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Essays in Honour of Judge Taslim Olawale Elias
Volume I: Contemporary International Law and
Human Rights. Volume II: African Law and
Comparative Public Law

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BOOK REVIEW

ESSAYS IN HONOUR OF JUDGE TASLIM OLAWALE ELIAS. VOLUME I: CONTEMPORARY INTERNATIONAL LAW AND HUMAN RIGHTS. VOLUME II: AFRICAN LAW AND COMPARATIVE PUBLIC LAW. Edited by Emmanuel G. Bello and Prince Bola A. Agibola, S.A.N. [Dordrecht, Boston, London: Martinus Nijhoff Publishers] 1992. Pp. xxxviii, 898. \$265.00 ISBN 0-7923-1426-3.

Sadly this *festschrift* was published following the death of Judge Taslim Olawale Elias in August 1991, so that those who wanted so much to honor him by their words and deeds while he was alive were too late. He was a legal legend in his own country, Nigeria, and was "the foremost legal luminary of exceptional quality in the African world".¹ His biography² reveals that during his long and distinguished career, Judge Elias was a teacher, scholar, research fellow, professor and dean of a faculty of law, legal adviser to governments in the developing world, the first Nigerian Attorney General and Minister of Justice of his country, Chief Justice of the Federal Republic, a Judge and President of the International Council of Justice.

Forty-four essays in two volumes comprise this personal salute to the great legal mind. The contributions represent the range of legal interests and active participation that Judge Elias maintained during a life of brilliant professional achievements. As one of the editors of this collection of essays notes, the individual contributions "constitute research and writing of the highest calibre of scholars and renowned jurists of the second half of the twentieth century." Collectively, they portray a balance between the older distinguished masters in the science of the law from the industrialized and sophisticated world, and the younger generation of international legal minds from the developing nations.³

In the two volumes, the essays are arranged into seven separate parts. Volume I entitled "Contemporary International Law and Human Rights" commences with Part I "Topics in International Law" with Brownlie's excursion through the international law developments during the second half of the twentieth century that were the concerns of Judge Elias. These themes include decolonization, self-determination, ra-

¹ ESSAYS IN HONOUR OF JUDGE TASLIM OLAWALE ELIAS ix (Emmanuel G. Bello & Prince Bola A. Agibola, S.A.N. eds., 1992).

² *Id.* at xv-xx.

³ *Id.*

equality, codification, the expansion of international society and universalism of specific rules of international law, for example, acquisition of title to territory and development of the law of the sea.

In recalling Judge Elias' doctoral work on Nigerian Land Law and Custom at University College, London, Georg Schwarzenberger uses the English derivatives of their Latin versions of validity and validation to write on the validity of claims perceived from ancient history through the classical period of antiquity. He then considers the relevance of the validation of claims since 2000 B.C. to international law. The significance of validity of claims in the context of contemporary international law completes the author's empirical assessment.

Roberto Ago provides a straightforward review of his ideas and experiences on the codification of the international law since becoming a member of the International Law Commission in 1956. He shares some thoughts for the forms and methods that can be used in future codification projects. Bin Cheng examines the treaties in force that concern the legality of the military use of outer space, the moon and other celestial bodies during the time of war or armed conflict. He also brings attention to the problems needed to be overcome by the U.S. and the former Soviet Union to achieve a meaningful arms control in outer space.

The contribution made by the U.N. in the development of international law rules concerning decolonization is set out in Michael A. Ajomo's essay. Jose M. Ruda contributes a scholarly essay on termination and suspension of treaties. In a short study on the unlawfulness of wars of aggression before 1914, Stephan Verosta recounts the events of the 1897 unjustified aggression by Greece against the Ottoman empire, and the successful collective measures of the European concert to restore European peace. Bertie G. Ramcharan uses the experience of the system of periodic reports pertaining to human rights to advance his thesis that a similar method would promote better observance of international humanitarian law, as abuses are rampant throughout the world. The concept of "soft law," and its influence in lawmaking as being beneficial to the growth of international law is the subject of a sophisticated essay by Michael Reisman.

Ignaz Seidl-Hohenveldern writes on the balancing of interests in having cultural treasures returned to their national territory and the value of having them displayed elsewhere in consonance with the concept of the common heritage of mankind. The Gorbachev imprint on Soviet foreign policy and the implications of the doctrinal change it brought regarding international law are the focus of William E. Butler.

Based on the premise that "[t]he well-being of mankind takes paramountcy over the parochial considerations of a nation or even a

group of nations,”⁴ Nagendra Singh examines the human rights of an adequate environment and sustainable development as being essential for the welfare of the entire community of human beings. The thirteenth and final essay in this opening part is a comprehensive, stimulating and well-researched evaluation of the present ecological crisis by Manohar L. Sarin. Dr. Sarin also reviews the current state of the environment and exhorts the international community to engage in cooperative efforts and apply international law to protect the environment for future generations.

Three essays comprise Part II which is devoted to “The International Court of Justice.” In the first, Manfred Lachs provides an insiders view on the role the Court has played in the acquisition, accumulation and presentation of evidence of both law and fact. In the second paper, entitled “‘Internationalizing’ The International Court: The Quest for Ethno-cultural and Legal-Systemic Representativeness,” Edward McWhinney focuses on the Second Phase of the *South West Africa* case which he believes is the high-water mark of legal positivism, and the Court’s rejection of the policy-oriented approach to law in the case involving *Nicaragua v. United States*. In each instance, Professor McWhinney attributes the outcome due to the background and philosophy of those judges sitting on the particular case. He calls for a more diverse representation on the Court from non-Western societies. Non-Western judges, he contends, would still apply the legal realist’s techniques in a policy-oriented approach, if elected, as the new states that have emerged since the late 1940’s acquire a new confidence in the international judicial process.

In the last essay, Santiago Torres Bernardez provides a thought-provoking analysis of the Court’s contentious jurisdiction and the various aspects of ‘reciprocity’ that are assumed for the Court to exercise that jurisdiction.

Eleven essays on Human Rights make up Part III. Louis Henkin writes on the idea of human rights and some of the alternative ideologies supposedly in conflict with that idea. The old ideas of religion and tradition, and the new as represented by socialism and development are used to develop his position. An explanation as to why human rights encounters difficulties in their applicability, and are not respected by Third World States is offered by Boutros Boutros Ghali as he considers the effects of colonialism, economic and cultural underdevelopment and peripheral wars.

Two essays are representative of how human rights enforcement fares under the military regimes in Africa with special emphasis on the situa-

⁴ *Id.* at 181.

tion in Nigeria. A capsule account by Bola A. Ajibola highlights the Nigerian experience by considering the Nigerian government's posture during three different time-frames: 1966-1979, 1983-August 26, 1985 and August 27, 1985 to the present. In his contribution, Y.A.O. Jinadu looks at the interaction of the courts and the Nigerian government in the 1960's relating to property of the citizen.

From a broad perspective, Oscar Schachter casts some light on the complex relationship of economic development and human rights. By examining their normative content, the changing exceptions of development in Third World countries and the legal obligation accepted to give their peoples a wide range of economic and social benefits dependent upon economic development, the reader is exposed to some of the difficulties in achieving the ends sought. R. St. J. Macdonald provides an excellent, detailed analysis of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment signed in 1989.

Four essays deal with the African Charter on Human and Peoples' Rights. Jacek Machowski gives an appraisal of the growth of people's rights as new human rights in *statu nascendi*. The thrust of Keba M'Baye's contribution is to concentrate on the background of events between 1961 and 1981 that led to the Charter's adoption.

Emmanuel G. Bello selects Article 22 of the Charter for a profound evaluation. He discusses the genesis of the right to development and seeks to discover the real significance of why it has engendered so much controversy. The aim of U.O. Umzurike's essay is to apprise the reader of the extent to which the African Charter is an autochthonous document of that continent. He recounts the differences in the number and type of rights in the African Charter as compared to its European or American counterparts and, the duties and promotional responsibilities unique to the African Charter. The final essay in this part is a thumb-nail sketch by Dinah Shelton of the Inter-American Human Rights system and the relationship of human rights to democracy.

The second volume of essays carries the sub-title of "African Law and Comparative Public Law." Part IV contains two essays which explore a range of issues in African customary law, the area of law in which Judge Elias was a pioneer and founding father when he began his scholarly work. Philip Nnaemeka-Agu has the gargantuan task of writing on Judge Elias' contribution to customary law in Africa. So wide is the spectrum of impact to this vast untapped reservoir of legal jurisprudence that the essayist reluctantly highlights only some of the record of achievements during different stages of the honoree's life. More specifically, A.G. Karibi-Whyte pays his homage through an essay on the general principles governing punishment in Nigerian customary criminal

law which appears to be missing in current Nigerian criminal law.

Part V covers specific topics in Nigerian law. Under the title "T.O. Elias and the Law," David A. Ijalaye evaluates some of the major scholarship of Judge Elias. Interestingly, the author is both laudatory and subtly critical when their views diverge. Chris Ogunbanjo seeks to answer the question of whether law has a role in advancing the economic development of Nigeria. His examination of the state of the Nigerian economy since 1982 as impacted by legislation and the government's role is critical, due to ineffectiveness to satisfy the aspirations of the populace. He advocates adoption of specific recommendations to create the freedom and social order necessary to promote Nigeria's economic revival.

Nigeria's shipping policy which is aimed at getting the country a fair share of maritime commerce is based on the UNCTAD Liner Code. Fola Sasegbon writes a poignant thorough assessment on this maritime system. He makes out a case for Nigeria to participate on a wider basis than provided under the code and the conference system, and advocates a more comprehensive and enduring national shipping policy. He likens the present policy to a multistory building with the liner code that has suffered many cracks at ground level, and the shifting sand of the conference as its foundation. His prediction is that the edifice will eventually crumble.

A. Oye Cukwurah closes this part with an insight into domestic law and international law as it applies in Nigeria's Air Force operations. Of particular interest, is the air force's responsibility for protecting the integrity of the country's territorial boundaries. The author outlines the Nigerian armed forces contributions to U.N. observer force operations and explains when it might be deployed under the 1981 ECOWAS Defence Pact.

The sixth part is reserved for four essays that involve "Constitutional Law." Jadesola Akande's writing sheds light on constitutional problems in a pluralistic society. His assessment touches on the sensitive areas of plurality in the different branches of government, protection of minority interests and guarantees of human rights, although he is quick to acknowledge ineffectiveness as to the last mentioned subject. He embraces the position that "different interests should have an opportunity to participate in the decision-making as well as the decision-implementing processes"⁵.

The theme of Niki Tobi's scholarly paper is the development of constitutional law under the various military regimes in Nigeria which began on January 15, 1966. In his view, Nigeria's military regimes have

⁵ *Id.* at 671.

made many positive and innovative changes to Nigeria's Constitution which have been more useful, purposeful and dynamic than the structure contained in the Westminster-patterned 1963 prototype.

As the theme for his learned offering, James E.S. Fawcett neatly summarizes four linked aspects of the Parliament of the United Kingdom. These include its historical evolution and the present interrelation of Parliament with sovereign, government and people; migration of the Westminster model of Parliament as a source of constitutional law to some Commonwealth countries; Parliament in relation to the European Communities; and to the possible development of federation in the U.K.

In the final essay in this part, Peter A. O. Oluyede looks at the multitude of special administrative tribunals operating in Nigeria. He deals generally with their organization, operation and place within governmental machinery. He provides a good insight into the problems associated with his country's administrative tribunals and proposes a long list of suggestions that emanate from one who has studied and practiced within the system.

Under the title of "Miscellanea," Part VII is comprised of seven essays. A second essay by Emmanuel G. Bello provides a synoptic historic-legal map of Africa as it was effected by foreign domination through the period of political independence.

In a philosophical mood, J.D. Ogundere writes on natural justice and unjust laws while C.O. Ajayi-Okunuga considers the factors that must be present for the satisfactory administration of justice, and in the process answers the query, what is justice? Matters of fact in various forms, whether at trial or on appeal, are discussed by E.O. Fakayode with respect to the practice before the courts in Nigeria. In "Privatus Logicus and the Return of the Dorians," Andreas J. Psomas writes a bizarre symbolic satire of the Western view of the law.

In virtually every African country today there are several local legal systems in operation simultaneously, in addition to the general legal system based on either the English common law or the French Code. Consequently, conflicts occur between the legal rules of the local legal systems and between a local system and the general legal system. E.K.M. Yakpo uses the public policy doctrine in African inter-local conflict of laws to explain its operation during the colonial period and since 1960 in Anglophone and Francophone Africa. The final essay in the collection is both a tribute and a recollection of Judge Elias by his friend and International Law Association colleague, Eze Ogueri II.

There is an index and a short professional biography of each of the many contributors who wanted to recognize the honoree. A bibliography of Judge Elias' works shows his diversity of interests and, attests to his great influence on the law. He was a bright star in the legal firmament.

The breadth of his impact has been superbly recognized in this fine collection of essays.

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