

# *NEW HORIZONS IN INTERNATIONAL LAW*

By. T.O. Elias

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The last few years have witnessed an increase in the amount of works in the area of international law by scholars coming from the Third World, even though their basic training may have been in the "first" world. Insofar as international law is concerned, one of the most important of these scholars is Judge Elias, the Nigerian member of the International Court of Justice.

As is perhaps to be expected, the majority of essays in his latest publication concern that Court, while his role at the Vienna Conference on treaty law is responsible for a further essay. In addition, he provides an interesting commentary on the new law of the sea, as well as a critique on the contribution of Asia and Africa to contemporary international law. The final group of essays is concerned with human rights and humanitarian law. He concludes with a paper devoted to this latter subject from the African perspective, wherein is examined some of the features of the Angola trial of mercenaries.

In his opening paper, Judge Elias discusses the *New Horizons in International Law* which were opened up as a consequence of the establishment of the United Nations. He emphasises the contribution made by such bodies as the International Law Commission and the various new annuals of international law, which represent the coming together of

so many peoples of different races and climes [who have] joined together to make and to administer a plethora of laws for their common welfare, [and] to organize and execute plans for social and economic development. . . . It seems such a pity that in an era of more laws, more books, more lawyers and more United Nations and other activities in the international legal field, there should be much less judicial work for the Court at the present time.<sup>1</sup>

It can hardly be expected that the situation will improve after the recent attempt by the United States to bring Iran before the Court in connection with the embassy incident, knowing that Iran would not attend and that the Court's decision would amount to a toothless paper tiger.

Judge Elias lists the fields in which Asia and Africa have made contributions. These include international constitutional law, legal and judicial developments, international economic law and humanitarian law. He is of the opinion that, "on the whole, it can truly be said that Asia and Africa, often with the assistance of Latin-American and sometimes of the east European States, have made notable contributions to the development of contemporary international law. . . . One can only hope that one has not exaggerated that contribution."<sup>2</sup> When the reviewer looks at the number of

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1. T.O. Elias, *New Horizons in International Law* (1979) 18-19.  
2. *Id.*, at 34.

cases in which the group of states referred to has paid nothing more than lip service to both traditional and new rules of international law, he finds that he cannot be as sanguine as the author. Judge Elias occasionally indicates that he himself has doubts. This tends to come through in his discussion of the Angola trial and the African approach to the so-called crime of mercenarism, with the Judge preferring the attitude of the Geneva Humanitarian Law Conference, based largely on a Nigerian proposal, to that of the so-called international committee that attended the Angola trial.<sup>3</sup>

Any person interested in the supremacy of the rule of law must be concerned with the extent to which pacific settlement of disputes can be effected, and particularly with the contribution of the judicial process. Of the papers in *New Horizons in International Law* dealing with the International Court, perhaps the most interesting is that in which Judge Elias considers the role of the Court in the search for peace. When discussing the series of judgments and opinions which led to the last of the *Namibia* findings, he comments that

the decision in the 1966 case was without a doubt too much influenced by excessive analytical positions in which the International Court of Justice ought not to indulge in its delicate task of administration of justice and ensuring world order. By 1971, however, the *Namibia* Advisory Opinion restored somewhat the image of the Court as not being the reactionary body that it was judged to be in the preceding decade or so. This is probably because the General Assembly had by that time worked out more fully and more perspicaciously the principle of self-determination as an acceptable norm of contemporary international law.<sup>4</sup>

It is perhaps unfortunate that he provides no discussion of the extent to which Assembly Resolutions are able or unable to make rules of international law. As well, he completely disregards the argument that after 1966 the membership of the Court has reflected political pressures rather than legal know-how (his views on the qualifications of judges are interesting,<sup>5</sup> leading some eminent commentators, for example, Professor Schwarzenberger, to talk of a packed court.

Whether one agrees with the views expressed by Judge Elias or not, it must be accepted that his *New Horizons in International Law* is a major contribution to the current dialogue on international law, with controversial, provocative and encouraging arguments in roughly equal proportions.

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3. *Id.*, at 200 ff.

4. *Id.*, at 139.

5. *Id.*, at 83.