

deesdae 'n algemene tendens om regsopleiding uitsluitlik praktykgerig in te klee ten koste van die historiese, teoretiese, en wysgerige begronding van die reg as wetenskap. Dit is jammer. *Politokrasie* sal die leser daaraan herinner dat universiteite bestem is om akademiese instellings te wees en nie bloot in tegnicons omgeskep moet word nie.

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**Africa and the Deep Seabed Regime: Politics and International Law
of the Common Heritage of Mankind**

by

Edwin Egede

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In *Africa and the Deep Seabed Regime: Politics and International Law of the Common Heritage of Mankind*, the author Edwin Egede explores the role of Africa, the second largest of the seven continents on earth, in the development and establishment of the regime of the deep seabed beyond national jurisdiction and the concept of the Common Heritage of Mankind. A salient feature of this book is that the author delves into examining the intriguing and lopsided regime of the deep seabed beyond national jurisdiction and the concept of the Common Heritage of Mankind exclusively from the viewpoint of African states. The value of this particular work lies in making an effort to fill up the vacuum in the existing academic literature as to the role of African states in the development of the regime of the deep seabed beyond national jurisdiction and the concept of the Common Heritage of Mankind. The author examines African States' contributions to the evolution and development of the international law norms related to this regime and places these contributions in the context of vital historical, social, political and economic factors that generally influence African states' attitudes to international law.

The book is stratified into eight chapters and an introductory part. At the outset, the introductory part identifies the rationale of the topic of the book and later on, arrays the discourse of subsequent chapters in proper context. Chapter 1 dapples with historical contribution of the African states to the development and evolution of the deep seabed regime and the concept of Common Heritage of Mankind. The continent of Africa is delimited on the north by the Mediterranean Sea, the west by the Atlantic Ocean, the northeast by the Red Sea and the southeast by the Indian Ocean. Thence, the sea is of great significance to the continent.

The chapter seeks to examine the historical developments of the law of the sea and deep seabed regime from an African perspective. The newly independent African states, at the outset of 1960s, were grumbled as to the traditional law of the sea which was more favorable to the technologically developed maritime states. Such disparity also revealed the tussle at the international sphere swelling between the rich technologically developed states and the generally poor, less technologically developed African and other third world states.

Chapter 2 analyses the role of African states in arraying the delineation of the deep seabed regime and analyses the geographical significance of that ocean space by the wordings of the Law of the Sea Convention. Since the deep seabed area is distinct from seabed and subsoil with national jurisdiction, it is vital to figure out the scope of the concept of the common heritage of mankind in that deep seabed area. Hence, the African coastal states, which are 39 in number, have a pivotal role to play in delving upon the issue.

Chapter 3 discusses the viewpoint of African states regarding the legal status of the concept of "common heritage of mankind", a relatively novel concept in the realm of international law and international relations. The concept becomes part of customary international law through the various General Assembly resolutions adopted in the 1960s and 1970s. The concept of "common heritage of mankind" is contained in articles 137 and 141 of the Law of the Sea Convention and imposes a binding duty upon all states to use the deep seabed area only for peaceful purposes and to refrain from claiming or exercising sovereignty over the deep seabed area or its resources. The concept has been inducted as a human right in article 22(1) of the African Charter on Human and Peoples' Rights. African States, along with other developing States in the Group of 77, take the view that the concept has the character of *jus cogens* (70).

Although African states are more prone to illustrate the concept of common heritage of mankind as incorporating the idea of common property, there are a motley of interpretations of the concept depending upon ideological, political and economic interests of the various states around the globe. Therefore, the author refers to "common heritage of mankind as a concept ambiguous in nature (60). The concept precludes States from appropriating the region further and excludes unilateral exploitation. Instead, it requires any exploitation of the area should be collective and regulated.

Chapter 4 examines the regime of the deep seabed area under Part XI of Law of the Sea Convention, as modified by the Agreement of 1994, an amending instrument that paves free market economy, with the aim of pinpointing certain effects on African states. Rather than exploring the modifications in the institutions and framework system of mining, the chapter analyses the reasons behind African states' preparedness to go along with the 1994 Agreement, considering their original and

unequivocal position during the UNCLOS III on the issues changed by the Agreement. The Agreement has significantly altered the original Part XI provisions of the Law of the Sea Convention by modifying its provisions on transfer of technology, production policy, financial terms of contracts and the review conference. Such modifications evidently favor the industrialised developed states to the disadvantage of African states and other developing states. In this chapter, the author analyses the effect of such changes on African states.

As a fitting sequel, Chapter 5 delves in examining the institutional framework of the regime established by Part XI of the Law of the Sea Convention, as modified by the 1994 Agreement. The chapter is bifurcated into two parts. The first part examines the institutional framework of the regime and the role of African states. This part is also divided into two sub-parts, Part A deals with the International Seabed Authority (ISA), while Part B deals with the dispute settlement mechanism. The second part overviews the issue of funding of these institutions and the contributions of African states. To inquire as to the ambit of representation of African states at the organs of institutions like International Seabed Authority, the author scours to discover whether the institution reflects effective democratic participation by all States. His findings reiterate that although well represented in the realm of the institutional framework of the Deep Seabed Area, African states do not have an effective voice matching with their role and significance.

Chapter 6 overviews the system of mining of the common heritage of mankind resources in the area by looking at the system of exploration and exploitation of the seabed with an aim of analysing contributions of African states to this and some possible effects on such states. The author evaluates the potential of African states' participation, along with its landlocked and disadvantaged states, on south-south co-operation with other developing states in deep seabed mining activities.

The financial and technological requirements burdened by the Law of the Sea Convention in tandem with the 1994 Implementation Agreement and the Mining Code wring the potential of African states with limitations. In Chapter 7, the author explores various possible co-operative actions that African states may embark upon to overcome the bulwarks in order to advance the prospects of their actual, direct and effective participation in deep seabed mining activities. Although the crisis of non-participation can easily be diluted by other pressing social problems that are currently entangling the African continent, such as poverty alleviation, the fight against HIV/AIDS and the provision of basic amenities, the author opines that the non-participation of African states in deep seabed mining activities is more due to a lack of interest on the part of African states rather than those daunting and entwining constraints.

The concluding chapter 8 is stratified into two parts. In the first part, the author outlines his appraisal of African states' contribution to the

common heritage of mankind. The comprehensive study of the arena of the deep seabed area regime reiterates the chieftain contribution of African states. The author identifies the impetus of African states in the vaunted regime of UNCLOS III as a “stamp of influence” as well as a “power-show” against the backdrop of western states’ domination in the orb of law of the sea. To rev up African states’ participation in deep seabed activities, the author propounds a brisk list of recommendations that refers to forming an articulated ocean and coastal policy; an institutional framework; and to take measures for effective participation of African states, as per article 148 of Law of the Sea Convention, in deep seabed mining activities.

In the second part of the concluding chapter the author indicates that beneath the froth of legal and political issues the tussle between power and justice is continuing in the coliseum of international law and politics. The African and developing states advocated for a justice-based approach, through which weak and deprived states can advance claims in the face of power, to protect the deep seabed area and its resources from approach of exploiting as much of the resources of that area, which the industrialised developed states contended for under the rubric of a “first come, first served basis”. Although a justice based approach is upheld in Law of the Sea Convention, it is the 1994 Agreement that dilutes the impact of the common heritage of mankind concept by limiting the impact of the justice based approach as far as the behemoth states are willing to accept.

This book is an accomplishment which puts forward a distinctive African flavour to the discourse of the regime of the deep seabed beyond national jurisdiction and the concept of the common heritage of mankind. The merit of this book under review lies in the fact that it sheds light on making an emphasis that the impetus of Africa paves an avenue to attempt to resolve outstanding north-south issues related to economic and social development. In this respect at least, the book does represent something of a novelty in legal literature.

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