Maryland Journal of International Law

Volume 8 | Issue 2 Article 7

International Law and the New States of Africa, by Yilma Makonnen

Daniel C. Turack

INTERNATIONAL LAW AND THE NEW STATES OF AFRICA. By Yilma Makonnen. Published with the assistance of UNESCO under the Regional Participation Programme for Africa, Addis Abeba. 1983. Pp. xxvi, 575. $37.95 (Distributed by UNIPUB.)

Although the title might indicate otherwise, this work is not a general study of international law as perceived or applied by the new States of Africa. Nor does it deal with the problems surrounding succession of governments and recognition of governments. Rather it is a specialized study of some international legal problems of state succession concerning treaty law in the newly independent States of Eastern Africa.

The book is divided into three parts. Part one discusses the historical background and evolution of the Eastern African States, with emphasis upon their attitudes and regard for the international community, contemporary international law, peaceful change, and the International Court of Justice.[1] The Eastern African States specifically considered in this study include Burundi, Kenya, Malawi, Rwanda, Somalia, Tanzania, Uganda and Zambia. The author presents the reasons for underlying attitudes with some analysis of the contributing factors for a fuller understanding of these States' posture toward the issues at stake. The view is that there are no mandatory international legal rules which obligate these States to accept any rule of international law at the time these States came into being without their explicit or implied consent.

In the second part, the author examines the general theories of state succession and status of the law of state succession. He continues with an in-depth analysis of the contribution of the Eastern African States' optional doctrine, derived from the classical clean-slate doctrine,[2] but overhauled

---

1. The orthodox Euro-centric view, for example, as expressed in the legal literature by positivists and neo-positivists of the late nineteenth and first half of the twentieth centuries is that African nations did not participate in the formulation of the norms of international law. The works of Wheaton, Phillimore, Hall, Oppenheim, Fauchille and Westlake attest to the view that international law was entirely developed through treaty and custom by the Christian countries of Europe. The attitudes of the new club members of the international community can be gauged by a perusal of Anand, *Attitude of the Afro-Asian States Toward Certain Problems of International Law*, 15 INT'L & COMP. L. Q. 55(1966); T. O. ELIAS, AFRICA AND THE DEVELOPMENT OF INTERNATIONAL LAW (1972); R.P. ANAND, NEW STATES AND INTERNATIONAL LAW (1972); F. OKOYE, INTERNATIONAL LAW AND THE NEW AFRICAN STATES (1972).

2. The "optional doctrine" is best summarily described by Judge T. O. Elias, President of the International Court of Justice, in his Forward to this book as "based on the principle that bilateral treaties should be separated from multilateral treaties, that other parties should join Tanganyika (as it then was) to apply the terms of certain treaties provisionally and limited

and reformulated by Julius K. Nyerere, President of the United Republic of Tanzania, and commonly known as the "Nyerere Doctrine." Generally, the Colonial Powers advocated that the new Eastern African States enter into inheritance agreements, and apply the pre-independence treaties concluded by the Colonial Powers on behalf of the colonial territories. Instead, the "Nyerere" doctrine, in the case of bilateral treaties, calls for provisional application, on a reciprocal basis, for a two-year period from the date of independence of those terms of treaties that are compatible with the sovereign rights of new states. This period of time would serve as a time for reflection by the new state to pick and choose whether to be bound or renegotiate the treaties with the parties concerned. In the case of multilateral treaties, there is no fixed period for the provisional application of their terms based on reciprocity. Inevitably, the various Eastern African States developed their own versions of the optional doctrine (the opting in; the opting out; the general declaration and non-committal or selective "specific treaty" formulae). The author provides considerable stimulating articulation in his analysis of the various concepts and State practices. Moreover, he outlines the reactions of the predecessor States, third parties including international organizations, and jurists to the optional doctrine. Impact of the optional doctrine has been ascertained through other entities' adoption of the formulae on gaining independence, and influence on the International Law Commission in its work on the Vienna Convention on Succession of States in Respect of Treaties.[3]

In part three the author's primary objective is to demonstrate to what extent the Eastern African States have actually applied their declared optional doctrine of succession on international treaties of various types. Readers will find this analysis both interesting and controversial. Makon-

---

only to those treaties which are valid legally and compatible with the sovereign rights of the new States though validly concluded or applied by Great Britain before independence, that the provisional application of such bilateral treaties is based on reciprocity between the parties to the treaties, that the provisional application of the terms of the treaties is fixed for a period of two years from the date of independence and all such treaties lapsed upon the termination of the period, that the two-year period should serve as a 'reflection period' when Tanganyika would have a chance to pick and choose as well as an occasion for possible renegotiation with the parties concerned, and that, in the case of multilateral treaties, there is no fixed period for the provisional application of their terms based on reciprocity."(p. xvi).

The proponents of *tabula rasa*, or clean-slate doctrine of state succession argue that upon state succession the predecessor State's personality and its identity completely disappear. The entirely new international sovereign personality appears in its stead with no legal connection or derivation between the predecessor and successor entities. *See* A.B. KEITH, THE THEORY OF STATE SUCCESSION, WITH SPECIAL REFERENCE TO ENGLISH AND COLONIAL LAW 3-6(1907).

3. U.N. Doc. A/CONF. 80/31 (1978). Opened for signature at Vienna on August 23, 1978.

nen's premise is that at the heart of decolonization is the need to free the economies and natural resources of the former dependent territories from the domination and control of the colonialists. Makonnen discusses in great detail matters pertaining to the succession of international public, economic and financial rights and obligations with impressive empirical data to back up his assertions. He investigates international law for obligatory rules concerning succession of state boundaries and boundary treaties, and finds that although the state practice of the Eastern African States shows evidence of the factual continuity of boundaries, it is not attributable to the theories of "dispositive treaty," "executed treaty," "established objective juridical status," or the *uti posseditis* doctrine.

In the final analysis the author admits that "in comparison with events of state succession which took place before or after the Second World War elsewhere in the world, the practice of the new Eastern African States has not been radically different."(p.498).

As Judge T.O. Elias, President of the International Court of Justice, states in the Forward, this work clarifies the motives underlying the different attitudes of the new States of Eastern Africa for the changes proposed in the rules of international law. Much light is shed on the problems with which these eight East African nations were faced on attaining independence.

The Vienna Conventions on Succession of States in Respect of Treaties, and in Respect of State Property, Archives and Debts are appended to the text. A good working bibliography and index complete this very fine scholarly work. Much thought and clarity of presentation assure this contribution a significant place when considering the subject of state succession.

*Daniel C. Turack**

---

*B.A. (Toronto), LL.B. (Osgoode Hall), LL.M., S.J.D. (Michigan). Professor of Law, Capital University Law and Graduate Center.