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Editorial

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EDITORIAL

Volume XIX of the ANNUAL SURVEY OF INTERNATIONAL AND COMPARATIVE LAW coincides with a very eventful year filled with many activities touching on international and comparative legal developments. These activities are mainly generated by states, international organizations and other non-state actors. It is always an uneasy feeling to sit on a tiger. The actors that operate on both the national and international planes are no exception. Their individual or collective conduct invariably triggers the concern of international and comparative law which forms the basis of the journal's yearly publication.

Starting from the basis of the old English adage, which holds that charity begins at home, it is appropriate to start our editorial discussions in this volume from Africa. There is virtually no region of Africa that has not been affected by either war or internal conflicts that may, in some instances, approximate actual war. The typical feature of these African wars is a consistent pattern of human rights violations. The cost of wars for African people, their cultures and societies as well as its' economies are very grave. If they are measured on the basis of deaths, refugees and displaced persons and lost economic opportunities, African wars are undoubtedly one of the great calamities of contemporary times.

The mineral-rich eastern Congo conflict stands out as a good example of one of the longest and most protracted African wars. The Congo has been engulfed in fighting since the 1994 Rwanda genocide, in which at least 500,000 Tutsi and moderate Hutus were slaughtered by Hutu militias. The practice of illegal natural resource exploitation during such conflicts as was the case in Sierra Leone has become the order of the day. It is humbly submitted that there is the need for the application of an international criminal legal system to curtail the illegal natural resource exploitation activities of armed rebel groups; this development would open the door for the use of its' provisions and institutions against similar behavior of other conflict actors in those wars that are funded by profits and revenue from illegal natural resource exploitation activities.

Regrettably, the United Nations Organization has lagged behind in initiating appropriate practical and pro-active measures to prevent such atrocities until it is almost too late. However, we must commend the recent Security Council Resolution sponsored by France, United States and Togo, authorizing for the first time, a new "intervention brigade" for the Congo, giving the brigade a mandate to operate "in a robust, highly mobile and versatile manner" to ensure that armed groups cannot seriously threaten government authority or the security of civilians.

In the United States of America currently, different kinds of ‘wars’ rage on – gun control and immigration reform, as well as some aspects of civil rights. The United States Supreme Court heard arguments on the 1996 Defense of Marriage Act on same-sex marriage. The State of California’s Proposition 8 banning same-sex marriages was the key issue before the apex Court. The United States 1996 federal law on marriages recognizes only the marriages of opposite sex couples.

Another case of relevance to international and comparative legal development is the American citizen’s Amanda Knox Case. An Italian lower court convicted her for the murder of Meredith Kercher, a British student and her roommate in 2007. She was imprisoned and later acquitted after serving four of her twenty seven year sentence. She returned to the United States and enrolled as a student at the University of Washington. Raffaele Sollecito, her Italian boyfriend, was likewise convicted for her roommate’s murder.

Recently, the Italian Supreme Court overturned her acquittal by a lower court and ordered a trial *de novo*. Should she decide not to return to Italy to face the re-trial, she may face extradition proceedings. Under international law, there is no duty to extradite in the absence of a treaty between both countries. However, a consideration of the principle of comity among States, and the good relationship between United States and Italy, might weigh heavily upon the matter of extradition. An argument by the US opposing the re-trial of its citizen based on the notion of double jeopardy may not stand.

In a different context, even where national judges were removed from their habitat to sit in an international or foreign setting, there is no assurance that international criminal justice at the hands of a national bench would be free and unencumbered by national pride and prejudices.

While adding this volume XIX building block to the edifice of the Annual Survey, it has become apparent that it cannot hope to cover all the intriguing aspects of the performances of States in contemporary times. It is only on a selective basis that the construction work could proceed with another layer of bricks to bring the edifice into a recognizable shape.

This volume covers a wide array of current international legal developments ranging from an article on “The Place of Treaties in International Investment” to “Taming the Beast: How the International Legal Regime Creates and Contains Flags of Convenience.” Volume XIX continues to touch upon a common theme that runs throughout the preceding volumes.

Last, but not the least, the Annual Survey of International and Comparative Law is proud to present two distinguished contributors whose articles contained in Vol. XIX are the result of keynote addresses presented at two different occasions at Golden Gate University School of Law during our Fulbright Symposiums. These are: “Cure the Underlying Problem, Not Just the Symptom” and “Sed Quis Custodiet Ipso Custodiet? (But Who Will Guard The Guardians?) The Case for Elevating Official Corruption to the Status of a Crime in Positive International Law.”

It is with pride and pleasure that Annual Survey presents volume XIX in its continuing effort to disseminate the writings of highly qualified jurists from around the world. Their diversity is the strength of the Annual Survey, giving this publication a truly international character that recognizes that although a tiger cannot change its stripes, it does like law, evolve with the march of time.

Volume XIX encompasses a broad continuum of legal topics, all of which deserve careful consideration. Despite the distinct focus of each of these articles, the common thread that weaves through this and all previous volumes is the true international character of the Annual Survey which reminds us that whichever almanac we use, or however we name our serpentine reptilian, we are one people, united in our struggles and strengthened by our diversity.

C. NWACHUKWU OKEKE
Editor-in-Chief