

# Africa and international law: An ode to Taslim Olawale Elias

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## Abstract

*The study of great personalities is an important venture as it retains the relevant cultural traditions and values and depicts the evolution of legal thought and practice. This is a study of the Nigerian jurist, Taslim Olawale Elias, in the form of a biographic. This paper aims to continue research, exploring the legacies of past greats African thinkers and their contributions to the present state of affairs. It focuses on Elias' contribution to the understanding of the involvement of Africa in the development of international law, the workings of the International Court of Justice, and finally, the emergent trends of public international law.*

**Keywords:** afrocentricity, TWAIL, international law, Exclusive Economic Zone (EEZ), history of international law

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## Introduction

Taslim Olawale Elias (1914-1991)<sup>1</sup> was a teacher, scholar, politician, diplomat, and judge. With immense intellectual and juristic prowess, he leaves behind a legacy that sets him apart in several dimensions. He is widely acclaimed as one of the leading African exponents of international law.<sup>2</sup> Contributing to various fields of law, he left behind a great wealth of knowledge that serves as the setting stone to the current discourse of Africa's involvement in international law.

Born on 11 November 1914 to a Muslim family, Elias undertook his elementary and high school education in Nigeria.<sup>3</sup> He went on to do his further studies at London University and at the Institute of Advanced Legal Studies (LLB, 1946; LLM, 1947; Ph.D., 1949; BA, 1954; and LLD, 1962).<sup>4</sup> Elias was also a Yarborough Andersen Scholar of the Inner Temple from 1946 to 1949. Amidst a prodigious academic performance and a multitude of distinctions and accolades, often overshadowed is the impressive count of sixteen honorary degrees received from universities across four continents, and the award of the title of Queen's Counsel in 1961.<sup>5</sup>

Aside from his educational pursuits, Elias was actively involved in Nigeria's pursuit of independence. This led to his appointment as the country's first Attorney General (1960-1972),<sup>6</sup> Minister for Justice

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<sup>1</sup> International Court of Justice, 'Death of former President Taslim Olawale Elias', Press Release 91/26, 15 August 1991.

<sup>2</sup> Emmanuel Bello and Prince Bola Ajibola (eds), *Essays in honour of Judge Taslim Olawale Elias*, (1992) as cited in James Thuo Gathii, 'A critical appraisal of the international legal tradition of Taslim Olawale Elias,' 21 *Leiden Journal of International Law*, 330, 2008, n 64.

<sup>3</sup> Siyan Oyeweso, 'Taslim Elias - The life of a phenomenal scholar and jurist,' in Siyan Oyeweso (ed), *Torch bearers of Islam in Lagos State*, Matrixcy Books, 2013, 3-4. This article can be found in (3) (PDF) *Taslim Elias - The life of a phenomenal scholar and jurist* (Researchgate.net).

<sup>4</sup> Olufolake Elias Adebowale and Olusoji Elias, 'Taslim Olawale Elias (1914-1991): A biographical note,' 21 *Leiden Journal of International Law*, 2008, 291.

<sup>5</sup> Olufolake Elias Adebowale and Olusoji Elias, 'Taslim Olawale Elias (1914-1991): A biographical note,' 291.

<sup>6</sup> Chinua Achebe, *There was once a country: A personal history of Biafra*, Penguin Press, New York, 2012, 228. Where Achebe classes him in Gowon's camp during the negotiations that preceded the end of the Biafran War.

(1960-1966) and Commissioner for Justice (1967-1972). Later, he was appointed as the Chief Justice (1972-1975) having never occupied any position as a judge in the lower courts.<sup>7</sup> He also was a reputable litigator representing the Organisation of African Unity (OAU) as lead counsel in the acclaimed *Namibia* case (1962).<sup>8</sup> He was elected to the International Court of Justice (1976-1991), where he served as the Vice President (1982-1985) and then proceeded to make history as the first African jurist to serve as the President of the World Court (1985-1991). Unfortunately, his demise preceded the end of his tenure at the Court.<sup>9</sup> He was also appointed to the Permanent Court of Arbitration (1987).

Elias' intellectual portrait, which is the main focus of this research, has pervaded both national law (Nigerian) and international law. A festschrift written after his death has critically examined his contribution to these particular areas of law.<sup>10</sup> Additionally, a section of the twenty-first volume of the *Leiden Journal of International Law* is dedicated to Elias.<sup>11</sup> All these are examples of research exploring the past legacies of prominent figures in an attempt to establish the approaches to international law in Africa.<sup>12</sup> These publications highlight Elias' contribution to Nigerian law, Africa's involvement in international law, African customary law, the workings of the International Court of Justice (ICJ), and emerging trends in public international law during his tenure in the ICJ. This

<sup>7</sup> Siyan Oyeweso, *Taslim Elias - The life of a phenomenal scholar and jurist*, 1992, 4. Some would argue that this appointment was because he was an ally to the Gowon government, but Oyeweso asserts that this appointment was due to his intellectual fortitude, reputable integrity and international reputation.

<sup>8</sup> Olufolake Elias-Adebowale and Olusoji Elias, 'Taslim Olawale Elias (1914-1991): A biographical note,' 292.

<sup>9</sup> ICJ, 'Death of former President Taslim Olawale Elias,' Press Release 91/26, 15 August 1991.

<sup>10</sup> Bello and Ajibola (eds), *Essays in honour of Judge Taslim Olawale Elias*, Martinus Nijhoff Publishers, Dordrecht, 1992.

<sup>11</sup> Fleur Johns, Thomas Skouteris and Wouter Werner, 'Editors' Introduction: Taslim Olawale Elias in the Periphery Series,' 21 *Leiden Journal of International Law*, 2008, 289-290.

<sup>12</sup> Frans Viljoen, Humphrey Sipalla and Foluso Adegalu, 'Introduction: Exploring African approaches to international law,' in Frans Viljoen, Humphrey Sipalla and Foluso Adegalu (eds) *Exploring African approaches to international law: Essays in honour of Kéba Mbaye*, Pretoria University Law Press, Pretoria, 2022, 1.

article takes the approach of studying this great personality through the length and breadth of his works.<sup>13</sup>

The paper is divided into four parts. The present part serves well to introduce this discussion. Part two analyses Elias' works on Africa's involvement in the development of international law. The third part dwells on his views on the working of the ICJ and the last part highlights the emerging trends of public international law that came about due to Africa's involvement in international law.

### **Afrocentricity of international law**

Elias has become acclaimed for his contribution to the legal discourse regarding international law, particularly Africa's involvement in its development. He claims that Africa was indeed involved in the formation of international law from what he terms medieval international law to modern international law. He argues that medieval international law dates from the period preceding Hugo Grotius and the signing of the Treaty of Westphalia to the collapse of the League of Nations; while modern international law the period dating after the end of the Second World War.<sup>14</sup> Elias posits that through this entire period, Africa has been actively involved in the formation and development of international law.<sup>15</sup>

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<sup>13</sup> Humphrey Sipalla, 'Towards an African professional history of international law: The life and work of Kéba Mbaye', in Frans Viljoen, Humphrey Sipalla and Foluso Adegalu (eds) *Exploring African approaches to international law: Essays in honour of Kéba Mbaye*, Pretoria University Law Press, Pretoria, 2022, 37 where he proposes this as an approach of studying such exceptional personalities.

<sup>14</sup> Taslim Olawale Elias, *Africa and the development of international law*, AW Sijthoff and Oceana Publications, Sijthoff, 1972, 63.

<sup>15</sup> This school of thought posited by Elias is to counter arguments that international law was majorly developed by Christians from Europe or persons of European decent. See, Henry Wheaton, *Histoire de progrès du droit des gens*, Brockhaus, Leipzig, 1865; James Lorimer, *The institutes of the law of nations: A treatise of the jural relations of separate political communities*, William Blackwood and Sons, Edinburgh and London, 1894 for a further discussion on this as cited by Gathii, 'A critical appraisal,' 325.

He starts off his seminal book *Africa and the development of international law* with a discussion of how pre-colonial Africa was involved in the formation of international law.<sup>16</sup> In his view, 'it is only through this background that Africa's place in international law and relations can be understood'.<sup>17</sup> He claims that 'the so-called Dark Continent' was actively taking part in internal and external relations that can be attributed to the formation of international law.<sup>18</sup> In support of this argument, he gives the example of the Carthaginian Kingdom, (which is present-day Tunisia) referring to its conquests both in Africa and other continents. He accounts for how there was trade between Carthage and its satellite colonies, which would explain its vast wealth in gold.<sup>19</sup> He also shows that the empire excluded Sicily, Sardinia, and southern Spain by treaty. This claim implies that Carthage had an international convention in the form of a treaty with the mentioned States.<sup>20</sup>

Further, Elias portrays a commercial and diplomatic history that strengthens this argument. He describes the 'silent trade' that occurs between Carthage and West Africans. The latter would exchange gold with the goods from Carthage. They would leave the gold on the beach and Carthaginians would equally leave the goods there, and each party would add their respective trading goods until they both deemed it was a fair bargain, then they would take their parts and depart.<sup>21</sup> The language barrier was not a problem and they would effectively trade with each other. This assertion adds on to the argument that pre-colonial Africa was indeed involved in shaping international law.

It is worth noting that Elias fails to engage in the discussion of how slavery in the eighteenth and nineteenth centuries shaped international law. He also does not attempt to counter the claims by colonisers that due to the barbaric and backward nature of the African kingdoms, they

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<sup>16</sup> This is evident in chapter one, Elias, *Africa and the development of international law*, 3-15.

<sup>17</sup> Elias, *Africa and the development of international law*, 6.

<sup>18</sup> Elias, *Africa and the development of international law*, 3.

<sup>19</sup> Elias, *Africa and the development of international law*, 4.

<sup>20</sup> Gathii, 'A critical appraisal', 322.

<sup>21</sup> Elias, *Africa and the development of international law*, 4, where he quotes Edward William Bovill, *The golden trade of the Moors*, Oxford University Press, London, 1958.

were merited to intervene and colonise them.<sup>22</sup> Equally, the same chapter of *Africa and the development of international law* proceeds to assert that the treaties formed by African chiefs and their colonisers are also a part of the development of international law.<sup>23</sup> This argument assumes that these African chiefs had absolute autonomy over the land and fails to critically analyse the contents of the treaties and see how unfairly they were drafted. It would seem that Elias' primary objective was to highlight and commend Africa's participation in the development of international law, thereby, refraining from investigating how international law played a role in establishing an institutional foundation for European dominance over Africa in the international political economy.<sup>24</sup>

Equally, Christopher Gevers questions Elias' interests in international law juxtaposed with the challenges facing post-colonial African countries. Granted, Elias had dedicated a chapter to address this situation.<sup>25</sup> Gevers points out that the Biafran War and its grave human rights implications did not affect Elias' scholarship.<sup>26</sup> Gevers points out how Elias, in a speech given to the Nigerian Society of International Law, absolves Nigeria from any allegations of violating international law during the war.<sup>27</sup> This criticism adds to the others that have termed the discussions by African international law lawyers such as Elias being *weak* and falling into the *contributionist* level of Gathii's taxonomy.<sup>28</sup>

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<sup>22</sup> Gathii, 'A critical appraisal', 322. Gathii goes on to challenge Elias' apparent silence regarding the role of international law during the colonial encounter with a lens of political and economic oppression and further, appositely provides an alternative approach to Elias' legal tradition relying on scholars during the same epoch as Elias, see Gathii, 'A critical appraisal', 338-347.

<sup>23</sup> Elias, *Africa and the development of international law*, 21.

<sup>24</sup> Gathii, 'A critical appraisal', 324.

<sup>25</sup> Elias, *Africa and the development of international law*, 107-120.

<sup>26</sup> Christopher Gevers, 'South Africa, international law and 'decolonisation'', 33 *Alternation Special Edition*, DOI <https://doi.org/10.29086/2519-5476/2020/sp33a13>, 352.

<sup>27</sup> Gevers, 'South Africa, international law and 'decolonisation'', 352.

<sup>28</sup> James Thuo Gathii, 'International law and eurocentricity', 9 *European Journal of International Law* (1998), 189. Gathii has since suggested his recognition of 'a third way, one that shares aspects of both approaches but has distinct characteristics of its own',

Despite these critiques, Elias stands among the front-runners in calling out the eurocentricity of international law or (European) international law.<sup>29</sup> He is at the forefront of challenging the *universality* of this (European) international law.<sup>30</sup> Gathii has termed his scholarly contributions, as an assault on (European) international law's universality claim.<sup>31</sup> His efforts countered the erroneous claims of Africans' inferiority, savagery, and backwardness.<sup>32</sup> Therefore, he is to be remembered as an African scholar who championed the inclusion of Africa in the development of international law.

### **Elias' reflections on the workings of the ICJ**

This section highlights Elias' contribution to the ICJ. Having served for fifteen years in the ICJ from 1976 to 1991, his literary work serves as a first-hand representation of the functioning of the world court. At the ICJ, he had served as a member of the Court, then rose on to become the Vice President from 1972-1982 and then the President from 1982-1985.<sup>33</sup> In this timeline, he was able to author various publications that address various issues that came up then and are still relevant about adjudication at the ICJ.

In his position as judge of the world court, Elias encountered a couple of methodological problems which he has well documented in

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in James Gathii 'Africa and the radical origins of the right to development' (2020) 1 *TWAIL Review* 28-50.

<sup>29</sup> This phrase is coined from, Andreas Buser, 'Colonial injustices and the law of state responsibility: The CARICOM claim to compensate slavery and (native) genocide,' KFG Working Paper Series No 4, Berlin Potsdam Research Group, *The international rule of law - Rise or decline?* Berlin, 2016, 417, n 31, in his claim of the eurocentric nature of international law.

<sup>30</sup> Chin Leng Lim, 'Neither sheep nor peacocks: TO Elias and post-colonial international law,' 21 *Leiden Journal of International Law*, 2008, 297.

<sup>31</sup> Gathii, 'A critical appraisal', 320.

<sup>32</sup> Gathii, 'A critical appraisal', 320.

<sup>33</sup> International Court of Justice, Judge Taslim Olawale, <Judge Taslim Olawale Elias | INTERNATIONAL COURT OF JUSTICE (icj-cij.org)> on 27 July 2023.

the first chapter of his collection of essays on the ICJ.<sup>34</sup> He describes a problem pertaining admissibility of applications in situations where the parties have instituted concurrent proceedings such as negotiation, inquiry, mediation, conciliation, arbitration, or judicial settlement, which are indeed provided for by the United Nations Charter.<sup>35</sup> A case-in-point is the *Aegean Sea Continental Shelf* case<sup>36</sup> between Turkey and Greece where, before the institution of the application by Greece, Greece had already instituted negotiations to define their respective jurisdictions in the islands in the Aegean Sea.<sup>37</sup> The decision of the Court in this case, in which Elias presided over and formed part of the majority's opinion, settled the problem by holding that the two processes can continue *pari passu*,<sup>38</sup> without interfering with each other.<sup>39</sup>

Elias also had some thoughts regarding the dilemma of the non-appearing respondent. He begins the chapter dedicated to this phenomenon by acknowledging that many states especially the newly-independent states were reluctant to come before the world court.<sup>40</sup> The major reason of this non-appearance being the ICJ's decisions in the *South West Africa cases* (1962, 1966).<sup>41</sup> He then analyses the objective nature of the threshold placed in the ICJ Statute on this subject.<sup>42</sup> Article 53 observes that when a party to a claim fails to appear to defend

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<sup>34</sup> Taslim Olawale Elias, *The International Court of Justice and some contemporary problems: Essays on international law*, Springer Science Business Media, Dordrecht, 1983, 13-26.

<sup>35</sup> United Nations Charter, 24 October 1945, 1 UNTS XVI, Article 33.

<sup>36</sup> *Aegean Sea Continental Shelf (Greece v Turkey)* (Judgement on merits) ICJ Reports (1978).

<sup>37</sup> Elias, *The International Court of Justice and some contemporary problems*, 18.

<sup>38</sup> Latin term meaning 'at an equal pace'.

<sup>39</sup> *Greece v Turkey* (judgement on merits) ICJ, 29.

<sup>40</sup> Elias, *The International Court of Justice and some contemporary problems*, 33.

<sup>41</sup> Elias, *The International Court of Justice and some contemporary problems*, 33. Elsewhere, Elias has discussed these cases deeply showing how the 1962 decision *South West Africa (Liberia v South Africa)* (Preliminary objections) ICJ Reports (1962) where the Court had asserted that both Liberia and Ethiopia had standing before the Court differed with the 1966 decision *South West Africa (Liberia v South Africa)* (Second Phase) (1966) where the majority decision held that these two countries did not have any legal interests in the claim. See, Elias, *Africa and the development of international law*, 88-106.

<sup>42</sup> Statute of the International Court of Justice, 18 April 1946, 33 UNTS 993, Article 53.



themselves then the other party can invite the court to adjudicate the claim in their favour.<sup>43</sup> However, this is only after the court satisfies itself that one, it has the requisite jurisdiction, and second that the claim is founded in fact and law.<sup>44</sup> He explains how this is peculiar to the ICJ since most municipal laws (that were operative then) would allow the present party to have the judgement in their favour without regarding the mentioned requirements.<sup>45</sup> This principle applies whether the non-appearance is partial or total.<sup>46</sup>

An example is the *Case Concerning the United States Diplomatic and Consular Staff*, whereby the Respondent (Iran) failed to make any written or oral pleadings, its only intervention being a letter from the Minister of Foreign Affairs.<sup>47</sup> The world court, with Elias as Vice President, having satisfied themselves that they had the jurisdiction to adjudicate the claim,<sup>48</sup> went on to rule in favour of the applicant. This case shows how, although a state might fail to appear wholly before the Court, the ICJ should still handle its authority with care by ensuring it has jurisdiction and the claim is merited.

Elias, while President of the ICJ was interviewed on the relevance of the adjudication of the ICJ if state parties do not adhere to either the provisional measures of the Court or the final judgement of the Court.<sup>49</sup> A case pointed out by the interviewer, Sunhee Juhon, was the

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<sup>43</sup> ICJ Statute, Article 53(1).

<sup>44</sup> ICJ Statute, Article 53(2).

<sup>45</sup> Elias, *The International Court of Justice and some contemporary problems*, 37.

<sup>46</sup> Elias, *The International Court of Justice and some contemporary problems*, 38.

<sup>47</sup> *United States Diplomatic and Consular Staff in Tehran (United States of America v Iran)* (Judgement on merits) ICJ reports (1980), 10.

<sup>48</sup> It is worth noting that Iran had not accepted the compulsory jurisdiction of the Court under Article 36 of the ICJ Statute, but the Court found that it had jurisdiction on the basis of interpretation of the Vienna Conventions of 1961-1963 that both were party to. See, *United States of America v Iran* (Judgement on merits) ICJ, 54. Iran has since accepted the compulsory jurisdiction of the ICJ specifically on 29 June 2023 making it the seventy fourth state. See, ICJ Press Release, 'The Islamic Republic of Iran files a declaration recognizing the compulsory jurisdiction of the Court', 29 June 2023.

<sup>49</sup> Taslim Olawale Elias and Sunhee Juhon, 'Prospects for the ICJ: An interview with Taslim Elias', 7(2) *Harvard International Review*, 1984, 4.

*Case Concerning the United States Diplomatic and Consular Staff* earlier mentioned, that apart from giving the judgement, the ICJ had minimal effect in ameliorating the situation.<sup>50</sup> In response to this question, Elias mentioned how after the judgement, not only were the hostages released but, the ICJ set up an Iran-United States Claims Tribunal, which facilitated the settling of the claims and Iran fully complied. He finished answering the question by stating, ‘those states that try to disregard us or feel that they can behave as they like, often have a way of settling these matters, following the judgment, without accepting it publicly, in their subsequent behaviour’.<sup>51</sup> This statement and the preceding paragraphs depict Elias’ literary contribution and active involvement as a judge in the ICJ.

### **Emergent trends in international law**

This section seeks to shed light on Elias’ contribution to the discussion of the furtherance of public international law between 1959 and 1979. This discourse is majorly highlighted in his book *New horizons of international law*,<sup>52</sup> which was dedicated to students, lawyers, and scholars of public international law to highlight the emerging trends of the subject they are most fond of.<sup>53</sup>

In the first chapter of the book, he describes the United Nations Charter as an avenue of opening ‘fresh vistas’ paving the ground for the new ‘modern international law’.<sup>54</sup> He equally lauds the Universal Declaration of Human Rights (UDHR) for its influence in the municipal laws of not just the newly independent states such as Nigeria but also the more advanced states such as Canada. These principles which were derived from President Roosevelt’s famous declaration of ‘the four

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<sup>50</sup> Elias and Juhon, ‘An interview with Taslim Elias’, 4.

<sup>51</sup> Elias and Juhon, ‘An interview with Taslim Elias’, 4.

<sup>52</sup> Taslim Olawale Elias, *New horizons in international law*, Martinus Nijhoff, Leiden, 1979.

<sup>53</sup> Elias, *New horizons in international law*, xvii.

<sup>54</sup> Elias, *New horizons in international law*, 3.

freedoms',<sup>55</sup> have pervaded the constitutions of the new states from the Third World and the earlier established states.<sup>56</sup>

Another improvement in international law recorded by Elias is the inclusion of the newly-independent states in its (re)formation. The newly independent states had previously suffered from insufficient manpower to represent them in the forums (these include the United Nations and its sub-divisions) in the development of this emerging trend of international law.<sup>57</sup> This inadequacy of personnel, necessitated a 'concerted action' by the Afro-Asian countries to remedy this situation. An example in which Elias himself was actively involved in is the Asian-African Legal Consultative Committee.

This Committee was created mainly to first, identify and make recommendations to legal problems facing the Afro-Asian bloc and second, to examine the laws made by the International Law Commission and the other UN agencies and whether they have positive and negative implications for the Afro-Asian bloc.<sup>58</sup> Elias explains how in just eighteen years of existence the Committee was actively involved in forums of discussion on international law where they tabled their recommendations. An example is the Conference on the Plenipotentiaries on the Law of Treaties in Vienna where Elias was elected as chair the Committee of the Whole and his recommendations as chair managed to save the formation of the Vienna Convention on

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<sup>55</sup> These four freedoms had been earlier adumbrated by Thomas Paine and had been provided by the proponents of the 1789 French Revolution, see Elias, *New horizons in international law*, 6, where he relies on writings of Jean Jacques Rousseau and his followers.

<sup>56</sup> Elias, *New horizons in international law*, 7. See also, Emmanuel Bello, 'Human rights: The rule of law in Africa,' 30(3) *International and Comparative Law Quarterly*, 1981, 633, n 33.

<sup>57</sup> Elias, *New horizons in international law*, 21; A good example is the state in Kenya where by the native Africans and Arabs in the country were prohibited from undertaking the law degree as a course in university until 1961 as recorded by Rhoda Howard, 'Legitimacy and class rule in Commonwealth Africa: Constitutionalism and the rule of law', 7(2) *Third World Quarterly*, 1985, 330, where she cites Amos Odenyo, 'Professionalisation amidst change: The case of the emerging legal profession in Kenya', 22(3) *African Studies Review*, (published online on 23 May 2014) 1979, 34-35.

<sup>58</sup> Elias, *New horizons in international law*, 22.

the Law of Treaties (VCLT) amidst a seemingly unpromising outlook of success in the conference.<sup>59</sup>

Stemming from the previous point, a new form of law of treaties was adopted by the codification of the VCLT. In this convention, the Conference on the Plenipotentiaries codified important principles such as *pacta sunt servanda*,<sup>60</sup> which is positioned right after the preliminary provisions emphasising its importance in treaty law. Equally, the principle of *jus cogens* (which was a matter of contention on invalidity as explained before) was codified into the VCLT.<sup>61</sup> The VCLT stands as the ‘most comprehensive’ authority on the law of treaties and is a ‘progressive development’ on the universality of international law.<sup>62</sup>

In Chapter 4, Elias highlights the ‘progressive development’ regarding the law of the sea. He mentions the introduction of the Exclusive Economic Zone (EEZ) by the First Negotiating Group.<sup>63</sup> This concept emphasises what this zone is, and the rights and duties of states regarding this zone. He earlier had shown how this concept was of Kenyan origin further contributing to the assertion that indeed Afro-Asian countries have been involved in the development of these emerging trends in international law.<sup>64</sup> The EEZ has been the object of discussion on a paper in the previous volume of this journal which sheds light on Prof FX Njenga and his contributions to the law of the sea.<sup>65</sup>

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<sup>59</sup> Elias, *New horizons in international law*, 24. The problem that they faced concerned Part V regarding invalidity of treaties or grounds of mistake, fraud, coercion and *jus cogens*, whereby the Western bloc was against it questioning the practicability of enforcing claims of invalidity and further, there being a lack of machinery settling disputes regrading this invalidity. Elias presented a package deal of one, giving jurisdiction to the ICJ to adjudicate over the matter and two, a robust machinery of procedural regulations on the same which was wholly adopted by all the parties.

<sup>60</sup> The meaning of this as posited by Elias being every treaty in force is binding to the parties and they are expected to perform their obligations in good faith, Elias, *New horizons in international law*, 43.

<sup>61</sup> Vienna Convention on the Law of Treaties, 23 May 1969, 1115 UNTS 331, Articles 54 and 63.

<sup>62</sup> Elias, *New horizons in international law*, 52.

<sup>63</sup> Elias, *New horizons in international law*, 56.

<sup>64</sup> Elias, *New horizons in international law*, 25.

<sup>65</sup> Patricia Cheruiyot, ‘The Exclusive Economic Zone and the legacy of FX Njenga’, 1 *Kabarak Law Review*, 2022, 165-178.

This section has shown Elias' contributions to the discussion of emergent tendencies in contemporary international law. These thoughts have stemmed from his consistent claim of universal inclusion in the (re)formation of international law that has been portrayed earlier in this paper. Elias indeed stands as a pillar of greatness in the discussion of the emerging trends in international law.

## Conclusion

The enduring intellectual and juristic impact of Elias remains remarkable on various fronts, establishing a legacy that stands alone. He has indeed been at the forefront in propagating the involvement of everyone(not just Africa)<sup>66</sup> in the (re)formation of international law. His works best describe the dilemma in which Africa was in, as shown by Gathii. This dilemma involved either Africa accepting international law as it was with an aim of changing it, or rejecting it completely which would have proved incautious.<sup>67</sup> Elias and his contemporaries chose to embrace it, and herald its change in time.

Currently, present scholars in third-world countries continue to propagate this discourse in the form of Third World Approaches to International Law (TWAIL).<sup>68</sup> Elias seemed to have had a hope of a better future of international law, one that encompasses universality.

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<sup>66</sup> This is evident in his time at the Asian-African Legal Consultative Committee.

<sup>67</sup> Gathii, 'A critical appraisal', 318, where he says; 'After all, international law was undoubtedly and unmistakably Eurocentric in its imprints. These scholars could either reject it entirely or accept only those parts of it that were not inimical to the interests of the newly independent African countries... Rejecting it entirely without an ability to change it even in the United Nations, where developing countries had majorities, seemed foolhardy. Yet accepting it without challenging its participation in the colonization of their countries seemed unacceptable.' This can be equated to the pragmatic approach posited by Chinua Achebe on the use of the English language in writing African literature arguing that although the language was forced upon Anglophone Africa, it is prudent to use it in literary works for a wider audience. See, Chinua Achebe, 'The African writer and the English language', reprinted in Achebe *Morning Yet on Creation Day* (1975), 58.

<sup>68</sup> Gathii, 'A critical appraisal', 347.

Although some have argued that this goal is far from being attained, they share in this hope that international law can lead to a better future.<sup>69</sup> Concluding with Elias' words: 'Never before in the history of international relations have so many people from different climes and races joined together to make and to administer such a plethora of laws for their common welfare'.<sup>70</sup>

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<sup>69</sup> Antony Anghie, *Imperialism, sovereignty and the making of international law*, Cambridge University Press, Cambridge, 2005, as cited in Gathii, 'A critical appraisal', 347-348, where he shows Anghie's dual approach, of how current international law emasculates the Third World countries but there is still hope for an alternative future.

<sup>70</sup> Elias, *New horizons of international law*, 18.