CHAPTER 26

Aspects of Africa’s Contribution to the Development of International Law

Adetola Onayemi and Olufemi Elias

1 Introduction

Following the expansion of the international community to include Latin American and African states in the nineteenth and twentieth centuries, international law has had to adapt to accommodate the divergent interests. Judge Abdul Koroma, a vocal advocate of the need for international law to reflect the full scope of these interests, noted that the growth of the United Nations and the globalization of the international community created a challenge for “multiculturalism”; for international law to be effective, “it should strive to accommodate potentially differing views of the international legal order in this new community of States and peoples”.¹ He points out the several respects in which international does not adequately reflect the needs and interests of parts of the international community. The “new” members of the international community have participated actively in reshaping the international law system to reflect their interests and needs, even though that has not resulted in a complete overhaul of modern international law and its Western origins.² In addition to Judge Koroma’s observation regarding their participation in the creation and development of rules of universal or general application, African states and other newly independent states have established legal frameworks and developed new principles and rules that are intended to operate on a regional level to address matters of particular concern or interest to their situation and

reflect their interests. This paper will focus on the latter aspect of the contribution of African States. It will provide a brief overview of a number of significant areas in which the solutions adopted in Africa can be considered progressive and provide more robust methods of addressing the issues arising in those fields of law.3

2 International Protection of Refugee Rights and Internally Displaced People

2.1 Refugee Rights

The protection of refugee rights is a proper starting point for an analysis of areas in which international law in Africa has developed to address pertinent existing problems. This is because the international law rules on the protection of refugees and internally displaced people in Africa, as will be subsequently considered, have been strategically formulated to both clarify and improve on the extant international law rules on refugees and internally displaced people.

2.1.1 Expanding the Legal Definition

The United Nations Convention Relating to the Status of Refugees of 1951 (“1951 Convention”) defines a refugee as a person who is outside the country of his or her nationality (or place of habitual residence, in the case of a stateless person) due to a well-founded fear of persecution on account of race, religion, nationality, membership of a particular social group or political opinion or owing to such fear is unwilling to avail himself or herself of the protection of that country.4 There are two requirements for refugee status in the 1951 Convention:5 the existence of a well-founded fear of personal persecution for...

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4 189 UNTS 150, Article 1(A)(2).