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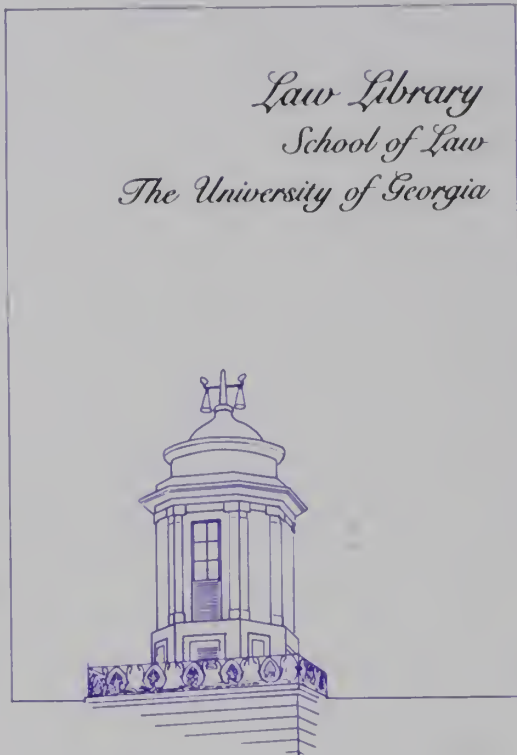
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THE ROLE OF THE ORGANIZATION OF AFRICAN
UNITY (OAU) IN REGIONAL CONFLICT
RESOLUTION AND DISPUTE SETTLEMENT

Peter Mweti Munya

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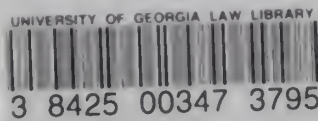
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THE ROLE OF THE ORGANIZATION OF AFRICAN UNITY (OAU) IN REGIONAL
CONFLICT RESOLUTION AND DISPUTE SETTLEMENT

by

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LL.B., University of Nairobi (UON), Kenya, December 1994

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A Thesis Submitted to the Graduate Faculty of the University of Georgia in Partial

Fulfillment of the Requirements for the degree

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1997


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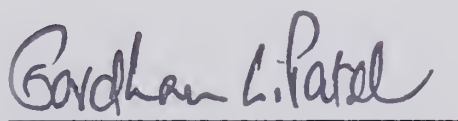
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DEDICATION

In memory of my father Jackson Munya M'Rukunga

ACKNOWLEDGMENT

To my supervisor, Professor Gabriel M. Wilner, of The University of Georgia School of Law, I owe an immense debt of gratitude. His guidance and assistance in numerous ways has been invaluable to me. I must however hasten to add that I take full responsibility for all shortcomings in this work. I wish also to register my gratitude to the graduate school of the University of Georgia whose award of assistantship enabled me to live and study in Athens.

PREFACE

For many centuries Africa has never experienced lasting peace. Peace and stability proved elusive in pre-colonial and colonial Africa. The scourge of slave trade, intertribal warfare and imposition of colonialism could never have allowed peace and stability a foothold in Africa. One would have expected emancipation and independence to usher in an era of stability and relative peace. Instead, post-colonial Africa has experienced conflicts of a scale and magnitude unwitnessed before. Pre-colonial Africa may have been volatile; but the rudimentary nature of the weapons obtaining then and the unsophisticated organizational structure of the societies, rendered conflicts more upsetting and indeed adventurous than catastrophic. The emergence of an artificially constructed modern state with internal contradictions, sophisticated state apparatus and weaponry, coupled with external forces has made Africa one of the most unstable regions in the world, and peace prospects a daunting task.

Conflict and civil wars have of course not been a preserve of the African continent. Two world wars marked a dark period in the Northern hemisphere. History seemed to repeat itself when the iron curtain collapsed. With the end of the cold war and the collapse of communist hegemony in eastern and central Europe, states were plunged into tribal and ethnic conflagration hitherto prevented by communist socio-political order. Ethno-nationalism seems to have re-emerged in the western Hemisphere as well.

Africa was also not spared the adverse repercussions of the end of the cold war. While super-power sponsored conflicts during the cold war were low-key (albeit protracted) due to the balance of power in the region, post-cold war conflicts have been marked by

unparalleled rapidity and devastating consequences. The situation has been worsened by the dwindling of Africa's geopolitical importance in the post-cold war era. Africa's traditional allies in the non-aligned movement and former socialist bloc have recapitulated due to post cold war economic hardships. The result has been a general lack of concern with what happens in Africa. While the United States and NATO are prepared to intervene in Haiti to restore a democratic regime and in the former Yugoslavia to end 'ethnic cleansing', respectively, no one is ready to intervene to avert a bloodbath in Rwanda or Sierra Leone. After all, no strategic western interests are harmed there, and in any case the United Nations Charter Prohibits intervention in internal affairs of other states! The short and long of this is that the post cold war era punctuated by forces of economic liberalization and dominance of the Breton Woods institutions in the economic management of the developing countries, have not only accelerated the economic marginalization of Africa _ placing her at the fringes of the global economy _ but also wrought insecurity in their wake.

This post-cold war "new order" only serves to emphasize the need for the OAU to reinvent itself to cope with these new challenges. This thesis is an attempt to unmask these and other challenges facing the OAU, make a postmortem of the performance of the OAU in conflict resolution, and offer suggestions on how the OAU can critically re-evaluate and refashion itself to face up to the old and new challenges that threaten the efforts to create lasting peace in Africa.

There is no telling that the OAU past record in conflict resolution is not outstanding. Perhaps this has to do with its history and constitution. The signing of the OAU Charter at Addis Ababa in May 1963 was greeted with optimism and high expectations. Aspirations of continental unity in a continent hitherto divided by the phenomenon of colonialism had reached fruition. The polarizing differences experienced in the preceding preparatory conferences pitting the radical Casablanca group against the conservative Monrovia camp had

been bridged, and the biggest regional organization in the world was born. The OAU however was not just an expression of continental efforts to achieve unity; it was by and large, a culmination and a concrete expression of the aspirations of the pan-African movement dating back to the beginning of the 20th century.

Dismay and disillusionment soon, however, replaced this optimism. The ink had not dried on the Charter before the continent was plagued by a plethora of conflicts, civil wars and a myriad of other problems. The celebrated organization that many had hoped would consolidate continental security and nurture peace and stability had failed to deliver the goods. Indeed civil wars, inter-state conflicts and their concomitant humanitarian crises _ disruption of socio-economic life and massive loss of lives and property _ have bedeviled the African continent since independence, threatening to tear the it apart. What went wrong?

A big debate has been raging on what went wrong. Many writers have attributed the problems of inter-state and intra-state conflicts to the colonial legacy of artificial borders, and the nature of the colonial state that was inherited after independence. Others have blamed the dismal performance of the OAU, its inability to resolve conflicts, to its charter. The OAU Charter, its normative structure, they argue, has an inbuilt tendency to encourage ineffectiveness and ineptitude. The conservative application of the concept of non-interference with internal affairs of states, and sanctity of borders, has completely rendered the OAU ineffective.

Be that as it may, any objective view of the role the OAU has played in resolving regional conflicts must take the aforementioned historical and ideological context, and internal as well as external forces as the point of departure. That way one is able to discern and appreciate the role played by OAU given the complexities and intricacies obtaining in conflict situations in Africa.

By examining the role played by OAU in regional conflict resolution and dispute settlement, the present writer hopes to contribute to this debate. The introduction examines, in a nutshell, the origins, purposes, principles and institutions of the OAU as envisioned in its charter. The OAU's mechanisms of dispute resolution as well as case studies of its conflict resolution activities is undertaken in chapter one. Chapter two examines the OAU-UN interaction in African conflict resolution. In particular, the delimitation of competencies and exercise of concurrent jurisdiction between the United Nations and the OAU is discussed. The Problems and prospects of utilizing United Nations organs in resolving African conflicts is also discussed in this chapter. Chapter three discusses legal and other impediments to effective conflict resolution in Africa. Chapter four examines the need to create a regional self-defense and intervention force as well as sub-regional conflict resolution mechanisms. The conclusion summarizes the arguments in the rest of the thesis.

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INTRODUCTION

A purely contemporary view of any problem is necessarily a limited and even distorted view. Every situation has its roots in the past . . . the past survives into the present; the present is indeed the past undergoing modifications.¹

A. The Origins of the OAU

Cultural and spiritual affinity among the black people is an age-old phenomenon exhibited in the poetry and music of African people the world over.² But it is not until the nineteenth century that this affinity evolved into fraternal solidarity, and eventually a formidable movement in the common struggle against racial discrimination.³ The OAU is the present-day symbol and embodiment of the ideals of this pan-African movement.⁴ In its formative stages the pan-African movement was led by black north American intellectuals.⁵

¹Quoted from Celestine O. Bassey, *Retrospects and Prospects of Political Stability in Nigeria*, 32 AFR. STUD. REV.97 (1989).

² Prof. Wideman writes that "... rhythm, blues and rock 'n' roll are rooted in traditional African music." JOHN EDGAR WIDEMAN, *BROTHERS AND KEEPERS* 197 (1984); See also Lawrence W. Levine, *African Culture and Slavery in the United States* in GLOBAL DIMENSIONS OF AFRICAN DIASPORA 103 (Joseph E. Harris ed., 1982).

³ ELENGA M'BUYINGA, *PAN-AFRICANISM OR NEOCOLONIALISM* 34-42 (1979).

⁴ See P. OLISANWUCHE ESEDEBE, *PAN-AFRICANISM: THE IDEA AND MOVEMENT* (1982).

⁵ The man credited with coining the term "Pan-African Movement", Henry Sylvester Williams, was a West Indian Lawyer who was then practising Law in London. See OWEN CHARLES MATHURIN, *HENRY SILVESTER WILLIAMS AND THE ORIGINS OF THE PAN-AFRICAN MOVEMENT* (1976).

Among the most notable ones was W.E.B. Dubois ⁶ and Marcus Gurney,⁷ although their approach and philosophy differed. A series of pan-African conferences, starting with the 1900 Manchester conference, were organized in which goals for the advancement of black people generally and the protection of native Africans from white settlers were formulated.⁸

After the World War II, pan-Africanism took a continental dimension becoming a potent force in the struggle for independence from colonialism in Africa.⁹ African intellectuals like Kwame Nkrumah, Leopold Senghor, Jomo Kenyatta and Sekou Toure, commencing with the 1945 Manchester conference, took a center-stage in the movement.¹⁰ Several conferences were organized in the African soil at the the beginning of the twentieth century which rearticulated the vision and reformulated the goals of the Pan-African movement.¹¹ Thus the movement was transformed from a sentimentalized forum for racial solidarity to a movement for self-determination of the African people geared towards the eradication of colonialism and the promotion African nationalism.¹² In its continental phase four distinct goals of the movement have been identified as:

1. complete independence for the entire continent;
2. development of fraternal alliance of Africans based on a loyalty which would transcend all tribal and territorial affiliations;
3. Creation of a united Africa based on a federation of sub-regional groups within which there would be a limitation of national sovereignty; and
4. non-intervention by Africans as partisans in international power politics.¹³

⁶ See generally W.E.B. DU BOIS (David Lewis ed., 1995); KWADO O. POBI-ASANANI, W.E.B. DUBOIS, HIS CONTRIBUTIONS TO THE PAN-AFRICAN MOVEMENT (Daryl F. Mallet ed., 1994).

⁷ See JON HENRIK CLARK, MARCUS GURVEY AND THE VISION OF AFRICA (1974).

⁸ RONALD W. WALTERS, PAN-AFRICANISM IN THE AFRICAN DIASPORA 205 (1993).

⁹ *Id.*

¹⁰ JON WORONOFF, ORGANIZATION OF AFRICAN UNITY 23 (1970).

¹¹ GORDON HARRIS, THE ORGANIZATION OF AFRICAN UNITY IX (1994).

¹² Woronoff *supra* note 10, at 28-56.

¹³ Walters *supra* note 8, at 206.

All the conferences that took place in Africa in one way or another echoed these goals. There was consensus that regional cooperation and unity was crucial if the vast resources of the continent were to be utilized for the prosperity of the continent and its people.¹⁴

The road to continental unity was however marked with confounding obstacles. Independent African states emerged from colonialism to find themselves balkanized into regional and ideological groups that were, ironically, the fruits of the pan-African conferences.¹⁵ The main post-independent groups that preceded the OAU were: the Casablanca Group composed of Ghana, Guinea, Mali, Morocco, United Arab Republic and the Algerian Provisional Government formed in January 1961;¹⁶ The Pan African Movement for East, Central and Southern Africa (PAFMESCSA);¹⁷ The Monrovia Group composed of Liberia, Ivory Coast, Cameroon, Senegal, Malagasy Republic, Togo, Dahomey, Chad, Niger, Upper Volta, Peoples Republic of Congo, Central African Republic, Gabon, Ethiopia and Libya, formed between in May, 1961;¹⁸ and the Brazzaville Group composed of Cameroon, Central African Republic, Madagascar, Peoples' Republic of the Congo, Ivory Coast, Dahomey, Gabon, Mauritania, Upper Volta, Niger, Senegal, and Chad formed in December, 1960.¹⁹

¹⁴*Id.*

¹⁵Esedebe *supra* note 4, at 161-162.

¹⁶See The African Charter of Casablanca in LOUIS B. SOHN, BASIC DOCUMENTS OF AFRICAN REGIONAL ORGANIZATIONS 42-43 (1971).

¹⁷See RICHARD COX, PAN-AFRICANISM IN PRACTICE:: AN EAST AFRICAN STUDY 11 (1964).

¹⁸See Decisions of the Monrovia and Lagos Conferences in Sohn *supra* note 16, at 53-54.

¹⁹Woronoff *supra* note 10, at 96.

The preparatory meetings preceding the May 1963 Addis Ababa summit of African leaders that was to adopt a charter for continental unity saw the African states balkanized into two main ideological camps. The radical Casablanca group of states favored a continental union government while the Conservative Monrovia group desired a loose continental body of independent states.²⁰ The Addis Ababa conference had to find a middle ground to bridge the gap between these groups opposed to each other. The OAU Charter therefore, as shall be argued later, emerged as a compromise document that had lost its cutting edge.²¹ Instead of serving as blueprint for continental political unification as intended by the “progressive” forces _ to appease the conservative leaders _ the Charter supported the status quo. It is this compromise that is at the heart of the OAU conflict resolution and management crisis.²² It is argued that if the Charter’s norm of non-intervention in internal affairs of member states insulates internal conflicts from scrutiny and resolution by the OAU, sanctification of national borders prevents the OAU from going to the bottom of the problem of border conflicts.²³

The OAU however cannot be divorced from the historical setting within which it was created. The OAU was born at an epoch-making period when the African states were emerging from colonial rule.²⁴ It was natural that these newly independent states seek to safeguard their sovereignty from any future subjugation while at the same time adopting a common approach in the struggle against the remaining vestiges of colonialism.²⁵ The aims and objectives of the OAU embody these African concerns of the time and (as one will observe) are not radically different from those of its predecessor_ the pan-African movement.

²⁰See *infra* note 391 & 392.

²¹See *infra* note 393.

²²See *infra* note 394.

²³See *infra* note 410.

²⁴See *infra* note 400.

²⁵*Id.*

It is also important to reiterate that the continental phase of the pan-African movement and the struggle against colonialism was dominated by leaders of the pro-independence nationalist movements.²⁶ It is these leaders propelled into the leadership of their respective states by the granting of independence, that converged at Addis Ababa to form the OAU. The domination of the institutional structure of the OAU by these leaders is therefore not accidental.²⁷

The preamble of the OAU Charter opens with the following words: "*We, the heads of African states and governments assembled in the city of Addis Ababa, have agreed to the present charter*".²⁸ This underscores the predominant and exclusionist role the African heads of state have played in the formation and evolution of the OAU.²⁹ Contrast this with the preamble of the United Nations Charter which starts with the words "*We the peoples of the United Nations*,"³⁰ emphasizing the centrality of the people in the aims and objectives of the United Nations, at least in theory. The success or failure of the OAU is therefore consequently intertwined with the weaknesses or strengths of the African heads of state: an indictment on the OAU is to the greatest extent an indictment on the African states' leadership. Indeed the heads of state and governments constitute the supreme organ of the OAU - the "Assembly of Heads of State And Governments".³¹

The efficacy and effectiveness of an organization is to a large extent determined by the nature of its Charter; its architectural foundation. It is therefore important to examine the

²⁶See generally HANS KOHN, *AFRICAN NATIONALISM IN THE TWENTIETH CENTURY*, (1965); Woronoff *supra* note 10, at 11.

²⁷See Boutros-Gali *infra* note 86, at 364.

²⁸The Charter of the Organization of African unity (hereinafter The OAU Charter) reprinted in Sohn *supra* note 16, at 63.

²⁹See Boutros-Ghali *infra* note 86, at 370.

³⁰The Preamble, U. N. Charter.

³¹See The OAU Charter Art. VIII.

basic tenets of the OAU Charter to be able to appreciate how this impacts on its capacity to resolve conflicts.

B. Purposes and Principles of the OAU

Article I of the OAU Charter delimits the geographical frontiers of the membership of the OAU, which include the continental African states, Madagascar and other islands surrounding Africa.³² It was important to clarify the geographical limits of the OAU in order to differentiate it with the mainstream pan-African movement which was diasporic in scope. One can therefore discern, with the formation of the OAU, a shift in the pan-African movement from a universal out-look to a regional world-view.

The purposes and objectives of the OAU, enumerated in Article II are:

- a. to promote the unity and solidarity of the African states;
- b. to co-ordinate and intensify their co-operation and efforts to achieve a better life for the peoples of Africa;
- c. to defend their sovereignty, their territorial integrity and independence;
- d. to eradicate all forms of colonialism from Africa; and
- e. to promote international co-operation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights.³³

To the above ends Article II calls upon the member states to co-ordinate and harmonize their general policies. Priority areas identified for harmonization and co-ordination include: political and diplomatic cooperation; economic cooperation, including transport and communication; educational and cultural co-operation; health, sanitation and nutritional

³²This was to appease Madagascar (Malagasy), whose name, now embodied in the name of the organization (OAU), had earlier on been included in the Charter of the Monrovia Group. See the Charter of the Inter-African and Malagasy Organization reprinted in Sohn *supra* note 16, at 55.

³³ OAU Charter Art. II (1).

cooperation; scientific and technical co-operation; and cooperation for defense and security.³⁴ Clearly, the areas requiring harmonization through common efforts are diverse and encompass all facets of socio-economic and political life of the member states.³⁵ It is also evident that the purposes of the OAU echo those of its progenitor, the pan-African movement.

The principles and norms that the OAU member states are pledged themselves to observe scrupulously are enumerated in Article IV, and may be classified into three categories depending on their teleological and philosophical underpinnings.³⁶ Category one are principles aimed at safeguarding the sovereignty and territorial integrity of member states. These are: principle 1 which recognizes the sovereign equality of all the member states; principle 2 which prohibits interference in the internal affairs of states; and principle 3 which underlines the member states pledge to pay respect to the sovereignty and territorial integrity of each state and its inalienable right to independent existence.³⁷ Principle 4 which immortalizes the principle of peaceful settlement of disputes by negotiation, mediation, conciliation or arbitration, may also fall in this category since it is a principle aimed at settling disputes peacefully before they escalate into conflicts that may threaten sovereignty and territorial integrity of member states.³⁸

³⁴The OAU Charter Art. II (2).

³⁵ The extent which these highly ambitious objectives have been achieved is difficult to determine.

³⁶The OAU Charter Art. III.

³⁷The OAU Charter Art. III.

³⁸The OAU Charter Art. III.

Category 2 principles are aimed at decolonization and emancipation of territories still under the yoke of colonialism. To this end the member states affirm their “absolute dedication to the total emancipation of the African territories which are still dependent”.³⁹

Principle 7 stands in a category of its own. It represents an attempt by the member states to create ideological uniformity in the member states foreign policy relations with non-member states. The policy of non-alignment is the basis to govern the relations between the member states and the superpower blocs. This principle is understandable seen in the backdrop of the intensity of the cold war then. However, despite the member states strongly professed adherence to no-nonalignment in theory, the question whether in practice they followed it is a different matter.

Principle 5 may be put in category one or in a category of its own depending on how one interprets it.⁴⁰ Condemnation of political assassination as well as subversive activities on the part of neighboring states _ seen as a measure to protect the national political institutions from being undermined by extraterritorial forces _ perfectly falls in category one. However the provision on assassination is a curious one. It may be viewed as a measure to protect and perpetuate the personalities occupying the highest offices in the land other than a safeguard to the political institutions in the member states.

This thesis is concerned with dispute resolution. These principles will therefore be examine in more detail later in so far as they affect the capacity of the OAU to resolve conflict and settle disputes. In particular principles in category one dealing with protection of territorial integrity and sovereignty of member states and non-interference in the internal affairs of member states. Suffice it here to say that there is an inherent tension between the desire to create a strong and effective organization but at the same time jealously guarding

³⁹The OAU Charter Art. III (6).

⁴⁰The OAU Charter Art. III.

the sovereignty of the member states. And it is this tension that is at the heart of the ineffectiveness of the OAU as a regional arbiter, and stabilizer.

C. Principal Institutions of the OAU

The task here is to mention the main organs of the OAU so as to have a holistic appreciation of the organization before dealing with the niceties of conflict resolution.⁴¹ In a nutshell, the OAU Charter creates four “principal institutions” to carry out its mandate. These are the Assembly of Heads of State and Governments; the Council of Ministers; the General Secretariat, and the Commission of Mediation, Conciliation, and Arbitration.⁴²

1. The Assembly of Heads of States and Governments

The Assembly of Heads of States and Governments is the supreme organ with a general supervisory role over the other organs of the OAU.⁴³ It has powers to discuss matters of concern to Africa with a view to co-coordinating and harmonizing the general policy of the organization. Additionally, it may review the structure, functions and acts of all the other organs and specialized agencies.⁴⁴

The Assembly is composed of heads of state and government or their accredited representatives. The Charter establishes an annual general meeting for the Assembly and an extra-ordinary session at the request of any member state on approval by a two-thirds

⁴¹For a detailed analysis of the OAU Institutions See James S. Bowen, *Power and Authority in the African Context: Why Somalia Did not Starve _ The Organization of African Unity (OAU) as an Example of the Constitutive Process*, 14 NA'L BLACK L. J. 92, 101-107 (1992).

⁴² OAU Charter Art. VII.

⁴³ OAU Charter Art. VIII.

⁴⁴ OAU Charter Art. VIII.

majority.⁴⁵ The Assembly of heads of states is also entrusted with the judicial function of interpreting the Charter.⁴⁶

2. The Council of Ministers

The Council of Ministers consist of foreign or such other ministers as designated by the governments of member states.⁴⁷ The role of the Council is to prepare conferences of the Assembly, implement the decisions of the Assembly, and coordinate inter-African cooperation in accordance with the instructions of the Assembly.⁴⁸

3. General Secretariat

An administrative Secretary-General, appointed by the Assembly, directs the affairs of the Secretariat.⁴⁹ One or more Assistant Secretaries General shall also be appointed by the Assembly.⁵⁰ The independence of the Secretary General and other staff of the Secretariat is entrenched in the Charter. The Secretary General and other staff shall not receive instructions from any other authority external to the organization and shall refrain from actions which might reflect on their positions as international officials responsible only to the organization.⁵¹

⁴⁵OAU Charter Art. IX.

⁴⁶See The OAU Charter Art. XXVI which posits that questions of interpretation of the Charter shall be determined by a vote of two-thirds of the Assembly of Heads of State and Government.

⁴⁷OAU Charter Art. XII.

⁴⁸Evidently, the role of the Council of Ministers is adjunct to that of the Assembly of Heads of State and Government. Indeed, Article XIII states that "The Council of Ministers shall be responsible to the Assembly of Heads of State and Government."

⁴⁹OAU Charter Art. XVI.

⁵⁰OAU Charter Art. XVII.

⁵¹OAU Charter Art. XVIII.

The member states undertake to respect the exclusive character of the Secretary-General and other staff and not to seek to influence them in the discharge of their responsibilities.⁵²

The Commission of Mediation, Arbitration and Conciliation will be discussed in the next chapter. At this point it is important as a concluding note to mention the voting process in the OAU. For both the Assembly and the Council, two-thirds of the total membership form the quorum.⁵³ Procedural and substantive matters in both the Assembly of Heads of state and government and the Council of Ministers are determined by a simple and a two-thirds majority of the total membership of the organization, respectively. This is a very significant threshold in that one can envision the organs being paralyzed by lack of quorum.⁵⁴

⁵²OAU Charter Art. XVIII.

⁵³See OAU Charter Art. X & XIV.

⁵⁴Such paralysis of the Assembly took place when Morocco and its sympathizers boycotted a OAU summit meeting prompted by the official recognition of the Sahara Arab Democratic Republic (SADR) by the OAU. See Naldi *infra* note 148.

CHAPTER I

REGIONAL CONFLICT RESOLUTION, DISPUTE SETTLEMENT AND PEACE MAKING WITHIN THE OAU CONTEXT

A. Mechanisms for Peaceful Settlement of Disputes in the OAU Charter

That a Commission of Mediation, Conciliation and Arbitration was established under the OAU Charter as one of the principal institutions of the organization, and a detailed protocol elaborating on its composition, procedure and function, underlines the seriousness with which the founders of the organization of African Unity valued dispute resolution by peaceful means.⁵⁵ Indeed Article XIX establishing the commission, echo the prohibition of the threat or use of force (in international relations) in the United Nations charter.⁵⁶

1. The Commission of Mediation, Conciliation and Arbitration

The protocol on the Commission forms an integral part of the OAU Charter.⁵⁷ The protocol consists of six parts and provides in elaborate detail the modes, procedure and types of dispute to be submitted for settlement.⁵⁸

Part one of the protocol deals with the establishment and organization of the Commission. The Commission consists of twenty-one members elected by the Assembly from

⁵⁵The OAU Charter Art. XIX.

⁵⁶U. N. Charter Art. 2 (4).

⁵⁷The OAU Charter Art. XIX.

⁵⁸See The Protocol of the Commission of Mediation, Conciliation and Arbitration (Hereinafter The Protocol) reproduced in Sohn *supra* note 16, at 69-76.

a list prepared by the Secretary General consisting of names of persons of recognized professional qualifications nominated by the member states.⁵⁹ Each member state is entitled to nominate two candidates and no two members of the Commission will hail from the same state.⁶⁰

Members of the Commission hold office for a term of five years, and are eligible for reelection. Upon expiry of their term members of the Commission remain in office until the election of a new Commission. The members of the Commission shall complete any proceedings in which they are already engaged the expiry of their term notwithstanding.⁶¹

The tenure of office of the member of the Commission is secured by Article IV. They shall not be removed from office except by decision of the Assembly of heads of state, by a two-thirds majority of the total membership on the grounds of inability to perform the functions of their office.⁶²

The Commission shall be headed by a president and two vice-presidents elected by the Assembly from among the members of the Commission for a period of five years without eligibility for reelection. The three shall constitute the bureau of the Commission and shall be full time members of the Commission while the rest of the Commissioners shall be part time.⁶³

Part two of the protocol entitled "general provisions," sets out the procedure for dealing with disputes. The jurisdiction of the Commission is restricted to disputes between

⁵⁹The Protocol Art. II.

⁶⁰The Protocol Art. II.

⁶¹The Protocol Art. III.

⁶²The Protocol Art. IV.

⁶³The Protocol Art. VI.

states. It is assumed that even nonmember states may submit disputes *inter-se* or between them and member states to the Commission for adjudication.⁶⁴

A dispute may be referred to the Commission jointly by the parties concerned, by a party to the dispute, by the Council of Ministers, or by the Assembly.⁶⁵ Where a dispute has been referred to the Commission and one or more parties have refused to submit to the jurisdiction of the Commission, the Bureau shall refer the matter to the council of ministers for consideration.⁶⁶ It is not clear what happens after referral to the council but it is rightly assumed that the Council of Ministers makes a recommendation by means of a resolution which may be submitted to the Assembly for approval.⁶⁷ It is doubtful however, whether the resolution if passed by the Assembly is legally enforceable.⁶⁸

Article XIX establishes three alternative modes of settlement of dispute: mediation, conciliation and arbitration. The three modes do not differ in any significant manner from the way one knows them in international law.⁶⁹ Among the three modes, the simplest and least formal is mediation. Once the parties agree to mediation the president of the Commission is obligated, with the consent of the parties, to appoint one or more members of the Commission to mediate the dispute.⁷⁰ Once appointed the mediator shall endeavor to reconcile the views

⁶⁴See The Protocol Art. XI; T. O. ELIAS, *AFRICA AND THE DEVELOPMENT OF INTERNATIONAL LAW* 170 (Richard Akinjinde ed., 1988).

⁶⁵The Protocol Art. XIII.

⁶⁶The Protocol Art. XIII.

⁶⁷See the OAU Charter Art. XIII; INTERNATIONAL DISPUTES: THE LEGAL ASPECTS 77-159 (Sir Francis Vallat ed., 1972).

⁶⁸The Charter does not create any mechanism for enforcement of the decisions of the institutions of the OAU.

⁶⁹See Christine Chinkin & Romana Sadurska, *The Anatomy of International Dispute Resolution*, 7 OHIO ST. J. ON DISP.RESOL.39 (1991); Dayle Spencer & Honggang Yang, *Lessons from the Field of Intra-national Conflict Resolution*, 67 NOTRE DAME L. REV. 1495 (1992).

⁷⁰The Protocol Art. XX.

of the parties and shall make written proposals to the parties as expeditiously as possible. The means the mediator proposes, if accepted by the parties form the basis of a protocol of arrangement between the parties.⁷¹

Part IV elaborate the procedure of reconciliation. A request for conciliation is formally submitted to the Commission by means of a petition addressed to the president by one or more of the parties to the dispute. In the later case the petitioner must show that prior written notice has been transmitted to the other party. The petition shall include a summary explanation of the grounds of the dispute.⁷² The president of the Commission shall then set a board of conciliators, consisting of three persons appointed by the president from among the Commission and one appointee of each party. The president shall designate one of the members of the Commission chairman of the board. In the nominations, care shall be exercised to ensure none of the members of the board are nationals of the same state.⁷³

The duty of the board shall be to clarify the issues in contention and endeavor to bring agreement between the parties upon mutually acceptable terms. The board has jurisdiction to consider all questions submitted to it and may undertake any inquiry or hear any person capable of giving any relevant information concerning the dispute. With the consent of the parties the board shall determine its own procedure.⁷⁴

The parties have a right to be represented before the board by agents who shall also act as intermediaries between the board and the parties. If the parties wish, the agents may be assisted by counsel and other experts, and may request that all persons with relevant evidence appear before the board.⁷⁵ Finally, at the close of the proceedings, the board shall

⁷¹The Protocol Art. XXI.

⁷²The Protocol Art. XXII.

⁷³The Protocol Art. XXIII.

⁷⁴The Protocol Art. XXIV.

⁷⁵The Protocol Art. XXV.

draw a report stating whether the parties have come to an agreement, and if need be the terms of such agreement or that it has been impossible to effect a settlement.⁷⁶ The report shall be submitted to the president of the commission as soon as possible and shall be published only with consent of the parties.⁷⁷

The procedure of establishing an arbitral tribunal is spelt out in part V. Each party to the dispute shall designate an arbitrator from among the members of the Commission. The parties shall pick only persons who are legally qualified. A third person to act as chairman of the tribunal shall be designated from the members of the tribunal by the two arbitrators appointed by the parties. If the two arbitrators fail to agree on the choice of a chairman within one month, the Bureau shall designate one.⁷⁸

The president may, with the consent of the parties, appoint two additional members who need not be members of the Commission but who shall have equal powers with the other members of the tribunal.⁷⁹ To ensure objectivity and impartiality within the tribunal, the arbitrators shall not be nationals of the parties, or have same territorial domicile with the parties, or have served as mediators or conciliators in the same dispute.⁸⁰

Once parties to a dispute agree to go to arbitration such agreement shall be presumed to be a submission in good faith to the arbitral award. This provision strikingly echoes the international law principle of *pacta sunt servanda*.⁸¹ As evidence of such agreement the parties shall conclude a *compromis* specifying the undertaking of the parties to go to arbitration, and to accept as legally binding, the decision of the tribunal. The *compromis* shall

⁷⁶The Protocol Art. XXVI (1)

⁷⁷The Protocol Art. XXVI (2).

⁷⁸The Protocol Art. XXVII (1).

⁷⁹The Protocol Art. XXVII (2).

⁸⁰The Protocol Art. XXVII (3).

⁸¹The Protocol Art. XXVIII.

further specify the subject matter of the dispute and the seat of the tribunal.⁸² The *compromis* may also specify the law to be applied, and if the parties agree to adjudicate *ex aequo et bono*. The time limit within which the arbitrators shall give an award, and the appointment of counsel to take part in the proceedings may also be indicated in the *compromis*.⁸³

In a case where the *compromis* is silent on the law to be applied, the tribunal shall decide the dispute according to the treaties concluded between the parties, international law, the Charter of the Organization of African Unity, the Charter of the United Nations, and with the consent of the parties, *ex aequo et bono*.⁸⁴ The hearings shall be in camera unless the arbitrators decide otherwise. A record of proceedings signed by the registrar and the arbitrators shall alone be authoritative of the proceedings. The arbitral award shall be in writing and shall state reasons for every point decided.⁸⁵

Such elaborate machinery clearly demonstrates the founding fathers desire to settle conflicts and disputes by peaceful means through certain and formal procedure. The irony of it, however, is that no member state has ever submitted their dispute for adjudication by the commission. The effectiveness or otherwise of this machinery has therefore never been tested. Indeed the Commission is of phantom existence. Instead the OAU and its member states have resorted to *ad hoc* committees and good offices to resolve their conflicts, totally ignoring the existence of the Commission .

Writers in the early stage of the existence of the OAU attributed this anomaly to the infancy of the commission, pleading that the commission is of recent creation and needs time to evolve a *modus operandi*.⁸⁶ Others attributed the redundancy of the commission to the

⁸²The Protocol Art. XXIX (1).

⁸³The Protocol Art. XXIX (2).

⁸⁴The Protocol Art. XXX.

⁸⁵The Protocol Art. XXXI.

⁸⁶BOUTROS-GHALI, THE ADIS ABABAS CHARTER 45 (1964).

susceptibility of African disputes to “friendly solutions”.⁸⁷ However time has proved otherwise. Thirty five years down the road, the Commission is yet to come out of its infancy. More often than not African disputes have been settled at the battlefield other than at a round table conference. Perhaps the greatest weakness that has militated against the emergence of the Commission as a viable vehicle for peaceful settlement of disputes is its very nature - it can only be moved to action through the consent of the disputants and, further more, there is no machinery in place for the enforcement of its decisions; hence hardly any incentive to disputants to submit to the jurisdiction of the Commission.⁸⁸

2. Other Conflict Resolution Mechanisms

As already mentioned the OAU has preferred the use of good offices and *ad hoc* committees to deal with conflicts to the formal machinery provided by the Commission of Mediation, Conciliation and Arbitration. Perhaps such less formal procedures are more attuned to the fluidity and rapidity of conflict situations in Africa that defy overly legalistic and time consuming formalistic solutions.⁸⁹ It is no accident then that most conflicts and disputes in Africa have been addressed through *ad hoc* arrangements.⁹⁰

⁸⁷F.C. OKOYE, INTERNATIONAL LAW AND THE NEW AFRICAN STATES 147 (1972).

⁸⁸See The OAU Charter Art. XIX, XXII, XXVII & XXXI.

⁸⁹See Gassama *infra* note 345, at 285.

⁹⁰See Meyers *infra* note 293, at 419.

Under the incumbent Secretary-General Of the OAU, Dr. Salim Ahmed Salim, a new mechanism, perhaps intended to replace the obsolete Commission of Mediation, Conciliation and Arbitration, has been created. This Mechanism dubbed “OAU Central Organ for conflict Prevention, Management and Resolution,” has registered some measure of success in dealing with the recent Zairean crisis.⁹¹ Its “peace quartet” organized a series of conferences in Nairobi (Kenya), and in its last meeting in Togo managed to bring the rebels forces of Laurent Kabila and the government of dictator Mobutu Sese Seko to a negotiating table.⁹² Plans are also underway of establishing an early warning system to facilitate investigation of potential conflict areas and timely intervention.⁹³ Efforts to establish whether this mechanism is another *ad hoc* arrangement, a specialized Commission envisioned under Article 22 (the most probable option), or an institution of the OAU established through an amendment to the charter (most improbable option), were fruitless.⁹⁴

B. The Performance of the OAU in Conflict Resolution and Dispute Settlement: Case Studies

This subsection undertakes case studies of conflicts in Africa with the aim of grasping the challenges that faced the OAU in each conflict and how the OAU responded to those challenges. A thematic as well as a sub-regional approach is adopted. In the Maghreb the Morocco-Algeria border conflict and the Western Sahara conflict are discussed. The Ethiopia/Somali/Kenya border conflict is the focus in the horn of Africa. In West Africa the

⁹¹PanAfrican News Agency, <http://cgi-bi.nando.net/pIweb-cgi...>, 07/02/97.

⁹²PanAfrican News Agency, <http://cgi-bin.nando.net/pIweb-cgi...>, 07/02/97.

⁹³Pan-African News Agency (PANA), May 11, 1997.

⁹⁴The present writer relied on electronic material which provided partial information.

Nigerian civil war is examined, Central Africa the Congo crisis, and in Southern Africa the Southern Rhodesian crisis. It is worth the while however to attempt a characterization of conflicts before embarking on case studies.

1. Characterization of Conflicts and Case Studies

Scholars have come with different ways of classifying conflicts.⁹⁵ Elias places post-colonial African conflicts into two categories: (I) those that may be regarded as inherited, in the sense that they emanate from the complex of rights and obligations that devolved upon the new states in the consequences of state succession; and (ii) those that are the result of post-independence alignments mainly in the economic and technical spheres.⁹⁶ Furley categorizes them into intra-state and inter-state conflicts.⁹⁷

Inter-state conflicts are in the main caused by border disputes emanating from the colonial legacy.⁹⁸ African state boundaries are traceable to the Berlin conference of 1889 at which the European imperial powers partitioned Africa into spheres of influence oblivious of the natural boundaries between the different nationalities.⁹⁹ Thus for example the Somali are divided among Kenya, Somalia and Ethiopia while the EWE are divide into Dahomey, Togo, and Ghana.¹⁰⁰

⁹⁵See Ted Robert Gurr, *Theories of Political Violence and Revolution in the Third World* in CONFLICT RESOLUTION IN AFRICA 153-189 (Francis Deng & William Zartman eds., 1991).

⁹⁶T.O. ELIAS, AFRICA AND THE DEVELOPMENT OF INTERNATIONAL LAW, 162 (1988).

⁹⁷Oliver Furley, *Introduction: Africa in the Habit of Conflict* in CONFLICT IN AFRICA 9 (Oliver Furley ed., 1995).

⁹⁸For a thorough discussion the phenomenon of African colonial boundaries see IAN BROWNLIE, AFRICAN BOUNDARIES: A LEGAL AND DIPLOMATIC ENCYCLOPAEDIA (1979).

⁹⁹See EUROPEAN IMPERIALISM AND THE PARTITION OF AFRICA (E. F. Penrose ed. 1975).

¹⁰⁰Cervenka *infra* note 113, at 51.

Intra-state conflicts have a myriad of causes ranging from ethnic animosity emanating from the divide and rule tactics of the colonial regimes in Africa (for instance Hutu-Tutsi conflict in Rwanda and Burundi) or historical differences between groups.¹⁰¹ Other causes of conflict are connected with disparities in the distribution of wealth within the states.¹⁰² Governance problems and human rights violations are other principal causes of conflicts in Africa.¹⁰³ Other intra-state conflicts are closely linked with the nature of the nation-state in Africa _ the so-called crisis of the nation-state _ characterized by a monopolization of state power and wealth by one elite faction and the ensuing conflict caused by attempts by excluded elite groups to wrestle power from the group controlling state apparatus and national wealth, exacerbated by the ruling elite defense of the status quo at all costs.¹⁰⁴ The Ethiopian civil war that claimed a lot of lives has been viewed as reactions by other elite groups (mainly the Tigrey and the Oromo) excluded from the spoils of state power by the Amahara ruling class.¹⁰⁵ There are other conflicts caused by special problems like conflicts caused in Southern Africa by the destabilization policies of the former apartheid regime in South Africa.¹⁰⁶

¹⁰¹For instance the Chad conflict is basically an ethnic conflict between the Muslim Arabs in the North and Black Africans in the South who are either Christians or profess African traditional religions. For a detailed discussion of this North-South divide see Rene Lemarchand, *Chad: the misadventures of the North-South Dialectic*, 29 AFR. REV. 27 (1986).

¹⁰²See M. Louise Pirouet, *The Effects of Conflict, I: Human Rights and Refugees* in Furley *supra* note 97, at 274.

¹⁰³For a discussion of the process of class-formation and ensuing conflict see Emmitt N. Evans, *Sources of Socio-political Instability in an African State: The Case of Kenya's Educated Unemployed*, 20 AFR. STUD. REV. 52 (1977).

¹⁰⁴See David Throup, *the Colonial Legacy* in Furley *supra* note 97, at 237-274.

¹⁰⁵PATRICK GILKES, *THE DYING LION: FEUDALISM AND MODERNIZATION IN ETHIOPIA* 175-227 (1975).

¹⁰⁶See Tom Lodge, *Perspectives on Conflict Resolution in South Africa* in Deng *et al* *supra* note 95, at 115-149

It is important to note that the characterization of conflicts into intra-state and inter-state is arbitrary because of the complexity and interconnectedness of causes and consequences. Intra-state conflicts more often than not do have extra-territorial effect while inter-state conflict certainly have intra-state repercussions. Secondly, although the above categorization is useful as an aid to analysis, it is too broad. It is possible to subdivide African conflicts into seven less broader categories: intra-state conflicts arising from the colonial legacy of artificial borders; conflicts emanating from colonial state succession; conflicts involving “illegitimate” and “racist” regimes resulting from delayed decolonization; internal conflicts resulting from secessionist movements; conflicts resulting from challenges to the legitimacy of the authority in power, conflicts involving external intervention; and conflicts with strong religious or ethnic underpinnings.¹⁰⁷

a. Inter-state Conflicts Arising from the Colonial Legacy of Artificial Borders

I. The Algerian-Morocco Border Conflict

This conflict was the first test case on the capacity of the infant OAU to resolve conflicts. It is also a microcosm of other border conflicts bedeviling the continent in that it illustrates the legacy of colonialism.¹⁰⁸ The actual conflict erupted in July 1962 when, after the referendum that ushered in Algeria’s independence (after a bloody war of liberation), Moroccan troops tried to occupy the border Town of Tindouf, claiming that it formed an

¹⁰⁷Ellen Frey-Wouters identifies five categories. The present writer deviates from this classification by discerning seven categories, buying from Frey-wouters two categories on conflicts involving external intervention and the one involving illegitimate and racist regimes. Ellen Fre-Wouters, *The Relevance of regional Arrangements to Internal conflicts in the Developing World* in *LAW AND CIVIL WAR IN THE MODERN WORLD* 466-473 (John Norton Moore ed., 1974).

¹⁰⁸Alf Andrew Heggoy, *Colonial Origins of the Algerian_Morocco Border Conflict*, 13 *AFR. STUD. REV.* 22 (1970).

integral part of the kingdom of Morocco. The government of Algeria responded through military force.¹⁰⁹

The genesis of the problem can however be traced to the beginning of French colonial rule in the Maghreb. When the French conquered and occupied Algeria in 1830, Morocco had existed as a distinct entity from time immemorial.¹¹⁰ To serve their own interest the French avoided demarcating the boundary between Morocco and Algeria, and indeed despite signing several treaties with Morocco none of those treaties attempted to fix a boundary between Morocco and Algeria.¹¹¹ This and the Islamic concept of *umma*, denoting a nation as a community of believers, to be distinguished from the western concept of a nation with ascertainable territorial entity, encouraged Morocco to harbor irredentist ambitions.¹¹² So that when the French were forced by the Algerian bloody war of liberation to withdraw from Algeria in 1962, seeds of conflict had been germinating for a long time.¹¹³

In the process of that bloody conflict Morocco decided to submit the dispute to the Security Council while Algeria, favoring an African solution took the dispute, to the OAU. Morocco however was persuaded by its allies within the Security Council to seek an African solution first.¹¹⁴ Hence emperor Haile Sellasie of Ethiopia and President Modibo Keita of Mali organized a meeting in Bamako to negotiate a cease-fire.¹¹⁵ Although the negotiated armistice was short-lived, the meeting produced the famous Bamako communique which

¹⁰⁹FRANK E. TROUT, MOROCCO'S SAHARAN FRONTIERS, 426 (1969).

¹¹⁰I. WILLIAM ZARTMAN, GOVERNMENT AND POLITICS IN NORTHERN AFRICA 19 (1964).

¹¹¹Woronof *supra* note 10, at 336.

¹¹²Amanwah *infra* note 135, at 202.

¹¹³ZDENEK CERVENKA, THE ORGANIZATION OF AFRICAN UNITY 52 (1968).

¹¹⁴Okoye *supra* note 87, at 148.

¹¹⁵Cervenka *supra* note 113.

consisted of a five point plan:

1. the immediate end of hostilities;
2. the creation of a committee composed of Algerian, Moroccan, Ethiopian and Malian military officers to define a demilitarised zone;
3. the supervision of security and military neutrality in the demilitarized zone by Ethiopian and Malian observers;
4. the request for an extraordinary meeting of the OAU Council of Ministers, for the purpose of creating a committee of arbitration to effect a definitive solution of Algerian-Moroccan dispute, and
5. the cessation of hostile propaganda attacks.¹¹⁶

An extraordinary meeting of the OAU Council of Ministers was convened in Addis Ababa, in November 1963, to discuss the conflict.¹¹⁷ It is important to summarise the arguments that delegates of both parties submitted to the Council of Ministers to see how diametrically opposed both sides were and the difficult position in which the OAU found itself. Morocco submitted the following arguments:

1. Morocco had an historic claim to the area;
2. Morocco made reference to various treaties concluded with France, and the treaty with Algerian provisional government in 1961;
3. since the French left the frontier between Morocco and Algeria undefined, Algeria should honor the 1961 agreement.¹¹⁸

Algeria replied with the following arguments:

1. that the 1961 agreement was signed under *force majeure*, and would therefore not be honored;

¹¹⁶Woronoff *supra* note 10, at 338.

¹¹⁷Trout *supra* note 169, at 428.

¹¹⁸S. O. AGBI, THE ORGANIZATION OF AFRICAN UNITY AND AFRICAN DIPLOMACY 9 (1986).

2. Morocco's expansionism was anti-OAU Charter and could, if allowed, destroy the OAU;

3. 'to wish to impose unilaterally the least revision of the Algerian-Moroccan border is without doubt to create a precedent or an unfortunate jurisprudence for the future of many African state.'¹¹⁹

Clearly the Council of ministers was in a quandary; here are parties with equally strong but irreconcilable positions. Characteristically the Council avoided dealing with the substantive issues raised by both parties and instead appointed an *ad hoc* committee composed of Ivory Coast, Ethiopia, Mali, Nigeria, Senegal, Sudan and Tanganyika "to examine the crisis in all its ramifications within the spirit of Bamako".¹²⁰ The so-called commission of seven had several meetings with the parties present but none of them appears to have decisively changed the status quo.¹²¹

However, it appears the disputants were undergoing a change of heart; the two governments announced on February 20, 1964 that they had signed an agreement and resumed diplomatic ties! A series of negotiations culminated in a general treaty of cooperation and solidarity between the two countries.¹²²

It would be erroneous to credit the end of this conflict singularly to the efforts of the OAU. There is no doubt that the *ad hoc* committee facilitated (to a great measure) the negotiations that preceded the settlement. The final settlement of the conflict however appears to have originated from the protagonists. Be that as it may, a conflict that exhibited signs of future catastrophe in a fragile continent had been resolved.

¹¹⁹*Id.* at 9-10.

¹²⁰Amanwah *infra* note 135, at 203.

¹²¹Woronoff *supra* note 10, at 340-342.

¹²²*Id.* at 343-344.

ii. The Ethiopia/Somalia/Kenya Border Conflict

This is yet another conflict with roots in Africa's colonial past. The Somalis are perhaps the best example of the arbitrariness with which the European colonial powers went about dividing Africa.¹²³ It is not possible here to give an account of the history of the establishment of the colonial state in the horn of Africa.¹²⁴ Suffice it to say that for the convenience of the colonial powers the Somali people were subdivided into the four countries that constitute the horn.¹²⁵ They occupy one-fifth of Ethiopia, one-third of Djibouti, and one-fifth of Kenya.¹²⁶ The protests by the Somalis against this balkanization fell on deaf ears. The British colonial authorities signed treaties with Ethiopia that completely transferred the Ogaden region occupied by the Somalis to Ethiopia, despite consistent objections from the Somalis.¹²⁷ To add an insult to injury, when the British were granting independence to Kenya in 1963, they ignored the wishes of the inhabitants of the Northern Frontier District of Kenya (NFD) who were predominantly Somalis, to be unified with Somalia.¹²⁸

So that the irredentist stance taken by Somalia immediately after independence in 1960 was neither unexpected nor surprising.¹²⁹ Somalia called for self-determination for

¹²³See Generally Peter Anyang Nyong'o, *The Implications of Crises and Conflict in the upper Nile Valley*, in Deng *et al supra* note 95, at 95-114.

¹²⁴See Michael Chege, *Conflict in the Horn of Africa*, in AFRICA PERSPECTIVES ON PEACE AND DEVELOPMENT 87-100 (Emmanuel Hansen ed. 1987).

¹²⁵Ethiopia, Kenya, Somalia and Djibouti.

¹²⁶Nzongola-Ntalaja, *The National Question and the Crisis of Instability in Africa*, in Hansen *supra* note 124, at 65.

¹²⁷TOM J. FARER, WAR CLOUDS IN THE HORN OF AFRICA: A CRISIS FOR DETENTE 57 (1976).

¹²⁸*Id.* at 77.

¹²⁹I. WILLIAM ZARTMAN, GOVERNMENT AND POLITICS IN NORTHERN AFRICA 173 (1964).

Somalis in Kenya and Ethiopia.¹³⁰ The determination of Somalia to create a "Greater Somalia" and their resentment of what they viewed as British betrayal was registered in March 1963 when Somali broke diplomatic relations with Britain.¹³¹ The tension that had been building reached its peak in 1964 when Somali nationals raided Ethiopian and Kenyan army and police posts.¹³² Earlier on Somalia's attempt to introduce the dispute for discussion at the OAU inaugural conference, found stiff opposition from Ethiopia, and the matter was shelved.¹³³

However, due to continued incitement of the Ethiopian Somali population by Somalia through radio broadcasts, Ethiopia requested an extraordinary session of the Council of Ministers to discuss what Ethiopia considered "aggression" by Somalia.¹³⁴ The Somali government too requested the Secretary-General for inclusion of the dispute in the agenda of the extra-ordinary session. Both disputants were asked to present their cases before the Council of Ministers when it met on February 12, 1964.¹³⁵ Regrettably, the resolution that the Council passed, other than imploring both sides to settle their differences amicably in accordance with the OAU Charter; did not address the substance of the problem.¹³⁶ Neither

¹³⁰Nzongola-Ntalaja *supra* note 126, at 66.

¹³¹I.M. LEWIS, *THE MODERN HISTORY OF SOMALILAND: FROM NATION TO STATE*, 193 (FREDERICK A. PRAEGER, INC., 1965)

¹³²Chege *supra* note 124, at 90.

¹³³Lewis *supra* note 131, at 198.

¹³⁴*Id.* at 27.

¹³⁵H.A. Amankwah, *International Law, Dispute Settlement and Regional Organizations in the African Setting*, in *THIRD WORLD ATTITUDES TOWARDS INTERNATIONAL LAW* 204 (Frederick E. Snyder & Surakiart Sathirai eds., 1987).

¹³⁶*Id.*

did the next extra-ordinary Council of Ministers meeting that took place in Lagos (Nigeria) go to the bottom of the problem.¹³⁷

Somalia underlined the importance of self-determination for the Somali populations in the disputed region while Ethiopia warned of the danger of attempting to revise Africa's borders. The words of the Ethiopian delegate captures the dilemma that the colonial borders placed on the OAU: "If we seek to redraw the map of Africa on the basis of the so-called tribal or racial or ethnic affinities, we will have cast ourselves adrift on a wild sea in a voyage that can only end in disaster."¹³⁸ Understandably, the Somalia proposal was rejected and both sides were asked to respect each others territorial integrity. The Council of Ministers further ordered the continuation of the cease-fire previously agreed, and cessation of hostilities.¹³⁹ Ethiopia had succeeded in playing on Africa's worst fears _ let those in the Council of Ministers who do not live in glass houses throw stones by attempting to revise the Ethiopia-Somalia boundary.

The cease-fire was as good as it lasted. Internal circumstances were changing; casting the fragile peace on a precarious balance. A new government took power in Somalia and affirmed that it would follow the expansionist policies of the previous government.¹⁴⁰ However immediate danger was averted when, through diplomatic efforts of president Kaunda of Zambia, a memorandum of understanding ending tension between Kenya and Somali was signed by the president of Kenya and the prime minister of Somalia.¹⁴¹ This seemed to cool matters between Ethiopia and Somalis for a while as well.¹⁴²

¹³⁷Agbi *supra* note 118, at 27.

¹³⁸*Id.* at 28.

¹³⁹Woronoff *supra* note 10, at 351.

¹⁴⁰Farer *supra* note 127, at 89.

¹⁴¹*Id.* at 90.

¹⁴²Chege *supra* note 124, at 93.

As fate would have it, a new government led by Siad Barre took power in Somalia.¹⁴³ Although Barre did not embark on an expansionist policy immediately (apparently due to internal problems), at the 21st meeting of the Council of Ministers in Addis Ababa in May 1973, Somalia attempted to persuade the summit to formally agree that a dispute existed between Ethiopia and Somalia, but the Council rejected Somalia's proposal. That marked the beginning of a succession of events that culminated in the devastating war between Ethiopia and Somalia between 1975 and 1978.¹⁴⁴ Participation by the superpowers on both political divides escalated the war.¹⁴⁵ Efforts by the OAU *ad hoc* committee to settle the conflict came to naught.¹⁴⁶ Due to war weariness on the part of Somalia coupled by the OAU's recognition of the Ogaden region as part of Ethiopia, and lack of resources to continue the war, the Somalia forces who were already being pushed out of Ethiopian territory gave up the war.¹⁴⁷

b. Conflicts Arising from Colonial State Succession

The Western Sahara Conflict

No other dispute has shaken the very foundations of the OAU like the protracted Western Sahara conflict.¹⁴⁸ Following the admission of the Sahara Arab Democratic Republic

¹⁴³Christopher Clapham, *The Horn of Africa: a Conflict Zone* in Furley *supra* note 97, at 76.

¹⁴⁴*Id* at 78.

¹⁴⁵Clapham *supra* note 143, at 77.

¹⁴⁶Cervenka *supra* note 113, at 52.

¹⁴⁷Chege *supra* note 124, at 93-95.

¹⁴⁸Other than illustrating the intricacies of conflict resolution in Africa, the Western Sahara conflict is also a study in the problem of state succession, imperatives of state membership in the OAU, and the legal problem of attributing statehood to a territorial entity. For details see J. Naldi, *The Organization of African Unity and the Sahara Arab Democratic Republic*, 26 J. AFR. L. 152

(SADR)¹⁴⁹ to the OAU, a Morocco instigated boycott brought the activities of the OAU to a halt when the nineteenth summit conference planned to held in Tripoli (Libya) failed to take place due to lack of quorum.¹⁵⁰

A voyage back to history puts the conflict into perspective. Spain acquired the territory of what is now Western Sahara between 1884 and 1934.¹⁵¹ The kingdom of Morocco which existed from time immemorial before the emergence of Spain into the scene, protested the occupation of this territory by Spain; claiming sovereignty over it.¹⁵² Mauritania the southern neighbor too claimed this territory as forming part of Mauritania.¹⁵³

Under pressure from these expansionist regional states, and desirous of keeping its colonial acquisition, Spain declared Western Sahara one of its provinces in 1958. Spain's decision raised furore and opposition within the United Nations General Assembly, and from Morocco and Mauritania.¹⁵⁴ At the prompting by the security Council Spain accepted to hold a referendum to determine whether the Sahawi, the inhabitants of the territory desired to rule themselves, to join Morocco or Mauritania, or remain under the protection of Spain.¹⁵⁵

(1982).

¹⁴⁹Sahara Arab Democratic Republic. See JEREMY HARDING , THE FATE OF AFRICA 103 (1993).

¹⁵⁰Naldi *supra* note 148, at 152.

¹⁵¹Azzedine Layachi, *The OAU and Western Sahara: A Case Study*, in THE ORGANIZATION OF AFRICAN UNITY AFTER THIRTY YEARS P.29 (Yassin El-ayouty ed.,1994).

¹⁵²*Id.*

¹⁵³Radha Krishna Ramphul, *The Role of international and Regional Organizations on the peaceful Settlement of Internal Disputes (with Special emphasis on the Organization of African Unity)*, 13 GA. J. INT'L & COMP. L. 372,382 (1983).

¹⁵⁴Layashi *supra* note 151, at 28.

¹⁵⁵Yahia H.Zoubir, *The Western Sahara Conflict: A Case Study in Failure of Prenegotiation and Prolongation of Conflict* 26 CAL.W. INT'L L.J. 173, 175 (1996).

Spain's attempts to hold a plebiscite in keeping with the earlier demands by the United Nations General Assembly in 1965¹⁵⁶ and the OAU in 1972¹⁵⁷ was, however, preempted when, largely due to Morocco's and Mauritania's diplomatic efforts, the General Assembly adopted a resolution seeking an advisory opinion from the International Court of Justice.¹⁵⁸

The questions the court was asked to answer were the following:

1. Was Western Sahara (Rio De Oro and Sakiet El Hamra) at the time of colonization by Spain a territory belonging to no one (*terra nullis*)?

If the answer to the first question is to the negative,

2. What were the legal ties between this territory and the Kingdom of Morocco and the Mauritanian entity?¹⁵⁹

The court found there existed some "legal ties of allegiance" between the Sultan of Morocco and some of the tribes living in the territory of western Sahara, and equally, legal ties existed between the Mauritanian entity and the territory of Western Sahara. The court held however that the evidence presented did not establish any ties of sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. The court therefore found nothing preventing the General Assembly from "implementing the principle of self-determination through the free and genuine expression of the will of the peoples of the territory".¹⁶⁰

¹⁵⁶G.A. Res. 2072, U.N. GAOR, 20th Sess., Supp. No. 14, at 59-60, U.N. Doc. A/6014 (1965).

¹⁵⁷A.H.G. Res. 272, 9th Ord. Sess., Rabat, June 12-15, 1972 taken into consideration by the General Assembly in G.A. Res. 2983, U.N. GAOR, Supp. No.30, at 84-85, U.N. Doc. A/8730 (1972).

¹⁵⁸G.A. Res. 3292, U.N. GAOR, 29th Sess., Supp. No. 31, at 103-04, U.N. Doc. A/9632 (1974).

¹⁵⁹G.A. Res. 3292, U.N. GAOR, 29th Sess., Supp. No. 31, at 104, U.N. Doc. A/9632 (1972).

¹⁶⁰Advisory Opinion, Western Sahara, 1975 I.C.J. 68 (Oct. 16).

Although the court's decision was an unequivocal rejection of any claim by Morocco or Mauritania to Western Sahara the intransigent King Hassan II of Morocco ironically interpreted the court's decision in his favor, and proceeded to organize the so-called "Green March," an invasion of Western Sahara by Moroccan troops and civilians.¹⁶¹ Problems at home coupled with pressure from the United States, however forced Spain, under the terms of the so-called Madrid Accords, to cede Western Sahara to Morocco and Mauritania.¹⁶²

Algeria the main backer of the Sahrawi nationalist movement (POLISARIO),¹⁶³ that had been waging a guerilla warfare against Spanish occupation, was outraged by the turn of events.¹⁶⁴ With Algeria's backing, POLISARIO shifted its attacks to Morocco and Mauritania until the later withdrew in 1979 due to internal problems.¹⁶⁵ The rising tension reached its peak in 1976 when POLISARIO proclaimed western Sahara an independent state under the name Sahrawi Arab Democratic Republic (SADR).¹⁶⁶

Two Council of Ministers meetings, in February and July 1976 in Addis Ababa and Mauritius, respectively affirmed the right of the Sahrawi people to self-determination but did not come up with concrete proposals on how to conclusively tackle the conflict.¹⁶⁷ Attempts

¹⁶¹Layachi *supra* note 151, at 3; TONY HODGES, *WESTERN SAHARA; THE ROOTS OF A DESERT WAR* 2111 (1983).

¹⁶²Agreement on the question of Western Sahara, Nov. 14, 1975, Morocco-Mauritania-Spain, reproduced in Third Report by the Secretary-General pursuant to Resolution 379 (1975) concerning Western Sahara, U.N. Scor, 30th Sess., U.N. Doc. S/11880, annex 1 (1975).

¹⁶³A. Peter Mutharika, *The role of the United Nations Security Council in Africa Peace Management: Some Proposals*, 17 MICH. J. INT'L L. 537,549 (1996).

¹⁶⁴Harding *supra* note 149, at 103.

¹⁶⁵There was internal instability subsequent to a military coup in Mauritania. Ramphul *supra* note 153, at 383;

¹⁶⁶Harding *supra* note 149, at 105.

¹⁶⁷Layashi *supra* note 151, at 33.

between 1976 and 1978 to call an extraordinary meeting failed owing to lack of quorum.¹⁶⁸ Subsequently, a summit took place in Khartoum where an *ad hoc* committee (“committee of wise men”) consisting of Mali, Guinea, Nigeria, Ivory Coast and Tanzania, was formed to look into the conflict.¹⁶⁹ In 1979 at the Monrovia conference, the OAU passed a resolution calling for a cease-fire and the holding of a free referendum for the inhabitants of Western Sahara to exercise their right of self-determination.¹⁷⁰ In the mean time, the United Nations General Assembly recognized POLISARIO as the legitimate representative of the Sahrawi people.¹⁷¹

At the Nairobi summit in 1981, the “committee of wise men” proposed a three point plan for the resolution of the conflict: (1) cease-fire and direct negotiations between the parties; (2) establishment of a multinational peace keeping force and an interim administration; and (3) referendum organized by the OAU and the United Nations.¹⁷² However the plan was not implemented because the implementation committee appointed to succeed the “committee of wise me,” failed to bring the parties to a negotiating table.¹⁷³

In February 1982 the events took a new turn when, in a Council of Ministers’ meeting, the OAU Secretary General, Edem Kodjo, admitted the SADR to the membership of the OAU. This decision, *inter alia*, caused a crisis that made the OAU Tripoli summit fail to

¹⁶⁸*Id.*

¹⁶⁹Resolution AHG/Res. 92 (XV) referred in Naldi, *supra* note 148, at 159.

¹⁷⁰Resolution on the question of Western Sahara, A.H.G. Dec. 14, 16th Ord. Sess., Monrovia, July 17-20, (1979).

¹⁷¹G.A. Res. 37, U.N. GAOR, 34th Sess., Supp. No. 46, at 203-04, U.N. Doc. A/34/36 (1979).

¹⁷²Resolution on Western Sahara, A.H.G. Res. 103, 18th Ord. Sess., Nairobi, June 24-27, 1981, reproduced in U.N. Doc. A/36/534, annex II (1981).

¹⁷³Layashi *supra* note 151, at 34.

take place.¹⁷⁴ By 1984 Morocco managed to complete building a wall surrounding what it termed the “Useful triangle.”¹⁷⁵ POLISARIO in turn planned its greatest attack, “the Maghreb offensive,” on Morocco that proved to Morocco that the wall was not “watertight”.¹⁷⁶

However, by 1989 circumstances seemed to change; internal problems in Morocco and Algeria, pitting both states against religious fundamentalist groups, forced the two to resume diplomatic ties.¹⁷⁷ Attempts at direct negotiations between Morocco and POLISARIO were also made. The establishment of United Arab Maghreb (UAM), an economic grouping in the region further explains the thawing of relationship between Morocco and Algeria.¹⁷⁸

It is at this point that the arena of efforts to resolve this conflict changed from the OAU to the United Nations. After a series of initiatives the Secretaries-General of the United Nations and the OAU worked out a comprehensive plan for a referendum to be held towards the end of 1990 or at the beginning of 1992.¹⁷⁹ The plan was approved by both the General Assembly and the Security Council. Subsequently, a United Nations Mission (MINURSO), consisting of a multinational force and military observers to oversee the implementation of the plan, was created, with both parties agreeing to the plan.¹⁸⁰

However, a key obstacle to the implementation of the plan emerged on the way. POLISARIO and Morocco could not agree on the formula of identifying the true inhabitants

¹⁷⁴Zoubir *supra* note 155, at 186.

¹⁷⁵This is an area with rich deposits of phosphates; hence the term ‘useful triangle’

¹⁷⁶Layasi *supra* note 151, at 34.

¹⁷⁷Economic cost of occupation became so high that Morocco was forced to negotiate while internal unrest in Algeria caused by Muslim fundamentalism shifted the focus of the Algerian government from effectively supporting SADR to resolving problems at home. See George Joffe, *The Conflict in Western Sahara* in Furley *supra* note 97, at 113.

¹⁷⁸Layashi *supra* note 151, at 35.

¹⁷⁹U.N. DEP’T OF PUBLIC INFO., THE BLUE HELMETS 270 (3 ed., 1996) U.N. sales No.E.96.1.14 (Hereinafter, The Blue Helmets).

¹⁸⁰*Id.*

of Western Sahara. While POLISARIO produced a list of 74,000 people based a 1974 census by Spain, Morocco on the other hand provided a roll of 200,000 people claiming to be Sahrawi¹⁸¹ Due to this fundamental disagreement, the United Nations plebiscite failed to take place. Morocco continues to occupy Western Sahara to this day.¹⁸²

This is one of the conflicts in Africa that cries for resolution. The security Council needs to come up with a formula to determine who are the genuine inhabitants of Western Sahara so that the long overdue referendum can take place and the Sahrawi can live in peace again. Any objective observer will agree that taking the 1974 census as a point of departure in determining the original genuine inhabitants is the most realistic formula. Why the Security Council has dilly-dallied over this purely technical exercise is difficulty to fathom.¹⁸³

c. Conflicts Involving “Illegitimate” and “Racist” Regimes Resulting from Delayed Decolonization

The Namibian and Zimbabwean struggle for independence and the south Africans’ struggle against the apartheid regime falls under this category. These conflicts, unlike the other conflicts where the OAU had to be seen acting as a neutral and impartial arbiter, the

¹⁸¹Zoubir *supra* 155, at 205.

¹⁸²*Id.* at 213.

¹⁸³The latest action by the Security Council on the Western Sahara conflict is Security Council Resolution 1084. The Security Council reaffirms its earlier resolutions on the Western Sahara Conflict and its commitment to hold a referendum to determine the wishes of the inhabitants. The resolution also calls upon the Secretary-General to continue with the efforts to break the impasse blocking the implementation of security Council Resolutions and submit an interim report by February 28, 1997, and a comprehensive report on the implementation of this particular resolution by May 9, 1997. The resolution however falls short of the expectations of the suffering inhabitants of Western Sahara and many observers of the conflict because while in Resolution 1084 the Council “decides to remain seized of the matter,” the resolution limits the operation of the United Nations mission in Western Sahara (MINURSO) to 31 May 1997 without making a concrete decision on the critical issue of what formula is to be used in determining the genuine inhabitant of Western Sahara to vote in the proposed referendum and when to hold such referendum. By prevaricating on the critical issues, the Security Council once again plays into the hands of King Hassan II of Morocco whose irredentist posture has shown his determination to subvert, by any means, the right of the Sahrawi to self-determination. U.N. SCOR. 371th mtg, U.N. Doc. S/RES/1084 (1996).

OAU directly challenged the legitimacy of the regimes in these countries.¹⁸⁴ It viewed these regimes as vestiges of white supremacy from the colonial era and therefore unacceptable.¹⁸⁵ The OAU initiatives to liquidate these illegal regimes was double-pronged; a diplomatic war within the United Nations, and financial and military support to the African liberation movements within these states.¹⁸⁶ The Southern Rhodesia crisis will serve as an illustration of this category of conflicts.

¹⁸⁴David A. Kay, *the Politics of Decolonization: the New Nations and the United Nations Political Process* in INTERNATIONAL ORGANIZATIONS: POLITICS AND PROCESS 329 (Leland M. Goodrich and David A. Kay eds., 1973).

¹⁸⁵See OAU Resolutions on Decolonization and Apartheid discussed in Cervenka *supra* note 113, at 15-18.

¹⁸⁶Cervenka reports six strategies adopted by the OAU Liberation Committee to tackle colonialism:

1. to break off diplomatic and consular relations between all African state and the government of Portugal and South Africa;
2. to introduce an effective boycott of the foreign trade of Portugal and South Africa by:
 - a) prohibiting the import of goods from those two countries,
 - b) closing African ports and airports to their ships and planes,
 - c) forbidding the planes of those two countries to overfly the territories of all African states;
3. to establish a co-coordinating Committee consisting of Algeria, Ethiopia, Guinea, Congo, Nigeria, Tanganyika, United Arab Republic and Uganda with headquarters in Dar es Salaam, responsible for harmonizing the assistance for African and for managing the Special Fund to be set up for that purpose. The Committee was, in fact, supposed to become the directing center of operations aimed at the overthrow of the white minority regimes of South Africa and Southern Rhodesia, and the total liberation of the African continent from the remnants of colonialism;
4. to establish a Special Fund to be raised by voluntary contributions of member states, to be used for the necessary practical and financial aid to the various African national liberation movements;
5. to receive on the territories of independent African states nationals from the liberation movements in order to give them training in all sectors and afford young people all assistance they need for their education and vocational training; and
6. to promote in each state the transit of all material aid and the establishing of a body of volunteers in various fields, with a view to providing the various African national liberation movements with the assistance they need in various sectors.

Cervenka *supra* note 113, at 15-16

The Southern Rhodesia Crisis

Perhaps the best potentialities and worst weaknesses of the OAU are revealed in the Rhodesian crisis. The crisis was triggered by the 1964 Unilateral Declaration of Independence (UDI) by the Minority Settler community in Rhodesia (now Zimbabwe) lead by Ian Smith. It was not a sudden declaration; preparations had been going on for a while.¹⁸⁷ The quest for 'independence' by the settler community started immediately after the dissolution of the Federation of Rhodesia and Nyasaland in March 1963 when the settler community formally requested independence from Britain.¹⁸⁸ The basis for the settler community's demand for independence was the 1961 class and racially based constitution that had given the country *de facto* self-government with the propertied minority white settlers forming the ruling class and the poor black people the underdogs.¹⁸⁹

The OAU did not hid its consternation at the events unfolding in Southern Rhodesia. The Second Ordinary Session of the Heads of State and Government meeting in Accra (Ghana) in October, 1965, passed a resolution which recommended the calling of a broad based constitutional conference that would draft a non-racial constitution. Else the OAU member states would take the following measures in the event of a non-negotiated independence:

1. refusal to recognize the new Rhodesian government;
2. continued efforts to reconcile the two African nationalist parties _ the Zimbabwe African People Union (ZAPU) and the Zimbabwe African National Union (ZANU) with a view to forming a government in exile and extending to it, financial, political, diplomatic and military assistance;
3. an emergency meeting of the OAU Council of Ministers to consider further action including the most effective means of involving the United Nations;

¹⁸⁷See T.O. Ranger, Southern Rhodesia: 1961 Trouble Spot?, 7 AFR. REP. (1962); L. H. GANN, HISTORY OF SOUTHERN RHODESIA (1965); PERCY F. HONE, SOUTHERN RHODESIA (1969).

¹⁸⁸G.V. & M.P. Doxey, *Whither Southern Africa?* 12 INT'L J. 25, 28 (1966-67).

¹⁸⁹Osita C. Eze, *OAU Faces Rhodesia*, 5 AFR. REV. 42, 46 (1975).

4. call to African members of the Commonwealth and other African countries to reconsider their relations with Britain and bring the utmost pressure to bear on the British government; and
5. generally, to treat Rhodesia like South Africa and Portuguese African territories in applying such measures as an economic boycott.¹⁹⁰

The Assembly established a committee of five member states to examine the resolution and take appropriate measures for effective implementation of the resolution.¹⁹¹ This did not deter the white minority government from their efforts to gain independence, nor did it stop them from continuing to emasculate the African nationalist movements.¹⁹² Urban violence increased as Africans increasingly become frustrated by oppression and discrimination which permeated every sector of government as the right wing Rhodesian Front party (RFP) gained more and more support from the settler white community.¹⁹³ The worst fears were confirmed by Ian Smith's flamboyant unilateral declaration of independence in November 1965.¹⁹⁴

It is against this background that the OAU Council of Ministers extraordinary Session was convened in Lagos (Nigeria).¹⁹⁵ In a no-nonsense resolution, the Council repeated the earlier calls made by the Assembly of Heads of State and Government, called on the Afro-Asian group in the General Assembly to take appropriate actions to ensure that Britain adhered fully to the United Nations Resolutions on Southern Rhodesia, and also

¹⁹⁰Eze *supra* note 189, at 55.

¹⁹¹*Id.*

¹⁹²Stephen John Stedman, *The End of the Zimbabwean civil War* in Stop the Killing 127(Roy Licklider Ed., 1993).

¹⁹³VULINDLALA MTSHALI, RHODESIA BACKGROUND TO CONFLICT 74-88 (1967).

¹⁹⁴G.V.Doxey *et al supra* note 188, at 25.

¹⁹⁵Eze *supra* note 189.

resolved "that if the United Kingdom does not crush the rebellion and restore law and order, and thereby prepare the way for majority rule in Southern Rhodesia by December 15, 1965, the member states of the OAU shall sever diplomatic relations on that date with the United Kingdom".¹⁹⁶ The deadline was reached and the OAU's ultimatum was neither heeded by Britain nor the rebellious Rhodesia. It turned out that the OAU membership was divided on what action to take. Only nine states implemented the Council of Ministers resolution.¹⁹⁷

It is difficult to clearly point to the tangible and solid contribution of the OAU to the resolution of this dispute. However several issues are clear. The OAU's rhetoric and diplomatic pressure contributed to the isolation and pariah status that the Ian Smith regime acquired. Its economic sanctions and that of the United Nations greatly contributed to the realization by the illegal regime that its future was bleak.¹⁹⁸ The Smith regime also in good time realized that the war against the African guerilla forces that had infiltrated the entire rural country was unwinnable.¹⁹⁹ There is however no denying that the liberation of Mozambique from Portuguese colonialism, the consequent ascendancy of an African independent government to power, and the subsequent closure of the Beirra rail link to the

¹⁹⁶Elias *supra* note 149; see generally GRAHAM C. KINLOCH, RACIAL CONFLICT IN RHODESIA (1978).

¹⁹⁷Several factors explain the OAU's helplessness in dealing Ian Smith's regime, and the division within the African ranks on what action to take. A military confrontation between the African states and the Smith Regime was ruled out - the OAU was ill-equipped to cope with a conventional warfare with Rhodesia. Economic sanctions could not be strictly enforced because the neighboring African (Malawi and Zambia), were weak, and their economies were so closely dependent on Rhodesia that they could ill-afford to impose sanctions on Rhodesia. Secondly, sanctions were ineffective because Rhodesia had a link to the Sea through South Africa and the Neighboring territory of Portuguese Angola. Doxey et al at 31-32.

¹⁹⁸Eze *supra* note 189, at 61.

¹⁹⁹Stedman *supra* note 192, at 237.

sea sealed the economic fate of landlocked Rhodesia, putting the last nail to the coffin of UDI government.²⁰⁰

On the other hand the polarization of the membership of the OAU as to whether or not to break diplomatic ties with Great Britain reflected the weaknesses of a house divide within. Some writers have questioned the legality of the Council of Ministers resolution; arguing that the Council, under the Charter, has no power to make decisions binding on the member states and hence the member states had no obligation to implement the resolution.²⁰¹ While, in a legalistic sense this position is correct, this argument does not absolve the OAU from its responsibility of ensuring that its organs act in unison and make decisions that members are ready to implement. That is the way to insure the credibility of the OAU.

d. Internal Conflicts Arising from Secessionist Movements

A number of secessionist movements have sprung up in African post-independent history.²⁰² They have been hardly successful due to the fact that the OAU, from its very birth, opposed any attempts at revising the borders existing before independence.²⁰³ This opposition has been induced by self-interest on the part of the African ruling elite and the genuine fear that revising the African borders would open a pandoras box and throw the

²⁰⁰Eze *supra* note 189, at 54.

²⁰¹Elias *supra* note 64, at 159.

²⁰² The most memorable ones (discussed in the paragraphs that follow) are the Katanga and Biafra secessionist provinces of Congo and Nigeria, respectively. See Peter Lyon, *The Ending of Cold War in Africa* in CONFLICT IN AFRICA 171-72 (Oliver Furley ed., 1995).

²⁰³See The OAU Charter Art. III (3)

continent into unprecedented instability.²⁰⁴ So far it is only Eritrea which has successfully seceded from Ethiopia.²⁰⁵ The Congo Crisis and the Nigeria civil war will be discussed to illustrate this category of conflicts.

a. The Congo Crisis

The facts surrounding the Congo crisis are well known.²⁰⁶ The Congo (later Zaire and now The Democratic Republic of the Congo), a country rich in mineral resources was hurriedly granted independence by Belgium in 1960 with Joseph Kasavubu and Patrice Lumumba as president and Prime Minister, respectively.²⁰⁷ The paternalistic colonial regime did little to prepare the Congo for independence, and therefore any keen observer of the local situation could have foreseen a crisis looming large.²⁰⁸

The crisis was triggered by the Belgian-sponsored secession of the mineral-rich Katanga province,²⁰⁹ and subsequent assassination of the left-leaning Lumumba, shortly

²⁰⁴See generally Ahmed An'na'im, *Eritrean Independence and African Constitutionalism: a Sudanese Perspective* in ERITREA AND ETHIOPIA: FROM CONFLICT TO COOPERATION (Amara Tekle ed., 1994).

²⁰⁵See RUTH IYOB, *THE ERITREAN STRUGGLE FOR INDEPENDENCE* (1995).

²⁰⁶The first Congo crisis was triggered by a secessionist machinations. The second crisis as shall be shown later, best illustrates how the involvement of superpowers in a local conflict can complicate the situation and render its resolution at the regional level, indeed even universal level, daunting. Yashpal Tandon, *The Internationalization of Civil wars: Lessons from the Congo, Nigeria and Vietnam*, in *AFRICA IN WORLD AFFAIRS* 66-67 (Ali A. Mazrui & Hausa Patel eds., 1973); see generally GEORGE MARTELLI, *LEOPOLD TO LUMUMBA* (1961).

²⁰⁷ See Rene Lemarchand, *Footnote to History: How Lumumba Came to Power*, 5 AFR. SP. REP. 2 (1960).

²⁰⁸The Blue Helmets *supra* note 179, at 175.

²⁰⁹ Mutiny in the Congo: The Linchpin Gives Way, 5 AFR. SP. REP. 3 (1960).

after independence.²¹⁰ A moderate government led by Aduola that emerged after the demise of Lumumba, did not last long. Political forces in the Congo were deeply divided despite the fact that by 1963 the secessionist forces led by Moise Tshombe had given up their bid for an independent state.²¹¹

By March 1963 the Congo was engulfed in another conflagration. Forces loyal to the deceased Lumumba regrouped under the name National Liberation Committee (NLC) and launched an onslaught on the Aduola government from the neighboring Congo Brazzaville.²¹² Moise Tshombe, with the support of the United States, Belgium and foreign mercenaries launched his second bid for power. Due to the turmoil that ensued and the ineffectiveness of his government to contain the situation, Aduola resigned and Tshombe was sworn in as Prime Minister in July 1964.²¹³

The turn of events shocked the OAU. Tshombe was widely regarded as a traitor responsible for the assassination of Lumumba and the escalation of the crisis by bringing mercenaries from Rhodesia and South Africa.²¹⁴ Small wonder that in October 1964 the OAU member States threatened to walk out of a Non-aligned movement (NAM) summit in Cairo (Egypt) should Tshombe be allowed to attend.²¹⁵

²¹⁰ The assassination of Lumumba has been closely linked to machinations by the CIA and Mobutu Seseseko who later took over the country in a bloody coup; see Shuyer *infra* note 216.

²¹¹ The Blue Helmets *supra* note 179, at 176-79.

²¹² Amankwah *supra* note 135, at 205.

²¹³ Agbi *supra* note 118, at 41.

²¹⁴ Ramphul *supra* note 153, at 379.

²¹⁵ Amankwah *supra* note 135, at 205.

The C.N.L. forces reacted to the ascendancy of Tshombe to power by launching an onslaught against government forces and capturing Stanleyville.²¹⁶ A bloody civil war ensued pitting the superpowers against each other with the local protagonists as pawns. The support of Tshombe by the United States was countered with the backing of C.N.L. by USSR and to a lesser extent China.²¹⁷

Attempts by the OAU to resolve the conflict bore no fruits.²¹⁸ An extraordinary session of the Assembly of Heads of State and Governments met in September 1964 to discuss the crisis. The Assembly appointed an *ad hoc* committee under the chairmanship of president Kenyatta of Kenya with a mandate to reconcile the warring parties and normalize relations between the Congo and its neighbors. The OAU also called for the withdrawal of foreign mercenaries, the formation of a caretaker government and the holding of elections.²¹⁹

Calls by the OAU went unheeded and initiatives by the Kenyatta committee to reconcile the factions failed.²²⁰ In the continuing civil war the C.L.N. forces seemed to get an upper hand over Tshombe's forces. However the famous Stanleyville operation effectively saw the defeat of C.L.N. forces and the emergence of Tshombe as the *de facto* leader. Thanks to the United States', Belgian and British paratroopers.²²¹

²¹⁶Ramphul *supra* note 153, at 379; see generally PILLIPPA SHUYER, WHO KILLED THE CONGO (1962).

²¹⁷*Id.* at 380.

²¹⁸External forces involved in the crisis were too strong and determined for the OAU to counteract.

²¹⁹Amankah *supra* note 135, at 205.

²²⁰Agbi *supra* note 118, at 52.

²²¹Amankwah *supra* note 135, at 205.

The OAU thus displayed its impotence in yet another regional conflict.²²² However, the active involvement of extra-regional forces in this conflict absolves the OAU from any fair indictment. Indeed, the endorsement of the OAU's call for the withdrawal of mercenaries by the United Nations Security Council went unheeded, and even the United Nations peacekeeping forces utterly failed to keep the peace.²²³

Moise Tshombe later (in a twist of fate) met his match in the person of Let. Marshal Mobutu who in a military coup, liquidated all his opponents and installed himself to power.²²⁴ Mobutu since then presided over a corrupt government, looting and plundering the resources of Zaire until recently when, rebel forces led by Laurent Kabila launched an offensive against Mobutu's moribund regime. Mobutu fled to exile in Morocco.²²⁵ Talk of poetic justice!²²⁶

²²²The impotence of the OAU can partly be explained by lack of a unified approach at the beginning of the crisis with the radical states calling for intervention, the conservatives favoring noninterference in the internal affairs of the Congo, and 'lukewarm' state desiring a middle way. For more details of the division of the African camp by the Congo crisis see Robert C. Good, *Four Views of the Congo Crisis*, 6 AFR. REP. 2 (1961).

²²³The intractability and complexity of the conflict is best illustrated by the fact that the then United Nations Secretary General, Dag Hammerskerjold lost his life in the Congo while on a peace mission. See *Martyrdom in the Congo*, 6 AFR. REP. 3 (1961); ARTHUR LEE BURNS & NINA HEATHCOTE, *PEACEKEEPING BY THE UNITED NATIONS: FROM SUEZ TO THE CONGO* 23-36 (1963).

²²⁴CNN Plus: Newsmaker Profiles,
<http://cnnplus.cnn.com/resources/newsmakers/world/afric/seko.html>, 06/03/97.

²²⁵CN Plus: Newsmaker Profiles,
<http://cnnplus.cnn/resources/newsmakers/world/africa/kabila.html>, 06/03/97.

²²⁶External intervention made the Congo crisis the most intractable conflicts in Africa. It is worthwhile to note that the worst dictators in Africa have always received support from western governments to keep them in power. A respected western weekly Magazine, "The Economist", makes this sad note:

"The outside powers provided some of the world's most unpleasant regimes with arms and aid. President Reagan welcomed Mobutu Sese Seko, the predatory boss of the Zairean kleptocracy, to the White House as a 'voice of good sense and goodwill,' and decided to 'go with Doe' after Master-Sergeant Samuel Doe had stolen a spectacularly corrupt election in Liberia. France sent

b. The Nigerian Civil War

The Nigerian civil is a microcosm of internal contradictions within the African nation-state.²²⁷ Nigeria was a country of promise when it gained independence from the British in 1960.²²⁸ It was not only an epitome of hope for Africa in the economic sphere (being a rich country with abundance oil deposits) but also a showcase in liberal democratic experimentation.²²⁹ If what an emerging country required was a democratic institutional base Nigeria had just that; the Federal constitution adopted after independence contained an elaborate and generous bill of rights. The principles of separation of powers and the rule of law were deeply ingrained in the federal constitutional order.²³⁰

Yet behind the constitutional facade of democracy and rule of law, seeds of civil strife were slowly germinating in the political arena _ the tribal inclination of Nigeria's political parties underlined the precarious political balance that could be tilted at the

soldiers to sustain incumbent dictators in Francophone Africa. Britain's Thatcher played footsie with the white supremacist government in Pretoria, even after apartheid started to crumble, and dismissed Nelson Mandela's African National Congress as "a typical terrorist organization." [The Economist, A Survey of Sub-Saharan Africa, September 7th 1996]

²²⁷For a review of literature on the Nigerian civil war see Laurie S. Wiseberg, *Emerging Literature: Studies of the Nigerian Civil War*, 17 AFRICAN STUDIES REV.117 (1975); Zdenek Cervenka, *THE NIGERIAN CIVIL WAR 1967-1970*, (1971); JOHN DE ST. JORRE, *THE NIGERIAN CIVIL WAR* (1972); A. H. JOHN KIRK-GREEN, *CRISIS IN NIGERIA VOL. I & II* (1971).

²²⁸B .O. NWABUEZE, *A CONSTITUTIONAL HISTORY OF NIGERIA*, 599 (1982).

²²⁹See generally OLUWOLE IDOWU ODUMOSU, *THE NIGERIAN CONSTITUTION: HISTORY AND DEVELOPMENT* (1963).

²³⁰T. O. ELIAS, *NIGERIA: THE DEVELOPMENT OF ITS LAWS AND CONSTITUTION* 117-245(1967).

slightest push.²³¹ The National Council of Nigerian Citizens (NCNC), was dominated by the Ibo of Eastern Nigeria, the Northern Peoples party of Nigeria (NPP), by The Hausa of Northern Nigeria, and the Action Group (AG), by the Yoruba of the Western region.²³² The federal government was a quasi-national loose coalition of the Ibo and Hausa.²³³ Like other newly independent countries allegiance to the tribe was the norm. Indeed Nigeria was an amalgamation of tribes and not a nation *per se*.²³⁴

In January 1966 a military *coup detat* engineered by Ibo officers took place and the prime Minister Tafawa Balewa was assassinated.²³⁵ Later Aguiyi-Ironsi (a Ibo) the leader of the previous coup was executed in a counter-coup that catapulted General Gowon to power.²³⁶ The turn of events was unacceptable to the Ibo.²³⁷ The military Governor of Eastern Nigeria Lt. Cl. Odumegwu Ojukwu declared the Eastern region an independent state to be called Biafra. The well known bloody civil war pitting the federal government and the secessionist Biafra, that lasted for three years and claimed an estimated one million people, ensued.²³⁸

²³¹JOHN J. STREMLAU, *THE INTERNATIONAL POLITICS OF THE NIGERIAN CIVIL WAR: 1967-1970*, 4 (1977).

²³²Ntalaja *supra* note 126, at 71.

²³³WILLIAM D. GRAF, *THE NIGERIAN STATE, POLITICAL ECONOMY, STATE CLASS AND POLITICAL SYSTEM IN THE POST-COLONIAL ERA* 27 (1988).

²³⁴Woronoff *supra* note 10, at 397.

²³⁵Amankwah *supra* note 135, at 206.

²³⁶*Id.*

²³⁷The coup was followed by a slaughter of Ibos in the northern part of the country. This precipitated the ill-fated secession of Biafra.

²³⁸Ramphul *supra* note 153, at 381.

What role did the OAU play in ending this unfortunate conflict? The OAU's capacity to resolve this conflict was inhibited by its Charter; the principle of non-interference in the internal affairs of member-states prevented the OAU from going into the bottom of the crisis.²³⁹ Although the OAU was aware of its impotence it did not want to appear to be doing nothing while a devastating civil war raged on in an African country. The Assembly of Heads of State and Governments summit meeting in Kinshasa (Zaire) in September 1967, therefore discussed the crisis.²⁴⁰ The resolution that was passed at the end of the conference emphasized that the conflict was Nigeria's internal affair but placed the "services of the Assembly at the disposal of the federal government."²⁴¹ The conference also decided to send a consultative mission to the head of the federal government to "assure him of the Assembly's desire for the territorial integrity, unity and peace of Nigeria."²⁴²

One wonders why the head of the federal government required this assurance from the OAU's Assembly of Heads of State and Government, since the Assembly was not

²³⁹In reference to why the OAU failed to resolve the Nigerian crisis Tandon gives a summary of reasons that explains the failure of OAU even in the other African intra-state conflicts. He writes:

"The OAU framework collapsed because of the following factors:

The first was that the OAU is, by design and constitution, and essentially conservative organization. It is anti-secessionist, anti-interventionist, and anti-border changes. . . . The second weakness of the OAU with reference to the Nigerian situation was its ability to enforce its decisions on its member states. The OAU could do nothing to prevent four member states (Tanzania, Zambia, Ivory Coast and Gabo) from recognizing Biafra. The OAU has no sanctions, except those of collective disapprobation of defaulting states, but even those the OAU was unprepared to invoke against the four states. . . . The third factor was the weakness of the OAU with respect to the outside world. Neither the OAU, nor any of its members, possess the power to insulate African problems from extra-regional intervention."Yashpal Tandon, *The Internalization of Civil war: Lessons from the Congo, Nigeria and Vietnam* in Mazrui *et al supra* note 206, at 68.

²⁴⁰Stremlau *supra* note 231, at 93.

²⁴¹*Id.*

²⁴²*See Id.*

fighting to dismember nor was it violating the territorial integrity of Nigeria. In any case why send a mission to convey such an assurance; one head of state or a letter to the federal government would have served the purpose. Whatever logic lay behind this confused lukewarm response by the Assembly to the Nigerian civil war several issues are apparent. The tension between the desire to resolve the conflict and at the same time remain faithful to the OAU Charter explains the Assembly's confused state of mind and unmitigated diplomatic blunder. By sending the mission to the federal government the OAU ironically, however, did what it had all along pledged never to do _ interfere in the internal affairs of a member state. The unfortunate thing however is that it interfered not as an impartial umpire bent on genuinely mediating between the parties and ending the conflict, but as a supporter of the federal government. This is yet another case of people living in glass houses and avoiding to throw stones.²⁴³

e. Internal Conflicts Resulting from Challenges to the Legitimacy of the Authority in Power

Most of the cases examined above manifest this characteristic in addition to the other traits discussed. A revisiting of the Congo crisis will illustrate this point. The Congo problem first started as a conflict between the secessionist movement of Moïse Tshombe against the government of Prime Minister Lumumba and President Kasavubu.²⁴⁴ At this

²⁴³ African heads of state (like emperor Haile Selassie of Ethiopia who was in the forefront of this Nigerian initiative) acted this in an attempt to preempt similar revolts in their own countries. The Nigerian crisis was thus a premonition of similar conflicts that had to engulf the continent later. Another weakness of the OAU displayed in this conflict is the inability of the members to stick to the decisions of the OAU. While the official policy of the OAU was to support the federal government as the legitimate government of Nigeria, some member state went ahead to recognize Biafra without any sanction emanating from the OAU. See W. Scott Thompson & Richard Bissel, *Legitimacy and Authority in the OAU*, 15 AFR. STUD. REV. 18 (1972).

²⁴⁴ Tandon *supra* note 206, at 206.

period there was no regional body within which the African states could launch an initiative. They therefore acted within the United Nations framework to support a peacekeeping operation.²⁴⁵ However when Lumumba was ousted by Kasavubu, the African states become deeply divided.²⁴⁶ The radical Casablanca group show the ouster of Lumumba as a challenge to the legitimate authority of the Congo and therefore unacceptable while the conservative Monrovia group viewed any overt support to a specific group in the Congo as interference with the internal affairs of the Congo. The African states could not, because of this polarization, act in concert within the United Nations.²⁴⁷

When Cyrille Aduola was installed as the successor to Lumumba in 1961, the situation seemed to improve. The radical states saw him as a legitimate successor to Lumumba.²⁴⁸ However his government proved ineffective and the conflict was renewed when Tshombe supported by the Americans, Belgians and mercenaries invaded from Kivu and Kilu provinces.²⁴⁹

In reaction to this externally supported offensive C.N.L, forces loyal to the late Lumumba received direct support from the neighboring states of Congo (Brazzaville), Burundi, Uganda and the Sudan, while the United Arab Republic (UAR), Algeria and Ghana supplied it with arms.²⁵⁰ Majority of the African state leaders questioned the

²⁴⁵Frey-wouters *supra* note 107, at 467.

²⁴⁶See generally ALLAN P. MERRIAN, CONGO BACKGROUND TO THE CONFLICT (1961).

²⁴⁷Frey-wouters *supra* note 107, at 467

²⁴⁸*Id.*

²⁴⁹Leon Gordenker, *The OAU and UN: can they Live Together?* in Mazrui *et al supra* note 206, at 115.

²⁵⁰Frey-Wouters *supra* note 107, at 467.

legitimacy of Tshombe's rulership over the Congo and viewed him as a "neo-colonialist puppet".²⁵¹

Other conflicts like the Sudanese civil war, the Rhodesian crisis, the Namibian civil war are all conflicts resulting from challenges to the legitimacy of the government in power although they have other peculiar characteristics mentioned elsewhere.²⁵²

f. Conflicts Involving External Intervention

A number of intra-state conflicts in Africa have involved external intervention either from within or without Africa. Some African countries in the early years of independence were accused of interfering in the internal conflicts within the neighboring states.²⁵³ It was Ghana's alleged involvement in a coup in Togo that prompted the Addis Ababa conference to incorporate Article III (5) in the OAU Charter.²⁵⁴ The most famous unilateral intervention by an African state into another is the Tanzanian 1979 intervention and ouster of dictator Idi Amin in Uganda.²⁵⁵ The OAU, through its Liberation commission overtly gave financial, military aid, and training grounds for rebel groups fighting the last colonial regimes in Mozambique and Angola as well as the racist white minority regimes in Rhodesia, Namibia and South Africa.²⁵⁶ The latest unilateral involvement by African states in an internal conflict is the alleged military support by Uganda, Angola, Burundi and

²⁵¹Gordenker *supra* note 249, at 115.

²⁵²See c above and g below.

²⁵³See James O. Jonah, *The OAU: Peacekeeping and Conflict Resolution in THE ORGANIZATION OF AFRICAN UNITY AFTER THIRTY YEAR 9* (Yassin El-Ayouty ed., 1994).

²⁵⁴This article condemns political assassinations and subversive activities "on the part of neighboring states or any other states."

²⁵⁵ANTONIO TANGA, *FOREIGN ARMED INTERVENTION IN INTERNAL CONFLICTS* 174 (1993).

²⁵⁶See Jacobson *infra* note 281.

Rwanda of the rebels of Laurent Kabila. Mobutu's use of mercenaries (from the former Yugoslavia) this time did not change the cause of history; he was eventually ousted by Kabila's forces.²⁵⁷ The intervention by ECOWAS in Liberia and Sierra Leone as well as the involvement of the great lakes regional states in Burundi conflict is examined elsewhere.²⁵⁸

During the cold war the East-West conflict manifested itself in Africa through superpower intervention in African internal conflicts.²⁵⁹ The Stanleyville operation and the Russian and Chinese involvement in the Congo crisis has already been mentioned. The Angolan and Mozambican civil wars have been sustained by the Cuban and Russian support of the incumbent governments and the sponsorship of the rebel movements in both countries by the then South African government and the United States.²⁶⁰ Mention has already been made of the US and Russian involvement in the conflict between Somalia and Ethiopia. France too has numerously unilaterally intervened in its former colonies to save incumbent governments threatened by a civil war or mutiny.²⁶¹

g. Conflicts with Strong Religious and Ethnic Underpinnings

The Hutu-Tutsi conflict within Rwanda and Burundi epitomize conflicts with strong ethnic angles exacerbated by colonial divide-and-rule policy of playing ethnic groups against

²⁵⁷see *supra* note 224; Time Magazine, 36-40 (Sept. 1, Vol. 150, No. 9, 1997).

²⁵⁸see Chapter V.

²⁵⁹Douglas Rimmer, *The Effects of Conflicts: II Economic Effects* in Furley *supra* note 97, at 302.

²⁶⁰See Kathryn O'Neill & Barry Munslow, *Angola: Ending the Cold War in Southern Africa* in Furley *supra* note 97, at 182-8.

²⁶¹France has intervened on many occasions in Chad, Central African Republic, Congo, Gabon, Mauritania, and Niger while Britain intervened to quash army mutinies in Kenya, Uganda and Tanzania in 1964. See Furley *supra* note 97, at 9.

each other.²⁶² One of the best example of a conflict with both religious and ethnic undercurrents is the Sudanese civil war. The Sudan is a country ethnically and religiously divided between the north and the south.²⁶³ The predominantly black, Christian and “animist” south took arms shortly after Sudanese independence from joint Egyptian and British rule in 1956 to fight for autonomy from the Khartoum government which was controlled by the Muslim and Arabist north.²⁶⁴ A settlement of the bloody war was reached in 1972 with the south assuming greater autonomy within a federal system of government.²⁶⁵ The war resumed in 1983 when the increasingly fundamentalist government in Khartoum reneged on the 1972 agreement, adopting Islamic policies like Sharia law and imposing them on the southerners.²⁶⁶

The Sudanese Peoples Liberation Movement (SPLM) led by Col. John Garang and other liberation movements in the south have continued to fight what they perceive as internal colonization by the north dating back to days of slave trade while the Khartoum government (especially the current regime of Al-Beshir) has, with strong determination strived to crash what it sees as an insurgency by infidels against Islam.²⁶⁷ With this kind of polarization a negotiated settlement in the near future is inconceivable. The OAU, through The Intergovernmental Agency for development (IGAD), a sub-regional body in the horn

²⁶²See Generally Neil Weiner, *Hutu and Tutsi of Rwanda and Burundi*, Netscape, <http://www.backgroundbriefing.com/hutututs.html>, 06/17/97.

²⁶³Mohamed Omer Beshir, *Conflict and Conflict Resolution in Africa - with Special Reference to the Sudan* in AFRICA: 25 YEARS ON 141 (KWESI KRAFONA, ED., 1988).

²⁶⁴*Id.* at 143.

²⁶⁵Donald Rothchild & Caroline Hartzell, *The Peace Process in the Sudan 1971_1972* IN STOP THE KILLING 63-93 (Roy Licklider ed., 1993).

²⁶⁶Peter Woodward, *Sudan War Without End* in Furley *supra* note, at 102.

²⁶⁷See generally Angella M. Lloyd, *The Southern Sudan: a Case for Secession*, 32 COLUM. J. TRANSN'L L. 419 (1994).

of Africa,²⁶⁸ has attempted to mediate an end to the conflict but has avoided direct involvement for fear of precipitating a fallout (between the Islamic states in the north and sub-Saharan states) that could destroy the unity within the continental body.²⁶⁹

D. Assessment of the Role of the OAU in Conflict Resolution and Dispute Settlement

The performance of the OAU in conflict resolution has been characterized by modest success in some cases and dismal failure in others. It is important to identify (in a general fashion) inroads the OAU has made and the challenges it has faced in its general endeavours at establishing lasting peace in Africa. Internal conflicts have presented the most daunting challenge to the OAU. The OAU has been helpless in the face of intra-state conflicts for two reasons. First, where foreign forces have been involved the capacity of the efforts of the OAU to impact positively on a conflict were substantially eroded.²⁷⁰ This is explained by the fact that extraterritorial forces have been too strong for the OAU. For instance in the Congo crisis the superpower intervention was so pervasive and overwhelming that the OAU efforts to nullify them proved fruitless.

Secondly, the OAU lacks the power, 'locus standi', so to speak, to intervene in internal conflicts. The key to understanding the impotence of the OAU in dealing with internal conflicts is Article III (3) which prohibits member states from interfering with internal affairs of other member states.²⁷¹ This provision has been conservatively interpreted

²⁶⁸IGAD is composed of Kenya, Ethiopia, Sudan, Uganda, Eritrea and Somalia. See The Daily Nation, <http://www.africaonline.co.ke/...online/nation/970707/rn/2.html>.

²⁶⁹Jonah *supra* note 253, at 11.

²⁷⁰Gordenker *supra* note 249, at 115.

²⁷¹OAU Charter Art. III (2).

and applied to place conflicts within a state beyond the purview and jurisdiction of the OAU. The result is an artificial and conceptually unrealistic dichotomy between inter-state and intra-state conflicts, with the OAU having jurisdiction to deal only with the former. As is self-evident to any casual observer of the African scene, this distinction is not realistic. All intra-state conflicts have a trans-border spillover effect that cannot be ignored by other states. It is therefore (as the above case studies show) impossible for the OAU to be faithful to this distinction. The OAU intervened in one way or another in all the cases that could be viewed as internal. The only thing that this distinction does is to enfeeble and impair the capacity of the OAU to resolve intra-state conflicts without preventing the OAU from intervening. In the case of Nigeria for example the OAU was unable to stay aloof, but since the Nigerian federal government insisted that the conflict was a Nigerian internal affair, to be faithful to this norm, the OAU intervened in support of the federal government. This way the OAU ironically thought it had insulated itself from being accused of undermining the sovereign integrity of Nigeria.²⁷²

The OAU has however registered success in the sphere of border conflicts; although this was the area that confronted the OAU with the biggest challenge from the beginning.²⁷³ It has been admitted that colonial boundaries were arbitrary and unsatisfactory.²⁷⁴ Writers and observers of the African scene have nonetheless conceded that attempts to redraw the map of Africa will invite unprecedented problems and even more conflicts. The maintenance of the *status quo* has proven more prudent than opening

²⁷²see *supra* note 239.

²⁷³For instance it contributed to the end of Ethiopia/Somali/Kenya border conflict and Morocco/Algeria border conflict. See Gordenkor *supra* note 249, at 114.

²⁷⁴*Id.* at 3.

a pandora's box by attempting to revise borders.²⁷⁵ The OAU over the years, has stuck to this rule in every conflict and the rule has become the norm.²⁷⁶ The rule has found juridical expression in the legal doctrine of *uti possidetis*.²⁷⁷ The stability with which the colonial borders have been maintained in Africa is astounding considering "the three wars in Latin America fought over frontier issues, the wars between India and Pakistan, the 1962 Sino-India war, and the extra-ordinary carnage of the 1980-88 Iran-Iraq war, which originated over disputed territory,"²⁷⁸ although some scholars feel otherwise.²⁷⁹

The role played by the OAU in decolonization cannot be overemphasized. Many conflicts in Africa were generated by the clash between the African independent states and liberation movements with the colonial regimes. From its inception, the OAU dedicated itself to the eradication of all vestiges of colonialism from the continent.²⁸⁰ Through its

²⁷⁵William J. Foltz, *The Organization of African Unity and the resolution of Africa's Conflicts* in Deng et al *supra* note 95, at 353.

²⁷⁶Alan K. Henrikson, *The United Nations and Regional Organizations: "King-links" of a "Global Chain,"* 7 DUKE J. COMP. & INT'L L. 35, 48 (1996).

²⁷⁷This is a prescriptive doctrine that asserts the continuity of African state entities the transfer of sovereignty from the colonial regimes notwithstanding. See Crawford Young, *Self-determination, territorial Integrity, and the African State Systems* in Deng et al *supra* note 95, at 328.

²⁷⁸*Id.* at 332.

²⁷⁹See Dr. Makau Wa Mutua, *Why Redraw the Map of Africa: A Moral and Legal Inquiry*, 116 MICH.J. INT'L L. 1113, 1114 (1996)- He writes: "The juridical statehood attained with the decolonization of the colonial state has in the last four decades proven inadequate. It is becoming increasingly apparent that these concepts and principles may have trapped in a detrimental time capsule; they now seem to be straight-jackets with time-bombs ready to explode. The imposition of the nation-state through colonization balkanized Africa into ahistorical units and forcibly yanked into the age of Europe, permanently disfiguring it." Mutua beautifully describes the problem of colonial borders but does not address the fundamental issue of how Africa can go about redrawing its map. He does not offer a formula. Should Africa call another Berlin Conference, for example?

²⁸⁰See OAU Charter Art. II(d) & III(6).

liberation committee, the OAU gave material and military support to the liberation movements, and at the United Nations level put diplomatic pressure on the United Nations to Act.²⁸¹ For instance Many anti-apartheid resolutions, sanctions on South Africa,²⁸² and the resolutions establishing steps towards independence for Namibia were crafted at the prodding of the OAU members at the United Nations.²⁸³ The OAU has contributed to the independence of Angola, Mozambique and Zimbabwe.²⁸⁴ With the end of Apartheid in South Africa it can be said Africa is now free from any form of colonial rule.²⁸⁵

Another significant step is the OAU's effort to contribute generally to peace and stability in the world through disarmament. It cannot be gainsaid that the presence of highly sophisticated weaponry in the world has contributed to general insecurity, more so in Africa. By adopting a convention making Africa a denuclearized zone the OAU has done two things.²⁸⁶ One, it has saved Africa from the costs of an arms race. Two, it has charted a new path in ongoing search for peace and stability based not on militarism but on trust.²⁸⁷

All conflicts have a human rights dimension; either they are caused by human rights violations, are triggered by attempts to stop human rights violations, and certainly they

²⁸¹Jacobson *supra* note 281, at 287-306 .

²⁸²See United Nations General Assembly Resolution 48/258 on the Elimination of Apartheid and the Establishment of a United, Democratic and Non-racial South Africa, 33 I.L.M. 1055 (1994).

²⁸³See The United Nations General Assembly Resolution on the Question of Namibia, 20 I.L.M. 516 (1981).

²⁸⁴Gordenker *supra* note 249, at 111.

²⁸⁵Goodrich *supra* note 184, at 316-32.

²⁸⁶See Organization of African Unity: African Nuclear-Weapon-Free Zone Treaty (Pelindaba Treaty), 35 I.L.M. 698 (1996).

²⁸⁷ Peter Lyon *supra* note 202, at 17; for a discussion of post-colonial militarization in Africa see Robin Luckham, *The Military, Militarization and Democratization in Africa: A Survey of Literature and Issues*, 37 THE AFR. STUD. REV. 27 (1994).

entail human rights violations.²⁸⁸ The adoption of the African Charter on Human and Peoples' Rights²⁸⁹—seen in the backdrop of the human rights crisis in Africa caused by conflicts—is a milestone in the long road towards establishing a culture of human rights in Africa—a prerequisite for peace and stability. The regionalization of human rights through the adoption of the Charter is a significant step in the human rights movement in Africa, in that it marks a radical departure from the OAU policy of the 1970s within which issues pertaining to human rights were seen as internal affairs of member state, hence the OAU could close its eyes to for example the massacres of tens of thousands of Hutu in Burundi in 1972 and 1973 and the massive violations of human rights by the notorious regimes of Jean Bedel Bokassa in the Central African Republic, Marcias Nguema of Equatorial Guinea²⁹⁰ and Idi Amin in Uganda.²⁹¹

²⁸⁸Louise Pirouet *supra* note 102, at 275-94; Oloka-Onyango, *Beyond Rhetoric: Reinvigorating the Struggle for Economic and Social Rights in Africa*, 26 CAL.W. INT'L L.J. 1 (1995).

²⁸⁹Reprinted in 21 I.L.M 69 (1980).

²⁹⁰U.O. Umozurike, *The African Charter on Human and Peoples' Rights*, 77 AM.J. INT'L L. 902, 903 (1983).

²⁹¹See DAVID GYNN, *IDI AMIN: DEATH-LIGHT OF AFRICA* (1977); MARTIN JAMESON, *IDI AMIN AND UGANDA* (1992).

CHAPTER II

THE OAU/UN INTERACTION IN AFRICAN CONFLICT RESOLUTION

A. The OAU as a Regional Organization Within the Meaning of Chapter VIII of the United Nations Charter.

The role played by regional organizations in the maintenance of international peace and security cannot be overemphasized. This point was not lost in the San Francisco conference that drafted the Charter of the United Nations.²⁹² While there was polarization between those who favored a universal system and those who desired regional arrangements within a universal framework,²⁹³ the later visionary position won the day when Chapter VIII was incorporated into the United Nations Charter. Article 52 declares:

Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters as relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the purposes and principles of the United Nations.²⁹⁴

The independent existence of regional organizations and their competence to deal with matters relating to the maintenance of international peace and security, cannot be

²⁹²For a discussion of the importance the San Francisco conference attached to regional organizations see RUTH B. RUSSEL, *A HISTORY OF THE UNITED NATIONS* 688-703 (1958); Anthony Clark Arend, *The United Nations, Regional Organizations, and Military operations: the Past and the Present* 7 DUKE J. COMP. & INT'L L. 3, 5-17 (1996).

²⁹³Jane A. Meyer, *collective Self-defense and Regional Security: Necessary Exceptions to a Globalist Doctrine*, 11 B.U. INT'L L.J. 391, 408 (1993).

²⁹⁴ U.N. Charter Art. 52.

questioned. The Charter, in no uncertain terms recognizes the legal capacity of regional organizations to deal with matters relating to regional peace and security, as long as their activities do not run afoul to the purposes of the United Nations.²⁹⁵ What is unsatisfactory however, is that no attempt is made in the Charter to define “regional arrangements or agencies.” An attempt by Egypt to sell a definition was dismissed as too restrictive of situations that may be covered by regional arrangements.²⁹⁶ Organizations were therefore left to themselves to decide whether they qualified to be regional organizations or not.

The question that imposes itself here is whether the OAU is a regional organization. Where an organization explicitly states in its charter, like the Organization of American States (OAS), that it is a regional organization, one would have no problem in agreeing that it is; especially if it performs regional security functions.²⁹⁷ A situation where the charter of an organization is silent on this matter like the OAU Charter, or where the Members claim that their organization is not a Chapter VIII organization like the NATO members do, is more problematic.²⁹⁸

The OAU was formed long after the UN was created. That the founders had the opportunity to consider its legal status and competencies *vis a vis* the United Nations is beyond doubt. The OAU Charter is awash with evidence showing that the drafters grappled with this question. Firstly, the purposes and principles of the OAU are not dissimilar to those

²⁹⁵U. N. Charter Art. 52.

²⁹⁶Okoye *supra* note 87, at 155 (1972).

²⁹⁷Charter of the Organization of American States, Apr. 30, 1948, 2 U.S.T. 2394, as amended by the 1967 Protocol of Amendment, 21 U.S.T. 607 (effective Feb. 27, 1970) Art.2 [hereinafter OAS Charter].

²⁹⁸See Christopher J. Borgen, *The Theory and Practice of Regional Organization Intervention in Civil Wars*, 26 N.Y.U.J. INT'L L. & POL. 797, 807 (1994).

of the United Nations.²⁹⁹ Secondly, the OAU Charter makes several references to the United Nations. The OAU founders were convinced that “the Charter of the United Nations and the Universal Declaration of Human Rights, to the principles of which we reaffirm our adherence provide a solid foundation for peaceful and positive cooperation among states.³⁰⁰ The commitment of the members of the OAU to the purposes and principles of the United Nations is further underlined by Article II (1)(e) which states the OAU’s goal of promoting “international cooperation, having due regard to the United Nations Charter and the Universal Declaration of Human Rights.³⁰¹ Article XXVI further provides for the registration of the OAU Charter (after ratification) with the United Nations Secretariat “in conformity with Article 102 of the Charter of United Nations.”³⁰²

There is no question that the founders recognized the primary role of the United Nations in the maintenance of international peace and security. Nonetheless, the assertion that the founders considered the OAU a regional organization yet failed to explicitly state so is rather curious. It is unbelievable that such an important issue could have escaped the mind of the Addis Ababa summit. Some writers have interpreted Article 26 to mean that the founders envisioned the OAU as a regional organization.³⁰³ Article 26 reads as follows: *“This Charter shall, after due ratification, be registered with the secretariat of the United Nations through the Government of Ethiopia in conformity with Article 102 of the United Nations Charter.”* Clearly, such an interpretation is far-fetched. Registration of treaties with the United Nations Secretariat is a requirement of the international law of treaties and has

²⁹⁹See OAU Charter Art.II; U. N. Charter Art.1.

³⁰⁰The OAU Charter Preamble.

³⁰¹The OAU Charter Art. II (1) e.

³⁰²The OAU charter Art. XXVI.

³⁰³Amankwah *supra* note 135, at 200.

nothing to do with nature of the treaty being registered. All treaties, bilateral or multilateral, irrespective of the nature of legal relations such treaties create are required to be registered with the United Nations Secretariat.

A more credible explanation of the silence of the OAU Charter as to its legal relationship with the United Nations is a desire on the part of the OAU to avoid direction and control by the “extra-African” United Nations Security Council, and therefore preserve its independence and non-aligned stance.³⁰⁴ Okoye eloquently argued this point thus:

...the point must be made that the Charter of the OAU envisaged the concept of a regional organization operating independently of the United Nations and of the Security Council in particular. The general impression is that the OAU carefully avoided any specific formulations which might remotely suggest that its activities are subject to United Nations control. Member states are impatient in their desire for national progress and African advancement and they are afraid that the United Nations crippled by cold war politics will frustrate their efforts on such matters as the right to self-determination, and the struggle against neo-colonialism”.³⁰⁵

The OAU’s quest for autonomy and originality of initiative independent of the United Nations does not however preclude it from being a regional organization for the purposes of Chapter VIII despite its other stated aims and objectives outside the realm of chapter VIII.³⁰⁶ Neither does NATO’s protestations that it is not a regional organization but a self-defense arrangement within the meaning of Article 51 _ aimed at avoiding being subjected to the supervisory role of the Security Council _ make it escape this classification; its self-defense character notwithstanding.³⁰⁷ Indeed, the utilization NATO troops by the United Nations for

³⁰⁴Leon Gordenker, *The OAU and the UN: can they Live Together*, in Mazrui *supra* note 206, at 112.

³⁰⁵Okoye *supra* note 87, at 158.

³⁰⁶Meyer *supra* note 293, at 417.

³⁰⁷See Borgen *supra* note 298, at 807.

enforcement action in the former Yugoslavia clearly demonstrates the duality of NATO (as a self-defense and regional arrangement), and the flexibility of Chapter VIII of the UN Charter.³⁰⁸ Indeed even the European Community (EC), a regional economic organization, has been drawn into regional dispute settlement and security concerns in the Balkans.³⁰⁹ This clearly demonstrates the foresight of those who rejected attempts at defining “regional arrangements,” the result of which could only have been to deny the United Nations Charter the flexibility necessary in dealing with regional crises like that in the Balkans. From the foregoing it is sensible and logical to conclude that the term “regional arrangement” employed in Article 52 of the United Nations Charter is inclusive and was intended to be elastic enough to denote all multilateral agencies of a regional character whose competencies encompass but are not necessarily restricted to dealing regional peace and security. The OAU is therefore a regional organization the silence of its Charter notwithstanding.

B. OAU-UN Involvement in African Conflict Resolution and Peace Making: Tackling Jurisdictional Bottlenecks

The United Nations and the OAU have co-existed for over three decades. It is important to examine how these two organizations have related over the years, especially given the fact that although the OAU Charter recognizes the importance of the United Nations and pledges to promote the purposes of the United Nations, no formal legal relationship between the two bodies is envisioned by their respective charters. Indeed the OAU (as already mentioned) has over the years seen itself as an autonomous regional

³⁰⁸Meyer *supra* note 293, at 431.

³⁰⁹Borgen *supra* note 298, at 809.

organization always taking with a pinch of salt any interaction with the Security Council that may lead credence to the view that it is a subordinate actor in the regional scene.³¹⁰

This does not in any way mean that the United Nations and the OAU have had an uneasy relationship. Far from that. The relationship between the United Nations and the OAU has always been cordial and warm; manifesting itself in resolutions by both organizations and various forms of mutual cooperation between the two organizations that have evolved over the years. In 1963 the OAU, through a resolution termed “Africa and the United Nations,” the member states of the OAU expressed their commitment “to strengthen and support the United Nations”.³¹¹ The African states underlined their conviction that the “United Nations is an important instrument for the maintenance of peace and security among nations and for the promotion of economic and social advancement of all peoples.”³¹² Another resolution adopted at the Ninth Ordinary Session of the Council of Ministers and approved by the Assembly of Heads of States in 1967 spelt out the principles of the OAU policy in dealing with the United Nations and its specialized agencies.³¹³

Of practical importance however is the cooperation the United Nations and the OAU have charted out in the social and economic fields. The work of the United Nations Economic Commission for Africa that has been critical in the development of Africa, was commenced with a special agreement between the OAU and the United Nations.³¹⁴ The OAU adopted in 1980 Lagos plan of Action (LPA) for the economic development of Africa, a comprehensive document detailing the strategies for Africa’s economic development to the

³¹⁰See Gordenker *supra* note 304, at 113; Okoye *supra* note 87, at 158.

³¹¹Discussed in Okoye *supra* note 87, at 157.

³¹²*Id.*

³¹³*Id.*

³¹⁴See Sohn *supra* note 16, at 129.

year 2000.³¹⁵ In 1985 the OAU adopted a revised and a more down-to-earth version of the Lagos Plan, the “African Priority Program for Economic Recovery (APPER).³¹⁶ The United Nations General Assembly, in support of this initiative, approved the “United Nations Program of Action for African Economic Recovery and Development (UNPAAERD)” in support of the OAU initiative.³¹⁷

Examples are a legion of UN-OAU cooperation in the socio-economic field. Of particular concern for this thesis, however, is the UN-OAU cooperation in conflict resolution and peace making. The charters of both organizations invest them with the authority to deal with conflicts and settle disputes.³¹⁸ While the OAU mandate is restricted within the geographical land mass occupied by the OAU members, the United Nation’s mandate is universal. Hence not only do the membership of both organizations overlap, but also their respective jurisdictions in dealing with conflicts.

The United Nations Charter of course attempts to restrict the jurisdiction of regional organizations to the utilization of peaceful means for regional dispute settlement, and retains the monopoly of use of force, the so-called enforcement measures for the Security Council.³¹⁹ The United Nations Charter also attempts to create an hierarchy of sorts between regional instruments of pacific settlement of disputes and the security Council. The member states are called upon to “make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security

³¹⁵ See Berhanukun Andemicael, *OAU-UN Relations in a Changing World* in THE ORGANIZATION OF AFRICAN UNITY AFTER THIRTY YEARS, 130 (Yassin El-Ayouty, ed. 1994).

³¹⁶ *Id.*

³¹⁷ *Id.*

³¹⁸ See the U.N. Charter Chapter VI & VII; the OAU Charter Art. XIX.

³¹⁹ The U. N. Charter Art. 24.

Council.”³²⁰ The security Council is therefore a tribunal of last resort after “exhausting local remedies,” so to speak.

These provisions however do not clarify conclusively the issue of computation of jurisdiction between the United Nations and regional mechanisms.³²¹ At what point is the Security Council expected to intervene in a local dispute? One might answer: after the disputants have made every effort to achieve pacific settlement of local disputes through regional arrangements. How is the Security Council to determine every effort has been made and regional arrangements have failed to resolve a dispute? And what is a local dispute? Or to put it in another way what disputes are not local? Do these provisions mean the Security Council or the Secretary General has no power to utilize “good offices” for resolution of local disputes when regional agencies are undertaking similar initiatives, or even when regional agencies have not gotten involved? There are no easy answers to these questions.

What is clear however, is that nothing in the United Nations Charter prevents the Security Council or the Secretary-General from being involved in a dispute at any stage. Indeed, Chapter VI of the United Nations Charter empowers the Security Council to assist in the resolution of conflicts through peaceful means. The Security Council “may call upon the parties to settle their disputes by such means, and may investigate any dispute or any other situation which might lead to international friction or give rise to a dispute.”³²² That regional organizations do not have exclusive jurisdiction over disputes “appropriate for

³²⁰The U.N. Charter Art. 52 (2).

³²¹Indeed, scholars have raised the question of jurisdiction in a number of conflicts. Some observers believed the Arab League was the competent forum to deal with the Gulf conflict at the initial stages. At the early stages of the conflict in the Balkans the United Nations and the regional organizations including NATO, Western European Union and the European Union seemed to back away from the conflict each expecting the other to assume jurisdiction. For details see Arend *supra* note 292, at 3.

³²²U. N. Charter Art. 34.

regional action,” (assuming it is possible to determine what such disputes are), was underlined by none other than Dag Hammarskjöld:

The importance of regional arrangements in the maintenance of peace and security is fully recognized in the Charter and the appropriate use of such arrangements is encouraged. But in those cases where resort to such arrangements is chosen in the first instance, that choice should not be permitted to cast any doubt on the ultimate responsibility of the United Nations.³²³

The short and long of this is that in many instances the United Nations and regional organizations have overlapping jurisdictions over regional disputes and one can imagine scenarios of tension between the two organizations if both assert their respective jurisdiction over a dispute.³²⁴ It is interesting to see how this anomalous situation has been avoided by the OAU and the United Nations in their various efforts to resolve conflicts and settle disputes in Africa. Depending on the nature of the dispute a *modus vivendi* has been evolved between the United Nation and the OAU to avoid tension and friction that any form of competition for jurisdiction may generate.

i. The United Nations Deference to the OAU.

The wisdom of deferring to regional organizations by the security Council lies in the recognition that regional agencies have intimate knowledge and understanding of the intricacies of local conflicts and are hence better suited to fashion out appropriate remedies.³²⁵ The Security Council has, in appropriate cases, more often than not deferred to the OAU

³²³ AIDA L. LEVIN, *THE OAS AND THE UN: RELATIONS IN THE PEACE AND SECURITY FIELDS* 45 (1974).

³²⁴ A case in point was the tension created between the United Nations and the Organization of American States (OAS) in 1965 when both organizations competed for jurisdiction over the crisis in the Dominican Republic. Henrikson *supra* note 276, at 47-48.

³²⁵ Meyer *supra* note 293, at 410.

when a dispute has been referred to it, a practice that has politically been dubbed “try the OAU first.” African countries have also tried their best to give African problems African solutions.³²⁶

Examples of this practice abound. When Morocco decided in 1962 to submit its border conflict with Algeria to the Security Council, it was persuaded by her allies within the Security Council to seek a settlement within the OAU first.³²⁷ Similarly, Somalia was prevailed upon to withdraw its petition before the Security Council dealing with its border conflicts with Kenya and Ethiopia, until the OAU had adjudicated the dispute. In the Western Sahara conflict the Security Council deferred to the OAU by calling upon the protagonists to cooperate to the fullest with the OAU in its effort to settle the conflict.³²⁸ The United Nations kept its hands off the 1967-70 Nigeria civil war mainly due to the fact that the OAU was already involved on the side of the federal government.³²⁹ In a nutshell the Security Council has over the years shown a lot of reluctance to deal with African border conflicts before the OAU has dealt with them, or when the OAU is seized of the matter.³³⁰

ii. Concurrent Exercise of Jurisdiction

Other than deferring to the OAU there are many other occasions when the United Nations and the OAU have jointly attempted to deal with a conflict on an equal footing and instances when the United Nations has taken an upper hand and relegated the OAU to the

³²⁶See Henrikson *supra* note 276.

³²⁷Layachi *supra* note 151, at 151.

³²⁸S.C.Res. 658, U.N. SCOR, 2929th MTG., U.N. Doc. S/RES/658 (1990).

³²⁹See Stremlau *supra* note 231, at 129.

³³⁰See Berhanykun Andemicael, *The Organization of African Unity and the United Nations: Relations in the Peace and Security Field*, in REGIONALISM AND THE UNITED NATIONS 238, 254-56 (Berhanykun Andemicael ed., 1979).

backstage. The United Nations and the OAU were jointly involved in peacekeeping operations in both the Congo and Chad, and the United Nations joined the OAU in condemning super power intervention in the former.³³¹ The latest example of a situation where the United Nations and the OAU have dealt with a conflict in a more or less equal footing is the recent civil war in Zaire pitting the rebels of Laurent Kabila and the government of dictator Mobutu Sese Seko. The United Nations and the OAU appointed a joint peace envoy in the name of Mohamed Sahnoun to mediate over the conflict and work out the modalities of a cease-fire.³³² Both organizations adopted the three point peace plan proposed by the mediator upon which the peace negotiations in Pretoria (South Africa) were based.³³³

The Western Sahara conflict is a classic example of a dispute where the OAU is at first predominantly involved, but gradually its role diminishes as that of the Security Council and the General Assembly increases. The involvement of the OAU started to decline at the point when the OAU officially admitted the Saharan Arab Democratic Republic (SADR) into the OAU. Morocco, one of the protagonists in the conflict rejected OAU mediation in the conflict pointing out that the OAU, after admitting SADR was no longer an impartial umpire.³³⁴ It is however worth noting that the three point formula formulated by the OAU

³³¹R. A. AKINDELE, *THE ORGANIZATION OF AFRICAN UNITY AND THE PROMOTION OF WORLD PEACE: A STUDY OF UNIVERSAL-REGIONAL SYSTEMS* 98-102 (1976).

³³²The Daily Nation, Monday April 28, 1997.

³³³*Id.*

³³⁴See Naldi *supra* note 148, at 152.

special committee reverberates at the Security Council and General Assembly level, and is implicitly supported by the decision of the International Court of Justice.³³⁵

The United Nations has also played a pivotal role in the resolution of conflicts related with decolonization such as the Namibian and South African (apartheid) conflict.³³⁶ However, although the steps leading to the resolution of these peculiar conflicts (especially the Namibian one) were crafted at the United Nations level, it would be wrong to assert that the OAU played a backstage role. While the OAU member states concentrated their diplomatic efforts to resolve these conflicts at the United Nations arena, at the OAU level they adopted a strategy envisioned in the OAU Charter_ giving material, military and logistical support to national liberation movements involved in these conflicts,³³⁷ for the “total emancipation of African territories which are still dependent.”³³⁸

From the foregoing, it is difficult to identify hard and fast rules on which the OAU and the United Nations have based their relationship in exercising their overlapping jurisdictions to resolve African conflicts. It is safe, however, to conclude that a pragmatic approach_ based on the nature of the dispute and the practical realities of the day _ has dictated the nature of the partnership between the United Nations and the OAU in resolving African conflicts.

³³⁵See Chapter I (B) (1) (b).

³³⁶For a detailed discussion of the involvement of the United Nations in resolving the South African conflict see Ibrahim J. Gassama, *Reaffirming Faith in the Dignity of Each Human Being: The United Nations NGOs and Apartheid* 19 FORDHAM INT'L L. J. 1464 (1996).

³³⁷Gordenker *supra* note 249, at 112.

³³⁸OAU Charter Art.III (6).

C. Utilization of United Nations Mechanisms for Resolution of African Conflicts: Problems and Prospects

1. The Security Council

Resort to the Security Council is one avenue the OAU may consider in resolving African conflicts. In this regard, whenever the OAU wishes to undertake an enforcement action against a regional threat to peace, it will submit its resolution to the Security Council for a stamp of approval.³³⁹ Alternatively, a member-state or the OAU collectively may submit a conflict to the jurisdiction of the Security Council for it to take a decision as to whether or not enforcement action under Chapter VII or other measures under Chapter VI is appropriate for such a conflict.³⁴⁰ Various shortcomings of the Security Council will however caution the OAU against relying on the Security Council to guarantee peace and security in Africa.

Firstly, a danger of a deadlock within the Security Council is real, with one or more of the permanent members using its veto power to block a Security Council decision, if it is in the geopolitical interest of such a member or members so to do.³⁴¹ Especially now after the end of the cold war when the hegemonic dominance of the United States prevails in the Security Council, one expects any decision that does not advance Washington's perceived

³³⁹Article 53 of the United Nations Charter prohibits regional organizations from taking "enforcement measures" without Security Council authorization.

³⁴⁰Member states of the United Nations are obligated, under Article 37, to refer disputes that they are unable to settle by peaceful means to the Security Council.

³⁴¹Borgen writes: The dilemma of deadlock arises when a regional organization wishes to undertake an enforcement action but is unable to get security Council approval because: a. The Security Council stays silent as to whether or not a given situation is a threat to international peace and security, or b. Security Council members believe that any attempt officially to label the situation as such would result in a veto. Borgen *supra* note 298, at 802.

foreign policy, to be blocked.³⁴² Once the OAU submits a conflict to the Security Council the competence to resolve the conflict henceforth devolves in the Security Council. Hence the Security Council retains the keys to the resolution of the conflict and may use the keys to resolve the conflict or may keep it in its locker, letting the conflict continue unresolved.³⁴³

That the Security Council as presently constituted suffers from a democratic deficit and a crisis of legitimacy is beyond doubt.³⁴⁴ While welcoming a more revitalized Security Council that is able to carry out its mandate under the United Nations Charter, the small states that form the majority in the United Nations object at what they see as an exercise of raw power by the United States within the framework of the Security Council. Professor Gassama puts this state of affairs in an historical perspective thus:

During the Cold War, the potential for abuse of these powers and their essentially undemocratic nature was not at issue. Indeed, the key concern then was the Council's inability to act on controversial matters since the hostility between East and west virtually assured institutional paralysis. Permanent members on the Council routinely frustrated the resolution of most major global issues. This institutional paralysis, however also meant that the Security Council did not interfere in the affairs of smaller members of the organization. Today, with the Security Council increasingly disposed to following U.S. leadership, smaller nations are becoming more concerned about the Council's powers, independence, and accountability. Many of these nations now

³⁴²Ruth Gordon, *United Nations Intervention in Internal Conflicts: Iraq, Somalia, and Beyond*, 15 MICH.J. INT'L L. 519, 581 (1994).

³⁴³See U.N. Charter Art. 25 & Chapter VII.

³⁴⁴One of the ironies of the United Nations system is that the Security Council that has in the recent past sought to promote democracy by intervening in some states like Haiti to restore a democratic regime to power, lacks democratic credentials of its own. Many writers and commentators are now questioning the credibility and legitimacy of the Council. See David Bills, *International Human Rights and Humanitarian Intervention: the ramifications of reform on the United Nations' Security Council*, 31 TEX. INT'L J. 107, 117 (1996); Sean D. Murphy, *The Security Council, Legitimacy and the concept of Collective Security After the Cold War*, 32 COLUM. J. TRANSNAT'L L. 201, 247 (1994).

advocate changes to the council that would make it more representative of the membership of the United Nations.³⁴⁵

It is not just the small states that acknowledge the need for reforming the Security Council. Big states including the United States have owned up to the need for overhauling the Security Council to reflect the present day reality.³⁴⁶ Indeed, with the publication of the United Nations Secretary-General Report's, An Agenda for Peace, by the immediate former Secretary-General, underlining the need for such reforms,³⁴⁷ and the appointment of a Working Group on the reform of the Security Council, a consensus in the international community on the inevitability of reform seems to have been reached.³⁴⁸

The crux of the matter, however, is determining in specific terms the nature of the reforms desired by the community of nations. A plethora of proposals have been put forward depending on what the proponents of these proposals feel are the fundamental flaws within the Security Council and the nature of the changes they discern will address these shortcomings. Some Scholars have argued that during the Cold War East-West division dominated the United Nations, but with the collapse of communism, and the end of the Cold War, we now have a North-South conflict (other than East-West divide) dominating the United Nations.³⁴⁹ Hence, they argue, a reformed Security Council must reflect this North-South division. The status quo characterized by Northern dominance, they argue, is

³⁴⁵Ibrahim J. Gassama, *World Order in the Post-cold War Era: The Relevance and the Role of the United Nations After Fifty Years*, 20 BROOK.J. INT'L L. 255, 318 (1994).

³⁴⁶See David Bills, *International Human Rights and Humanitarian Intervention: the Ramifications of Reform on the United Nation's Security Council* 31 TEX. ENTER. L. J. 107, 117 (1996).

³⁴⁷United Nations Report of the Secretary-General on An Agenda for Peace _ Preventive Diplomacy, Peacemaking and Peace-keeping, June 17 1992, 31 I. L. M. 953 (1992).

³⁴⁸G.A. Res. 26, U.N. GAOR, 48th Sess., Supp. No.49, 29 U.N. Doc. A/48/49 (1993).

³⁴⁹*Bills supra* note 346, at 119.

unpalatable.³⁵⁰ Some scholars have advocated for the scrapping of the veto power, since in their view veto power only serves to undermine the principle of sovereign equality of states upon which the international law edifice is predicated, and instead of buttressing the rule of law, goes to emphasize that might is right.³⁵¹

Others would like to see the one-state-one-vote system in both the General Assembly and Security Council replaced by a weighted System whereby state representation in both of these organs would be directly proportional to the population in a given state and the financial contribution such a state makes to the United Nations.³⁵² A regionalized Security Council representation is another proposal espoused by some scholars who argue that the five permanent members in the Security Council were given permanent status following their victory in the World War II.³⁵³ The continued possession of veto power by some of these States is anachronistic in the sense that it does not reflect the present day reality on the global distribution of military and economic power.³⁵⁴ Further more, they argue, the defining characteristics of what constitutes threats to peace have shifted from global military capability to local situations directly linked to poverty and deprivation. Therefore, in their opinion, incorporating regional economic superpowers in a reformed Security Council makes a lot of sense.³⁵⁵ For instance India and Japan would represent the Asian Continent while Latin America would be represented by Brazil, Western Europe by Germany and Africa by Egypt, South Africa or Nigeria. Veto power would be extended to these regional powers in addition

³⁵⁰*Id.*

³⁵¹*Id.* at 120.

³⁵²Gassama *supra* note 344, at 307.

³⁵³Gordon *supra* note 342, at 585.

³⁵⁴*Id.*

³⁵⁵*Id.*

to the five permanent members who already possess it; since it would be difficult to convince Great Britain and France whose possession of veto power no longer seems justified, to give it up.³⁵⁶

Some scholars have even gone further to propose 'direct universal suffrage' for state representatives in the United Nations organs.³⁵⁷ The incumbent President of the United Nations General Assembly who is also the chairman of the Working Group on Security Council reform has proposed a three-tier system with the first tier consisting of the present five permanent members retaining the veto power, and a second tier of five states, three from the developing regions of Africa, Asia, Latin America and the Caribbean, and two from the industrialized countries.³⁵⁸ The second-tier states would have permanent status but no veto power. A third tier would consist of four rotational members elected every five years akin to the present ten non-permanent members to be derived each from Africa, Asia, Latin America, Eastern Europe, and the Caribbean.³⁵⁹

While it is not within the scope of this thesis to discuss the merits and demerits of these proposals, a few important points need to be noted. Any reform of the Security Council that does not address the genuine concerns of the developing countries that form the majority of the members of the United Nations will not resolve the credibility and legitimacy crisis currently engulfing the United Nations Security Council. More specifically a restructuring of the Security Council that preserves the veto power exclusively for the current five permanent members like the proposed three-tier system is an exercise in window-dressing which does not deal with the bottomline of the desired reforms; that is, the removal of superpower

³⁵⁶See Gassama *supra* note 344, at 321.

³⁵⁷*Id.* at 316.

³⁵⁸Panafrican News Agency, <http://www.africanews.org/PANA/news/970321/feat6.html>.

³⁵⁹*Id.*

syndrome by making the Security Council a more representative body.³⁶⁰ However care must be taken not to over-expand the Security Council. A security Council that is too large is bound to be unwieldily and inefficient in carrying out its mandate.³⁶¹ And since it is not possible to call another San Francisco conference, the General Assembly is the right forum to discuss and adopt the requisite reforms, in accordance with Article 108 of the United Nations Charter.

A genuine spirit of striving for fundamental reforms that will serve the ends of peace, stability and justice, captured in the preamble to the Charter of the United Nations _ other than political expediency and self-interest _ should permeate the discussions leading to the reforms. The immediate former Secretary General of the United Nations underlined this new spirit that must inform relations and intercourse within the United Nations system in the following words:

a genuine sense of consensus deriving from shared interests must govern the work of Council, not the threat of a veto or power of any one group of nations. Moreover, the permanent members must have the deeper support of other members of the Council, and the membership more widely, if the council's decisions are to be effective and endure.³⁶²

2. The International Court of Justice (I.C.J).

The international Court of Justice is another universal institution that the OAU members state could have recourse to in the resolution of conflicts and disputes *inter se*. It is an avenue whose potentialities have hardly been explored since the existing OAU conflict

³⁶⁰Indeed Italy criticized the proposal, saying "we cannot accept a system that attempts to benefit the very few by taking away from the great many, in blatant disregard for the principles of sovereign equality enshrined in the Charter." *Id.*

³⁶¹Murphy *supra* note 344, at 264.

³⁶²BOUTROS BOUTROS-GHALI, AN AGENDA FOR PEACE: PREVENTIVE DIPLOMACY, PEACEMAKING AND PEACEKEEPING 15 PAR. 78 (1992).

resolution and dispute settlement structures and the practice of its member states generally seem to be bent in favor of informal means and diplomatic resolution as opposed to juridical modes of resolution of disputes and conflicts.³⁶³ Some scholars have found explanations for this supposedly African (and Asian too) scepticism displayed towards the international Court of Justice rooted in the African (and Oriental) cultures which prefer negotiation and consensus as the ideal modes of dispute resolution, and look with disfavor juridical resolution of disputes.³⁶⁴

Such assertions (with due respect to their proponents) have no scientific basis since empirical evidence exist to show that informal mechanisms of dispute resolution based on negotiation and consensus co-existed with indigenous courts administering indigenous justice in pre-colonial African and Asian societies.³⁶⁵ African and Asian states have avoided the International Court of Justice for historical reasons that have nothing to do with Afro-Asian cultures, but every thing to do with the culture of the international Court of Justice itself.³⁶⁶

The African (and Asian) states emerged from colonial subjugation to find themselves overburdened with onerous duties and obligations in the international regime deriving from “principles by which the Western powers agreed to live and conduct their business.”³⁶⁷ In other words the newly independent states, propelled into the international law edifice suddenly found themselves having to abide by norms of classical international law made by

³⁶³Asante *supra* note 351.

³⁶⁴R.P. Anand, *Attitudes of the “New” Asian African Countries Towards the International Court of Justice* in Snyder *et al supra* note 135, at 163.

³⁶⁵It is these court the colonial authorities, unable to administer western justice to the natives incorporated into the colonial judicial machinery, albeit in a distorted form. For example see E. A. KEAY & S.S. RICHARDSON, *THE NATIVE AND CUSTOMARY COURTS OF NIGERIA* (1966).

³⁶⁶Anand *supra* note 364, at 164-65.

³⁶⁷S. PRAKASH SINHA, *NEW NATIONS AND THE LAW OF NATIONS* 23 (1967).

and skewed in favor of Western states.³⁶⁸ The composition of the International Court of Justice with judges from the Western countries, and the practice of these judge that was directed at perpetrating vested interests of the western states, served to alienate the Afro-Asian states from the International Court of Justice, which they viewed as a Western institution designed to serve Western interests and far removed from the realities of the problems affecting the newly independent states.³⁶⁹

The Court was presented with an opportunity to correct this image of itself from the African states on November 4, 1960 when the governments of Liberia and Ethiopia filed, in the Court registry, applications instituting proceedings against South Africa in the famous South West African Cases.³⁷⁰ Preliminary objections raised by South Africa touching on the jurisdiction of the Court and the legal standing of the petitioners were dismissed by the Court; finding that it had jurisdiction to adjudicate upon the merits of the dispute and the applicants had *locus standi* before the court.³⁷¹ The court then went to deal with the substantive issues in the merit stage of the case (South West African case, Second Phase).³⁷² The following is a summary of the main issues that were in contention between the parties:

1. Whether South West Africa was still a territory under mandate and if so whether the mandatory obligation to furnish annual reports on its administration to the Council of the League had been replaced by an obligation so to report to the General Assembly of the United nations.

³⁶⁸P. Kenneth Kiplagat, *Legal Status of Integration Treaties and the Enforcement of Treaty Obligations: a look at the COMESA Process* 23 DEN. J. INT'L L. & POL'Y 259, 262 (1995).

³⁶⁹Anand *supra* note 420, at 166.

³⁷⁰See KRYSTYNA MAREK, A DIGEST OF THE DECISIONS OF THE INTERNATIONAL COURT VOL. 11, 718 (1978) for analysis of the Court's judgement and the historical background of the territory of South-West Africa see L.C. Green, *South West-Africa and the World Court*, 22 INT'L J CANADIAN INSTITUTE OF INT'L AFFAIRS, 39-67 (1966-67).

³⁷¹*Id.* at 728.

³⁷²(Rep. Of S. Afr. v. Ethiopia & Liberia) 1966 I. C. J. 6.

2. Whether in keeping with the mandate, the Republic of South Africa had promoted to the utmost the material and moral well being and the social progress of the inhabitants of the territory.
3. Whether the mandatory had, by acts and/or declarations, violated a number of provisions in the mandate, in particular, following a policy of racial segregation, by establishing military and naval bases and by creating administrative structures which amount to a unilateral modification of the terms of the mandate.
4. Whether by attempting to modify the Mandate without the consent of the United Nations General Assembly, the legal successor of the Council of the League for this and other purposes, South Africa had violated the provisions in the Mandate that the mandate can only be modified with the consent of the Council of the League of Nations.³⁷³

Sadly, this opportunity slipped through the hands of the Court when in its 1966 judgement, in a streak of ultra-conservatism, the International Court of Justice delivered what has been rightly described as a “legalistic, restrictive and narrow ruling.”³⁷⁴ The court’s majority “resort to a restrictive or literal treaty interpretation and to legal quibbles had resulted in technical dismissal of the applicant states’ case.”³⁷⁵ The Court ruled that Ethiopia and Liberia had locus standi [“the legal standing before the court itself”]before the court,³⁷⁶ but no legal right to receive judgement [“legal right or interest appertaining to them in the subject-matter of the present claims”].³⁷⁷ The court thus by creating a nuance between legal standing and subject matter interest, an issue all the parties thought the court had conclusively dealt with at the preliminary stage, was able to avoid dealing with the substance of the application.

³⁷³(Rep. Of S. Afr. v. Ethiopia & Liberia) 1966 I. C. J. 6, 10-16.

³⁷⁴Elias *supra* note 118, at 75.

³⁷⁵*Id.* at 94.

³⁷⁶1966 I. C. J. 6, 18.

³⁷⁷1966 I. C. J. 6, 50.

The alienation of the African states from the International Court of justice by this ruling is obvious. This was not the only time the Court had failed to rise to the occasion and contribute to the positive development of international law.³⁷⁸ A commentator harshly (but rightly) indicts the Court thus:

The international Court is said to have successfully alienated the Eastern bloc on (Corfu Channel case), the Latin American on (The Asylum and Haya de la Torre cases) and the Asians on (the Temple of Preah Viheah and Rights of Passages cases). There can be little doubt that the South West African cases have turned the African states from mere alienation to total disenchantment with the International Court. The Court could probably be called by the radical sceptics no less than the moderates, the “Western European Court of Justice,” determined to give legal protection to the colonial and imperial interest of Southern Africa. Whether this attitude is induced by temporary frustration remains to be seen. The real tragedy is that the International Court has probably abdicated any capacity it ever had to contribute towards the resolution of Conflict between nations by means other than violence.³⁷⁹

Such criticism was deserving of the International Court before and in the 1960s. Its composition and perhaps the substance of its rulings have undergone some change to warrant some caution in overly criticizing it or at least to make such criticism mild. The General Assembly in 1968 changed the composition of the Court to reflect “the main forms of civilization and of the principal legal systems of the world,”³⁸⁰ by electing two Africans

³⁷⁸In the Northern Cameroons case the Court refused to “adjudicate upon the merits of the claim of the Republic of Cameroon,” since the amalgamation of Northern Cameroons and The Federation of Nigeria was a *fait accompli*, and therefore the “any judgement which the court might pronounce would be without object.” Great Britain under the Mandate system of the league of Nations and the Trusteeship system of the United nations, had administered the territories of Southern and Northern Cameroons as part of the colony and protectorate of Nigeria. By way of two referendums administered by the United Nations General Assembly, Southern and Northern Cameroon decided to join the Republic of Cameroon (formerly under French rule) and the Federation of Nigeria, respectively. The new Republic of Cameroon was unhappy with the results of the plebiscite in Northern Cameroon and sought a “declaratory” opinion from the Court. Case Concerning the Northern Cameroons (Cameroon v. United Kingdom) 1963 I. C. J. 15, 37.

³⁷⁹Okoye *supra* note 87, at 203.

³⁸⁰Art. 9 of the Statute of the International Court of Justice.

judges to the Court.³⁸¹ Africa was hitherto unrepresented.³⁸² The International Court of Justice has therefore gained some stature and popularity.³⁸³ In fact the international Court of Justice of late seems to have enhanced its popularity among African states as the right forum for resolving inter-state conflicts, especially boundary disputes. The Opinion delivered by the Court on Western Sahara can be cited as a landmark ruling on issues touching on Africa's colonial past.³⁸⁴ The Court's ruling ordering provisional measures in the case concerning the border conflict between Mali and Burkina Faso seems to have resolved the devastating conflict between these two neighboring states.³⁸⁵ The Libya/Chad Border conflict too has been settled by the International Court of Justice.³⁸⁶

Nonetheless certain quarters still feel there is need for reforms to make the International Court of Justice a truly "principal judicial organ of the United Nations,"³⁸⁷ that can contribute to the "clarification and development"³⁸⁸ of international law, and avoid the retrogressive practice of having "to apply the law as it finds it, not to make it," as happened

³⁸¹See the INTERNATIONAL COURT OF JUSTICE YEARBOOK 1968-69, NO. 23 (THE HAGUE: I.C.J., 1969) P.3.

³⁸²For information pertaining to the composition of the Court between 1946 and 1996 see ARTHUR WITTEVEEN, THE INTERNATIONAL COURT 1946-1996, 370-3.(KLUWER LAW INTERNATIONAL, 1996)

³⁸³EDWARD MACWHINNEY, JUDICIAL SETTLEMENT OF INTERNATIONAL DISPUTES 122 (1991).

³⁸⁴Advisory Opinion, Western Sahara, 1975 I.C.J. 68 (Oct. 16).

³⁸⁵See Order on Provisional Measures in the Case Concerning the Frontier Dispute (Burkina Faso/Mali, I.C.J., (1986), 25 I.L.M. 146 (1986).

³⁸⁶See the Case Concerning the territorial Dispute (Libya Arab Jamahiriya/Chad), I.C.J., (1994), 33 I.L.M. 571 (1994).

³⁸⁷U. N. Charter Art. 92.

³⁸⁸See Barcelona Traction Case (Belg. v. Spain), 1970 I. C. J. 3, 63 (separate opinion of judge Sir Gerald Fitzmaurice).

in the South West Africa cases.³⁸⁹ In Particular some scholars and commentators have been calling for the empowerment of the International Court of Justice by scrapping the optional clause [Article 36 (2) of the Statute of the International Court of Justice] and expanding the compulsory jurisdiction of the Court.³⁹⁰ While these proposals are very sensible and necessary if the court is to be a truly global judicial body, it is doubtful whether the United Nations member states are ready at this point in the history of the development of the international legal system to confer to the 'world court' inherent jurisdiction akin to the jurisdiction enjoyed by municipal courts.

³⁸⁹ A portion of the Courts judgement reads: "... the Court is not a legislative body. Its duty is to apply the law as it finds it, not to make it." 1966 I. C. J. 6, 47.

³⁹⁰ Okoye *supra* note 87, at 203; Gassama *supra* note at 323.

CHAPTER III

LIMITATIONS AND IMPEDIMENTS TO EFFECTIVE CONFLICT RESOLUTION AND DISPUTE SETTLEMENT IN AFRICA

The limitations that have impeded or checked the capacity of the OAU to effectively resolve regional conflicts are located within and without the OAU. Hence the compartmentalization of this discussion into Charter-based limitations and obstacles, denoting the conceptual, normative and structural improprieties within the OAU Charter on the one hand, and non-charter based problems _ meaning external factors such as budgetary problems and political inertia, that are not attributable to the OAU *per se* but are products of the economic and political milieu within which the OAU operates, on the other hand.

A. Charter-based Limitations and Obstacles

Perhaps the best approach in the exploration of the Charter-based limitations and obstacles is to go back to the conception of the OAU. Two visions informed the process and permeated the Addis Ababa conference that drafted the Charter of the OAU. The first vision most prominently advocated by the late President Nkrumah of Ghana, conceived of a unitary government, a united state of Africa, that would be able to overcome the historical internal contradictions in Africa and check external forces.³⁹¹ For Dr. Nkrumah this was the only way to guarantee the security, independence and prosperity for Africa. He eloquently painted his vision thus:

Our essential bulwark against such sinister threats and the other multifarious designs of the neocolonialist is in our political union. If we are to remain free,

³⁹¹OPOKU AGYEMA, NKRUMAH'S GHANA AND EAST AFRICA 31 (1992).

if we are to enjoy the full benefits of Africa's rich resources, we must unite to plan for our total defense and the full exploitation of our material and human means, in the full interests of our peoples. To go it alone will limit our horizons, curtail our expectations, and threaten our liberty . . . Unless we meet the obvious and very powerful neocolonialist' threats with a unified African front, based upon a common economic and defense policy, the strategy will be to pick us off and destroy us one by one.'³⁹²

The second vision conceived by the Monrovia group of states and best advocated by Nigeria, thought of an amalgamation of African states into a continental body based on equal sovereignty of all states, dealing with issues of common concern:

Nigeria's stand is that if we want unity in Africa, we must first agree to certain essential things. The first is that African states must respect one another. There must be acceptance of equality by all states. No matter whether they are big or small, they are sovereign and their sovereignty is sovereignty.'³⁹³

The Charter that emerged from the conference was therefore necessarily a compromise document representing both world views of Africa, but with the second vision forming the core of the Charter. Like all compromise documents tailored to meet political expediency,³⁹⁴ rather than designed to confront the problems and challenges facing the continent, the OAU Charter, most scholars agree, lost its cutting edge.³⁹⁵

However, to attribute the weaknesses of the OAU only to its origin and process of creation is to paint a partial picture of the problem. The OAU is a creature of international law and the weaknesses of the OAU are by and large those of the international legal system

³⁹²Kwame Nkrumah, *Africa Must Unite* p. xvii (1985) quoted in Shridath Rahphal, *The Legacy of Kwame Nkrumah* in ORGANIZATION OF AFRICAN UNITY: 25 YEARS ON, 1 (Kwesi Krafona ed., 1988).

³⁹³Agbi *supra* note 118, at 116.

³⁹⁴John Marcum, *How wide is the Gap Between Casablanca and Monrovia*, 7 AFR. REP. 3 (1962).

³⁹⁵See Thomas Nsenga Kanza, *Africa Must Change* in ORGANIZATION OF AFRICAN UNITY: 25 YEARS ON, 146 (Kwesi Krafona ed. 1988); W. Scott Thompson & Richard Bissel, *Legitimacy and Authority in the OAU*, 15 AFR.STUD. REV. 27 (1972).

itself. International law has over the centuries exalted the concept of sovereignty as the bedrock of relations between nations.³⁹⁶ State borders were considered sacrosanct and any attempt by a state to, in any way, exert influence over what happens within another states borders was considered contrary to international law and frowned upon.³⁹⁷ The international organizations that emerged were therefore loose associations of sovereign states designed and geared towards promoting the essential and minimum international relations without offending the tenet of sovereign equality between member states. The Member states still functioned as self-contained units with the real power of decision-making. Frey-wouters eloquently captures the weakness inherent in regional organizations due to this flawed conceptualization of international relations, in the following words:

The limited character of existing regional institutions shapes their response to internal conflict. The decision-making process of the Organization of American States, the Organization of African Unity, and the League of Arab States is of an intergovernmental character. There is no supranational regional center of power above the member states; the regional system is limited to direct interaction between the power centers of the member units. The regional secretariats are merely administrative organs, exercising no executive power and entrusted with little scope for independent initiative.”³⁹⁸

³⁹⁶Classical definition of sovereignty is provided by Jean Bodin as “the absolute and perpetual power” within a single states boundaries.[JEAN BODIN, SIX BOOKS OF THE COMMONWEALTH 25 (C.H. WILSON & R.B. MCCALLUM EDS., M.J. TOOLEY TRANS., BASIL BLACKWELL 1955) (1576)]. Although the concept of state sovereignty has evolved over the years, starting from the Treaty of Westphalia in 1648, the modern concept of sovereignty still poses monumental problems. see CAROLINE THOMAS, NEW STATES, SOVEREIGNTY AND INTERVENTION (1985).

³⁹⁷The crisis of the OAU is therefore to a large extent the crisis of international law itself, as it grapples with the challenge of confronting the realities of the ever changing nature of the subjects and objects of international relations. Grossman and Bradlaw capture this crisis when they write “The deficiencies of the present international legal order based on the de jure sovereignty of the nation-state and a relatively clear distinction between the international and domestic legal issues are obvious. The nation-state is no longer functionally “the master of its own territory.”” _ Claudio Grossman & Daniel Bradlow, *Are We Being Propelled Towards a People-Centered Transnational Legal Order?*, 9 AM.U.J.INT’L L. & POL’Y 1, 22 (1993).

³⁹⁸Frey-wouters *supra* note 107, at 460.

The founders of the OAU were therefore simply paying homage to international law by incorporating classical international law norms into the OAU Charter. An examination of the normative and institutional structure of the OAU will throw more light into this discussion.

1. Conceptual and Normative Weaknesses

The classical international law principle of sovereign equality of all states enshrined in Article III (1) of the OAU Charter forms the core of the normative structure of the OAU.³⁹⁹ All other norms only serve to reinforce this 'grundnorm', so to speak. The principle of non-interference in the internal affairs of member states, and the prohibition of subversive activities are geared towards the protection of state sovereignty.⁴⁰⁰ Additionally, the OAU Assembly of Heads of State and governments and the Council of Ministers have over the years passed many resolutions aimed at safeguarding state sovereignty. It is understandable, as Prof. Borella observes, that the infant OAU sought to strengthen the weak African states that were emerging from colonial subjugation. He wrote: 'Created only a few years after independence it was normal that the continental organization should devote itself to the objective of the Charter (Art.2.1.c. of the Charter) of defending their sovereignty, their territorial integrity and their independence.'⁴⁰¹

That may be so but isn't there a need for the OAU to keep pace with the evolution of international law and the changing times? There is no denying that the concepts of non-intervention and non-interference in the internal affairs of states are fundamental concepts in the United Nations Charter and customary international law.⁴⁰² However, while

³⁹⁹The said Article reads: "... the member states solemnly affirm and declare their adherence to the following principles: 1. The sovereign equality of all member states."

⁴⁰⁰Michel-Cyrdjiena Wembu, *The OAU and International Law* in THE ORGANIZATION OF AFRICAN UNITY AFTER THIRTY YEARS, 17 (Yassin El-Ayouty ed., 1994).

⁴⁰¹*Id.* at 16

⁴⁰²See U.N. Charter Art.2 (4) & 2 (7).

the United Nations Security Council, especially after the end of the cold war, has interpreted these concepts restrictively, and utilized its Chapter VII powers to deal internal situations within member states, the OAU has dogmatically and conservatively continued to observe these norms, allowing conflicts to rage on in Africa unabated.⁴⁰³ Some examples will illustrate this contrast between the Universal body and the regional OAU.

In December 1992 the United Nations Security Council adopted resolution 794 authorizing the Secretary General in tandem with cooperating member states “to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia.”⁴⁰⁴ Clearly the Security Council was expansively interpreting its Chapter VII powers to deal with an internal conflict within a member state in order to “restore peace, stability, and law and order with a view to facilitating the process of a political settlement under the auspices of the United Nations, aimed at national reconciliation in Somalia.”⁴⁰⁵ Although it failed to achieve its objective, the Somalia operation unequivocally marked the beginning of an activist post-cold war Security Council intervention in matters hitherto regarded as internal affairs of member states.⁴⁰⁶

The Security Council Resolution 940 on Haiti was even a further step away from the concepts of absolute sovereignty of states and non-interference with internal affairs of member states.⁴⁰⁷ Through this resolution, the Security Council authorized the intervention of a multinational force in Haiti to restore ousted President Aristide and remove from power

⁴⁰³S.K.B. Asante, *The Role of the OAU in Promoting Peace, Development and Regional Security* in Hansen *supra* note 124, at 127.

⁴⁰⁴S.C. Res. 794, UN. SCOR, 47th Sess., 314th mtg. at 63, U.N. Doc. S/RES/794 (1992).

⁴⁰⁵*Id.*

⁴⁰⁶Ruth Gordon, *The United Nations Intervention in Internal Conflicts: Iraq, Somalia and Beyond* 15 MICH.J. INT’L L. 519, 545 (1994).

⁴⁰⁷S.C. Res. 940, U.N. SCOR, 49th Sess. 3413th mtg. At 1-4, U.N. S/RES/940 (1994).

the military junta that ousted him.⁴⁰⁸ Such is the elastic interpretation of Chapter VII that a coup d'état can be termed as "a threat to international peace" necessitating Security Council enforcement action.⁴⁰⁹

While this evolution (or is revolution?) is going on within the United Nations, The OAU has continued to stringently observe the norms of sovereign equality of member states and non-interference with internal affairs of member states in a fashion clearly out of tune with the present reality.⁴¹⁰ Since all member states are equal sovereigns their territorial integrity must be observed by all and sundry and this involves religiously observing the norm of non-interference with internal affairs of member states and inviolability of state boundaries.⁴¹¹ Devastating conflicts and concomitant humanitarian crises have been raging from the horn of Africa (Sudan and Somalia) to the heart of Africa (Rwanda, Burundi and Zaire). Yet the OAU has continued to bury its head in the sand of outmoded international law concepts.⁴¹²

This state of affairs does not augur well for the future of the OAU. There is a need for the OAU to reevaluate its role. If the OAU does not come up with a formula for dealing with internal conflicts, unilateral intervention by member states will be new norm and slowly

⁴⁰⁸ *Id.*

⁴⁰⁹ Richard B. Lillich, *Humanitarian Intervention Through the United Nations: Towards the Development of Criteria*, 53 ZAORV (HEIDELBERG J. INTL.L.) 557, 564 (1993).

⁴¹⁰ It may be recalled the reassertion of the principle of sovereignty even within the United Nations during the first few decades after World War II was spearheaded by the members of the OAU within the United Nations in tandem with other developing countries, through a series of resolutions in the General Assembly. For a discussion of these resolutions see *CHANGING PRIORITIES OF THE INTERNATIONAL AGENDA: THE NEW INTERNATIONAL ECONOMIC ORDER* (Karl P. Sauvan, ed., 1971).

⁴¹¹ William J. Foltz, *The Organization of African Unity and the Resolution of African's Conflicts* in *CONFLICT RESOLUTION IN AFRICA* 352 (Francis Deng & William Zartman eds., 1991).

⁴¹² See Chapter I (B).

but surely the OAU will be pushed to political limbo. Tanzania's intervention in Uganda in 1979 is a case in point.⁴¹³ The intervention of ECOMOG in the Liberian Civil war, if successful in restoring civil order and stability in Liberia, may mark the beginning of a shift of the center of power from the continental body to sub-regional groups that have the will and the means to act.⁴¹⁴

2. Institutional and Structural Limitations

Apart from the normative weaknesses inherent in the OAU Charter, various institutional and structural anomalies have continued to constrain the capacity of the OAU to play an effective role in resolving regional conflicts. Chief among them is the delimitation of competencies between its principal organs. The Charter creates four "principal Institutions"; the Assembly of Heads of State and Government, the Council of Ministers, The Secretariat, and the commission of Mediation, Conciliation and Arbitration.⁴¹⁵ The Charter further clothes these institutions with varying degrees of competencies.⁴¹⁶

A closer scrutiny however reveals that the Assembly is the organ with real power; the other organs are just ancillaries to the Assembly with no real powers of their own (save for the Commission whose anomalies have been dealt with in detail elsewhere).⁴¹⁷ The Assembly is the "supreme organ" combining both executive and judicial powers in addition to general supervisory power over the other organs.⁴¹⁸ The Assembly may "review the

⁴¹³TONY AVIRGAN, WAR IN UGANDA 53-95 (1982).

⁴¹⁴See Chapter IV (D)(1)

⁴¹⁵OAU Charter Art. VII.

⁴¹⁶OAU Charter Arts. VIII-XVIII.

⁴¹⁷See Chapter I (A) (1).

⁴¹⁸OAU Charter Arts. VIII, IX, X & XXVII.

structure, functions and acts of all the other organs and any specialized agencies.’⁴¹⁹ In contrast the Council of Ministers is confined to preparing conferences for the Assembly, implementing its decisions and taking “cognizance of any matter referred to it by the Assembly.”⁴²⁰ As for the Secretariat, the Charter does not confer any significant role for the Secretary-General under whom the Secretariat is supposed to function.⁴²¹

An examination of the history of OAU reveals that the founders were keen on retaining all important competencies for the Assembly. So much so that the Secretary-General was not intended to play any politically significant role.⁴²² Hence the title “Administrative Secretary-General.”⁴²³ This asymmetry of power and monopolization of initiative by the Assembly, has not worked very well for the OAU. Indeed, Boutros-Ghali’s prediction shortly after the OAU inaugural conference that drafted the Charter, remains true today:

It would be presumptuous to pass judgement on the organization at this stage, but one cannot help noticing that extremely broad powers have been bestowed upon the Assembly of Heads of State and Government, when these powers are considered in relation to those already enjoyed by each head of state in his own country, it becomes obvious that the Assembly is the only real organ of the OAU. . . the Council of Ministers has virtually no authority of its own. If this is true of the second ranking organ of the OAU, it applies even more to the other organs. . .there does seem to be a trend towards an “Africa of Heads of State.”⁴²⁴

⁴¹⁹OAU Charter Art.VIII.

⁴²⁰OAU Charter Art. XIII.

⁴²¹OAU Charter Art.XVI.

⁴²²James O. Jonah *supra* note 253, at 5.

⁴²³A resolution on the functions and regulations of the General Secretariat was adopted by the Council of Ministers at Dakar on August 11, 1963. Rule 11 of the regulations which list the functions of the Secretary-General is just a summary of the strictly technical aspects of the duties of the executive head of any organization without more. See Sohn *supra* note 16, at 93.

⁴²⁴BOUTROS-GHALI *supra* note 86, at 45.

A comparison of the role of the OAU Secretary General and that of his United Nations counterpart will reveal the minimalist notion of the role the drafters of the OAU Charter intended the Secretary-General to play. Apart from the Administrative duties endowed on the United Nations Secretary General by Article 97 of the United Nations Charter, Article 98 confers on the Secretary-General the authority to make and submit annual reports to the General-Assembly on the work of the United Nations, and more importantly Article 99 empowers the Secretary General “to bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.”⁴²⁵ It is from this provision that the powers of the United Nations Secretary-General to investigate situations that are likely to endanger peace and use his “good offices” to resolve conflicts, emanate.⁴²⁶

Provisions similar to Article 98 and 99 of the United Nations Charter are missing in the OAU Charter. So that over the years the OAU Secretary-General has shied away from proactively using his good offices to resolve conflicts or take any similar diplomatic initiative on his own motion lest it be interpreted as arrogating to himself a visible political role.⁴²⁷ The result has been that small conflicts that could be resolved at the earliest convenience and at minimum expense of time and resources have been left to escalate. It takes a Secretary General of exceptional personal abilities (like the incumbent one) to overcome these legal hurdles and play some role in dispute resolution.

⁴²⁵U.N. Charter Art.98.

⁴²⁶Jonah *supra* note 253, at 5.

⁴²⁷*Id.*

One might argue that sitting OAU Chairmen have been able to play this crucial role and therefore it is not necessary to confer such powers on the Secretary-General.⁴²⁸ It is true that sitting OAU Chairmen have, in practice, played this role traditionally meant for the Secretary-General (in effect eclipsing the Secretary General) although the Charter does not envision such a role for the occupants of this office.⁴²⁹ It is acceptable to the Assembly of Heads of State and Government that the Chairman plays such a role since himself being a head of state at par with his peers in the Assembly is in retrospect the Assembly exercising that power. In any case, that way the danger of a powerful Secretary General emerging does not arise. However the problem is that the Chairman is too busy with his state responsibilities to find sufficient time to personally play an effective and meaningful role in conflict resolution. This is the ideal role for the Secretary General.

Closely allied with the problem of 'Africa of Heads of State' is another lacuna within the OAU "constitutional order,"- lack of an enforcement organ akin to the United Nations Security Council.⁴³⁰ There is need for creating such an organ bestowed with the primary responsibility for the maintenance of regional peace and security. The Assembly of Heads of State and government, like the United Nations General Assembly, is too large and with diverse opinions to be able to make timely decisions of such magnitude and implement them with the necessary speed. In any case even the Assembly of Heads of state and Government is not bestowed with disciplinary or enforcement powers.⁴³¹

⁴²⁸*Id.*

⁴²⁹Rule 10 of the rules of procedure of the Assembly of Heads of State and Government describes the role of the chairman as that of chairing and directing meetings, and ensuring order and decorum of the proceedings of the Assembly. The diplomatic role played by the Chairman in resolving conflict is a creature of practice that has no basis in the OAU juridical order. See Sohn *supra* note 16, at 79.

⁴³⁰U. N. Charter Chapter V & VII.

⁴³¹S.K.B. Asante, *The Role of the Organization of African Unity in Promoting Peace, Development and Regional Security in AFRICA* IN AFRICA PERSPECTIVES ON PEACE AND DEVELOPMENT 128 (Emanuel Hansen, 1987).

Another anomaly in the OAU Charter is linked with the procedural aspect of the decision-making process within the OAU. For a meeting of either the Assembly of Heads of State and Government or the Council of Ministers to take place, two-thirds of the members must be present to form the requisite quorum, and further more, any decision of the Assembly is determined by two-third of the total membership of the organization.⁴³² This is a very significant threshold and many a time the running and proffer functioning of the organization may be jeopardized by lack of quorum. This leads credence to the accusation that the Charter has an inbuilt tendency to encourage indecisiveness and ineffectiveness.⁴³³

Closely connected to this is the general over-reliance on consensus and informal structures in decision-making and dispute resolution, respectively. Consensus and diplomatic resolution of disputes is important, but there are limits. Some conflicts are susceptible to diplomatic solutions while others are only amenable to juridical resolution.⁴³⁴ The OAU's over-reliance on diplomacy and *ad hoc* procedures has left many disputes temporarily resolved only to resurface later in greater magnitude because diplomatic solutions rarely go to the bottom and substance of a dispute.⁴³⁵ Dealing with the substance by going to the core of a dispute is the *raison d'etre* of juridical processes. There is therefore a glaring need for the creation of a judicial organ within the OAU legal regimes alternative or supplemental to diplomatic means.

⁴³²See rules 14 & 25 of The Rules of Procedure of the Assembly of Heads of State and Government, and Rule 18 of The Rules of Procedure of the Council of Foreign Ministers, reproduced in Sohn *supra* note 16, at 77-97 (1971).

⁴³³Folts *supra* note 275, at 350.

⁴³⁴*Id* at 356.

⁴³⁵For example the Ethiopia/Somalia border conflict was superficially solved by the OAF only to resurface later in a greater magnitude. See Chapter I (B) (1) a.

B. Non-Charter Based Obstacles

Many other factors external to the mechanics of the OAU have contributed in curtailing the effectiveness of the OAU. Whereas it is not within the province of this thesis to examine them in detail, it is worth the while to mention some of them in passing. The dominant one is the general lack of financial resources. More than any other regional organization, the OAU, ever since its formation, has continued to experience debilitating budgetary problems.⁴³⁶ Nevertheless it is not possible to divorce an organization from the socio-economic environment within which it functions. The financial ill-health of the OAU is neatly intertwined with the economic condition of the African states which form its membership. The financial position of the OAU is therefore expected to improve with the improvement in the economic situation in Africa.

Political inertia also continue to bog down the organization.⁴³⁷ Hence the need to inject some life into the OAU by redrafting its Charter so that the organization can be given a new lease of life. Closely related with the problem of political inertia is what has been referred to as a legitimacy crisis within the OAU. Due to general lack of effectiveness in enforcing its will and its general aloofness in the face of internal conflicts many member states have dared to take independent positions on conflicts without attracting any sanctions from the OAU.⁴³⁸

In sum the OAU Charter is replete with structural and normative anomalies rendering the OAU a very weak tool for regional conflict resolution. There is therefore an urgent need

⁴³⁶Asante *supra* note 349, at 128.

⁴³⁷See Foltz *supra* note 275, at 350.

⁴³⁸For example some member states recognized Biafra without any protest from the OAU. Others do not pay their dues and the OAU cannot do anything. Some states like Malawi and Zambia were militarily and economically vulnerable to support OAU's resolutions on Southern Rhodesia while others for unknown reasons simply defied the OAU. For a discussion of these and other factors that show the erosion of legitimacy and authority of the OAU see Scott *et al supra* note 243.

to overhaul the Charter to strengthen its institutional and normative structure, and rid it of archaic international law concepts that have no place in today's increasingly interdependent world. In particular an effective executive organ that can respond to the conflict resolution and management needs of a highly volatile region need to be created and the office of the Secretary-General to be empowered. A judicial organ buttressed with compulsory jurisdiction over inter-state disputes is also a prerequisite. Anachronistic norms such as non-interference with internal affairs of member states and inviolability of state frontiers must be discarded or reinterpreted to cope with the conflict resolution needs of our time.

CHAPTER IV

OTHER MECHANISMS FOR CONFLICT RESOLUTION IN AFRICA

The problem of conflict resolution in Africa cannot be divorced from the larger question of regional security. Is there a regional security problem in Africa? Of course the current instability and protracted conflicts in Africa pose a regional security problem. But is there a regional security problem (real or potential) posed by an external force? This chapter answers these questions and also examines sub-regional mechanisms for resolution of localized conflicts in Africa. In particular part A and B of this chapter examine the proposals to create a regional defense mechanism and regional intervention force and the legal problems such initiatives might encounter. Part C examines sub-regional conflict resolution mechanisms and their place in the OAU conflict resolution structure.

A. Regional Self-defense Mechanism

A common defense system for Africa is not a new idea. At the creation of the OAU the formation of an African defense force, an “African High Command”, as the late Kwame Nkrumah liked to call it, was thought of as a necessary arm of the proposed African union government.⁴³⁹ The plan was to create a mechanism for collective action against the remaining colonial regimes and any external aggressor.⁴⁴⁰ The Assembly of Heads of State and Government debated the idea and eventually incorporated it into the Charter, albeit in a

⁴³⁹Agbi *supra* note 118, at 115.

⁴⁴⁰*Id.*

whittled-down form of a Defense Commission.⁴⁴¹ Since the commission did not have military capability to back its resolutions, it was a non-starter *ab initio*.⁴⁴²

If the OAU wishes to resurrect this idea of a common defense mechanism it may borrow a leaf from the Western European and Northern Atlantic states by starting a military self-defense arrangement permitted by Article 51 of the United Nations Charter.⁴⁴³ This could be done by amending the present OAU Charter to incorporate provisions similar to Article 5 of the NATO treaty to the effect that if one of the OAU member states is attacked the attack will be viewed as an attack on all of them and therefore the members of the alliance “individually and in concert with other parties” will forthwith take “such action as it deems necessary” in self-defense.⁴⁴⁴

That a pan-African defense force made a lot of sense in the framework of a continental government and in the face of threats of invasion by the then existing colonial regimes is beyond doubt. Now that there are no colonial regimes left in Africa to threaten the independent existence of African states, is a collective self-defense arrangement necessary? The North Atlantic treaty Organization (NATO) was created to guarantee the security of post-war Europe against possible attacks from expansionist post-war Russia and any possible threat from Germany.⁴⁴⁵ Scholars are now questioning the need for NATO after the threat of

⁴⁴¹The OAU Charter Article XX (4).

⁴⁴²For instance in 1969, Portugal carried out military attacks on Guinea and Senegal in retaliation for the support the two countries were offering to African nationalist groups within Portuguese African territories. The Defense Commission did nothing. Agbi *supra* note 118, at 122.

⁴⁴³United Nations Charter Article 51 provides: “Nothing in the present Charter shall impair the inherent right of individuals or collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security”

⁴⁴⁴North Atlantic Treaty, April 4, 1949, 4 Bevans 829, 63 Stat. 2241, T.I.A.S. No. 1964, 34 U.N.T.S. 243.

⁴⁴⁵*Id.* at 480.

an attack from the Warsaw Pact evaporated with the collapse of communism in eastern Europe.⁴⁴⁶

One cannot, even more, see the need for such an alliance in Africa where a serious threat from an external enemy has never existed. The viability of such an alliance given its financial implications contrasted with the economic conditions in Africa, is questionable. Further more African security problems are basically internal. Although conflicts in Africa are usually supported by external forces, there is no identifiable direct military threat against African States' territorial independence that calls for a collective self-defense military pact. However if created within the existing OAU framework without an elaborate institutional structure and avoiding unnecessary financial expense a pan-African military alliance may act as a deterrence to external forces, real or imaginary, that may be (in future) bent on fomenting trouble in Africa.

B. Regional Intervention Force

A security architecture for Africa must of necessity include a regional intervention force as one of its key pillars. As already observed, the idea of a continental pan-African military force is not a new one. Dr. Kwame Nkrumah, at the inception of the OAU proposed what he called an 'African High Command' as the military wing of his envisioned African continental government.⁴⁴⁷ Although Nkrumah's envisioned force was intended to ward off external aggression, nothing today stands in the way of creating a force with the twin objectives of fighting external enemies and intervening to resolve internal conflicts.

In spite of the fact that, at its inception, the OAU shelved the idea of an intervention force in favor of a commission, the need for such a force has refused to go away. Never has

⁴⁴⁶Jane E. Stromseth, *The North Atlantic Treaty and the European Security After the Cold War*, 24 CORNELL INT'L L.J. 479, 479 (1991).

⁴⁴⁷Obed Asamoah, *Nkrumah's Foreign Policy in THE LIFE AND WORK OF KWAME NKRUMAH* 195-6 (Kwame Arhin ed., 1993).

this need been demonstrated in the most brutal way than in the last eight years. The Horn of Africa and the Great Lakes region has been embroiled in devastating conflicts that have claimed millions of lives, displaced millions, torn communities and states apart, with a rapidity and vengeance unwitnessed before. Such a force, had it existed, could have mitigated if not stemmed the tide of these inexplicable conflicts.

The OAU and the international community have been forced to own up to the need of such a force. In October 1996 former United States Secretary of State, Warren Christopher made a week-long tour of Africa to solicit support for what he termed an “African crisis response force,” that would be trained and equipped by the United States.⁴⁴⁸ The OAU seems to be seriously considering the creation of such a force, but there are fundamental differences between the United States proposal and the OAU plan.⁴⁴⁹ While the Washington-proposed force would be under the auspices of the United Nations Security Council, the OAU intends to create a force under its own command and control. It is logical that the OAU being a continental body should seek to create a regional force under its aegis. But why Washington feels it would be necessary to depart from the normal legal practice of deploying a multinational force of a universal character in any conflict that threatened international peace, under the direction of the Security Council, and instead create an African force under the command of the Universal Security Council _ to be deployed in African conflicts _ is at best bizarre.⁴⁵⁰

Besides the practical problem of designing an acceptable structure for such a force there are other problems that stand in the way of the creation of the envisaged force. Firstly,

⁴⁴⁸Panafrican news Agency,
<http://www.africanews.org/usa1/usafrica.usafrica.8003985999.html>.

⁴⁴⁹*Id.*

⁴⁵⁰See Online Focus, News Maker: Warren Christopher, [Http://web-er01.pbs.org/newshour/bb...st/october 96/christopher_10-15.html](http://web-er01.pbs.org/newshour/bb...st/october%2096/christopher_10-15.html).

there is the problem of the OAU Charter whose letter and spirit does not have room for such a force.⁴⁵¹ The OAU was created as bulwork against colonialism and a safeguard for the sovereignty of member states. It was never intended to play a supranational role. Yet the creation of a regional intervention force entails a supranational role for the OAU necessarily anti-thetical to the protection of sovereignty of the member states. An antidote to this state of affairs is an overhaul of the entire OAU Charter as a prerequisite to the creation of the proposed force. Whether the OAU member state have the political will so to do is a different matter.

A second obstacle to the creation of such a force, more problematic and intricate, relate to the validity of such a force in international law. If the force is to be a peace keeping one, acting within the tenets of traditional peacekeeping _ to be deployed with the consent of the belligerent parties either to observe a pre-agreed ceasefire or monitor the implementation of a peace settlement, without interfering with the so-called "internal affairs" of a state _ there are no legal problems to bloc the formation of such a force by the OAU or any other regional or sub-regional body.⁴⁵² The problem arises when the force is intended to engage in what is termed as humanitarian intervention (precisely the purpose envisioned for the force by the present writer) _ a grey area of international law whose frontiers are not clearly delimited.⁴⁵³

⁴⁵¹It has been argued before that the central norm in the OAU Charter is non-interference in the internal affairs of member states. Hence an intervention force is not envisaged in the OAU constitutional order.

⁴⁵² This is the role that a traditional peacekeeping force does. Chapter VIII of the United Nations Charter permits regional organizations to engage in peacekeeping activities, among their other mandates in the maintenance of regional peace and security.

⁴⁵³See Generally Rosalin Higgins, *Intervention and International Law* in INTERVENTION IN WORLD POLITICS 29-44 (Hedley Bull ed., 1984)

Opinion of scholars is divided over whether humanitarian intervention is prohibited or permitted in international law.⁴⁵⁴ The heart of the controversy is Article 2 (4) of the United Nations Charter which reads:

All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.⁴⁵⁵

Basically, two schools have evolved over the interpretation of the above provision.⁴⁵⁶ For the positivists, Article 2 (4) prohibits all forms of use of force in relations between states except in self-defense as per Article 51 or for peace enforcement purpose by the Security Council under Chapter VII of the United Nations Charter. Use of force in any other manner runs afoul of Article 2(4).⁴⁵⁷ This interpretation is predicated upon classical positivist theory of international law according to which states are the primary subjects of international law.⁴⁵⁸ Human beings have no place in this perception of international law since their interests are an amalgamation of the individual states to which they belong. The principle of non-intervention is ancillary to the right of sovereignty in that it is intended to guarantee independent states' liberty to conduct their own affairs unimpaired by external interference.⁴⁵⁹

⁴⁵⁴See generally HUMANITARIAN INTERVENTION AND THE UNITED NATIONS (1973); F. X. DE LIMA, INTERVENTION IN INTERNATIONAL LAW, (University of Virginia Press, 1971).

⁴⁵⁵U. N. Charter Art. 2(4).

⁴⁵⁶This is an oversimplification. Scholars have identified a myriad of schools ranging from realists and liberals to the cosmopolitans. See Ravi Mahalingam, *The Compatibility of the Principle of Non-intervention with the Right of Humanitarian Intervention*, 1 UCLA J. INT'L L. & FOREIGN AFF. 221, 222-237 (1996).

⁴⁵⁷See Articles by Ian Brownlie and Richard B. Lillich in LAW AND CIVIL WAR IN MODERN WORLD (John Norton Moore ed., 1974). Both scholars profound diametrically opposed view points as to the legality of use of force with Brownlie arguing it is illegal while Lillich argues use of force is supported by state practice and customary law generally.

⁴⁵⁸*Id.* at 222.

⁴⁵⁹*Id.*

On the other hand the cosmopolitans adopt a permissive interpretation of Article 2 (4). They Argue that humanitarian intervention is a customary law right that survived the United Nations Charter although in a modified form.⁴⁶⁰ The positivists counter this by arguing that even though customary law allowed humanitarian intervention prior to the enactment of the United Nation's Charter, use of force for humanitarian purposes was outlawed in 1945 by the incorporation of Article 2 (4) in the United Nations Charter.⁴⁶¹

A number of reasons explain why scholars cannot agree on the scope of prohibition on the use of force in the United Nations Charter. First, the wording of Article 2(4) is ambiguous; hence capable of varied interpretation. What does the terms "territorial integrity" and "political independence" mean? Does the prohibition of use of force against territorial integrity only outlaw annexation of a state's territory by another or does it also extend to any violation of the frontiers of a state for any other purpose such as rescuing aliens trapped in a civil war or rescuing hostages taken by some religious fanatics? Does prohibition on the use of force against the political independence of a state mean an action intended to annex another state so that it ceases to exist as an independent state? Does it also include any coercive action against such a state intended to make it follow a particular policy? And what is use of force? Must it be a military action? Is a threat to cut military aid to a developing country unless it adopts certain human rights standards or hold democratic elections amount to use of force against political independence of such a state? Clearly some of the scenarios outlined above do not amount to use of force envisioned by Article 2(4). However, the problem lies in demarcating the line between what actions amount to and what actions do not amount to use of force in contravention of Article 2(4).

⁴⁶⁰Richard B. Lillich, *Humanitarian Intervention: A Reply to Ian Brownlie and A Plea for Constructive Alternatives* in LAW AND CIVIL WAR IN MODERN WORLD 231-244 (Jorn Norton Moore ed., 1974).

⁴⁶¹Ian Brownlie, *Humanitarian Intervention* in *Id.* at 218- 228.

Secondly, state practice has not been consistent and that has not helped in clarifying what the drafters of Article 2(4) meant. While states have over the years used force for humanitarian purposes against other states, and have justified their actions on humanitarian grounds, more often than not, they have adduced other grounds like self-defense and consent of the legitimate authorities of the states in which they are intervening.⁴⁶² And since some of the grounds like consent and self-defense are valid in international law, it is difficult to isolate situations where states intervened for purely humanitarian considerations so as to be able to decide whether such intervention was legitimate or not.⁴⁶³

Thirdly, scholars have been 'pro-intervention' or 'anti-intervention' depending on their theoretical and philosophical perception of international law. Professors Henkin and Teson, perhaps the sharpest contemporary proponents of non-intervention and the right of humanitarian intervention, respectively, best illustrate this point. Prof. Henkin is an absolute believer in the prohibition of use of force.⁴⁶⁴ He contends that save for the two exceptions to the non-use of force in the United Nations Charter, all other forms of use of force are outlawed by Article 2(4). His conclusion is based on his perception of the historical mission of the United Nations and the normative structure of its Charter.⁴⁶⁵ For Henkin the values built into the United Nations Charter form a normative hierarchy. Peace is at the apex of this hierarchy; other norms like respect for human rights, economic and social development, the right of self-determination and justice are of lesser importance:

⁴⁶²See studies of state practice in ANTONIO TONGA, *FOREIGN ARMED INTERVENTION IN INTERNAL CONFLICTS* 148-195 (1995).

⁴⁶³Tanzania justified its invasion of Uganda on both the grounds of self-defense and humanitarian purposes. T.V. SATHYAMARTHY, *THE POLITICAL DEVELOPMENTS OF UGANDA: 1900-1986* 608-57 (1986); The United States too put forward many grounds for its invasion of Grenada. See generally JOHN NORTON MOORE, *LAW AND THE GRENADA MISSION* (1984); SCOTT DAVIDSON, *GRENADA, A STUDY IN POLITICS AND THE LIMITS OF INTERNATIONAL LAW* (1987).

⁴⁶⁴Louis Henkin, *the Use of Force: Law and U.S. Policy* in RIGHT V. MIGHT 37-69 (John Temple Swing ed., 1991).

⁴⁶⁵*Id.* at 38.

The Charter reflected universal agreement that the status quo prevailing at the end of the World War II was not to be changed by force. Even justified grievances and sincere concern for “national security” or other “vital interest” would not warrant any nation’s initiating war. Peace was the paramount value. The Charter and the organization were dedicated to realizing other values as well _ self-determination, respect for human rights, economic and social development, justice, and a just international order. But those purposes could not justify the use of force to achieve them; they would have to be pursued by other means. Peace was more important than progress and more important than justice.⁴⁶⁶

Prof. Teson on the other hand, argues that individuals and not states should be the primary subjects of international law.⁴⁶⁷ For Teson, promotion of human rights is the highest value in the United Nation’s normative structure. He sees the World War II as a war in defense of human rights.⁴⁶⁸ In the view of Teson there is no other way the legitimacy of states can be justified other than the protection and enforcement of human rights. He writes:

The human rights imperative underlies the concepts of state and government and the precepts that are to protect them, most prominently Article 2(4). The rights of states recognized by international law are meaningful only on the assumption that those states minimally observe individual rights. The United Nations purpose of promoting and protecting human rights found in Article 1(3), and by reference in Article 2(4) as a qualifying clause to the prohibition of war, has a necessary primacy over the respect for state sovereignty. Force used in defense of fundamental human rights is therefore not a use of force inconsistent with the purposes of the United Nations.⁴⁶⁹

Further digression into this controversy is unwarranted. However several points need to be made. Whatever some opponents of humanitarian intervention might say, there is

⁴⁶⁶*Id.*

⁴⁶⁷FERNANDO R. TESON, HUMANITARIAN INTERVENTION: AN INQUIRY INTO LAW AND MORALITY 81 (1988).

⁴⁶⁸*Id.* at 135.

⁴⁶⁹*Id.* at 153.

general consensus among scholars that certain forms of humanitarian intervention are permitted by international customary law and the United Nations Charter. Some forms of intervention have been characterized as “just,” and hence acceptable because they are “based on goals that have received general international approval, such as anti-colonialism, self-determination, and the implementation of human rights.”⁴⁷⁰ Even Prof. Henkin admits that humanitarian intervention “strictly limited to what is necessary to save lives,” “has brought wide acquiescence.”⁴⁷¹ Mention has already been made of intervention by a state into another state either by consent or invitation by the ‘legitimate authorities’ of that state; a practice accepted by customary international law.

After the end of the Cold War the bubble of non-intervention seems to have burst. Certain forms of intervention hitherto prohibited seems to have gained currency and acceptability as legitimate forms of intervention. Intervention in support of democracy restricted to restoring a validly elected government to power, after a military coup is now supported by both state practice and opinion of publicist. However it is accepted only to the extent that it is carried out in a collective fashion within the auspices of the United Nations Security Council or a regional organization, as one commentator observes: “. . . the right of collective intervention may well have crystallized in recent state practice, as recent scholarship focusing on the crucial distinction between collective and unilateral intervention seems to suggest.”⁴⁷² United Nations intervention in the civil war in Somalia to protect relief agencies

⁴⁷⁰Gabriel Wilner, *Introduction to panel 1*, 13 GEORGIA J. OF INT’L & COMP. L. 189, 190 (1982).

⁴⁷¹ He even concedes that this intervention is not restricted to actions by a state on behalf of its own nationals. Henkin *supra* note 463, at 41.

⁴⁷²Antonio F. Perez, *On the Way to the Forum: the Reconstruction of Article 2(7) and the Rise of Federalism under the United Nations Charter*, 31 TEX. INT’L L.J. 353,365 (1996).

from the warring factions is the earliest example of this post-cold war intervention.⁴⁷³ The Security-Council-authorized intervention to restore the democratically elected government of president Aristide to power after a military junta took power in Haiti has been seen as classic example of intervention to protect democracy.⁴⁷⁴ The latest intervention for democracy is the OAU-authorized intervention in Sierra Leone by the forces of the Economic Community of West Africa States (ECOMOG) to reverse a coup by a military junta that overthrow the elected government of president Kabbah.⁴⁷⁵

In conclusion there is no evidence in the present status of international law barring the OAU from creating the proposed intervention force. Such a force once created will serve as a very useful instrument for resolution of conflicts that threaten regional peace. The OAU however must exercise caution in deploying such a force; the force should not be deployed at the slightest excuse. Deployment must be done strictly within the limits of humanitarian intervention,⁴⁷⁶ lest the force becomes a hegemonic tool in the hands of powerful regional states.⁴⁷⁷

⁴⁷³See U.N. Security Council Res. 792 *supra* note 404.

⁴⁷⁴See U. N. Security Council Res. 940 *supra* note 407.

⁴⁷⁵See subsection C (3) below.

⁴⁷⁶A number of conditions against which to judge an intervention to determine whether it qualifies to be a humanitarian intervention have been suggested by scholars. They include (1) human rights violations must be egregious; (2) all peaceful means for resolving the conflict must be exhausted; (3) there must be no immediate hope of relief in the absence of intervention; (4) the intervention must be aimed at stopping the violation of human rights; (5) the principle of proportionality must be respected; the victims of human rights violations must welcome the intervention; and (6) collective intervention is to be preferred to unilateral actions. These criteria have generally gained acceptance, but the specific meaning of each criterion and factual situations that satisfy them is still a subject of debate. See Teson *supra* note 466, at 111-123; Athony Chukwukaa Ofodile, *The Legality of Ecowas Intervention in Liberia*, 32 COLUM. J. TRANSAT'L L. 381, 396 (1994).

⁴⁷⁷Nigerian dominance of the ECOWAS peace initiative in Liberia was reported to have been the main obstacle to negotiation and cease-fire between the warring parties. *Id.* at 385.

C. Utilization of Sub-regional Mechanisms

A number of factors make utilization of sub-regional mechanisms to resolve sub-regional conflicts very convenient and politically attractive to the OAU. Given the OAU budgetary constraints, sub-regional organizations like the Economic Community of West African States (ECOWAS), Common Market for Eastern and Southern Africa (COMESA),⁴⁷⁸ Southern Africa Development Community (SADC),⁴⁷⁹ and Economic Community of Central African State (ECCAS)⁴⁸⁰ being economic groupings, have the financial wherewithal lacking in the OAU to finance a conflict resolution initiative. Utilization of sub-regional mechanisms also enables the OAU to avoid the possibility of alienating some states that may not agree with its decision. This way the OAU is able to sustain the cohesiveness within its ranks that it seems to covet so much, without having to let conflicts continue devastating the continent.

The destabilizing effect that an internal conflict seems to cause at the sub-regional level makes the neighboring states that have a stake in the resolution of the conflict ready and willing to invest in its resolution.⁴⁸¹ The proximity of the sub-regional states to the conflict locale and their knowledge of the intricacies of the conflict makes them more effective in planning and implementing an intervention initiative. Perhaps this explains the relative success with which sub-regional organizations have undertake conflict resolution initiatives. Examination of ECOWAS intervention in Liberia, sanctions on Burundi by neighboring states

⁴⁷⁸33 I.L.M. 1067 (1994).

⁴⁷⁹32 I.L.M. 267 (1993).

⁴⁸⁰23 I.L.M. 945 (1984).

⁴⁸¹It is on record that support for the ECOWAS initiative was at first lukewarm but when the warring parties started destabilizing neighboring countries, ECOWAS received unqualified support. For instance, Taylor's NPFL "precipitated a revolt in Sierra Leone, which lead to the fall of president Joseph Momoh." Immediately several countries joined the ECOWAS initiative to forestall similar revolts within their borders. Ofodile *infra* note at 384.

to protest the overthrow of a democratically elected government, and the recent OAU authorization of ECOWAS to intervene in Sierra Leone will throw more light on this discussion.

1. ECOWAS Intervention in Liberia

Liberia is one of the countries that one may term a failed state.⁴⁸² Devastated by a civil war since 1989 pitting Charles Taylor's National patriotic Front of Liberia (NPFL), Prince Johnson's Independent National Patriotic Front of Liberia (INPFL), a break-away faction from NPFL, and United Liberation Movement of Liberia (ULIMO), a remnant of Samuel Doe's army, and other factions,⁴⁸³ an estimated 200,000 people have been killed and half of the country's 2.8 million people have been rendered homeless. Civic life and institutions have completely broken down.⁴⁸⁴

The germs of the Liberian conflict originated from the history of this country. The Republic of Liberia was founded in 1847 by former American slaves.⁴⁸⁵ They settled in what is now Monrovia and set up a system of government that excluded the indigenous tribes and treated them as second-class citizens. This precipitated a chasm that has never healed to this day.⁴⁸⁶ The Americo-Liberians ruled the Country until 1980 when Samuel K. Doe a native Liberian of the minority Krahn tribe overthrow and killed the American-descended president,

⁴⁸²For a discussion of the salient features of a failed state see Henry J. Richardson, III, "Failed State," *Self-determination, and Preventive Diplomacy: Colonialist Nostalgia and Democratic Expectations*, 10 TEMP. INT'L L.J. 1 (1996).

⁴⁸³Anthony Chukwukaa Ofodile, *The Legality of EOWAS Intervention in Liberia*, 32 COLUM. J. TRANSNAT'L L. 381, 383-89 (1994).

⁴⁸⁴Netscape: CNN Interactive, <http://www.cnn.com/WORLD/9604/30/liberia/background.html>.

⁴⁸⁵*Id.*

⁴⁸⁶Ofodile *supra* note 476, at 288.

William Tolbert.⁴⁸⁷ Doe imposed martial law and ruled with an iron fist until 1985 when a new constitution restored civilian rule. In January 1986 the new constitution took effect but Doe retained power by rigging the elections.⁴⁸⁸

Civil war started in 1989 when Charles Taylor, who had returned to Liberia after bribing his way out of a Massachusetts prison in the United States, invaded the country with his rebels from the neighboring Ivory Coast. In the ensuing war, Taylor's forces managed to occupy most of the country except Monrovia.⁴⁸⁹ Taylor's take-over of the whole country was checked when Prince Johnston (one of his commanders) broke away to form his own faction. Johnston entered into a pact with Doe and started (in tandem with Doe's forces) to drive back Taylor's rebels from the outskirts of Monrovia.⁴⁹⁰ In September 1990 Doe was brutally murdered by forces loyal to Prince Johnson. Doe's forces regrouped under the name ULIMO and the Civil war intensified with the three factions fighting against each other.⁴⁹¹

Shortly before the killing of Doe, the Economic Community of West African States (ECOWAS) decided to intervene in order to impose a cease-fire and end the war. The forces of the Economic Community of West African States Monitoring Group (ECOMOG), were deployed in Liberia on August 27, 1990. Doe, who was then trapped in the presidential bunker and Johnson supported the Intervention while Taylor declared war on ECOMOG, and severally clashed with them.⁴⁹² Several stages can be identified in the ongoing peace process in Liberia.

⁴⁸⁷Jennifer L.Turner, *Liberian Refugees: A Test of the 1969 OAU Convention Governing Specific Aspects of the Refugee Problems in Africa*, 8 GEO. IMMIGR. L.J. 281, 287 (1994).

⁴⁸⁸*Id.*

⁴⁸⁹*Id.* at 315.

⁴⁹⁰*Id.* at 289.

⁴⁹¹*Id.*

⁴⁹²Binaifer Nowrojee, *Joining Forces: United Nations and Regional Peacekeeping_ Lessons From Liberia*, 8 HARV. RTS. J. 129, 135 (1995).

a. The Initial Stages of ECOWAS Intervention

This stage is marked by three initiatives by ECOWAS: (1) deployment of forces to enforce and monitor a cease-fire between the warring factions; (2) attempts to bring the factions together to hammer out a peace formula; and (3) setting up of an interim government. ECOWAS relied on Article 7 of its treaty and its Protocol on Non-aggression to intervene in the war. Article 7 of ECOWAS treaty invests the Authority of Heads of State and Government (AHSG), the “supreme institution of the community,” with broad supervisory powers and mandate to oversee the implementation of the objectives of the Community.⁴⁹³ Although the Protocol On Non-aggression applies only to inter-state conflicts the AHSG interpreted it broadly to encompass the Liberian conflict in view of the destabilizing effect the conflict had regionally.⁴⁹⁴ Consequently, the AHSG established a Standing Mediation Committee (SMC) comprising of two members appointed by the AHSG and the Chairman of AHSG.⁴⁹⁵

ECOWAS ordered the ceasing of all military and para-military activities and surrender of all arms and ammunition to ECOMOG.⁴⁹⁶ The warring factions were further ordered to cooperate with SMC and ECOMOG so that law and order could be restored and cease-fire maintained. ECOMOG was mandated with the role of assisting the SMC in supervising the implementation of the Cease-fire.⁴⁹⁷

⁴⁹³ Economic Community of West African States (ECOWAS): Revised Treaty, Done at Cotonou, Benin, July 24, 1993, 35 I.L.M. 660 (1996).

⁴⁹⁴ See Protocol on Non-Aggression, Apr. 22, 1978, reprinted in Economic Community of West African States: policies and Programme Series 21-22 (1981) referred in Kufuor *infra* note 494, at 375.

⁴⁹⁵ Kofi Oteng Kufuor, *Developments in the Resolution of the Liberian Conflict*, 10 AM. U.J. INT’L L. & POL’Y 373, 375 (1994).

⁴⁹⁶ *Id.* at 376.

⁴⁹⁷ *Id.*

The next step was for ECOWAS to establish an interim government that would oversee the countries transition to democracy. A conference of all the Liberian political parties, patriotic fronts, interest groups and concerned citizens was organized in Abuja (Nigeria).⁴⁹⁸ The conference drafted a peace plan and established a broad-based Interim Government of National Unity (IGNU) Headed by Dr. Amos Sawyer as the President. The conference also established a 51 member broad-based legislative Assembly. The OAU endorsed its support for the Interim Government, the Peace Plan and the efforts of ECOWAS to bring peace in Liberia.⁴⁹⁹

The peace plan however was doomed to fail *ab initio*. Charles Taylor's NPFL, whose forces controlled more than half of the country refused to participate in the Interim Government. Despite efforts by ECOWAS to assuage Taylor's fears, his forces continued to engage ECOMOG in battle.⁵⁰⁰ For instance, ECOMOG incorporated troops from Senegal and other French-speaking countries (that had initially supported Taylor) to offset the dominance of Nigerian forces that Taylor accused of partiality. Taylor however insisted on being made the interim president and allowed to run for the presidency during the elections; although all the parties had agreed that the interim president should not be eligible for the presidential elections.⁵⁰¹

Several fruitless meetings were organized by the SMC between NPFL and IGNU to try to win the confidence of NPFL. The first meeting (held in 1991) involved neutral observers from International Negotiations Network (INN) and states considered sympathetic

⁴⁹⁸*Id.*

⁴⁹⁹Turner *supra* note 487, at 289.

⁵⁰⁰*Id.*

⁵⁰¹Ofodile *supra* note 476, at 385.

to NPFL.⁵⁰² The second meeting was organized in Yamoussoukro (Cote d'Ivoire). Here NPFL and IGNU agreed to establish a five member Elections Commission to organize and supervise elections, and an *ad hoc* Supreme Court to settle disputes that may arise from the elections.⁵⁰³ The third meeting of the committee produced the so-called Yamoussoukro IV Accord, incorporating the decisions of the second meeting and the agreement between NPFL and IGNU.⁵⁰⁴ The NPFL however continued to renege on the peace process.⁵⁰⁵ The NPFL refused to implement the Yamoussoukro Accord IV and launched an attack on ECOMOG's positions in Monrovia. Although ECOMOG repelled the attack it was clear that the peace process was derailed.⁵⁰⁶

b. United Nation's Involvement

The United Nations Security Council passed Resolution 788 in which it affirmed its belief that the Yamoussoukro IV Accord "offers the best possible framework for a peaceful resolution of the Liberian conflict."⁵⁰⁷ The resolution further directed all states to implement a general arms embargo against Liberia (except for arms and equipment destined for ECOMOG) and supported ECOWAS efforts to bring peace in Liberia. The Security Council called upon the parties to abide by the Yamoussoukro IV Accord and directed the United Nations Secretary-General to make a report on the implementation of Resolution 788.⁵⁰⁸

⁵⁰²Kufuor *supra* note 495, at 379.

⁵⁰³Turner *supra* note 487, at 289.

⁵⁰⁴*Id.*

⁵⁰⁵Kufuor *supra* note 495, at 381.

⁵⁰⁶*Id.*

⁵⁰⁷U.N. SCOR. 313th mtg, at 1, U.N. Doc. S/RES/788 (1992).

⁵⁰⁸U.N. SCOR. 3138th mtg, at 2-3, U.N. Doc. S/RES/788 (1992).

The report submitted later to the Security Council, identified the main obstacles to the peace process and the views of the parties involved in the conflict.⁵⁰⁹ On the basis of this report, the Security Council passed Resolution 813 in which it reiterated its commitment to the Liberian peace process and welcomed the continued commitment of ECOMOG to the peaceful resolution of the Liberian conflict. The resolution also hailed the support and endorsement the OAU had given to the ECOWAS peace initiative.⁵¹⁰ The resolution also acknowledged and acceded to the desire of the warring parties for a greater United Nations involvement in the peace process.⁵¹¹

c. The Cotonou Peace Accord and the Akosombo Agreement

The United Nations Secretary General as mandated by the Security Council in Resolution 813 (in conjunction with the OAU) assembled the parties to a peace conference in Geneva.⁵¹² The Cotonou Peace Accord signed by IGNU, ULIMO and NPFL on July 25, 1993 was an embodiment of the proceedings of the Geneva peace conference.⁵¹³ The Cotonou Peace Accord invested the United Nations observer Mission and ECOWAS with a joint responsibility to oversee the implementation of the peace process. The Accord further set-up a five member Council of State to exercise executive power in the transitional period.⁵¹⁴

⁵⁰⁹Cited in U.N. SCOR. 813, 3187th mtg. at 1, U.N Doc. S/RES/813 (1993).

⁵¹⁰ Sec. U.N. SCOR. 26th mtg. at 1, UN Doc. S/RES/813 (1993).

⁵¹¹*Id.* at 3.

⁵¹²See Ofodile *supra* note 476, at 386.

⁵¹³*Id.*

⁵¹⁴See United Nations Observer Mission Liberia: <http://ralph.gmu.edu/cfpa/peace/unomil.html>.

The Security Council subsequently adopted Resolution 856 which underlined the importance of the Cotonou Accord in ending the Liberian war and approved an advance team of United Nations military observers.⁵¹⁵ By Resolution 866 the Security Council established the United Nations Observer Mission in Liberia (UNOIL) to work with ECOWAS in monitoring the implementation of the peace Accord.⁵¹⁶

Owing to renewed fighting and emergence of more splinter groups from the three main factions, another agreement amending the Cotonou Peace Accord was signed in Akosombo (Ghana) on September 12, 1994.⁵¹⁷ Under this agreement ECOWAS agreed to transfer much of its responsibilities to the transitional government which would henceforth join ECOWAS and UNOMIL in the supervision and monitoring of the peace process.⁵¹⁸ Although sporadic fighting was reported between Taylor and Johnson in April last year the peace monitoring groups seems to have contained the situation and Liberia seems to be on an irreversible road to peace, as the peaceful outcome of the recently concluded elections show.⁵¹⁹

A number of observations need to be made in conclusion. Although the United Nations Observer Mission is involved, the Liberian peace process is clearly an ECOWAS-driven initiative. Indeed the Security Council, in Resolution 866 observed that the Liberian Initiative was “the first peace-keeping mission undertaken by the United Nations in cooperation with a peace-keeping mission already set up by another organization,” but stressed that ECOMOG had “the primary responsibility of supervising the implementation”

⁵¹⁵U.N. SCOR., 3262rd mtg, U.N. Doc. S/RES/856 (1993)

⁵¹⁶See U.N. SCOR. 3281st mtg, U.N. Doc. S/RES/866 (1993).

⁵¹⁷Kufuor *supra* note 495, at 390.

⁵¹⁸See U.N. SCOR.3624th mtg, at 2 U.N.Doc. S/RES/1041 (1996).

⁵¹⁹CNN Interactive: <http://www.cnn.com/WORLD/9604/30/liberia/background.html>.

of the Agreements.⁵²⁰ The involvement of the United Nations and the support of the OAU was necessary to give the intervention credibility and legitimacy.⁵²¹ Indeed, the intervention had been criticized as infringing on Article 2(4) of the United Nations Charter. The Security Council Resolution 788 was therefore a kind of *post ipso facto* authorization of the intervention.

Further more, the ECOWAS intervention is significant in a number of ways. It is the first bold initiative by a sub-regional organization to intervene in a local conflict. Contrasted with the ill-fated United Nations intervention in Somalia, the ECOWAS intervention in Liberia is a big success. It has been able to stem the humanitarian crisis triggered by the war, restored civil order, and a peace process that may lay the foundation for sustainable peace in the country is on course. This Leads credence to an observation quickly gaining currency that with the end of the cold war the primary responsibility of resolving conflicts is shifting to regional and sub-regional bodies.

2. Sub-regional Sanctions on Burundi

Following a military coup in Burundi by Major Pierre Buyoya On July 25, 1996⁵²² that overthrew the legal government of Sylvestre Ntibantunganya, countries in the Great lakes region decided to impose sanctions on the minority Tutsi regime that took over the reigns of power.⁵²³ Ntibantunganya had taken over the presidency after the death of Melchior Ndadaye's successor, Cyprien Ntaryamira in a suspicious plane crash over Kigali with the

⁵²⁰Sec. U.N. SCOR.3281st mtg, at 1 U.N. Doc. S/RES/ 866 (1993).

⁵²¹See U.N. SCOR.3187th mtg, at 1 U.N. Doc. S/RES/813 (1993) in which the security Council commends ECOWAS for its efforts to bring peace in Liberia and the OAU for endorsing ECOWAS's Initiatives.

⁵²² Pan-African news Agency, Netscape: <http://egi.bin.nando.net/plweb.egi/fastwe>.

⁵²³Africa News Online, http://www.africanews.org/east/burundi/19970506_feat2.html.

then Rwandese president Juvenal Habyarimana on April 6, 1994.⁵²⁴ The coup was a culmination of a bloody conflict that was sparked off by the assassination of the first democratically elected Hutu president, Melchior Ndandaye, in a putsch by the Tutsi military on October 21, 1993.⁵²⁵

An estimated 150,000 people were killed between October 1993 and the date of Buyoya coup.⁵²⁶ The ensuing conflict pitted the extremist Hutu _ who saw the assassination of Ndandaye as an attempt to sabotage the democratic revolution and revert to Tutsi domination _ against the Tutsi army and militia groups.⁵²⁷

Other than the sub-regional sanctions both the United Nations and the OAU have responded to the crisis. The OAU condemned the coup and supported the sanctions imposed by the states in the great lakes region.⁵²⁸ It called upon the military junta to start dialogue with other parties with a view to ending the conflict and reverting to democratic rule. In addition, the OAU sent an observer mission to observe the peace process.⁵²⁹ The United Nations Security Council in Resolution 1012 set up an international commission of inquiry to investigate the facts leading to the assassination of President Ndandaye, the subsequent massacres, and to recommend “measures with regard to the bringing to justice of persons

⁵²⁴ Africa News Online, http://www.africanews.org/east/burundi/19970523_feat1.html.

⁵²⁵ For a superb account of the history of Hutu-Tutsi conflict see Gerard Prunier-Writenet, *BURUNDI: DESCENT TO CHAOS OR A MANAGEMENT CRISIS?*, (1995): <http://www.unhcr.ch/refworld/country/writenet/wribdi01.htm>; and for some background information about the Hutu and Tutsi see Neil Weiner, *Hutu an Tutsi of Rwanda and Burundu*: <http://www.backgroundbriefing.com/hutututs.html>.

⁵²⁶ Netscape: <http://egi.bin.nando.net/plweb.egi/fastwe>.

⁵²⁷ Burundu Breaking the Cycle of Violence *infra* note.

⁵²⁸ See Sec. Council Res. 1040, 3623rd mtg, on 29th January 1996, U.N.Doc. S/RES/1040 (1996).

⁵²⁹ Netscape: Pan-African News Agency, <http://egi.bi.nando.net/plweb.egifastwe>.

responsible for these acts.”⁵³⁰ The United Nation also set up a military observer mission in Burundi. Although reports indicate that the commission of inquiry submitted its report to the Security Council available information indicate that no action has been taken in relation to the report so far.⁵³¹

The sanctions by the Great lakes states are significant in a number of respects. First, they are unprecedented. The Buyoya military coup was not the first in the countries bloody political history; nor is it the first military coup in the region.⁵³² However, the coup was unique in that it is the first coup against a democratically elected government. By slapping sanctions on the military regime the regional states indicated that attempts to reverse trends towards democracy in the region will no longer be tolerated. And by the OAU and the United Nations Security Council acquiescing to the sanctions, they lent a cloak of legitimacy to this and any future sub-regional intervention.⁵³³ The sanctions may not have succeeded in reversing the coup but they have achieved the objective of forcing the Buyoya junta into peace talks with the ousted government and other stakeholders in the fluid and complex political situation that is Burundi.⁵³⁴

⁵³⁰Sec. Council Res.1012 3571st mtg, on 28 August, 1993, UN Doc. S/RES/1012 (1995).

⁵³¹See Africa News online, http://www.africanews.org/east/burundi/19970523_feat1.html.

⁵³² There have been several coups in Uganda and Rwanda. The history of Burundi has been characterized by hatred and bloody conflicts between these two ethnic groups. Records indicate that since gaining independence from Belgium in 1962, Burundi has witnessed a number of massacres of the Hutu by the Tutsi dominated military. For instance in April 1972 Micombero, a Tutsi military ruler massacred an estimated 200,000 Hutus and eliminated all Hutus from the armed forces, to suppress Hutu unrest. Col. Bagaza is also reported to have killed thousands of Hutus during his 1984-87 military rule. Buyoya the incumbent Burundi strongman recycled back to power by the Tutsi dominated military, is reported to have butchered 20,000 people in operations to restore order in August 1988 after eruptions of violence. See *Burundi: Breaking the Cycle of Violence*, <http://www.nsws.com/mrg/burundi.html>.

⁵³³In this resolution the Security Council “expresses strong support for the efforts of the OAU” and other organizations and individuals facilitating the peace process. U.N. SCOR. 3639th Sess. U.N.Doc. S/RES/1049 (1996).

⁵³⁴See Netscape, Pan-African News agency, <http://egi.bin.nando.net/plweb.egi/fastwe>.

3. Suppressing a Coup in Sierra Leone

On May 25, 1997 Maj. Paul Koroma Ousted from power the first democratically elected president of Sierra Leone, Ahmed Tejan Kabbah in a military coup.⁵³⁵ This was the third military take-over in five years.⁵³⁶ It was hoped Kabbah's election 14-months earlier would mark the end of a century of brutal authoritarianism that had characterized Sierra Leone since the beginning of British colonial rule.⁵³⁷ After winning the elections president Kabbah earned international respect for quickly negotiating and signing a peace treaty to end a five year war with the rural-based Revolutionary United Front (RUF) rebels of Foday Sankoh.⁵³⁸ RUF took arms against the government in 1991, leading to a conflict that claimed an estimated 10,000 lives.⁵³⁹

The ill-timed coup coincided with the 33rd OAU summit of the Heads of State and Government in Harare (Zimbabwe).⁵⁴⁰ In an unprecedented move, the OAU departed from its past practice of at worst keeping mum and at best condemning coups and endorsed military as well as diplomatic measures to reverse the coup.⁵⁴¹ The Assembly of Heads of State and Government unanimously mandated the Economic Community of West African States (ECOWAS) to use force and any other means to reverse the coup. The Chairman of the OAU President Mugabe of Zimbabwe was categorical: "We are getting tougher and tougher every time. I can assure you for the future coups it will be much tougher.. .We want

⁵³⁵CNN Interactive World News: <http://cnn.com/WORLD/9706/03/sierra.leone/index.html>.

⁵³⁶*Id.*

⁵³⁷The Washington Post: <http://search.washingtonpost.com/w...ch/1979-05/26/084F-052697-idx.html>.

⁵³⁸Africa news Online: http://www.africanews.org/west/sierraleone/19970606_feat2.html.

⁵³⁹*Id.*

⁵⁴⁰Pan-African News Agency, <http://egi.bin.nando.net/plweb.egi/fastwe>.

⁵⁴¹Reuters, <http://www.yahoo.com/headlines/special/sierraleone/sierraleone.1.html>.

to (ensure) that conflict is avoided, democracy is not reversed and, where it is reversed, that we attend to the situation . . .”⁵⁴² The United Nations Secretary-General supported the OAU decision: “If it becomes the last resort, we are prepared to support a military solution.”⁵⁴³

Whether the ongoing negotiations to end the crisis peacefully between ECOWAS and the ruling military junta will succeed is a matter of conjecture at this stage.⁵⁴⁴ Whatever the outcome of the ECOWAS initiative, however, the OAU decision is clearly unprecedented. By endorsing intervention to resolve the Sierra Leone conflict, the OAU has reached a watershed in its regional conflict resolution role. The ghost of non-interference in internal affairs of member states that forms the core of the OAU normative structure and has cast its spell over intra-state conflicts since the creation of the OAU, is slowly but surely getting buried. A respected African weekly news magazine commenting on the Sierra Leone coup, summed up this evolution thus:

At Harare, the OAU heads of state joined the rest of the international community in unanimously condemning Sierra Leone’s military take-over. But unlike in the past, where the OAU stopped at mere condemnation, it called for the reinstatement of the civilian government of president Kabbah by all means possible, including force if need be. . . . The question is whether we are seeing a determination by the OAU to adjust its Charter to the new challenges of peace keeping and security which many domestic civil clashes previously considered by the OAU to be the internal affairs of member states, are now posing.⁵⁴⁵

This is an important paradigmatic shift in the OAU conflict resolution and security framework. Intervention in internal conflicts hitherto considered anathema due to the norm

⁵⁴²CNN Interactive,
<http://www.cnn.com/WORLD/9706/04/zimbabwe.new.africa/index.html>.

⁵⁴³Pan-African News Agency,
http://www.africanews.org/westsierrealeone/19970613_feat4.html.

⁵⁴⁴AfricaNews Online, http://www.africanews.org/west/sierrealeone/19970613_feat3.html.

⁵⁴⁵The Weekly Review June 13, 1997,
<http://www.africaonline.co.ke/afric...stand/weeklyrvu/970613/edito2.html>.

of non-interference in internal affairs of member states, seems to be gaining currency as legitimate way of settling regional conflicts. This is as it should be since, as argued before, humanitarian intervention at least at the collective level as opposed to unilateral intervention has crystalized into an accepted norm of international law. The OAU by engaging in intervention to defend democracy and nullify the cancer of military dictatorships in Africa is simply abandoning an archaic norm already discredited at the United Nations level.

However the new-found willingness on the part of the OAU to deal with the so-called internal conflicts through intervention must be exercised with pragmatic caution. Intervention should not be used to subvert social change.⁵⁴⁶ Armed struggle or revolution still remain a legitimate way of removing an unwanted regime from power. An intervention that stifles such a process would be self-defeating and therefore unacceptable. A critical line must therefore be drawn between totalitarian and dictatorial regimes on the one hand and popularly elected governments in a free and fair election on the other hand. It is only on the overthrowal of the later that the OAU has business in intervening to prevent the gun-totting warlords in revolutionary straight-jackets like those currently in Sierra Leone from suppressing the peoples will.

On the whole it is evident from the foregoing that, in a comparative sense, sub-regional initiatives have been successful in resolving localized conflicts. It also appears that a healthy partnership is evolving between the OAU and sub-regional bodies. In this partnership the broad decisions of what nature of action or measures to be taken in resolving a localized conflicts is taken at the OAU level. The modalities and technical details of implementing the decision are left to the sub-regional bodies. In the case of Sierra Leone the decision to intervene and reverse the coup was made by the OAU while ECOWAS was mandated to implement the decision. This way, when major policy decisions are made at the

⁵⁴⁶W. FRIEDMANN, *THE CHANGING STRUCTURE OF INTERNAL LAW* 267 (1964).

continental level, the danger of dominant powers in a sub-regional level dominating the local scene by influencing the decisions of a sub-regional body is greatly reduced. The accusation that hegemonic dominance of Nigeria permeates the ECOWAS peace initiative that has doggedly cast a shadow over the peace process could have been avoided if the intervention in Liberia had followed this pattern.

CONCLUSION

This thesis has explored the role of the OAU in regional conflict resolution and dispute settlement. In the introduction a glimpse into the historical origins as well as the normative and institutional structure of the OAU was undertaken. The OAU was seen as a slave of time. Created at a period when nationalism and sovereign integrity of states were the foremost concepts in international relations _ especially so to African states which were emerging from colonial subjugation. The OAU thus assimilated and entrenched these concepts into its architectural foundation. Until recently the OAU remained a highly conservative institution unresponsive to the changing times. Its unprecedented attempt to nullify the military coup in Sierra Leone has been viewed as an attempt on the part of the OAU to come to terms with the changing realities of inter-state relations. The OAU now seems to be prepared to no longer treat internal conflicts and human rights as internal matters to be addressed only by the affected state. This apparent behavioral change may however not last long; it faces the danger of being undermined by the ultra-conservative forces within the OAU if it is not accompanied by an overhaul of the OAU Charter to incorporate the new paradigms.

The thesis went further to characterize conflicts in Africa and to examine the OAU conflict resolution initiatives. Although the OAU has been effective in resolving inter-state conflict its performance in resolving intra-state conflicts was found to be wanting. This was attributed to the practically and theoretically untenable dichotomy the OAU Charter creates between intra-state and inter-state conflicts; placing intra-state conflicts beyond the purview of the OAU. In a world so interdependent and closely linked together, such compartmentalization of conflicts is simplistic and unrealistic. Purely internal or international

conflicts do not exist. Inter-state conflicts have internal causes while the so-called internal conflicts have international repercussions (like outflow of refugees and armed insurgencies into neighboring states) that cannot be ignored by the affected states.

The relationship between the OAU as a regional organization and the Premier global organization, the United Nations, in the arena of regional conflict resolution was also examined. The Charters of both organizations invest them with the competence to deal with regional conflicts. At the theoretical level, the involvement of both institutions in resolving African regional conflicts therefore poses the problem of delimiting the jurisdictional frontier of each institution. In practice however the involvement of both institutions has been mutually reinforcing. Nonetheless, it was demonstrated that, for historical and constitutional reasons the executive and judicial organs of the United Nations (the Security Council and the International Court of Justice, respectively) have not been popular with the African states as forums for resolution of African disputes, alternative to the OAU mechanisms. This state of affairs however seems to have gradually changed in relation to the International Court of Justice and is bound to change in relation to the Security Council if the ongoing reforms are not scuttled.

Impediments to effective conflict resolution on the part of the OAU were also explored. These impediments were found to be both Charter based and non-charter based. At the institutional level an asymmetry of power between the Assembly of Heads of States and Government and other organs of the OAU is inbuilt into the Charter. The juridical and extra-juridical power of the Assembly was found to be so complete and pervasive that it overwhelmed and emasculated the other organs. Specific suggestion on how this unsatisfactory state of affairs could be rectified were offered, chief among them being the empowerment of the office of the Secretary-General and the creation of a Judicial and enforcement organ within the OAU institutional framework.

In the end a security framework for Africa within the existing international legal order

was proposed. In this framework sub-regional organizations were seen as a necessary and fundamental component. An evolving partnership between the OAU and these sub-regional bodies was identified. There is however a need to develop a legal framework to govern this partnership in order to give it juridical anchorage. Reformed institutions of the United Nations were also allocated a critical role in this security arrangement.

The underlying hypothesis throughout was that a holistic appreciation of the role the OAU has played in addressing the chronic problem of conflict in Africa _ perhaps the most critical challenge of our time _ is a prerequisite to offering solutions. In this quest, several fundamental questions and answers were apparent. The question whether the OAU has been effective in resolving regional conflicts was answered in the negative. The ongoing debilitating conflicts in Africa testify to this fact. The Answer to the question why the OAU has been ineffective was located in both the historical underpinnings and the normative structure of the OAU. The OAU was however credited with playing a leading role in wiping out the scourge of colonialism (at least in its classical form), which was a major source of conflicts.

On the whole it must be concluded that nothing short of an overhaul of the Charter of the OAU will cure the anomalies afflicting the organization. This calls for political will on the part of the member states. Archaic norms that have done a lot of disservice to the African region must be replaced by new ones. The OAU must be empowered and rejuvenated by restructuring and revitalizing its institutions to cope with the vital role of resolving conflicts. Any window dressing exercise will not suffice. Most Importantly, a new and revitalized OAU must make the promotion and protection of human rights a fundamental norm incorporated into its Charter and central to any conflict resolution initiative. After all protection of human rights is a matter of course in international relations today. In any case, after all is said and done, there is no other ethical justification for the existence of any institution _ indeed even the state itself _ other than the welfare of humankind; which boils down to the promotion and protection of human rights in the broadest meaning of the term.

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