

FOREWORD: PERSPECTIVES

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The invitation to write the foreword of the Duke Journal of Comparative & International Law was an offer that I quickly and enthusiastically accepted. I discovered DJCIL as a member and assistant editor some years ago when I was an LL.M. student at Duke. I then published in it as a practitioner and law lecturer. The Journal has been a significant part of my experience within the vibrant and dynamic academic community of Duke Law School. A journal, this Journal, is a vehicle to communicate with and about our changing world. The articles we now present provoke and, may I say, form part of, our discussions about our international community.

The first article of this issue by Helen Duffy reviews specific legal challenges countries are facing in implementing the International Criminal Court Statute. These challenges are part of the international law process. New commitments are adopted in the international arena and they need to be reconciled with domestic rules and principles. How do states reconcile, for example, constitutional provisions barring the extradition of their own nationals with the unqualified ICC Statute obligation to arrest and surrender suspects to the Court? How do states reconcile constitutional immunities, such as those conferred on heads of states or parliamentarians, with the duty established by the ICC Statute to arrest and surrender suspects, irrespective of their official status? How do states reconcile constitutional prohibitions on life imprisonment with the Statute's penalties that empower the ICC with the ability to impose life sentences under exceptional circumstances? These three central questions address solutions to potential inconsistencies between international commitments and existing national laws. Ms. Duffy reports on the experiences of several countries and describes the two kind of responses states have adopted to address this issue: 1) by amending their constitutional provisions; or, 2) by construing or re-interpreting them in a

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non-conflicting manner. By comparing and assessing the approaches taken by different states, Ms. Duffy provides a valuable guide to how these issues can be addressed at the national level. This way our dialogue towards an International Criminal Court continues.

In the next article, Professor Jeremy Levitt makes use of his extensive experience in international law, conflict management, development, and the African region to develop a three part model of conflict prevention, conflict management, and conflict resolution with which to evaluate the role of different African regional and sub-regional actors in assisting African nations in time of conflict. Professor Levitt suggests that regional actors such as the Organisation of African Unity, the Economic Community of West African States, the Southern African Development Community, and the Intergovernmental Authority on Development are better able to assist in preventing, managing, and resolving conflicts in the region than other international non-African actors. After comparing the strengths and weaknesses of the African regional actors, Professor Levitt concludes by recommending how the organizations may most effectively “harmonize and harness” their various powers and abilities to address conflict.

The next article is a translation by Michael Byers and Anne Denise of a fascinating work on international customary law by Brigitte Stern. Professor Stern dissects the scholarship on the formation of customary international law to address in particular the notion of *opinio juris*. She reviews the positions of the objectivist and voluntarist schools with regard to the wills of states to suggest that *opinio juris* is the result of the repeated impositions of the powerful and active majority upon those states less equipped or inclined to compete in the international arena. As Professor Byers ably describes in the introduction to Stern’s piece, “it forces us to reconsider the degree to which power is restrained as a result of communities, shared understandings, and international institutions—and thus makes a major contribution towards explaining the full impact of international politics on the structures and content of international law.”

Finally, two provoking and well-written student notes round out this appealing issue of the Journal. First, Alex Dale takes on the challenge of addressing the novel question of imposing international limits to the freedom of speech. At issue is the case of the 1994 Rwandan private radio hate-filled broadcastings promoting genocide of the Tutsi people. Working from this example, Mr. Dale calls on the authority of the U.N. Security Council to jam such radio signals.

The note defines jamming and points to the language of Chapter VII that gives the Security Council power to act against threats to international peace and security. It then goes on to define the scope of the wording “breach of the peace, threat to the peace, or act of aggression,” the effect of the use of force, and the appropriate bounds of “inciting” language. Central to his argument is the distinction between promoting free speech and condemning hate speech.

Second, Dan Joyner’s note compares the two models that have been suggested to integrate customary international law into U.S. law. On the one hand, the Bradley/Goldsmith position suggests integrating customary international law by legislative action at the state and federal levels. The opposing position, the Koh position, argues that customary international law falls within the scope of federal common law, as foreign relations are the exclusive domain of the federal government. Mr. Joyner tries to overcome these conflicting views by suggesting that Congress control the implementation of customary international law, with safeguards in judicial review. For this purpose, he draws a comparison to administrative law and the promulgation of regulations under the Chevron doctrine.

As we move into the twenty-first century, we still sit before that same old river and contemplate its changing new waters. If nothing is new under the sun, a reading of today’s globalization trend must relate to our historical efforts to reach each other and struggle through our diversity, and into our commonality. But our current challenges, either new or not, demand responses. We renew our discussions, and in our dialogue we reach into our understanding of law and politics from a comparative and international perspective. These are just sample ideas of what I rediscover in this issue of the Journal. A new court and the old challenges of conflicting jurisdictions. New organizations and the recurrent challenge of development and conflict solution. A fresh perspective towards the ongoing debate on the process of international law formation. Thus I welcome you, Reader, to this issue and to your recreation of these discussions.