a (still) raging conflict on the ground and the initiation of legal proceedings in front of a distant court. The interrelated transmissive process of extracting victims' voices from active conflict theatres and transferring these into the Hague courtroom has been explored in contemporary contributions. This phenomenon is also traceable in Gaskins' description of how (legal) obstacles – including active victim participation, the 'language of legality' (at 159) or the dichotomy of situating law between morality and practice – had to be confronted by the Court. Consequently, Gaskins notes that, '[a]s a product of twentieth-century European experience and anxieties, the long battle against impunity met its match in central Africa ... [and] [c]onditions in Ituri were far removed from the core paradigm, which had universalized a Weberian model of rational planning, organizational bureaucracy, and charismatic leadership' (at 253).

3 From the Congo to The Hague

Providing an adjudicative forum for the legal processing of international core crimes is the prime function of judicial institutions such as the ICC. In complying with this core responsibility, in Gaskins' view, '[t]he ICC can be seen as an experimental exercise, testing and recasting the original language in the Rome Statute', whereas only '[t]ime

will tell whether legal procedures, strictly observed, can hold up under the inevitable criticisms. ... [T]he first ICC trials [therefore] magnified tensions between moral and legal principles' (at 201). The overall challenge characterizing the Court's assessment of what crimes had been committed in Ituri from a distance thus became particularly observable in its interaction with witnesses, as ultimately their 'testimon[ies] brought the challenges of Ituri and the CAR [Central African Republic] into the courtroom. ... [While] much of the evidence submitted was circumstantial in nature, testing the Trial Chamber's fact-finding capacity[.], [d]isputes arose over methods used by trial judges to lever weak evidence into findings the judges deemed persuasive' (at 208). These inherent tensions thus became characteristic for the subsequent proceedings, occupying the Court throughout the early years of its existence.

Mindful of these frictions between questionable evidence and robust findings, Gaskins engages in a comprehensive case study of the three Congo trials, thereby further substantiating and exemplifying his previous observation of an inherent tension between moral and legal principles guiding the ICC's operations in each of the cases under assessment. Each case study – comprising the trials of Thomas Lubanga, Germain Katanga and Mathieu Ngudjolo, and the proceedings against Jean-Pierre Bemba (shifting the adjudicative loci towards the Central African Republic (CAR), but still considered a Congo trial due to the accused's nationality and the effects of his individual conduct taking effect in the DRC) – is thus dealt with in a single and carefully construed chapter. Here, Gaskins provides three likewise insightful analyses, each of which is both unique and valuable in its respective contextual scope and focus: to the knowledge of this author, no assessment of comparable topical depth and scholarly diligence – comprising the historical background of each underlying conflict, the Court's activities and operations in the respective situations as well as the public's engagement with, and perception of, ICC proceedings – has been conducted to the present day. While carving out each situation's unique complexities and contextual circumstances – including, for example, a comprehensive analysis of actors involved in each underlying conflict – Gaskins also manages to extract generalizable commonalities inherent in the Congo proceedings, while remaining cautious to offer over-simplified solutions to the myriads of challenges the Court had to engage with at different stages of each proceeding, including, *inter alia*, the admission of evidence. This notwithstanding, an even more structured assessment of each situation, while based on a clear comparative analytical framework, would have been helpful for readers in contrasting the different cases and structuring the wealth of provided information.

4 The Congo Trials

The Congo trials were not only the first experiences gathered within the 'Global Laboratory of Justice' (at 1) but also – at the time of Gaskins' writing – the first ICC cases to have reached the appeals stage. A shared commonality across all the Congo trials, which also created profound challenges for the parties involved, was hence identified in the different methods and approaches towards engaging in fact-finding on the ground – that is, in identifying, extracting and transferring the facts and

circumstances characterizing the Ituri conflict to the Hague courtroom. What visibly unfolded in the Congo trials was therefore an extended version of the underlying controversies accompanying international criminal proceedings more broadly: as emphasized by Gaskins, '[t]he justice laboratory needs completed trials for scrutinizing the whole dynamic spectrum. ... With the Congo trials, the breadth now includes a series of judgments, dissents, reversals, concurrences, and acquittals, alongside the convictions. In this way, "the law in the books" becomes the "law in action", opening up new possibilities for critique and evaluation' (at 449).

In summarizing the 'lessons learned' throughout the Congo trials, Gaskins synthesizes a number of shared commonalities among individual proceedings. First, he specifies that the leading narrative guiding the Congo trials was primarily grounded upon the necessity not only to end inter-communal violence in both Ituri and the CAR but also to end impunity for a broad range of international crimes committed in Eastern Congo. Second, Gaskins points out that the adjudicative process as such focused on establishing individual criminal liability of the accused in each of these highly complex and multi-layered cases rather than on the question of whether, how and which kind of international crimes had been perpetrated *in concreto*. Third, he reveals that non-governmental organizations seized an important and activist role in each of the cases, particularly with a view towards providing first-hand information, thereby not only providing a foundation for the Office of the Prosecutor's prosecutorial activities but also supporting judges in contextualizing developments on the ground. Fourth, Gaskins devotes particular analytical scrutiny to different chambers' interpretation and application of Regulation 55 of the Regulations of the Court,² delineating a chamber's authority to modify the legal characterization of facts: in its decision under Article 74 of the Rome Statute, a chamber may therefore proceed so as to accord with the crimes stipulated under Articles 7, 8 and 9 of the Rome Statute or with the form of participation of the accused under Articles 25 and 28 of the Rome Statute, while not exceeding the facts and circumstances described in the original charges or any amendment thereto.

This implicitly constraining purport of the originally determined facts and circumstances, in Gaskins' view, turned out to be a decisive characteristic of the Congo trials, further amplified by the difficulties of gathering on-site information prior to the commencement of the proceedings: while a chamber, under certain circumstances, is hence empowered to change the legal characterization of facts as mentioned in Regulation 52(c), this competency does not extend towards altering the facts and circumstances as mentioned in Regulation 52(b) and Article 74(2) of Rome Statute and as stipulated in the original document containing the respective charges against a defendant. A key challenge for each concerned chamber therefore stemmed from the fact that, while attaining additional knowledge on the respective facts and circumstances throughout the proceedings, it was not competent to modify the contextual purport of the respective case. As Gaskins therefore consequently highlights, '[l]ooking back

² International Criminal Court, *Regulations of the Court*, ICC-BD/01-05-16 (24 November 2022).

over the Congo trials as a whole, the Court struggled for well over a decade to meet the challenge of fact-finding in the rugged conditions of Ituri and the CAR. The issue was not whether atrocities occurred. ... But the trials encountered difficulties in sorting through complex modes of liability, and in applying certain definitional criteria for international crimes' (at 423).

5 Critique

With his monograph, Richard Gaskins has not only added a missing piece to the overall puzzle that is international justice but also provided an insightful, yet sporadically over-ambitious, account of the Congo trials at the ICC. Notwithstanding a few lengthy passages, the book is joyously readable, characterized by fluid prose and written in a precise and intelligible way, thereby making it easily accessible also for audiences outside academia. Moreover, Gaskins refrains from providing an overall verdict on the Court's performance in the Congo trials: instead of postulating a clear success or failure in bringing the Ituri and CAR conflict(s) into the global laboratory of justice, he remains eager to underline that '[t]here are many ways to read the overall results: the scorecard of convictions, the record on sexual and gender crimes, the impact on victims, and the long-term contributions to restorative justice in the conflict zones, among other perspectives' (at 449). While it is thus invigorating that Gaskins does not engage in over-simplistic evaluations of the Court's activities, a more critical and structured assessment of the ICC's overall role and impact in the Congo situation would have been desirable, for example, with a view towards notions of victim compensation. Notwithstanding these discrete lacunae, this book should be included in any reading list for courses covering the ICC, international justice and, especially, the enigma that is the Ituri conflict. It is particularly in the latter context that Gaskins has provided an invaluable contribution to the field.

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