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AFRICA  
AND THE  
INTERNATIONAL  
LAW OF THE  
SEA

N.S.REMBE

# AFRICA AND THE INTERNATIONAL LAW OF THE SEA:

A Study of the Contribution of the  
African States to The Third United  
Nations Conference on the  
Law of the Sea

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## FOREWORD

At the time of writing this foreword (April 1979), the eighth session of the Third United Nations Conference on the Law of the Sea (UNCLOS III) is still meeting. By the time the current session ends, UNCLOS III will have involved over 140 states in 57 weeks of negotiations. It must be added that, although prediction is a hazardous business, the prospects for the early adoption of a generally acceptable convention are not good. Moreover, the adoption of the convention will be but a beginning and it may be some considerable time before it attracts the number of ratifications or accessions required to bring it into force. In the meantime, states will have no option but to frame their national policies and conduct their international marine relations on the basis of a large body of principles and rules which is at the same time looking backwards to the Geneva regime of 1958 and forward to the embryonic Caracas regime. If the entry into force of a new convention is unduly protracted, it is likely too that new rules of international customary law, already germinating in the rich humus of current state practice, will emerge into full bloom.

It is against this fluid background that Dr. Rembe has had to conduct his inquiry into the contribution which the African States have made to the work of UNCLOS III. Many of these States are very young; most are developing; and the great majority have a shortage of trained and experienced international lawyers and diplomats. They have, nevertheless, played an important role in the Conference, both separately and as a major section of the group of 77 developing States. They have, for example, supplied the influential chairman of the Conference's First Committee (Mr. Paul Bamela Engo, Cameroon) and major intellectual and diplomatic contributions have been made by, among others, Dr. Rembe's compatriot, Mr. J.S. Warioba (Tanzania) and Mr. F.X. Njenga (Kenya). It is largely as a result of the work of such leaders that an African approach to the law of the sea has gradually developed.

The task of gathering, digesting and analysing documentation

from about fifty States has not been an easy one but, while the evaluation of Dr. Rembe's work must await a more objective reviewer, it can be said with confidence that his spadework, his insight into the historical and economic background and his skillful ordering of a mass of material have made of this work an invaluable introduction for the younger generation of African diplomats who will be concerned with UNCLOS III and its aftermath. Readers from the developing world will also gain a better understanding of the UNCLOS III negotiations by studying this work of a young African lawyer whose consciousness of the excessive inequalities among States and of the need to mould a new law of the sea as part of a New International Economic Order is shared by a substantial majority of UNCLOS III delegations.

E.D. BROWN

## PREFACE

International law is in a period of transition from a European law to a more universal or quasi-universal law governing diverse subjects and reflecting a wide range of fields. In this heuristic stage, international law is emerging as a discipline of considerable interest to many States, particularly to the newly independent nations.

International law is a law of inter-State relations and an instrument of co-operation. This role is significant to the newly independent States following their reassertion of independence as fully fledged subjects of the law. International law thus becomes an important instrument of their foreign relations in diplomatic and consular, economic and trade matters.

The above view does not, however, mean that the new States are satisfied with, and accept the whole body of international law. There has been a phase of reaction against traditional international law which sanctified relationships that are the sources of the current problems in these countries. The origins, development and functions of traditional international law have been indissolubly linked and identified with colonialism and imperialism, responsible for the present and past oppression and exploitation of the new States. International law therefore poses as an obstacle to the realization of national economic and social reconstruction, as well as international development.

Following the decolonization process and the phenomenal developments in the fields of science and technology, international society has expanded in many fields and relationships, necessitating a corresponding quantitative and qualitative expansion of international law on a system-wide basis. This has manifested itself in the current efforts towards the establishment of a just and equitable international institutional, economic and social order. Acceptability and respectability of international law will be enhanced if the law reflects, and contributes towards the solution of, present and future political, economic and social problems.

International law and decision making are complex processes

currently involving more than 150 States. These States have different socio-economic and political formations and are at various levels of development. The newly independent States, backed by their numerical strength, can shape and influence the development of international society through their participation in decision-making forums based on the principle of sovereign equality of States. These countries are characterized by underdevelopment, which has led to their recognition as a special category of subjects requiring more appropriate international considerations according to their needs and interests. However, the strategy of international negotiations and diplomacy is also changing. The traditional pattern of East-West negotiations involving a few powers is being replaced by a process of multilateral negotiations and diplomacy, from which "consensus" is emerging as a method of adopting major international decisions.

In looking at the African contribution to UNCLOS III, which is the theme of this work, our attention should not be confined to events taking place in the sea. Firstly, it is necessary to grasp general African attitudes towards international law, particularly as we focus on new subjects which had not participated in framing the previous order. Secondly, the negotiations have been conceived as part of the New International Economic Order, and therefore many inter-related issues are involved. An interdisciplinary approach has been taken as the framework of our analysis, bearing in mind that the various issues of the law of the sea are closely linked together. Lastly, the African States have varied and growing interests in marine affairs which explain their active participation in UNCLOS III and the Seabed committee that preceded it. These interests cannot be isolated from the basic national and international problems of the African States.

The book is divided into five chapters. Chapter 1 examines the attitudes of the African States on international laws which are relevant to the better understanding of the positions taken by these States in UNCLOS III. Regrettably, we have been unable to include all of chapter 1 of the original thesis, which focused on contemporary national and international problems of emergent African States. This latter chapter contains historical, political, economic and social factors which influence and shape the attitudes of the African States on international affairs.

Chapters 2–4 examine the positions advanced by the African States from the various debates and proposals tabled before UNCLOS III. These proposals form the bulk of the *travaux pré-*

*paratoires* and include those considered by the Seabed committee which remain extant. Despite the existence of diverse interests in a continent of about fifty States, the African States adopted a regional negotiating position which is important in assessing their contribution to UNCLOS III.

The concluding chapter sums up the contribution made by the African States in UNCLOS III. This is followed by an appendix containing some of the basic proposals and other facts bearing on the text. It should be emphasized: firstly, the original study was carried out in the course of the negotiations and without a definitive text; secondly, it focused mainly on the initial sessions of UNCLOS III; thirdly, the issues debated in the conference and discussed here, remain relevant for the development of the International Law of the Sea. Finally, this text remains in substance essentially the same as the original thesis.

The accomplishment of this work could not have been possible without the gruelling two years Ph.D. course undertaken at the Department of Law, University of Wales Institute of Science and Technology. My profound gratitude goes to Professor E.D. Brown of the said University under whose supervision the original research was undertaken, and again for so kindly providing the foreword to this book.

I would like to thank all persons and institutions who in varying degrees contributed to the success of this work, to mention particularly the invaluable assistance rendered by Susan and Ndugu Kitiwili. The book is especially dedicated to Chris and Christina who were born in the course of its preparation.

N.S. Rembe, D'Salaam.  
March, 1979

## ABBREVIATIONS

AALCC	Asian-African Legal Consultative Committee
AJIL	American Journal of International Law
BYIL	British Yearbook of International Law
CECAF	Fisheries Committee for the Eastern Central Atlantic
DDT	dichloro-diphenyl-trichloro-ethene
ECOSOC	Economic and Social Council of the United Nations
ECA	Economic Commission for Africa
EEZ	Exclusive Economic Zone
ENDC	Eighteen-Nation Disarmament Committee
FAO	Food and Agriculture Organization of the United Nations
GFCM	General Fisheries Council for the Mediterranean
Group of 77	Third World Countries, originally 77, now numbering 117
IBRD	International Bank of Development and Reconstruction
ICJ	International Court of Justice
ICLQ	International and Comparative Law Quarterly
ILC	International Law Commission
ILM	International Legal Materials
ILO	International Labor Organization
ILR	International Law Reports
IMCO	Inter-governmental Maritime Consultative Committee
IMF	International Monetary Fund
Int. Org.	International Organization
IOC	Inter-governmental Oceanographic Commission
IOFC	Indian Ocean Fishery Commission
OAU	Organization of African Unity
res	resolution
rev	revised



SALT	Strategic Arms Limitation Talks
SCA	Scientific Council for Africa
supp	supplement
TIAS	Treaties and other International Acts Series
UK	United Kingdom of Great Britain and Northern Ireland
UN	United Nations
UNCLOS	United Nations Conference on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
UNEP	United Nations Environmental Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNIDO	United Nations Industrial Organization
UNITAR	United Nations Institute for Training and Research
UNTS	United Nations Treaty Series

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Part I

## INTRODUCTORY MATERIAL





## Chapter 1

# THE IMPACT OF AFRICAN STATES ON INTERNATIONAL LAW

### 1.1 Emergent Africa: A General Survey

Africa is a vast continent covering about 11.7 million square miles (30.3 million square kilometres), or one-fifth of the earth's total land surface. It is the second largest continent after Asia, to which it is joined by the narrow Isthmus of the Suez. The continent has striking diversities as well as similarities.

Nearly the whole of the continent lies with the tropics. The equator divides it unevenly into two, the smaller part tapering to the southernmost extremity, the Cape of Good Hope. The Tropics of Cancer ( $23\frac{1}{2}^{\circ}$  N) and Capricorn ( $23\frac{1}{2}^{\circ}$  S), marking the movement of the overhead sun, cut across the continent. To the north stretches the vast Sahara Desert, slowly encroaching southwards into the Sudano-Sahelian region. Situated at the centre of the continent are three inland lakes, which rank among the largest in the world. Much of the rest of the continent stands on the African plateau, dissected by high relief and the Great Rift Valley. From this plateau descend many rivers, such as the Nile, the Congo, the Niger, and the Zambesi, in a series of rapids and cataracts before emptying into the sea. These climatic and relief features are the main physical factors which influence agriculture, settlement, communications and other human activities.

Africa is washed by four seas: the Mediterranean in the north, the Atlantic in the west, the Indian Ocean and Red Sea in the east, and the mingling of the Atlantic and Indian Oceans in the south. The Mediterranean is linked with the Atlantic by the Strait of Gibraltar, and with the Red Sea by the Suez Canal, both of which offer an important and direct sea link between the West and the East. The African coastline is fairly straight, with few inlets, bays and gulfs. Similarly, the continental shelf is not extensive; in some areas it is truncated a few miles from the coast.

There are more than fifty political divisions, large and small, coastal and land-locked States, including a number of islands