

Elias, T.O., AFRICA AND THE DEVELOPMENT OF INTERNATIONAL LAW. Dobbs Ferry, New York, Oceana Publications, Inc., 1972. xiii, 261 p. \$13.00

For millenia, Africa's place in international law was as an arena, a background and at times a prize in the international system of the Mediterranean and of Europe. During this period, African territorial communities developed international and intertribal laws of their own which were largely unrecorded and seemed to have had little impact on the rest of the world. The past 25 years have seen this historical pattern reversed. There are now 41 African members of the United Nations. Their representatives have played major and often initiating roles in the shaping of contemporary international law. And African regional collaborations and conflicts, far from being ignored, are widely and nervously perceived as portending major power stakes for the rest of the world. In "Africa and the Development of International Law", Dr. T.O. Elias, Professor and Dean of Law at the University of Lagos, undertakes to describe and to analyze these developments from the perspective of international law. While most of the chapters have been published elsewhere, their reproduction in this ambitious project gives them a different significance and provides the lawyer with a fairly comprehensive survey of what Africa is doing and what is being done to Africa in international law.¹

In Part I of his book, Dr. Elias locates Africa historically in the flow of world events. He suggests that this intercourse with the rest of the world coupled with a fundamental "rule of law" conception which he believes is found in hierarchical as well as coarchical African societies² produced certain accepted standards of international contact which permit African states, despite their apparent newness, to fit easily into the contemporary international legal community. That community, under the stress of change, has forced comparable changes in the

1. Unfortunately, Dr. Elias has not revised and updated the previously published pieces. Different time references will confuse the reader.

2. See Elias, Nature of African Customary Law (1956).

dynamics, prescriptive procedures and scope of activities of the United Nations. Dr. Elias applauds such changes, yet surprisingly he criticizes, in a later chapter, comparable organizational developments in the OAU. He analyzes closely the International Court of Justice's Southwest Africa and Namibia cases³ and approves of the latter. But in developing a theory of coup in international law as lawful when, among other things, it does not break up an existing state, he ignores the fact that this seriously attenuates a continuing right of self-determination in the probable contexts of international law in the future.

Part II of "Africa and the Development of International Law" shifts to a detailed examination of the legal and political dynamics of the African regional system. Dr. Elias presents a dynamic and in part comparative overview of the Charter of the Organization of African Unity and the agencies and commissions related to it. Against this background, he analyses the potential conflicts of competence between the Council of Ministers and the Assembly of Heads of State and applies his analysis to one phase of the Rhodesian case. The specific resolution which he considers in this context was probably politically inadvisable at the time, but Dr. Elias' refutation involves a constitutional argument which tends to paralyze executive development within the OAU. The author concludes this section with an analysis of the OAU's Commission of Mediation, Conciliation, and Arbitration.

Part III is a looser collection of essays in which Dr. Elias broadens his focus again, tying developments in Africa back to the comprehensive system of international law. Two chapters survey the general development of the international protection of human rights, with special emphasis on the problems of ensuring freedom of assembly and association. A chapter on the law of foreign investments in Africa is unfortunately too short and without footnotes, so that it is of little use to the lawyer, the student or the scholar. The book concludes with a fitting investigation of legal regulation of international communication and some of its effects in Africa.

"Africa and the Development of International" in its survey of general trends in international law does not break new ground.

3. [1966] I.C.J. 6; [1971] I.C.J. 16.

Yet it will be a handy collection, for it does realize its basic ambition: it presents a sweeping view of Africa's contributions to international law and its developing regional law. But though his canvas is large, Dr. Elias chooses to work with a slim palette of colors. He is a conventional jurist, and he allows little of the broader political and economic insight which obviously informs his thinking to inform his readers. Nor is his scrutiny of African problems always even-handed. Racism and self-determination in Africa north of the Zambesi are virtually untreated. Biafran-type problems of formation of new international entities and separatism are not discussed as difficult parts of contemporary self-determination, but are dismissed as a legal pathology. These oversights are regrettable. Dr. Elias will persuade the most reluctant reader that Africa is a full and vigorous participant in the international legal process and that its interstate and international problems are those of the rest of the world. African international lawyers seem to be as reluctant as their counterparts elsewhere to face squarely up to problems closest to home.

W. Michael Reisman

Professor of Law
Yale Law School