

NASILA 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.

Alphen aan den Rijn, Germantown, Maryland, Sijthoff & Noordhoff, 1980, XIX, 251 S., Dfl. 85,-/S 42,50.

In his foreword to Rembe's book, Professor E. D. Brown, supervisor of this work which started as a doctorate thesis, cautiously predicts that the "prospects for the early adoption of a generally acceptable convention are not good"¹. This view seems to contradict his early position in 1973 that such a situation would be "disastous to many other international problems"². However, Rembe, in his recommendations on the implementation of UNCLOS III Treaty, optimistically maintains that a comprehensive Law of the Sea Treaty will be concluded³. Whichever of these views is closer to the truth, one thing is certain, and that is, that the adoption of a convention will lead to "a beginning that will need some considerable time before it attracts the number of ratifications or accessions necessary to bring the convention into force"⁴.

To draw upon a recent experience on another subject, that has little to do directly with the Law of the Sea, we would easily recall, if our memory serves us well, that the Strategic Arms Limitation Talks (SALT) went on for ten long years, between the United States and the Soviet Union, before agreements were concluded in 1979; yet, today, it is by no means certain that the outcome of those efforts will be favourably rewarded by the final act of ratification. The scenario may be no less different, and perhaps more evident, in the Third UN Law of the Sea Conference (UNCLOS III).

What is consistent about the attitudes expressed by Brown and Rembe, is that the same inconsistency has dominated UNCLOS III since its deliberations commenced several years ago⁵.

In the last couple of years, scholars and experts, including participants in the present Law of the Sea Conference, have hardly contained the urge to flood Law Journals and Publishing Houses, with manuscripts on the subject. Rembe is not an exception. He has tackled a difficult topic, with volumes of literature behind it, at a particular juncture when UNCLOS III appears to be "eliciting only yawns from the media and glazed eyes among the public"⁶. His efforts are commendable.

When the permanent mission of Malta to the UN sent a Note Verbale on 17. August 1967 to the late Secretary-General, U Thant, outlining the problems of the "seabed and the ocean floor and the subsoil thereof"⁷ and the wish that such item be placed on the agenda of the General Assembly for consideration, hardly did they realise how much time, interest and expense will be dissipated in the whole exercise. After thirteen years of complex resolutions an negotiations, the only glimmer of hope now in sight is that UNCLOS III, is gradually inching its way to an agreement. The process has been such that States have unduly, severally,

1 P. VII.

2 See Brown, E. D., "The 1973 conference in the Law of the Sea: The Consequences of Failure to Agree", Paper presented at the 6th Annual Conference of the Law of the Sea Institute, University of Rhode Island, June 1971 pp 1-37 cited by Rembe in note 6 p. 208.

3 Rembe, p. 206.

4 Ibid. p. VII.

5 The Conference itself started in 1973, but there had been years of preparation before then.

6 See International Herald Tribune 4 April 1980.

7 See 22 UN GAOR, Annexes III (Agenda item 92) UN Doc. A/6695 (1967).

jointly and continuously modified the framework within which their objectives are to be achieved⁸.

The task of collecting and digesting documentations submitted by all the African States, not to mention those distributed by other delegations, must have involved a lot of spadework, even overwhelming. However, the first apparent oddity in Rembe's book is the format. The outline is divided into two main parts, of which the first, the introductory material, contains a single chapter of thirty three pages, not immediately related to the subject. The second part dealing with Africa and UNCLOS III, in its entirety, covers four chapters in one hundred and eighty two pages. It is not clear whether this was responsible for the clumsy treatment of the different aspects of the same topic under different chapters⁹. The author, no doubt, creates a bit of confusion in the mind of the reader, who wonders whether he is going through the same thing again or not. Better delimitation of Rembe's book would have made much difference to it. Another curious aspect, was the citing of so many UN Documents in the main body of the work instead of including them in the footnotes¹⁰. They did not add any particular merit to the book.

Bibliographical appendix tells the general reader where he may find the bulk of information along the main lines of inquiry covered by any book. Rembe did not unfortunately, consider this necessary. The reader must, therefore, only be satisfied with his footnotes and the scanty list of documents in appendix III¹¹.

The evidence of all too familiar litany on the limitations of certain norms and principles of international law, are dealt with in chapter one under a general survey of emergent Africa and its impact on international law¹².

The core of the book is devoted to details of efforts, attempts, assertions and rivalries among interst groups. Attitudes of African States and the positions taken on issues by the Organisations of African Unity (OAU) are emphasised, and the mind boggles with the incredible number of resolutions and draft articles submitted to UNCLOS III since 1973. The assemblage of facts in Rembe's book is significant. It is a comprehensive, if not an exhaustive study on compromises and the great awakening of the African States to a dynamic role in international relations, and especially in multilateral negotiations. This, in turn, has surprised the African States themselves as to the degree of influence they could wield through concerted efforts, unity and co-operation¹³. It is very hard to stand alone. Special interests can be protected in a multilateral negotiation, but to do so the case must obtain at least some significant support and must be argued in a broader context¹⁴.

In the course of his general survey, the author did not adequately make a systematic analysis of the impact of the different factions, nor did he go behind the issues, the delegations, the forum of negotiation to pry into the intellectual world of UNCLOS III, and the philosophy that sustained this marathon exercise. Probably, not since the Code of Justinian was carried out over 1500 years ago has there been an equal challenge to the wit of jurisprudence¹⁵.

8 The 9th Session of UNCLOS took place in April 1980.

9 For example, Problems of African Land-locked States, pp. 74, 142; Scientific Research, *ibid.* pp. 134, 135, 179 etc; Transfer of Technology *ibid.* pp. 63, 179, 183 etc; to mention but a few.

10 *Ibid.* pp. 110, 114, 129, 142, 145, 146, 177.

11 *Ibid.* pp. 229-232.

12 *Ibid.* pp. 3-33, Matters such as Colonialism, lack of participation and the superimposition of the law of the Western World are well treated.

13 *Ibid.* pp. 153-154, Especially the inclusion of Liberation Movements as observers in order to avoid presenting them with future "fait accompli".

14 See ALC de Mestral and L.H. Legault; "Multilateral Negotiation-Canada and the Law of the Sea Conference". International Journal vol. XXXV NO1 Winter 1979-80.

15 From New York Times printed in International Herald Tribune 8 April 1980.

The creation of the first ad hoc committee “to study the peaceful uses of the seabed and the ocean floor” was due to a draft resolution sponsored by ten African States¹⁶. Even then, they perceived UNCLOS III as part of a global concern to establish a new, equitable, and just international economic and social order; embracing other interests and needs¹⁷. Nevertheless they were sometimes divided on specific issues particularly those connected with the Second Committee¹⁸. It is interesting to note that presence of Ambassador Paul Bamela Engo (Cameroon) as chairman of the First Committee reassured the African States¹⁹. The real reason why the African States and other developing countries united their efforts was because of the fear that the technologically advanced nations would parcel out the seabed and its resources²⁰. One of the several achievements of the African States was the proposal by Senegal to invite national liberation movements, recognised by the OAU and the Arab League, to participate as observers at UNCLOS III, which was approved by the conference²¹.

Rembe tells us that the war of words on whether scientific research should be considered as part of the freedom of the high seas, has now been resolved by its inclusion in the Negotiating text²². The end product is that greater emphasis has been placed on the early transfer of science and technology²³. This would, no doubt, bring into focus the activities of the IOC-UNESCO project on Training, Education and Mutual Assistance (TEMA)²⁴.

On the important question of the creation of an International Seabed Authority, conflict still revolves, not around the concept itself, but on “a flexible institutional arrangement that would not be financially burdensome or inefficient”²⁵. The problems of Land-locked African States are acute. First, they are categorised among the least developed countries in the world by the United Nations. And secondly, there are fourteen of them in Africa alone of which ten are “hard core” economic cases. Their needs in the seabed are linked with a regime that would allow them “secure transit and access to the sea”²⁶.

Another major contribution of the African States to UNCLOS III, is the concept of the Exclusive Economic Zone (EEZ). It was built on the idea of a patrimonial sea, which originated from Latin America²⁷. The EEZ was first mooted, according to Rembe, at the Asian African Legal Consultative Committee meeting in Colombo in 1971, by the representative of Kenya, and since then it has been recognised as African idea.

The author has given a detailed description of the attitudes of African States on many other issues confronting UNCLOS III, especially those dealing with marine pollution, freedom of fishing, shipping and navigation, marine environment and the complex question of dispute settlement. On the regime of shipping and navigation, the book draws special attention to how ill-equipped the African States are to “combat massive oil pollution arising from accidents, blow-out and spills”²⁸.

16 Namely, Ghana, Kenya, Libya, Madagascar, Nigeria, Senegal, Somalia, Sudan, Egypt and Tanzania. See Rembe p. 40. UN Document cited in footnote 18 p. 81.

17 Ibid. pp. 58 and 182.

18 Ibid. p. 58.

19 Ibid. p. 60.

20 Ibid. pp. 52 and 73.

21 Ibid. pp. 153–154.

22 Ibid. p. 179. Also A/CONF. 62/w p. 10, Art. 87 (f.).

23 Ibid. p. 179.

24 See Bello E. G. “The Present State of Marine Science and Oceanography in the Less Developed Countries”. *The International Lawyer*, Volume 8, Number 2, April 1974.

25 Ibid. p. 66.

26 Ibid. pp. 74, 75, 143 and 144.

27 Ibid. p. 158, see footnote 120.

28 Ibid. p. 175.

The impact of "consensus" as a new signpost in the process of decision making in multilateral negotiations is clearly highlighted²⁹. On the principle of "common heritage of mankind", Rembe, uses the African Land tenure systems of common ownership to illustrate African States' perception of UNCLOS III deliberations on the subject³⁰.

The concluding chapter of this book evaluates African participation and contribution. It deals also with the new state of affairs that may arise when the Law of the Sea Conference comes to an end. Against this background, and to contain any doubts, African States are asked to be cautious in examining the legal implications of ratifying the Treaty, and the unforeseen consequences of implementing its provisions³¹.

Rembe's book will remain a valuable reference work for students and teachers seeking to chart the course that the African States followed at UNCLOS III. It provides a conclusion that gives a guide in the quest for future work in the Law of the Sea, when all the hustle and bustle have calmed down.

Emmanuel G. Bello

FRANZ NUSCHELER/KLAUS ZIEMER

Politische Organisation und Repräsentation in Afrika

Walter de Gruyter, Berlin, New York, 1978, (Band II: Die Wahl der Parlamente und anderer Staatsorgane, hrsg. von Nohlen u. a., 2 Bände, 2507 S., 862 DM)

Dieser zweite Band – nach dem 1969 zu Europa erschienen – der Reihe „Die Wahl der Parlamente und anderer Staatsorgane“ beschränkt sich nicht auf diese enge Fragestellung, die die Autoren insbesondere für Afrika als „grotesk und museal“ (wohl mit Recht) bezeichnen (S. 1). Das vorliegende Werk will und muß mehr sein, will es den Charakter und das Funktionieren der politischen Systeme und des Willensbildungsprozesses in Afrika erfassen und auf den Begriff bringen.

Das Handbuch, das (begründet) Informationskompendium und Nachschlagewerk sein will (S. 3), besteht aus zwei Teilen: aus einer allgemeinen Einführung und aus Beiträgen zu 55 Ländern und Territorien. Die Verfasser zeichnen gemeinsam für die Einleitung und auch (individuell) für ca. die Hälfte der Länderbeiträge. Den Rest besorgten 16 weitere Autoren. In der umfangreichen „Einleitung“ – die mit 200 Seiten eigentlich auch schon den Charakter einer eigenständigen Monographie hat – ziehen Nuscheler/Ziemer einen vergleichenden Querschnitt durch die politische Entwicklung des Kontinents und diskutieren dabei ausführlich und gekonnt – was in den Länderbeiträgen so nicht möglich wäre – die Theorien, Hypothesen und Erklärungsansätze der politischen Entwicklung. Sie gehen dabei zunächst auf die präkolonialen Gesellschafts-, Herrschafts- und Legitimitätsformen, auf die Praxis der Kolonisation und Dekolonisation sowie dazu den relevanten theoretischen Erklärungsversuchen, auf Genese und Organisation des afrikanischen Nationalismus, auf die Transformation der (kolonial hinterlassenen) Verfassungsmodelle (von der „Westminsterdemokratie“ zum afrikanischen Präsidialismus), schließlich auf Begründung, Entstehung und Entwicklung der Einparteiensysteme und der Militärherrschaft als alternativer politischer Organisationsform ein. Den Abschluß dieses Teils bilden einige knappe Bemerkungen zum Stichwort „die afrikanischen Staaten als ‚periphere Staaten‘“.

Mit dieser Einleitung ist Nuscheler/Ziemer ohne Zweifel eine der besten Einführungen in die politischen Systeme und die politische Entwicklung Afrikas gelungen, die durch die Hand

29 Ibid. p. 65.

30 Ibid. p. 53.

31 Ibid. p. 206.