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**THE ORGANISATION OF AFRICAN UNITY**  
**AND REGIONAL DISPUTES**  
**A STUDY OF AFRICAN CONFLICTS**

**A THESIS PRESENTED BY**  
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**FOR THE DEGREE OF DOCTOR OF PHILOSOPHY**  
**OF LAWS IN THE UNIVERSITY OF GLASGOW**  
**MARCH 1984**

**THE DEPARTMENT OF PUBLIC INTERNATIONAL LAW,**  
**FACULTY OF LAW, GLASGOW UNIVERSITY**

TO THE MEMORY OF MY MOTHER  
AND TO MY PARENTS IN LAW

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ABBREVIATIONS

A.A.P.C.I.A.S.	ALL AFRICAN PEOPLE'S CONFERENCE OF INDEPENDENT AFRICAN STATES
A.C.R.	AFRICA CONTEMPORARY RECORD
A.C.S.P.	ARAB COLLECTIVE SECURITY PACT
A.H.S.G.	ASSEMBLY OF HEADS OF STATE AND GOVERNMENT
A.J.I.L.	AMERICAN JOURNAL OF INTERNATIONAL LAW
A.N.C.	ARMÉE NATIONALE CONGOLAISE
A.P.G.	ALGERIAN PROVISIONAL GOVERNMENT
A.R.B.	AFRICAN RESEARCH BULLETIN
B.E.T.	BORKOU-EUNADI-TIBESTI
B.Y.B.I.L.	BRITISH YEAR BOOK OF INTERNATIONAL LAW
C.A.F.	CENTRAL AFRICAN FEDERATION
C.A.R.	CENTRAL AFRICAN REPUBLIC
C.L.N.	COVENANT OF THE LEAGUE OF NATIONS
C.M.	COUNCIL OF MINISTERS
C.M.C.A.	COMMISSION OF MEDIATION, CONCILIATION AND ARBITRATION
C.N.	COMMONWEALTH OF NATIONS
C.N.L.A.	CONGO NATIONAL LIBERATION ARMY
D.I.L.	DIGEST OF INTERNATIONAL LAW
D.L.M.	THE DJIBOUTI LIBERATION MOVEMENT
E.C.A.	THE ECONOMIC COMMISSION FOR AFRICA
E.C.O.S.O.C.	THE UNITED NATIONS ECONOMIC AND SOCIAL COUNCIL
E.C.J.	EUROPEAN COURT OF JUSTICE
E.E.C.	EUROPEAN ECONOMIC COMMUNITY
F.A.O.	FOOD AND AGRICULTURAL ORGANISATION
F.A.N.	FORCE ARMÉE DE NATIONALE
F.A.P.	FORCE ARMÉE DE POPULAIRE

F.L.S.C.	THE FRONT FOR LIBERATION OF THE SOMALI COAST
F.L.I.N.G.	THE FRONTE PARA A LIBERTACAO E INDEPENDENCIA DE GUINE PORTUGUESA
F.N.L.A.	THE FRONT FOR NATIONAL LIBERATION OF ANGOLA
F.P.L.	THE MOVEMENT FOR THE POPULAR LIBERATION
F.R.E.L.M.O.	THE MOVEMENTA PEOPULAR DE LIBERATACAO DE MICAMBIQUE
F.R.O.L.I.N.A.T.	FRONT DE LIBERATION NATIONALE TCHADIAN
G.S.	GENERAL SECRETARIAT
I.A.E.A.	INTERNATIONAL ATOMIC ENERGY AGENCY
I.A.M.O.	INTER-AFRICAN AND MALAGASY ORGANISATION
I.A.T.R.A.	INTER-AMERICAN TREATY OF RECIPROCAL ASSISTANCE
I.C.J.	INTERNATIONAL COURT OF JUSTICE
I.C.L.Q.	INTERNATIONAL AND COMPARATIVE LAW QUARTERLY
I.C.R.C.	THE INTERNATIONAL COMMITTEE OF THE RED CROSS
I.F.C.	INTERNATIONAL FINANCE CORPORATION
I.L.O.	INTERNATIONAL LABOUR ORGANISATION
I.L.M.	INTERNATIONAL LEGAL MATERIALS
I.M.F.	INTERNATIONAL MONETARY FUND
I.Y.B.I.A.	INDIAN YEAR BOOK OF INTERNATIONAL AFFAIRS
J.A.A.	JOURNAL OF AFRICAN AFFAIRS
J.C.H.	JOURNAL OF CURRENT HISTORY
J.I.A.	JOURNAL OF INTERNATIONAL AFFAIRS
J.I.O.	JOURNAL OF INTERNATIONAL ORGANISATION
J.I.R.	JOURNAL OF INTERNATIONAL RELATIONS
J.F.A.	JOURNAL OF FOREIGN AFFAIRS
J.M.A.S.	JOURNAL OF MODERN AFRICAN STUDIES
J.R.A.S.	JOURNAL OF ROYAL AFRICAN STUDIES

L.A.S.	LEAGUE OF THE ARAB STATES
M.E.	MIDDLE EAST
M.P.L.A.	THE MOVEMENT FOR THE POPULAR LIBERATION OF ANGOLA
M.P.L.	THE PEOPLE'S LIBERATION MOVEMENT
M.R.A.	MISSION DE REFOMME ADMINISTRATIVE
N.A.N.	NON-ALIGNED NATIONS
N.A.T.O.	NORTH ATLANTIC TREATY ORGANISATION
N.C.N.C.	NATIONAL COUNCIL OF NIGERIA AND CAMEROON
N.I.P.	NATIONAL INDEPENDENT PARTY
N.F.D.	NORTHERN FRONTIER DISTRICT
N.L.A.	NATIONAL LIBERATION ARMY
N.U.I.	THE NATIONAL UNION FOR INDEPENDENCE
O.A.M.C.E.	ORGANISATION AFRICAINE ET MALGACHE ET CO-OPERATION ECONOMIQUE
O.A.S.	ORGANISATION OF AMERICAN STATES
O.A.U.	THE ORGANISATION OF AFRICAN UNITY
O.C.A.M.	ORGANISATION COMMUNE AFRICAINE ET MALGACHE
O.N.U.C.	L'OPERATION DES NATION UNIES DANS LE CONGO
O.P.E.C.	THE ORGANISATION OF PETROLEUM EXPORTING COUNTRIES
P.A.	PAN-AFRICANISM
P.A.C.	PAN-AFRICAN COUNCIL
P.A.I.G.C.	THE COMITE REVOLUCIONARIS AFRICAN O DE INDEPOLANCIA DE GUINE E CALO VERAB
P.A.S.I.L.	PROCEEDING OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW
P.F.A.	PATRIOTIC FRONT ALLIANCE
P.O.L.I.S.A.R.I.O.	FRENTE POPULAR PARA LA LIBERATION DE SAGUIA ET HAMRA Y RIO DE ORO

S.A.	SOUTHERN AFRICA
S.D.A.R.	SAHRWI DEMOCRATIC ARAB REPUBLIC
S.A.T.O.	SOUTHEAST ASIAN TREATY ORGANISATION
S.G.	SECRETARY GENERAL
S.R.	SOUTHERN RHODESIA
S.W.A.	SOUTH WEST AFRICA
S.W.A.N.U.	SOUTH WEST AFRICAN NATIONAL UNION
S.W.A.P.O.	THE SOUTH WEST AFRICAN PEOPLE'S ORGANISATION
U.A.M.	UNION AFRICAINE ET MALGACHE
U.D.H.R.	UNIVERSAL DECLARATION OF HUMAN RIGHTS
U.K.	UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
U.N.	UNITED NATIONS
U.N.G.A.	UNITED NATIONS GENERAL ASSEMBLY
U.N.S.C.	UNITED NATIONS SECURITY COUNCIL
U.S.A.	UNITED STATES OF AMERICA
U.N.H.C.R.	UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES
U.N.C.T.A.D.	THE UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT
U.N.E.S.C.O.	THE UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANISATION
U.A.N.C.	UNITED AFRICAN NATIONAL COUNCIL
U.D.I.	THE UNILATERAL DECLARATION OF INDEPENDENCE
U.F.P.R.	UNITING FOR PEACE RESOLUTION
U.A.R.	UNITED ARAB REPUBLIC
U.N.E.F.	UNITED NATIONS EMERGENCY FORCES
U.S.S.R.	UNION OF SOVIET SOCIALIST REPUBLICS
U.N.I.D.O.	UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANISATION

U.P.O.	UNITED PEOPLE'S ORGANISATION
U.P.U.	UNIVERSAL POSTAL UNION
U.T.N.I.A.	THE UNION FOR THE TOTAL NATIONAL INDEPENDENCE OF ANGOLA
W.P.	WARSAW PACT
Z.A.N.U.	ZIMBABWE AFRICAN NATIONAL UNION
Z.A.P.U.	ZIMBABWE AFRICAN PEOPLE'S UNION

PREFACE:

an entire sentence
 The African countries scene for over a quarter of a century of regional conflict of world-wide dimension is currently experiencing an important resurgence stemming from a newly found political and economic prominence. This development can only be rationally comprehended in the light of contemporary history of the African continent shaped by the major events that have occurred there in the past twenty-five years and which were often an expression of the aspiration of its peoples.

There is,
 Perhaps, no better way to recount that history than to dwell on the sources, describe the evolution and assess the outcome of the major disputes that have involved the states of the continent. This in turn might best be achieved through an analytical study attempted in this thesis of the role performed in the African regional disputes by the OAU which <sup>was</sup> established on May 25th, 1963 as the first regional organisation in the post-World-War-Two era.

In dealing with this subject, it is hoped that the thesis will be of great interest to international lawyers and will generally contribute to a better understanding of the African continent, the field of regional organisations and the law and principles of peaceful settlement of international disputes. In fact, there is a notable scarcity of literature on the OAU generally as a regional organisation comprising all independent African states except South Africa. Moreover, there has been virtually no detailed study of the particular subject of international



disputes involving the OAU member states. Such little writing as there has been on this subject has suffered from the difficulty of securing access to relevant materials most of which are of a confidential nature. In consequence, scholars have either given inadequate attention to the subject or else have dealt with it on a speculative basis. It is the purpose of this thesis to attempt to fill, at any rate in part, the gap in the literature referred to above and thereby open the way to future studies on the subject.

The present study is written as a thesis to be submitted to the Department of Public International Law, Faculty of Law, for the degree of Doctor of Philosophy of Laws in the University of Glasgow.

The basic method adopted in the thesis is that of dealing with the subject on a case-history basis and legal consideration of the conflict. The general framework within which this study has been fitted is as follows:-

In Chapter I some description and analysis has been provided of the legal structure of the OAU system for handling regional disputes. This chapter of the thesis deals with the origins of the OAU and describes the historical evolution that led to the establishment of the OAU on May 25th, 1963. This is followed by an analysis of the provisions of both the OAU Charter and the Protocol of the Commission of Mediation, Conciliation and Arbitration, particularly those bearing on the question of regional disputes and the machinery established to deal with such disputes. Chapter II examines the differences

between the OAU system for regional disputes and other similar regional systems. The relationship between the OAU and the system of the UN and how the particular nature of the system has influenced the manner in which it has functioned. The question of Security Council responsibility for disputes threatening international peace and the issue of priority for the OAU procedures over those of the UN are examined. Some description and analysis has also been provided of the practice of the OAU member states relating to certain international issues such as African attitudes towards traditional principles of international law, their approach towards peaceful settlement of international disputes and their reaction to secessionist self-determination. Moreover, an appreciation is made of the role of the OAU in the field of regional collective security, how the organisation has discharged this function in disputes between OAU member states and third states. Finally, a brief study is sought to explain African reaction to existing boundary alignments and the persistence of colonial boundaries after independence.

Consideration is given in Chapters III and IV of this thesis to the manner in which the system has operated in relation to the major disputes referred to the OAU, whether border conflicts, tensions arising from internal conflicts, the problems of political refugees, their implication in regional disputes, the concept of non-interference in domestic jurisdiction and internal conflicts within individual member states. These two Chapters of the thesis describe a detailed account of the origins of the disputes, the legal consideration of the conflict, the role played by the UN

and the OAU and how the disputes were eventually settled. An attempt is further made to analyse various aspects of each dispute, its significance and nature, its handling by the OAU and the relevance to it of UN procedures. Although Chapter V of the thesis purports to give an equally comprehensive account of the emergence of new international principles concerning dependent territories, the OAU role in eradicating colonialism from Africa, and the compatibility of the OAU collective measures with the provisions of the UN Charter. This is followed by an analysis of the OAU efforts which have been made in the past two decades to solve the main colonial and racial problems in Africa and evaluate its role and relationship with the UN, in each case in terms of the extent of agreement on the issues. The colonial problems of greatest concern to the OAU have been those relating to Namibia, the policies of apartheid in Southern Africa and the role it played in the attainment of independence to Portuguese administered territories and Rhodesia (Zimbabwe). Finally, special appreciation is made to analyse the 1971 effort by the African Presidents who sought unsuccessfully to mediate in the conflict, primarily between Egypt and Israel, and the immediate aftermath of that effort whose failure contributed to the transformation of the system of international relations between Africa and the Middle East. Finally, the thesis contains an evaluation of the OAU system for regional disputes. An appreciation is first attempted of the use actually made of each procedure of the system. Did the technique resorted to by the Assembly of Heads of State and Government and the

Council of Ministers prove effective? How did the Secretary-General perform his role? This is followed by a determination of the relationship between the procedures of the OAU system and those of the UN. Some general conclusions on the OAU system are also drawn. Suggestions are made in respect of improved techniques for peaceful settlement of African regional disputes, establishment of new machinery and development of the collective security system. This is considered against a background of the broader question of revision of the OAU Charter which in turn is linked to the future evolution of the OAU and the existing solidarity among its membership.

~~(In preparation of this study)~~ I wish to express my sincere gratitude and deepest appreciation to my supervisor, Mr. John P. Grant, Head of the Department of Public International Law, Faculty of Law, the University of Glasgow, for his help, guidance, inspiring suggestions throughout my research on this subject. This study would not have been possible without his valuable comments and perceptive criticism. I can never thank him enough for his personal encouragement, moral support and constant attention. I also owe a very special debt of gratitude to my wife, Laila, my daughter Magdalene and my son Muhanned - special thanks for their patience and encouragement throughout my study. I owe thanks to the staff of Glasgow University Library for their assistance, co-operation and valuable service. I am grateful to Mrs. Fewson who kindly typed the manuscript. Finally, I should like to acknowledge the intellectual debt I owe to my maternal grandmother who above all taught me at an early age to learn from my social environment.

In conclusion of this preface, I must emphasise that opinions and views expressed in this study are entirely my own and should not necessarily be taken to represent the views of the OAU or those persons and institutions to whom tribute has been paid.

OMAR ABUBAKAR BAKHASHAB

MARCH 1984

CHAPTER I:

FRAMEWORK OF THE ORGANISATION OF AFRICAN UNITY  
SYSTEM FOR REGIONAL DISPUTES

HISTORICAL ORIGINS TO THE ESTABLISHMENT OF THE OAU

A surge of nationalism swept across the African continent after the second World War. African politicians who had taken a prominent part in a series of Pan-African Congresses abroad returned home to lead national movements for independence and the right to self-determination<sup>(1)</sup>. At the first Pan-African Congress which was held in 1945 at Manchester, the basic aims of African movements were articulated as "the intensification of the struggle in colonies against the continuance of colonialism, self-government and eventual independence and unity, economic and social development to be achieved by co-operation and combating racialism all over the continent especially in areas of European minority rule such as Rhodesia and South Africa<sup>(2)</sup>." However, the idea of African nationalism was given a revolutionary impetus of solidarity after the Egyptian revolution of July 23rd, 1952<sup>(3)</sup>. Despite this, it would appear that there had been little connection previously between the Arab States of North Africa and the sub-Saharan states. This was because of the colonial

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(1) Okoye, Felix Chuks, International Law and the New African States, Sweet and Maxwell, London 1972, p.121

(2) Thompson, Vincent Bakpetu, Africa and Unity: The Evolution of Pan-Africanism, Longman, London 1960, p.133

(3) Okoye, Felix Chuks, Op. Cit. p.121

experience in Africa which had produced a psychological barrier between those North and South of the Sahara. Nevertheless, the newly independent sub-Saharan States emerged with an enthusiastic desire to strengthen their relationships with the Arab North African States and refused to accept the Sahara as a political barrier. Thus, this attitude created the environment for collective endeavours towards the establishment of an all-embracing continental, regional organisation. In this direction the first All-African People's Conference of Independent African States<sup>(4)</sup> was held in 1958 at Accra, Ghana, where eight African states attended. The participants of this historic Conference were Ethiopia, Ghana, Liberia, Libya, Morocco, Sudan, Tunisia and the United Arab Republic. These were the then independent African states except South Africa which was actually invited but refused to participate because invitations were not extended to the colonial powers<sup>(5)</sup>. It would appear that Nkrumah had taken the initial initiative to involve the Arab States of North Africa and also brought Ethiopia and Liberia out of their isolation by giving them a role to play in modern Africa<sup>(6)</sup>.

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(4) The aims of the Conference was to consider means of safeguarding the political independence and sovereignty of participating states, to formulate the mutual policy of extending assistance to dependent African territories in their attempt of the attainment of self-government, to discuss problems of common interest and to strengthen mutual understanding

(5) Sanders AJGM, International Jurisprudence in African context, Butterworths, London 1979, p.102

(6) Nkrumah placed Pan-Africanism at the cornerstone of Ghana's foreign policy. In his book "Africa Must Unite" which was published in 1963, he set out his programme for Pan-Africanism. He gave a whole new turn to the African regionalism by welcoming non-sub-Saharan states into the rank of Africanism with a view to establishing a "United States of Africa."

However, the participating states endorsed Pan-Africanism, and welcomed the formation of regional groupings which should not be prejudicial to the ultimate goal of Pan-Africanism. They also declared themselves for a policy of non-alignment in world affairs and to <sup>the</sup> co-ordinate <sup>work of</sup> African policies on international political issues. Moreover, they condemned colonialism and racialism and supported African liberation movements in their struggle for freedom and independence (7). It would appear that the firm attitude was not too difficult at this first conference which was dominated by revolutionary states and <sup>when</sup> Ethiopia and Liberia were only just integrating themselves in the continent. Subsequently, a second conference of independent African states was held on June 15th, 1960 in Addis Ababa, Ethiopia, which followed the traditional procedure of "palavar" on decision-making by consensus. R. ? Consequently, it was able to work out consensus on matters of common concern such as decolonization, an African foreign policy, economic, social and cultural goals as well as on the methods to attain these aims by peaceful means. Despite this common concern, the participating states agreed that African unity would only be obtained gradually as the regionally imposed psychological barrier vanished in the process of time and which would give rise to the formation of some kind of regional structure. But things worked out quite differently (8). In fact, the second conference was

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(7) Tharp, Paul A., Regional International Organisation/ Structure and Function, St. Martin Press, New York 1971, p.48

(8) Sanders AJGM, Op. Cit, p.103



the last gathering of independent African States for some years to come. Meanwhile, many African territories became independent, most of them former French territories, with moderate policies. At the same time, the Algerian and Congo crises had plunged the continent into political turmoil and upon these two crises, African states reacted quite differently. This immediately led to a polarization of attitudes which lasted for some time and eventually extended into the field of African inter-state organisation. Accordingly, there was a rapid emergence and disappearance of regional groupings among the independent African states. Thus, the first conference of the French-speaking African states which subsequently became known as the Brazzaville Group<sup>(9)</sup> <sup>was</sup> held on October 24th, 1960 at Abidjan, Ivory Coast. The group consisted of Cameroon, the Central African Republic, Chad, Congo-Brazzaville, Dahomey (Benin), Gabon, Ivory Coast, Madagascar, Mauritania, Niger, Senegal and Upper Volta, all of whom had recently become independent<sup>(10)</sup>. It should be noted that the mutual bonds of language and a shared colonial past had led them to join in an exploration of common concern and the formation of a common foreign policy. Therefore, the Brazzaville States addressed themselves to such common concern issues such as the harmonization of their economic policies, national

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(9) The Brazzaville Group were frequently criticized by other African groups, particularly the Casablanca Group for their close ties with their former colonial master and the way they persistently refused to recognise the Algerian Provisional Government which was contrary to Pan-Africanism.

(10) Sanders, AJGM, Op. Cit, p.104

development plans, pooled diplomatic representation and their relations with their former colonial power. Despite this common concern about these issues, the Brazzaville States did not plan to establish a formal organisation framework to channel co-operation in the above-mentioned fields among themselves. They simply agreed to hold periodic meetings as the need arose, in order to formulate a united front towards international issues of world concern. Nonetheless, at a subsequent meeting of the Brazzaville States held on March 27th, 1961 at Yaoundé, Cameroon, the African and Malagasy Organisation for Economic Co-operation (Organisation Africaine et Malgache<sup>(1)</sup> de Co-operation Economique: OAMCE) was established in order to co-ordinate economic co-operation agreed upon at the earlier meeting<sup>(11)</sup>. Thus, once OAMCE was set up to co-ordinate economic matters, the Brazzaville States felt that it was time to create the political machinery in order to co-ordinate the political affairs towards the harmonization. Consequently, the Brazzaville States met again, this time in Tananarive, Malagasy, on September 12th, 1961, where it was agreed to establish the African and Malagasy Union (Union Africaine et Malgache<sup>(2)</sup>: UAM) which was designed to be a multi-purpose organisation. The UAM Charter characterized the organisation as a Union of independent and sovereign states to which all independent African states were eligible for membership, but only upon unanimous approval. Subsequently, Togo and Rwanda were admitted in 1963. Nevertheless, the organisation remained limited to French-speaking African states<sup>(12)</sup>.

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(11) Ibid p.104

(12) Ibid p.105

The objectives of the UAM were to organise co-operation between member states in order to maintain and promote solidarity, collective security, development in various fields and peace in both Africa and in the world at large<sup>(13)</sup>. Meanwhile, the then revolutionary states of Ghana, Guinea, Mali, Morocco, the United Arab Republic, including the Algerian Provisional Government, signed an African Charter at the conclusion of a conference held on January 4th, 1961 at Casablanca, Morocco<sup>(14)</sup>. This was done in order to regain the lead in the movement for the establishment of a multi-purpose regional structure. Consequently, the Casablanca Charter called upon all independent African states to associate themselves with the signatories in order to strengthen solidarity among African states and maintain peace in Africa and the world<sup>(15)</sup>. However, the Charter provided for the establishment of a supra-national African Consultative Assembly which would hold periodic sessions and would consist of representatives of every African state. There was also the African Political Committee comprising the heads of state or their representatives which would be responsible for co-ordinating the general policies of the various African states. Moreover, it provided for the creation of an African Economic Committee to be staffed by the ministers of economic affairs, and was responsible for economic co-operation. Finally, the

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(13) Okoye, Felix Chuks, Op. Cit, pp.123-124

(14) Sanders, AJGM, Op. Cit. p.106

(15) Tharp, Paul A., Op. Cit, p.49

Joint African High Command was set up, <sup>comprising</sup> composing the chiefs of staff, which was responsible for ensuring the common defence of Africa in the event of aggression against any part of Africa and for safeguarding the independence of African states<sup>(16)</sup>. It would appear that the Casablanca Charter incorporated the same aims and goals as those in the Charter of the African and Malagasy Union, with the addition of the establishment of a Joint African High Command. The aspiration of the Casablanca group appeared from the preamble to the African Charter wherein the signatories declared their determination to promote liberty and unity among African states. It also enshrined provisions for the preservation and consolidation of identity of views and unity of action in international affairs, and to reinforce peace in the world by adopting a policy of non-alignment. Moreover, it envisaged a pledge to safeguard African states' political independence, territorial integrity and to liberate African territories still under foreign domination by giving assistance to national liberation movements in their struggle to liquidate colonialism<sup>(17)</sup>. Subsequently, the group further elaborated their original Charter by establishing a payments union, an African Common Market, an African Economic Development Bank, an Economic Council to co-ordinate economic planning and a postal and telecommunication union. Finally, a Protocol for the implementation of the Casablanca African Charter was signed in June 1961 by the heads of state<sup>(18)</sup>

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(16) Sanders, AJGM, Op. Cit, p.107

(17) Ibid p.108

(18) Okoye, Felix Chuks, Op. Cit, p.124

It would appear that the Casablanca group had hastily been thrown together in their efforts at regional integration. They also had little in common to make their ties lasting. The only common grounds were mainly the result of a common attitude to the Algerian and Congo crises and of their militant anti-colonialism in general. To counteract the prevailing polarization in the continent, three states which were not members of either group, namely Liberia, Nigeria and Togo proposed the idea of a conference to be held on May 8th, 1961 in Monrovia, Liberia, to discuss the Algerian and Congolese crises. But, in fact, the conference was designed to explore the possibilities of establishing a wider regional organisation with multi-purpose co-operation on political and other fields. However, two Casablanca states, Guinea and Mali and two Brazzaville states, Cameroon and Ivory Coast, agreed to attend and co-sponsor the proposed conference<sup>(19)</sup>. It was hoped that the position of sponsorship given to these states would bring the two groups together, but difficulties arose immediately over the question of the Algerian Provisional Government's participation at the conference. The two Casablanca states insisted that the Algerian Provisional Government be invited, while the two Brazzaville states objected to this request on the grounds that Algeria was not yet an independent state<sup>(20)</sup>. As a

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(19) Ibid p.124

(20) At Monrovia, the Brazzaville Group joined, with a majority of the English-speaking states, to establish the Monrovia Association. This meeting was the largest gathering of African states ever to have taken place and it was considered an important landmark in the pattern of African power bloc policies.

result, the two Casablanca states withdrew as co-sponsors and charged the Brazzaville states of being directed by their former colonial power on the issue of the Algerian Provisional Government's participation. Some states attempted to find a compromise, but their endeavours were unsuccessful. Under these circumstances, the remaining states decided to go ahead with their conference in the hope of establishing the first step towards the desirable goal of regional integration. The conference was attended by twenty-two of the twenty-seven then independent African states. It was agreed that all the independent African states were ipso facto eligible for membership of the conference and a number of liberation movements were admitted to the conference with observer status<sup>(21)</sup>. This meeting was the largest gathering of African states ever to have taken place and became known as the Monrovia group. The purposes of this group were to promote inter-African co-operation and give the participating states an opportunity to articulate their respective views concerning the legal structure of a regional organisation which the group aimed to establish. On the political issues of the day, the conference called upon France and the Algerian Provisional Government to conclude a cease-fire agreement leading to eventual independence for Algeria, and supported the UN actions in the Congo. It also adopted a number of resolutions to provide the machinery for political and economic co-operation to achieve unity for Africa.

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(21) Tharp, Paul A., Op. Cit, p.48

Moreover, it established a provisional secretariat which would be responsible for drawing up a draft charter of the proposed Inter-African and Malagasy organisation (IAMO) which would be submitted to the subsequent summit meeting of the group<sup>(22)</sup>. Thus, a committee of experts met in July 1961 at Dakar, Senegal, to elaborate the legal details of the draft charter which envisaged the principles of sovereign equality for all member states, respect for territorial integrity, inalienable right to political independence, non-interference in internal affairs, peaceful settlement of disputes and the promotion of co-operation among member states. Subsequently, the draft charter was submitted to and approved by the second summit meeting of the group held on January 25th, 1962 at Lagos, Nigeria<sup>(23)</sup>. Again, the Casablanca states decided to stay away because the Algerian Provisional Government had not been invited; in addition, Libya, Sudan and Tunisia boycotted the conference for the same reason. However, Congo-Leopoldville (Zaire) and Tanganyika were added to the ranks of the Monrovia group<sup>(24)</sup>. At all events, the most important activity of the Lagos Conference was the consideration of the draft charter for the proposed (IAMO) submitted by the committee of experts. It was also decided to endorse the proposed charter in principle and agree to transmit it to all

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(22) Sanders, AJGM, Op. Cit, p.108

(23) Ellas, T.O., The Charter of the Organisation of African Unity, AJIL, Volume 59, 1955, p.243

(24) Sanders, AJGM, Op. Cit, p.109

independent African states for comments. Moreover, the conference decided that foreign ministers were to meet in June 1962, again in Lagos, to consider the comments of independent African states, in order to harmonize the proposals in a revised draft<sup>(25)</sup>. Subsequently, the third conference of the Monrovia group held on December 23rd, 1962 at Lagos, Nigeria, was attended by sixteen states in an attempt to bridge the gap and reconcile the different approaches of the Monrovia-Casablanca groups. At the same time, the participating states signed the charter of the Inter-African and Malagasy Organisation.(IAMO) at the conclusion of their meeting. The attending states were unanimous in their desire to establish a loose-form of association based upon the principles of sovereign equality, respect for territorial integrity, the inalienable right to political independence, non-interference in internal affairs, peaceful settlement of disputes and the promotion of co-operation among member states. The consensus was also that inter-African organisation of economic and technical co-operation should take precedence over political union at this stage of evolution while a great part of the continent was still under foreign domination<sup>(26)</sup>. However, the Lagos Charter provided for three principal organs. The assembly of heads of state and government was designed as the supreme organ of the organisation which would decide upon the general policies and actions of the organisation.

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(25) Ellas, T.O., Op. Cit, p.244

(26) Ibid pp.243-244



The council of ministers,<sup>was</sup> charged with the responsibility of considering matters of common concern in the areas of co-operation in various fields of regional integration, and the third principal organ,<sup>was</sup> the general secretariat,<sup>was</sup> as<sup>designed</sup> the central administrative organ of the organisation. Finally, the charter envisaged a pledge by the contracting states to settle their disputes by peaceful means and to that end,<sup>then</sup> agreed to conclude a separate treaty for the establishment of a permanent conciliation commission to function in conformity with the provisions of the afore-said treaty which would be regarded as forming an integral part of the Lagos Charter<sup>(27)</sup>. Once again, the states of the Casablanca group also did not participate in this third conference of the Monrovia group for various reasons which vitiated the aim of the conference, of bringing about continental unity<sup>(28)</sup>. Therefore, the charter never came into force, but it was of more than academic value as it established an important blueprint for the subsequent charter of the Organisation of African Unity. It also enshrined the formation of a loose association of sovereign states and the adoption of a functional or gradual<sup>ist</sup> approach to regional integration. Thus, the functional approach towards the pursuit of limited goals provided the only realistic way of inter-African co-operation at this stage of contemporary African realities<sup>(29)</sup>. In fact, the Casablanca group also

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(27) Sanders, AJGM, Op. Cit, p.110

(28) Padelford, Norman J., The Organisation of African Unity, JIO, Volume 18, 1964, pp.521-522

(29) Ellas, T.O., Op. Cit, pp.244-245

followed a functional position and the fundamental differences that divided the two groups were merely the consequences of their different approaches towards the achievement of African unity. The Casablanca group put the emphasis on technical co-operation and political consultation rather than political federation. It was, therefore, possible to conceive of the two groups forging a common policy on the matter of African regional integration. It is worthwhile mentioning that the Monrovia states wisely kept the door open for the Casablanca group by modifying their relative political colournessness. They also adopted resolutions condemning apartheid and colonialism in Africa, whereby a dialogue could possibly be facilitated with the Casablanca group. Under these circumstances, the tension between the two groups had sharply declined towards the end of 1962 with Algeria's accession to independence and the lull in the Congo crisis<sup>(30)</sup>. Therefore, the time was ripe for reconciliation and thus, Tunisia offered to be the host of the proposed conference of all-African independent states if that was acceptable to the states of the Casablanca group<sup>(31)</sup>. But, Ethiopia, a non-member of either group, successfully initiated efforts to end the split on the African continent. It had previously succeeded in bringing the Brazzaville group, with a number of African moderate states, to the Monrovia conference of May 1961. Eventually, it had been agreed that Ethiopia should serve

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<sup>(30)</sup> Duncan, Patrick, Towards Unity in Africa, JFA, Volume 42, 1964, pp.267-275

<sup>(31)</sup> Ellas, T.O., Op. Cit, p.245

as the host of the unanimously recommended next summit conference of all independent African states, at which the Ethiopian Emperor in person, for the first time, participated in such a gathering of all the African People's Conference of Independent States<sup>(32)</sup>. The Addis Ababa Summit Conference of heads of state and government was preceded by a foreign ministers' meeting of thirty independent African states<sup>(33)</sup> from May 15th to 22nd, 1963 to prepare a detailed agenda for the summit conference. They also prepared a draft charter, based upon the Casablanca charter, the Lagos charter and an Ethiopian draft charter which drew heavily on a similar idea to that of the Organisation of American States<sup>(34)</sup>. The Ethiopian draft charter proposed the

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(32) Duncan, Patrick. Op. Cit. p.270

(33) Morocco and Togo did not participate in the summit conference. Nonetheless, both were signatories to the Addis Ababa Charter. The thirty independent African states attending at Addis Ababa were Algeria, Burundi, Cameroon, Central African Republic, Chad, Congo-Brazzaville, Congo-Leopoldville, Dahomey, Ethiopia, Gabon, Ghana, Guinea, Ivory Coast, Liberia, Libya, Madagascar, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Tanganyika, Tunisia, Uganda, United Arab Republic and Upper Volta.

(34) Wallerstein, Immanuel. The Early Years of the OAU: The Search for Organisational Pre-eminence, JIO, Volume 20 1966, pp.774-775

establishment of a loose association of states, but emphasised functional co-operation in various fields and ignored political unity. Thus, the foreign ministers meeting ended without reaching a definite agreement on the charter of the proposed regional organisation because of divergent views between the supporters of a loose confederation and the advocates of a federation of African states. Nonetheless, the summit conference of heads of states and governments took place on May 23rd 1963 where, the then Ethiopian Emperor (as host, delivered the keynote speech and submitted a draft charter for the proposed regional organisation which provided the guidelines for the summit meeting. Eventually, a charter of the Organisation of African Unity was adopted in response to the collective efforts of the participating states who had common interests in regional peace, security, liberty, economic co-operation and in finding African solutions to African disputes<sup>(35)</sup>. The legal structure of the Organisation of African Unity<sup>(36)</sup> was envisaged in the charter as a regional, international arrangement designed to effect a non-supra-national organisation of states. Its principles provided for respect of sovereignty, territorial integrity and political independence,

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(35) Duncan, Patrick. Op. Cit. pp.275-281

(36) The Organisation of African Unity is the name that was finally agreed upon for the organisation. The summit found it unnecessary to include the word Malagasy in the title and also recognised the confusion that the title "Organisation of African States" (OAS) would create with the Organisation of American States (OAS). Eventually, it was agreed that a distinct title, the Organisation of African Unity (OAU) should be adopted for the new Organisation.

non-interference in internal affairs, condemnation of subversive activity and colonialism and non-alignment in world affairs. The charter also reaffirmed the principles of the UN charter and the Universal Declaration of Human Rights, which provided a solid foundation for peaceful and positive co-operation among states in the world at large<sup>(37)</sup>. As a matter of fact, all independent African states and those that will attain independence are ipso facto eligible for membership in the new organisation, with the exception of the Republic of South Africa and the Government of Southern Rhodesia<sup>(38)</sup>. Thus, in spite of basic disagreement on a number of inter-African affairs, the independent African states maintained a facade of unity. A number of events had led towards the then existing disagreement. Morocco quarrelled with Tunisia over the latter's recognition of Mauritania's right to exist as a separate sovereign state<sup>(39)</sup> and Nigeria attained independence and challenged Ghana's claim to leadership. Another cause of dissension was the close ties of the French-speaking African states with their former power and the participation of their troops in combating the Algerian Front of National Liberation. Finally, the Congo crisis split the African states into two blocs. One supported the Gizenga government in Stanleyville while the other supported Kasavubu government in Leopoldville. But African states

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(37) Padelford, Norman J., Op. Cit, p.523

(38) Brownlie, Ian. Basic Document on African Affairs, The Clarendon Press, Oxford 1971, p.1.

(39) Thus, Morocco refused to attend the summit conference of Addis Ababa because of the presence of Mauritania, over which it then claimed sovereignty.

eventually realised that the secessionist province of Katanga was being used as a vehicle for neo-colonialist penetration of Africa. Therefore, all states on the continent approved the UN actions with a view to using force to bring about the termination of the secessionist regime in Katanga. Thus, the Congo crisis was one of the direct incentives that gave rise to the efforts at reconciliation between the various competing regional groupings. After realizing the danger, prompt efforts had been made which brought about a consensus among African states uniting them on the question of Pan-African movements, the eradication of remnants of colonialism, neo-colonialism and the preservation of the existing political system and frontiers on the African continent. Thus, the Addis Ababa Summit Conference was a landmark which united the diverging efforts of the Pan-African factions. Consequently, the conflicts between the moderates and the radicals came to an end. Thus, co-operation and compromise prevailed and the outcome of the Summit Conference was the adoption of a Charter of African Unity.

THE CHARTER OF THE OAU:

The preamble commences with "We the Heads of African States and Governments," and ends with the declaration that "We have agreed to the present Charter<sup>(1)</sup>." The Charter, therefore, is an international contractual instrument establishing the legal foundation of the organisation. The legal obligations derive from the principles of international law that states are bound by their consent and must implement (it) in good faith<sup>(2)</sup>. The preamble also emphasises the fundamental principles of the inalienable right of all peoples to self-determination, freedom, justice, equality and dignity, in order to promote co-operation among African peoples based on mutual understanding and transcending ethnic and national differences. The member states reiterate their responsibility to maintain a solid foundation for peace and security among them in order to safeguard their political independence, territorial integrity and to eradicate colonialism as well as neo-colonialism in all its forms. The preamble further states that the member states should unite henceforth in order to ensure the welfare, well-being of their peoples by establishing close links between them and strengthening common

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(1) The OAU Charter and Rules of Procedure, Published by the Division of Press and Information of the OAU General Secretariat, Addis Ababa, 1981, p.9

(2) A Short History of the OAU (Principles and Objectives), a Pamphlet Published by the General Secretariat of the OAU, Addis Ababa 1977, pp. 4-6

institutions. However, the present text reiterates [the confirmation of] the African states' faith that the Charter of the UN and the Universal Declaration of Human Rights provide a solid foundation for peaceful and positive co-operation among states in the world at large<sup>(3)</sup>.

The reference to the UN Charter <sup>implies</sup> denotes not merely the adherence of the member states to the principles of the UN Charter, but also the awareness of the African States of the need for international co-operation in practical terms. It is also possible that African leaders had in mind the necessity of bringing their organisation within the framework of Chapter VIII of the UN Charter which laid down the principles governing co-operation between the UN and regional arrangements<sup>(4)</sup>.

Article 2 of the OAU Charter sets out the purposes of the organisation, and paragraph (2) requires member states to co-ordinate and harmonize their general policies, particularly in the following fields:-

1. "political and diplomatic co-operation;
2. economic co-operation, including transport and communication;
3. educational and cultural co-operation;
4. health, sanitation and nutritional co-operation;
5. scientific and technical co-operation and co-operation for defence<sup>(5)</sup>."

The member states reinforce the aforesaid by stating in Article 3 their adherence to the following principles:-

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(3) Ellas, T.O., The Charter of the OAU, AJIL, Volume 59, 1965, pp.522-533

(4) Brownlie, Ian. Op. Cit, p.16

(5) The Charter of the OAU, Article II, p.10



1. "the sovereign equality of all member states;
2. non-interference in the internal affairs of states;
3. respect for the sovereignty and territorial integrity of each state and for its inalienable right to independent existence;
4. peaceful settlement of disputes by negotiation, mediation, conciliation or arbitration;
5. unreserved condemnation in all its forms, of political assassination as well as of subversive activities on the part of neighbouring states or any other states;
6. absolute dedication to the total emancipation of the African territories which are still dependent;
7. affirmation of a policy of non-alignment with regard to all blocs<sup>(6)</sup>."

In respect of the first principle of "the sovereign equality of all member states<sup>(7)</sup>" it is obvious that the same principle is enshrined in Article 2(1) of the UN Charter which provides that the UN is based upon the principle of sovereign equality<sup>(8)</sup>. The inclusion of the assurance of the principle of sovereign equality into the OAU Charter was deemed <sup>necessary</sup> ~~exigent~~ in order to reassure the smaller African states and to demonstrate the spirit of new solidarity and unity, despite the fact that, unlike the Organisation of American States, the OAU did not have a super power amongst its members.

This compares with recent practice in similar international instruments. The text of the Pacific Charter, signed at Manila on September 8th, 1954, contains a provision comparable to Article 3(1) of the OAU Charter which reads:

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(6) Ibid, Article III p.10

(7) Ibid, Article I p.10

(8) Goodrich, Leland M., et al., The Charter of the UN, Columbia University Press, New York 1969, p.23

"first, in accordance with the provision of the UN Charter, they uphold the principle of equal rights and self-determination of peoples and they will eventually strive by every peaceful means to promote self-government and to secure the independence of all countries whose peoples desire it and are able to undertake its responsibility<sup>(9)</sup>."

The Asian states which had recently won independence needed help, but they also feared to accept such assistance from the Western powers because they were afraid that that would become the start of Western domination. Therefore, the Pacific Charter laid great stress on sovereign equality in order to protect the Asian members from any attempt at domination by the European members. Thus, it would also seem that the stress on sovereign equality was also a confirmation that the legal structure of the OAU as a regional organisation was not intended to have a supra-national character<sup>(10)</sup>.

Regarding the second principle of Article 3 of the OAU Charter of non-interference in the internal affairs of member states, it is worthwhile to refer to its general adherence to the principle of the UN Charter enshrined in Article 2(7) prohibiting UN intervention in matters which are essentially within the domestic jurisdiction of any state<sup>(11)</sup>.

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(9) Whiteman, Marjorie M., Digest of International Law, Volume 5, 1963, Department of State Publication, Washington D.C., 1971, p.90

(10) Pandelford, Norman J., Op. Cit, p.528

(11) Ibid, p.529

Nonetheless, the UN has often asserted jurisdiction over an extremely wide range of matters, including those of Human Rights<sup>(12)</sup>. Thus, the UN Charter makes a distinction between obligations imposed upon the UN itself and those imposed upon its member states, but the OAU Charter only imposes the obligation of non-interference upon the member states and not upon the Organisation itself<sup>(13)</sup>. In this connection, the Charter of the Organisation of American States enshrines this principle in Article 15 which provides that "No state or group of states has the right to intervene directly or indirectly for any reason whatever in the internal or external affairs of any other states. The foregoing principle prohibits not only armed force but also other forms of interference or attempted threat against the personality of the state or against its political, economic and cultural elements<sup>(14)</sup>." Thus, the OAU Charter, unlike that of the Organisation of American States, models itself closely on the principle of the UN Charter. It is clear, however, that intervention in civil strife by the Organisation of American States is a delicate matter because in principle it is a matter of domestic jurisdiction of the states. In any event, international agreements impose upon states the obligation to refrain from threats to the peace, and respect the principles of self-defence of peoples and

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(12) Goodrich, Leland M., et al., The Charter of the UN and Documents, Columbia University Press, New York 1969, pp.60-61

(13) Kononu, Onyeonoro, Secession and the Right of Self-Determination: An OAU Dilemma, JMAS, Volume 12, 1974, p.371

(14) Whiteman, Marjorie, M., Op. Cit, p.463

human rights. Consequently, it would seem that the organisation of American States cannot evade its responsibility to interpret these obligations and to act, if investigation indicates that international peace or human rights are violated.

This principle is, however, the corollary of the principle of sovereign equality. Thus, it also emphasises its importance in paragraph (5) which obliges members to condemn unreservedly political assassination in all its forms as well as subversive activities on the part of neighbouring states<sup>(15)</sup>. It can be argued that the primary of the principle of non-interference is inherent in the sovereignty which the OAU Charter stresses heavily. However, since its inception, the OAU has been faced with the problem of how to handle regimes coming to power through illegal seizure of authority<sup>(16)</sup>.

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(15) Several African governments in the past made a number of charges against Ghana for political assassination, as well as of subversive activities against several African governments. At the Addis Ababa Summit Conference of May 23rd 1963, many African leaders were, therefore, determined that subversion should be condemned in very explicit terms.

(16) The coup d'etat in Togo was the first crisis that faced the OAU after being established. The new regime in Togo was, however, prevented from attending the inaugural conference because of the opposition of a number of members. The second Summit Conference debated a proposal expounded by a number of members to deny participatory legitimacy to the new regime in Ghana. The attempt failed, whereupon, a number of delegations walked out from the Summit. In February 1971, the sixteenth session of the Council of Ministers held in Addis Ababa debating the competing claims of representation of Uganda, in consequence of both the new regime and the deposed regime having sent delegations to the meeting. However, certain members backed the deposed delegation while others supported the new regime's delegation. The conference broke up without deliberating any item on its agenda, so neither of the delegations was seated at the meeting.

It is hard to draw a definite conclusion of interference by the OAU, but at any rate, those coups had been discussed in the forums of the organisation<sup>(17)</sup>. As far as the principle of non-interference is concerned, it is understood that interference in the internal affairs of member states is prohibited, but this is not applicable to South Africa which is one of the non-member states affected by the sixth principle of Article 3, that of "absolute dedication to total emancipation of the African territories which are still dependent."

The third principle is that of respect for sovereignty and territorial integrity of each state and for its inalienable right to independent existence<sup>(18)</sup>. This is one of the fundamental principles of the law of Nations by which a sovereign state is supreme within its own territorial domain where its citizens have the right to enjoy and use their territory without interference from outsiders. This obligation imposes the duty on every state itself to refrain, and its responsibility to prevent its agents and subjects<sup>1</sup> from committing<sup>2</sup> any act which constitutes a violation of another state's sovereignty and territorial integrity<sup>(19)</sup>. 8

It is clear that this is one of the fundamental principles of the UN Charter which is enshrined in Article 2(4), which reads as follows: "All members shall refrain in their international relations from the threat or

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(17) Polhemus, Higbe J., The OAU and Intra-System Conflict Management, 1963-68, unpublished Ph.D. Dissertation, Duke University 1971, p.70

(18) Once a state is in existence, it may claim the right to continue to exist because there is no right for a state to be born. Article 10 of the Covenant of the League of Nations provided protection for existing political independence, but it was not enforced, nor has the UN done more in this matter.

(19) Whiteman, Marjorie M., Op. Cit, pp. 183-184

use of force against the territorial integrity or political independence of any state or in any other manner inconsistent with the purpose of the UN<sup>(20)</sup>." This principle is equivalent to Article 7 of the Charter of the Organisation of American States which provides - "Every American State has the duty to respect the right enjoyed by every other state in accordance with international law<sup>(21)</sup>."

However, the OAU system designated no institution with particular powers in the matter of peace and war, equivalent to the UN Security Council, in which no privileged position has been given to the great powers of Africa. Accordingly, it is clearly understood that the African States deliberately determined to avert the emergence of any kind of hegemony, de facto or de jure, on the model of the Organisation of American States, where the United States of America plays a primary role. It also avoided the weighted voting formula at present in effect in the European Economic Community and in some of the UN Specialised Agencies, such as the International Monetary Fund (IMF) and International Finance Corporation (IFC). The OAU Charter endorsed the formula of one vote for one state and the supreme organ of the organisation is the Assembly of Heads of States and Governments with a two-thirds majority requirement to pass measures.

The fourth principle, that of the peaceful settlement of disputes by negotiation, mediation, conciliation or

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(20) Brownlie, Ian, Op. Cit, pp.3-4

(21) Whiteman, Marjorie M., Op. Cit. p.221

arbitration is the most essential of the seven principles set forth in the OAU Charter. The Charter further states in Article 19 that - "member states pledge to settle all disputes among themselves by peaceful means and to this end decides to establish a commission of mediation, conciliation and arbitration<sup>(22)</sup>." Article 3(4) of the OAU Charter is comparable to Article 33(1) of the UN Charter and imposes the same obligation upon the UN member states to settle all disputes among themselves by peaceful means. It reads as follows: "The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security shall first of all seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their own choice<sup>(23)</sup>." This article imposes on the member states of the OAU the duty to maintain peace and security in the continent at all costs. As the OAU is a regional organisation of the UN under the auspices of Chapter VIII, this does not bar extra-African agencies' involvement in African disputes, and leaves the way open for resort to the other regional arrangements, such as the League of Arab States and the Commonwealth. There is, however, no provision in the OAU Charter comparable to Article 20 of the Organisation of American States which

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(22) The Charter of the OAU, Op. Cit, p.14

(23) Brownlie, Ian, Basic Document in International Law (Second Edition) The Clarendon Press, Oxford 1981 p.12

provides for the submission of all disputes between American States to the peaceful procedures of the OAS before being referred to the Security Council of the UN. This article reads as follows: "All disputes which may arise between American States shall be submitted to the peaceful procedures set forth in this Charter before being referred to the Security Council of the UN<sup>(24)</sup>."

The African states discerned that the peace which they so badly needed <sup>was</sup> is in danger because of threats of border and frontier disputes between certain OAU members. Therefore, the initial undertaking of all member states is to observe the principle of peaceful settlement by negotiation, conciliation and arbitration provided in the OAU Charter. To this end the OAU member states endeavoured to adopt an additional Protocol of Mediation, Conciliation and Arbitration which provides for the establishment of a commission as the fourth principal institution of the organisation<sup>(25)</sup>..

The sixth principle is of a somewhat different character. It imposes on the organisation and the member states the duty of absolute dedication to the total emancipation of the African territories which are still dependent. In this connection, the UN Charter expresses in Article 1(2) inter alia, the principle "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination<sup>(26)</sup> of all peoples." Subsequently,

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(24) Polhemus, Higbe J., Op. Cit, p.74

(25) Padelford, Norman J., Op. Cit, p.322

(26) It has been held that self-determination applies to the peoples of non-self-governing territories while denying this right to the minorities living within the boundaries of a state. Consequently, self-determination by the initial instance is a question of international concern beyond the scope of domestic jurisdiction.



on December 14th, 1960, the General Assembly of the UN adopted the famous Resolution 1514 on the "Declaration on the Granting of Independence to Colonial Countries and Peoples<sup>(27)</sup>." The African representatives at the UN took an active part in the formulation of the UN General Assembly Resolution 1514 which set up a 17-member committee with a view to supervising the implementation of the 1960 declaration. The aforesaid resolution called upon all administering powers of non-self-governing territories to respond in good faith to the application and implementation of the declaration<sup>(28)</sup>. Under the terms of the declaration - "all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development<sup>(29)</sup>." To this end the OAU set up the Liberation Committee, with headquarters at Dar-es-Salaam. It is charged with the responsibility of providing and co-ordinating financial assistance for all African liberation movements which are still struggling for the political independence of their countries. In pursuance of the principle of absolute dedication to the total emancipation of African territories, the African representatives at the UN enthusiastically endeavour to secure the legitimacy of the armed struggle against the colonial powers in order to attain the legal recognition of liberation movements. Accordingly, the UN General Assembly adopted Resolution 2189 on December 13th, 1966,

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(27) Brownlie, Ian, Op. Cit, p.3.

(28) Krishnan, Maya, African States Practice Relating to Certain Issues of International Law, IYBIA, Volume XIV, 1965, pp.197-99

(29) Brownlie, Ian, Op. Cit, p.189

which recognised the legitimacy of the struggle of the peoples under colonial rule to exercise their right to self-determination and independence and urged all states to give material and moral assistance to national liberation movements in colonial territories<sup>(30)</sup>. The conclusion which could be drawn from the African stand on self-determination emphasised the demand of the African states for peoples' right to self-determination, aimed at the attainment of independence for African dependent territories. Under these circumstances, the right of self-determination is the right of the majority within an accepted territorial unit to exercise power. There is no such right as self-determination for the minorities that live within the political unit of an independent African state.

The last of the seven basic principles of the organisation is that of the affirmation of a policy of non-alignment with regard to all blocs. This principle is also articulated in the "Solemn Declaration on General Policy," which reads as follows: "In order to help reduce the tension between blocs, we have subscribed to the policy of non-alignment and to give meaning to this commitment, we have expressed our deep desire to see Africa rid itself of all foreign military bases and stand aloof from any military alliances and from the armaments race<sup>(31)</sup>."

In this connection, it is very difficult to claim that the OAU have developed an all-African foreign policy.

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(30) Yakemtchouk, Romain, The OAU and International Law: The OAU After Ten Years, Comparative Perspectives, edited by El-Ayouty, Yassin, Praeger Publishers, New York 1975, p.99

(31) The Solemn Declaration on General Policy, Published by the Division of Press and Information of the OAU General Secretariat, Addis Ababa, 1973, p.2.

It is obvious that the OAU member states do not have an identical foreign policy; nevertheless, they have sufficient points of common interest on a number of crucial questions to constitute a continental approach to international affairs. This approach is sometimes determined by pressure of the majority on unwilling states to make them accept the dominant view. For this reason, a number of heads of state chose to stay away from OAU summit meetings for long periods, but they cannot afford to take the political risk of leaving the organisation.

Article 4 provides that "each independent sovereign state shall be entitled to become a member of the organisation<sup>(32)</sup>." Accordingly, the aforesaid article excludes all African liberation movements as well as African territories still under colonial domination. The Republic of South Africa would be excluded from membership of the organisation in consequence of its apartheid policy which is in absolute conflict with the aims and purposes of the OAU Charter. Thus, the illegal government in Southern Rhodesia was also banned from the right of adherence to the OAU Charter<sup>(33)</sup>. All independent sovereign African states that duly signed and ratified the Charter are original members in conformity with Article 24(1) which stipulates that "....the Charter shall be open for signature to all independent sovereign African states and shall be ratified

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(32) The Charter of the OAU, Op. Cit. p.11

(33) Southern Rhodesia was debarred from adherence as a consequence of its illegal status and its policies and institutionalised racial discrimination. There is nothing in the Charter of the OAU to prevent a Caucasian or a member of any other racial group from representing an African state.

by the signatory states in accordance with their respective constitutional process<sup>(34)</sup>." Membership of the organisation may also be acquired by adhesion and accession to the Charter. According to Article 28(1) - "any independent sovereign African state may at any time notify the Secretary General of its intention to adhere or accede to this Charter<sup>(35)</sup>." However, Article 28(2) further states ".... the Secretary General shall on receipt of such notification, communicate a copy of it to all the member states. The decision of each member state shall be transmitted to the Secretary General who shall upon receipt of the required number of votes, communicate the decision to the state concerned<sup>(36)</sup>." It should be noted that under this procedure it is simple enough to achieve admission to the organisation without the need for the applicant state to wait for the next meeting of either the Assembly of Heads of State and Government or the Council of Ministers.

In any event, the procedures for the termination of membership in the OAU is also very easy. Article 32 provides - "any state which desires to renounce its membership shall forward a written notification to the Secretary General. At the end of one year from the date of such notification, if not withdrawn, the Charter shall cease to apply with respect to the renouncing state, which shall thereby cease to belong to the organisation<sup>(37)</sup>." It is clear that the

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(34) The Charter of the OAU, Op. Cit, pp.15-16

(35) Ibid p.16

(36) Ibid p.17

(37) Ibid p.17

reason for the stipulation of a "cooling off" period between the submission of the notification and the cessation of membership is to give both the organisation itself and the renouncing state time to adjust all pending obligations and rights.

It is worthwhile mentioning that the Charter contains no provision for collective security defence in case of an external aggression against any member state, or when a member state has recourse to war in the effort to solve a dispute with another member state, or to subvert the political independence of its neighbours. Even so, there is no provision for partial or comprehensive sanction or equivalent to Article 6 of the UN Charter which provides - "a member of the UN which has persistently violated the Principles contained in the present Charter may be expelled from the organisation by the General Assembly upon the recommendation of the Security Council<sup>(38)</sup>."

It has already been mentioned that the OAU Charter is based upon the principle of sovereign equality of all member states. As far as the question of equal rights is concerned, there is an apparent doubt concerning the question of equal duties. It is obvious that this is more so in theory than it is in practice. Accordingly, Article 23 provides - "the budget of the organisation prepared by the Secretary General, shall be approved by the Council of Ministers. The budget shall be provided by contributions from member states in accordance with the scale of assessment of the UN, provided, however, that no member state

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(38) Brownlie, Ian, Op. Cit, p.5

shall be assessed an amount exceeding twenty percent of the yearly regular budget of the organisation. The member states agree to pay their respective contributions regularly<sup>(39)</sup>." Thus, Article 23 of the OAU Charter, therefore disregards the principle of absolute equality in its requirement for member states to contribute to the budget on the same basis as that of the UN which is related to unequal incomes and is not allocated on the basis of equality. The only limitation to a membership contribution is the provision that a member state may not be assessed an amount exceeding twenty percent of the annual estimate of the regular budget of the organisation. Consequently, the provisions of Article 23 are in sharp contrast to that in Article 17(2) of the UN Charter which provide - "the expenses of the organisation shall be borne by the member as apportioned by the General Assembly<sup>(40)</sup>."

It is worthwhile to note that the exact formula for apportionment could only be found in the scale of assessment recommended by the Committee on Contribution, subject to the approval of the Preparatory Commission. According to the recommended scale of assessment, the committee is required to advise the UN General Assembly on the apportionment to be fixed for new members. As far as a minimum contribution is concerned, the UN General Assembly has determined this at 0.02 percent of the current budget estimate. In any event, revision of scales is the annual task of the Committee on Contribution.

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(39) The Charter of the OAU, Op. Cit, p.15

(40) Brownlie, Ian, Op. Cit, p.8

The UN Assembly's Rules of Procedure provide for revision every three years except in the case of an appeal by a member state for a change of assessment<sup>(41)</sup> or action to be taken in conformity with Article 19 of the UN Charter<sup>(42)</sup>.

It should also be noted that there is no OAU provision equivalent to Article 19 of the UN Charter which allows the suspension of voting rights in the UN General Assembly of those states which are in arrears with their financial contributions to the organisation. There are a number of the OAU member states who are in arrears of payment of their assessed contributions and therefore, the entire organisation is caught in financial problems.

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(41) Bowett, D.W., The Law of International Institutions Stevens & Sons, London 1975, pp.370-371

(42) Brownlie, Ian, Op. Cit, p.8

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THE INTERNAL STRUCTURE OF THE OAU

Article 7 of the OAU Charter provides that

"....the Organisation shall accomplish its purposes through the following principal institutions: -

1. the Assembly of Heads of State and Government;
2. the Council of Ministers;
3. the General Secretariat;
4. the Commission of Mediation, Conciliation and Arbitration<sup>(1)</sup>."

The principal institutions are clearly distinct from the specialised commissions of the organisation which are provided for in Article 20 of the OAU Charter.

The Assembly of Heads of State and Government:

According to Article 8, it is provided that -

"the Assembly of Heads of State and Government shall be the supreme organ of the organisation. It shall, subject to the provisions of the Charter, discuss matters of common interest to Africa with a view to co-ordinating and harmonizing the general policy of the organisation. It may, in addition, review the structure, functions and acts of all the organs and any specified agencies which may be created in accordance with the present Charter<sup>(2)</sup>."

In virtue of the above-mentioned article the Assembly of Heads of State and Government is the supreme organ of the organisation. It consists of the Heads of State or Government, or their duly accredited representatives<sup>(3)</sup>

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(1) OAU Charter and Rules of Procedures, Op. Cit, Article VII, pp.11-12

(2) Ibid, Article VIII p.12

(3) Ibid, Rule 2, p.42



The Assembly meets at least once a year in ordinary session, but it may meet in extraordinary session at the request of any member state upon approval by a two-thirds majority of the membership<sup>(4)</sup>. The place of meeting should generally be decided by a simple majority<sup>(5)</sup>, but at the second ordinary session of the Assembly, it was decided that all future meetings should be held in Addis Ababa<sup>(6)</sup>.

The Assembly's meeting requires a quorum of two-thirds of the total membership, whether the meeting is an ordinary or extraordinary session, before any debate can take place<sup>(7)</sup>. Each member has one vote in the Assembly where all resolutions and decisions shall be determined by a two-thirds majority of the member states. Questions of procedure require a simple majority only<sup>(8)</sup>. In this connection, it is necessary to distinguish between resolutions and decisions. Neither the Charter nor the Rules of Procedure clarify the precise nature of either.

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(4) Ibid, Rule 5, pp.42-43

(5) Padelford, Norman J., Op. Cit, p.323

(6) The first ordinary session of the Assembly accepted Nkrumah's invitation to hold the second ordinary session of the Assembly of Heads of State and Government in Accra. This caused the problem of dealing with hostile activities against a number of French-speaking states by Nkrumah's regime. Consequently, those states accused the Ghanaian government of harbouring dissident political groups from their respective countries and of encouraging subversive activities. Despite conciliatory efforts made by the Council of Ministers at a special session, eight states (Ivory Coast, Niger, Upper Volta, Dahomey, Congo-Kinshassa, Burundi and Senegal) were absent from the Accra meeting.

(7) OAU Charter and Rules of Procedures, Rule 14, Op. Cit, p.44

(8) Ibid, Rule 24, 25 and 26, p.47

It is worthwhile to mention<sup>ing</sup> that a resolution is a consequence of a decision, but that not all decisions naturally take the form of a resolution. Legally, both constitute the same sort of obligation. It should be noted that all decisions in conformity with Rule 26 require a simple majority of all members of the organisation. The only decisions that require a two-thirds majority of the quorate assembly in order to be acted upon, are those concerned with amendments to the Charter and the Rules of Procedure, the appointments of the Secretary General and his assistants, as well as those concerning budgetary matters. However, it is worthwhile mentioning that in the context of the Charter, resolutions should be recommended to the member states of the organisation in conformity with recommendations adopted by the UN General Assembly<sup>(9)</sup>. This conclusion could be drawn from the principles of non-interference and sovereign equality which the OAU Charter stresses heavily. Moreover, the OAU Charter neither established an organ with disciplinary powers in order to enforce compliance with the OAU resolutions, nor allowed the expulsion of a member which had persistently violated such resolutions<sup>(10)</sup>. The Assembly's agenda is prepared by the Council of Ministers from a provisional draft submitted by the Secretary General<sup>(11)</sup>. It has become customary for the head of the host government to be

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(9) Okoye, Felix Chuks, Op. Cit, p.132

(10) Polhemus, Higbie J., Op. Cit, p.72

(11) OAU Charter and Rules of Procedures Rule 11, Op. Cit, p.44

elected as the Assembly's Chairman along with eight vice-Chairmen<sup>(12)</sup>. The Assembly's powers to debate, deliberate and adopt resolutions on any matters of common concern to Africa are extremely broad. The obvious limitation to its power is that its resolutions legally take the form of a recommendation to the independently sovereign member states<sup>(13)</sup>. The Assembly is not specifically charged with the settlement of regional disputes but as the supreme organ of the OAU, it has inevitably become involved in the settlement of inter-member disputes through a variety of procedures and techniques. By and large the Assembly has provided a forum for negotiation between the member states in dispute. In practice it has become a permanent organ of conciliation, mediation and good office, and is usually relied upon by the Council of Ministers to implement these procedures. Sometimes, ad hoc commissions are established to carry out such functions. The predominance of the Assembly of Heads of State and Government in the settlement of African disputes, is especially characteristic of developing states whose rules tend to be personal. Consequently, the heads of state or government are in a position to commit their countries to a specific international obligation. Basically, the Assembly's approach to African disputes is that it favours conciliation between the parties, rather than adjudication of their claims. This could be

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(12) Markakis, John, The OAU: A Progress Report, JMAS, Volume 41, 1966, p.150

(13) Meyers, David, International Conflict Management by the OAU, JIO, Volume 28, 1974, p.348

explained on the following grounds: Firstly, the OAU's fundamental policy is seeking to preserve solidarity and unity among its member states. Such a policy is no more than a consequence of the inherent nature of some regional arrangements. Secondly, the Assembly's emphasis on conciliation resulted from its policy of giving precedence to the preservation of solidarity among its members. It should be noted, however, that the Assembly has made use of the techniques of conciliation, mediation and good offices in dealing with inter-member disputes. It has seldom resorted to them on the other hand, in disputes involving members and non-members. Here the OAU always acted in support of its member states rather than attempting to settle the question between the disputant parties. The nature of the OAU intervention in that context is that of a regional system against an external threat, rather than a regional procedure for the settlement of disputes.

The Council of Ministers:

According to Article 12(1) of the AOU Charter, it is provided that "the Council of Ministers shall consist of Foreign Ministers or such other Ministers as are designated by the government of member states<sup>(14)</sup>." With reference to the aforementioned phrase "....such other ministers as are designated by the government of member states" this accounts for the name "Council of Ministers" and not the "Council of Foreign Ministers." The composition of this

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(14) The OAU Charter and Rules of Procedures Op. Cit, p.13

organ is clearly flexible in order to allow member states to designate any minister to represent them as circumstances may require<sup>(15)</sup>. Article 12(2) provides that "the Council of Ministers shall meet at least twice a year. When requested by any member state and approved by two-thirds of all member states, it shall meet in extraordinary session<sup>(16)</sup>." The reason that the Council is required to meet at least twice a year is given in Rule 6 (Rules of Procedure of the Council of Ministers) .... "at its ordinary annual session which shall be held in February each year, it shall consider and approve, inter alia, the programme and budget of the organisation for the next fiscal year<sup>(17)</sup>," whilst the other ordinary annual session which shall be held in August, shall be devoted to the preparation of the Assembly's annual summit conference of Heads of State and Government, and is usually held at the same place where the summit conference is taking place. The Council's meeting requires a quorum of a two-thirds majority of the total membership whether the meeting is an ordinary or extraordinary session before any debates can be begun<sup>(18)</sup>.

It is worth mentioning that the organisation of an extraordinary session is slightly different from those of ordinary sessions. The bureau is elected at the preceding ordinary session and its term of office continues until the commencement of the forthcoming ordinary session.

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(15) Ellas, T.O., Op. Cit, p.245

(16) OAU Charter and Rules of Procedures, Rule 12, Op. Cit, p.13

(17) Ellas, T.O., Op. Cit, p.246

(18) OAU Charter and Rules of Procedures, Rule 13, Op. Cit, p.35

Rule 17 provides that "....the agenda of an extraordinary session shall comprise only items submitted for consideration in the request for convening the extraordinary session<sup>(19)</sup>." Nevertheless, the Council has adopted a flexible approach to the limitation on agenda items of its extraordinary sessions<sup>(20)</sup>.

In conformity with Rule 9, all meetings of the Council shall be held in private, unless it decides otherwise by a simple majority. According to Rule 29, all resolutions of the Council of Ministers shall be determined by a simple majority whilst no distinction is made between substantive and procedural questions. The Council's relationship with the Assembly is defined by Article 13 of the OAU Charter, which reads as follows - "the Council of Ministers shall be responsible to the Assembly of Heads of State and Government. It shall be entrusted with the responsibility of preparing conferences of the Assembly...<sup>(21)</sup>." "It shall take cognisance of any matter referred to it by the Assembly. It shall be entrusted with the implementation of the decisions of the Assembly of Heads of State and Government.

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(19) Ibid, Rule 17, p.35

(20) For instance, the second extraordinary session of the Council held in Dar-es-Salaam, February 12th 1964, to consider an African settlement to the situations arising from army mutinies in Tanzania, Kenya and Uganda, the Council at the same time debating an additional item on its agenda concerning the border disputes between Somalia-Kenya and Ethiopia. But, the Ghanaian proposal was rejected on the grounds that the said proposal did not inscribe on the session's agenda.

(21) OAU Charter and Rules of Procedures, Article 13, p.13

It shall co-ordinate Inter-African co-operation in accordance with the instructions of the Assembly and in conformity with Article 11(2) of the present Charter<sup>(21)</sup>." Moreover, the Council is given competence by Article 22 to approve the Regulations governing the specialised Commissions and by Article 23 to approve the budget of the organisation prepared by the Secretary General.

The Council is given a supervisory role over the organs that have actual or potential powers to implement policy. These are the Commission of Mediation, Conciliation and Arbitration, the General Secretariat and various Specialised Commissions. It has already been mentioned that the Assembly of Heads of State and Government are the decision-making organ, but in practice, the Council makes decisions on a wide variety of matters, some of great importance<sup>(22)</sup>. As far as the Council jurisdiction are concerned, it has been established in practice and theory that the Council's resolutions are not binding upon member states unless they are approved by the Assembly<sup>(23)</sup>.

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(22) For instance, the decision of November 11th, 1965 to respond to the Rhodesian unilateral declaration of independence, the Council decided by an overwhelming majority that if Great Britain did not take the appropriate measures to restore law and order in Rhodesia, and subsequently prepare the way for majority rule by December 15th, 1965, the OAU member states would sever diplomatic relationship with the UK.

(23) By December 15th, only nine member states broke their diplomatic ties with the UK. These were the United Arab Republic, Algeria, Sudan, Mauritania, Ghana, Guinea, Mali, Congo (Brazzaville) and Tanzania. Subsequently, at the second session of the Assembly of Heads of State and Government, the Liberian President did question authority being exceeded by the Council but also went beyond that conclusion. He stated that "...the Liberian Government's views that the Foreign Ministers who met in Addis Ababa exceeded the scope of their authority. No Foreign Minister on the Liberian political level would direct a breach of diplomatic relations between Liberia and any foreign government. This can only be done by the President of Liberia, generally in consultation with the Cabinet and Legislature. Therefore, I consider the act of the Foreign Ministers ultra vires and void ab initio. This procedure and condition imposed by the resolution I consider to be harsh, unreasonable and impracticable."  
(Polhemus, Higbie, J., Op. Cit., p.96)

It has been a most active organ within the OAU system in settling regional disputes. It has already been mentioned that neither the Assembly nor the Council are specifically charged with the settlement of regional disputes, but as far as the Council is concerned, this competence would be assumed under Article 2(9) of the OAU Charter.

The Council has assumed its immediate role to respond with extraordinary sessions in case of emergencies and to promote amicable settlement of regional disputes<sup>(24)</sup>. Its most effective technique in such emergencies is to have a ready meeting place for all concerned parties and a forum for a swift exchange of opinion between the OAU member states in order to promote a mutually acceptable solution to the issue in dispute. The Council usually pursued the procedure of meeting the concerned parties in a dispute and subsequently adopted a draft resolution reflecting the consensus among member states. The Council has always used the technique of setting up an ad hoc commission entrusted with the dual function of fact-finding and conciliation. Such a function involved the investigation of the issue in dispute between the parties and simultaneously endeavoured to bring about a mutually acceptable solution. This, for instance, was envisaged in the OAU missions established in connection with the Algerian-Moroccan dispute in 1963, the second Congo

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(24)

Markakis, John, Op. Cit, p.148



crisis in 1964 and the Ethiopia and Kenya-Somalia boundary disputes. In a number of situations, however, conflicting interests and political antagonisms prevailing among the member states impeded meaningful decisions from being taken<sup>(25)</sup>.

The General Secretariat:

Article 16 of the OAU Charter provides that "...there shall be a Secretary General of the organisation, who shall be appointed by the Assembly of Heads of State and Government. The Secretary General shall direct the affairs of the Secretariat<sup>(26)</sup>." The Secretariat is located in Addis Ababa as the permanent organ of the organisation headed by the Secretary General. In conformity with Article 17, the Secretary General shall be assisted by "...one or more Assistant Secretary General of the organisation, who shall be appointed by the Assembly of Heads of State and Government<sup>(27)</sup>." It would appear from the aforesaid articles that the Council of Ministers are not competent to consider nomination for the Secretary General and his Assistants, or even to make recommendation to the Assembly of Heads of State and Government on this particular matter<sup>(28)</sup>.

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(25) The meeting of the Council on March 3rd, 1966 was indefinitely adjourned in consequence of the walkout by the delegations of the United Arab Republic, Algeria, Mali, Tanzania, Somalia, Kenya and Congo (Brazzaville). The reasons given for the walkout were varied. Some posed the objections to participation of the Ghanaian new regime's delegation; some mentioned that the OAU attitude towards the situation in Rhodesia was too soft.

(26) OAU Charter and Rules of Procedures, Op. Cit, pp.13-14

(27) Ibid p.14

(28) There was a considerable debate on the question of the Secretary General and his assistants, during the first ordinary session of the Council of Ministers held at Dakar in August 1963, but no decision was taken. Subsequently, the appointment of the first Secretary General and his assistants was made by the Assembly of Heads of State and Government at its first ordinary session which took place in Cairo in July 1964.

As has already been seen, the OAU Charter only referred to the administrative and budgetary functions of the Secretary General, such as drawing up the budget of the organisation, communicating applications of intent to adhere to the Charter, receiving notification of intent to withdraw from the organisation and processing proposed amendments to the Charter requested by member states<sup>(29)</sup>. The other aspects of his functions are defined in the internal regulations of the General Secretariat which were drawn up by the Council of Ministers at its first meeting. According to Rule 1, the Secretary General "....shall carry out the functions assigned to [him] by the Charter of the organisation, those that might be specified in other treaties and agreements among the member states and those that are established in these regulations<sup>(30)</sup>." In accordance with Rule 2, the Secretary General is also responsible generally for "....supervising the implementation of decisions of the Council of Ministers concerning all economic, social, legal and cultural exchanges of member states<sup>(31)</sup>." In a provision closely patterned after Article 100 of the UN Charter, Article 18 of the OAU Charter provides "....in the performance of their duties the Secretary General and the staff shall not seek or receive instructions from any government or from any other authority external to the organisation. They shall refrain from any action which might reflect on their position as international officials responsible only to the organisation.

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(29) OAU Charter and Rules of Procedures, Articles 23, 28, 32 and 33, Op. Cit, p.16-18

(30) Ibid p.20

(31) Ibid p.20

Each member of the organisation undertakes to respect the exclusive character of the responsibilities of the Secretary General and the staff and not to seek to influence them in the discharge of their responsibilities<sup>(32)</sup>. However, the Secretary General is directly responsible to the Council of Ministers for the adequate discharge of all duties assigned to him<sup>(33)</sup>. In addition to these specific powers given to the Secretary General, the latter is also authorized by Rule 10 to attend the meetings of the Assembly, the Council of Ministers and the Specialised Commissions. In this connection, the Secretary General is required to submit at every ordinary session of the above-mentioned organs, a report on the work concerning each<sup>(34)</sup>. As a matter of fact, it clearly appears from the OAU Charter and the Functions and Regulations of the General Secretariat that the Secretary General's contribution to the settlement of African regional disputes has been severely limited. The Secretary General's authority was progressively weakened during the drafting of the OAU Charter in which there was an article that would have allowed him to initiate action in case of threats to the peace, this was struck from the draft documents<sup>(35)</sup>. Thus, could be attributed to the deep cleavage among the African states which eventually affected the influence of the post of OAU Secretary Generalship. The cleavage reflects such basic factors as British or French background and the differences between Arab and non-Arab cultures<sup>(36)</sup>.

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(32) Ibid p.14

(33) Ibid p.22

(34) Ibid p.22

(35) Polhemus, Higbie J., Op. Cit, p.98

(36) Legum, Colin, the OAU Success or Failure, JIA, Volume 51 1975, pp.208-210

The other divisions stem from differing foreign and domestic orientations. The divisions have been institutionalized in trans-regional organisations such as the Arab League and the Commonwealth of Nations<sup>(37)</sup>. Moreover, the other divisions were institutionalized in African sub-regional organisations such as the Casablanca Group, the Brazzaville Group and the Monrovia Group<sup>(38)</sup>. At any rate, these cleavages have not completely separated African sub-regional groups even at times of the culmination of divisions. There have always been some non-aligned states avail themselves to provide the vehicle of mediation between opposing groups. The agreement on the site of the OAU headquarters and the election of the Secretary General could largely be explained in terms of Africa's major cleavages<sup>(39)</sup>. In the years preceding the establishment of the OAU, the major cleavage between African states involved their attitude towards the Algerian War of Independence and their support of different factions in the first Congolese War. These divisions were institutionalized in the rival sub-regional organisations established at Casablanca, Brazzaville and Monrovia. In 1963, Ethiopia, a non-member of any of the sub-regional organisations, successfully initiated efforts to end these splits on the African continent. Ethiopian diplomacy succeeded in bringing the Brazzaville Group, with a number of moderate states, to the Monrovia Conference. Subsequently,

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(37) Higgins Roselyn, The Commonwealth Secretary General's Limits of Leadership, JIA, Volume 55, 1979, pp.67-71

(38) Andemicael Berhanykum, The OAU and the UN, Africana Publishing Company, New York 1976, p.10

(39) Polhemus Higbe James, The Provisional Secretariat of the OAU, JMAS, Volume 12 1974, pp.287-294

the Guinea President's efforts succeeded in convincing the leaders of the Casablanca group to participate at the Addis Ababa Summit Conference and, together with all other African states, to establish the OAU<sup>(40)</sup>.

Similarly, sub-regional cleavages have determined the nationality of the Secretary General. In 1964, the Guinean candidate for the post of the OAU Secretary General was acceptable to both radical and moderate African states as a reward for its president's mediatory role<sup>(41)</sup>. The two subsequent incumbents had come from the Cameroon, a country with a dual religious and colonial heritage. The Cameroon are a federation of ex-British and ex-French territories. Its candidates are bilingual and potentially useful in bridging the gaps between Anglophone and Francophone. In addition, the Cameroon federation is predominantly Muslim. This condition may make its candidate acceptable to both Arab and non-Arab OAU member states<sup>(42)</sup>.

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(40) Sanders, AJGM, Op. Cit, pp.117-120

(41) Mr. Diallo Telli, the Guinean Ambassador to the UN was elected in 1964 as the organisation's first Secretary General and served two terms in office.

(42) In 1972, Mr. Neo Ekangaki of Cameroon was elected the Organisation's second Secretary General and served two years in office. He had been Minister of Labour and Social Welfare in the Cameroon. In 1974, efforts were made to choose a successor to Mr. Neo Ekangaki and again, it was the Cameroon candidate whose application secured the unique distinction of being elected as a compromise candidate acceptable to all members because of their polarised positions. The election was contested by Somalia's Foreign Minister, supported by the Arab States and French-speaking member states, and Zambia's Foreign Minister, supported by Ethiopia and the English-speaking states. After twenty deadlocked ballots, the Cameroon President was asked to furnish a candidate. He nominated Mr. William Eleki, an experienced politician and former Cabinet Minister who was then unanimously elected as the Organisation's third Secretary General. The current Secretary General is Mr. Eden Kodjo of Togo, elected in 1978. He was Togo's Foreign Minister. Previously, he was President of the West African Monetary Union and played a prominent role in promoting Afro-Arab co-operation.

The severe divisions among the African states will probably continue to limit the number of countries that can furnish candidates for the post of OAU Secretary General, whose application must secure the required two-thirds of the Assembly of Heads of State and Government<sup>(43)</sup>. In August 1964, the Assembly of Heads of State and Government elected the first Secretary General who regularly participates in the deliberations of all organs of the OAU. The Secretary General has used his report to initiate debates on controversial problems which he felt the Assembly and the Council of Ministers might endeavour to avert<sup>(44)</sup>. As the head of the OAU, the Secretary General has become a spokesman for the organisation. On a number of occasions, the Secretary General was entrusted by the Assembly or the Council of Ministers, with powers which have the nature of executive functions. Consequently, the representatives of the member states endeavoured to constrain those initiatives and reminded the Secretary General of the limit of his authority<sup>(45)</sup>. The Secretary General's inability

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(43) Meyers David, the OAU's Administrative Secretary General, JIO, Volume 30 1976 pp.515-520

(44) For instance, the report submitted to the Assembly in 1967, called attention to the occupation of Egyptian Sinai territories by Israel, the Civil War in Nigeria and the Rebellion of Mercenaries in Zaire. All these were issues which some member states tried to keep off the Conference's agenda.

(45) For instance, in November 1965, the Heads of State entrusted the Secretary General with an initiative to establish contact with the UN. However, at the next session of the Assembly, the Secretary General was reproved for having signed the Agreement with the UN Secretary General. In 1974, a similar set of circumstances, led to the resignation of the Secretary General, Mr. Neo Ekangaki for having signed an agreement with the British Multinational Lohnro, as the OAU's advisor, on how to assist African states hit by the oil crisis after the 1973 War between the Arab States and Israel.

to recruit the personnel serving in the Secretariat General has also limited his influence. The Assistant Secretaries General, each of whom heads a department within the Secretariat, are also elected by the Assembly of Heads of State and Government<sup>(46)</sup>. Nomination for these posts must be on the principle of geographic, linguistic and political equilibrium<sup>(47)</sup>. Under these circumstances, the Secretary General has been unable to impose control over the Secretariat's personnel from the very moment of establishment<sup>(48)</sup>.

However, the continued reluctance of the African states to provide the General Secretariat with sufficient material resources also limits the potential influence of the Secretary General. The limited financial contributions allocated for the Secretariat have restricted the Secretary General's activities for providing services to the meetings of the OAU organs. The OAU also lacks adequate numbers of professional staff. Throughout its existence, the OAU Secretariat has had great difficulties in recruiting well-qualified Africans because such citizens are in considerable demand by their own governments<sup>(49)</sup>. In addition to the

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(46) The current Assistant Secretaries General are Mr. Peter Onu (Nigeria), Mr. Chimuka (Zambia), Mr. D. Murego (Rwanda), Mr. Paul Etiang (Uganda) and Mr. Nouredin Djoudi (Algeria) representing Africa's five regions.

(47) African Research Bulletin, Volume 15, No.9, October 15th 1978, p.4978

(48) There has been considerable disagreement and disputes between the Secretary General and the Executive Secretary of the Liberation Committee. Despite the decisions of the Assembly and the Council of Ministers that the Liberation Committee's Secretariat is responsible to the OAU Secretary General, the Liberation Committee's Secretariat is independently financed, and its Executive Secretary is appointed by the Tanzanian President.

(49) Sanders AJGM, Op. Cit, p.118

aforesaid limitations on the Secretary General's role, the latter does not possess the unique prominence of the UN Secretary General who is usually perceived as the primary representative of the UN. The OAU Secretary General has rivals each year, one being the Chairman of the Assembly of Heads of State who issues statements on behalf of the OAU<sup>(50)</sup>. Other rivals for prominence are the Secretary General of the Commonwealth<sup>(51)</sup> and the Secretary General of the Arab League, whose prestige has been increased by his successes in the settlement of Arab regional disputes<sup>(52)</sup>. Thus, the OAU practice is to appoint one or more of the African Heads of State to lead efforts to initiate the peaceful settlement of African regional disputes, the OAU Secretary General has never been the mediator in any major African dispute and is unlikely to be so in future conflicts. In addition to the aforesaid practice, the OAU response to the settlement of African regional disputes has often been to refer such disputes to an ad hoc committee representing the diversity of views within the organisation. These committees either postpone difficult decisions, or attempt to reconcile the conflicting viewpoints. This led to severe handicap and inability of the OAU to find an African solution to the Civil War in Chad and in the Western Sahara<sup>(53)</sup>.

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(50) Meyer David, Op. Cit, p.516

(51) Higgins Roselyn, Op. Cit, p.68

(52) Bakhashab Omar, A., The Legal Structure of the Arab League, unpublished LL.M. Dissertation, Glasgow University 1979, p.96

(53) African Research Bulletin, Volume 18, July 15th 1981, p.6067



It is apparent that legal institutional restraints supplemented by suspicion of the incumbent's activities have been the predominant causes <sup>of</sup> for the powerless position of the OAU Secretary General. The Office was designated as a weak, non-political institution and the incumbent's efforts to expand his authority have been mistrusted and, in general, rebuffed by the member states. The conclusion which could be drawn from this analysis is that the OAU Office may be compared to the similar Office of the League of Nations, conceived as an International Office of high level civil servants, set up to implement instructions rather than to act as a guiding hand for the Organisation (54).

Despite all these facts, the OAU Secretary General has travelled widely and endeavoured to involve himself in numerous matters, for which he can be given credit and respect. He has regularly visited the leaders of member states involved in disputes, to remind them of their obligations under the OAU Charter and to serve as a mediator between the disputants. The time during which the Secretary General was prominently active, was the Nigerian Civil War and the Second Congo crisis. On a number of African conflicts he has issued public calls for a peaceful settlement within the context of the OAU Charter. He has occasionally and privately lent his good offices to the heads of member states in dispute, with a view to achieving mutually acceptable solutions to African problems. However, a practice has developed according to which the

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(54) Polhemus Higbie, J., Op. Cit, p.107

Secretary General or his representatives participate in the drafting of the Assembly and the Council of Ministers' resolutions on the proposals submitted to the parties to a dispute. A further role of the Secretary General is the submission at every ordinary session of either the Assembly or the Council of Ministers, of a report on the work of the Organisation. These reports refer to the measures undertaken for the implementation of the Assembly and the Council's resolutions, and frequently contain proposals relating to various aspects of regional disputes. The Secretary General of the OAU has exercised his general power to act upon his own initiative in the absence of any specific mandate, whenever such action seemed warranted in the interests of the Organisation. They, therefore, constitute a further means by which the Secretary General can exercise a role in Inter-African relations.

The Commission of Mediation, Conciliation and Arbitration:

At the Addis Ababa Summit Conference, the African leaders expressed the urgent importance of maintaining peace and security in the African continent. Accordingly, they called for the creation of a formal OAU institution to deal with the settlement of African regional disputes. In response to the above-mentioned appeal, the OAU Charter enshrined Article 19 in which "...member states pledge to settle all disputes among themselves by peaceful means and to this end decide to establish a Commission of Mediation, Conciliation and Arbitration, the composition of which and conditions of service shall be defined by a separate

protocol to be approved by the Assembly of Heads of State and Government. Said protocol shall be regarded as forming an integral part of the present Charter<sup>(55)</sup>." At its second regular session held in Lagos in February 1964, the Council of Ministers set up a committee of seven legal experts to draw up an acceptable text. A final draft protocol of mediation, conciliation and arbitration was submitted to the third regular session of the Council of Ministers, held in Cairo in July 1964, and was endorsed by the Council and subsequently approved by the Assembly at its second regular session<sup>(56)</sup>. The competence of the Commission is obvious in settling regional disputes. It is the sole organ of the OAU exclusively and specifically responsible for such functions.

Part I of the OAU Protocol deals with the composition of the Commission in addition to the conditions of service of its officers. The twenty-one members of the Commission shall be elected by the Assembly of Heads of State and Government and require to be persons with recognised professional qualifications. The eighteen members are to be part-time while the President and the two Vice Presidents are to constitute the Bureau of the Commission, which is charged with the responsibility of consulting with the parties to a certain dispute concerning the appropriate mode of settling the dispute within the context of the OAU Protocol<sup>(57)</sup>.

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(55) OAU Charter and Rules of Procedures, Op. Cit, p.14

(56) Ellas, T.O., The Protocol of the Commission of Mediation, Conciliation and Arbitration of the OAU, BYBIL, Volume 40, 1964, pp.336-338

(57) Protocol of the CMCA, OAU Charter and Rules of Procedures, Op. Cit, Article 5, p.53

When the members of the Commission are engaged in official duties, they shall enjoy diplomatic privileges and immunities in conformity with the provisions of the OAU Convention on Privileges and Immunities<sup>(58)</sup>. It is obvious that the members are considered independent experts and not government representatives. The member states in general, and the parties to a certain dispute in particular, are under obligation to give their unlimited co-operation to those members of the Commission engaged in the course of mediation, conciliation or arbitration, as well as to those instructed to conduct an investigation, fact-finding or enquiry in connection with the efforts to settle the issues in dispute. It should be noted that the potentialities of commissions of enquiry, fact-finding and investigation in the peaceful settlement of African regional disputes appeared to have been largely vitiated. The OAU member states are obliged to have recourse to any one of three modes of peaceful settlement - mediation, conciliation or arbitration - all dependent on the consent of the parties to a certain dispute. In the absence of such consent, the Commission is only competent to refer the matter to the Council of Ministers for consideration<sup>(59)</sup>. In such circumstances, the Council of Ministers shall endeavour to find a mutually acceptable solution, but in case of disagreement, the matter shall be referred to the Assembly of Heads of State and Government<sup>(60)</sup>.

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(58) Polhemus Higbie J., Op. Cit, p.118

(59) Protocol of the CMCA, OAU Charter and Rules of Procedures, Article 13, Op. Cit, p.54

(60) This practice had been used in the second Congo crisis in 1964. The Council of Ministers met in Nairobi on March 4th 1964 to debate the situation in the aftermath of the Belgian-United States rescue operation in the Congo. However, the Council had met for twelve days, the longest session in the Council's history in which it adjourned without having adopted any resolution on the Congo. On March 9th, the final day of the session, it issued a communique expressing its decision to submit the whole Congolese question to the Assembly of Heads of State and Government to find the appropriate settlement.

The three methods of peaceful settlement are alternative and not necessarily successive procedures, by which parties to a certain dispute are free to make a choice of any one of these three methods in respect of a dispute. . However, the member states are under an obligation, in conformity with Article 3(4) of the OAU Charter, to seek an amicable settlement in case of not being willing to confine themselves to the protocol procedures. The member states may have recourse to pacific procedures which may obtain quicker results, such as diplomatic negotiation. It clearly appears from the protocol that the OAU Commission has no compulsory jurisdiction over member states, but is rather optional <sup>as</sup> the International Court of Justice and other international tribunals. As a matter of fact, the African states would not accept, generally, the principle of compulsory jurisdiction at their earliest phase of development. Therefore, the attitude of the OAU member states towards compulsory jurisdiction is less than certain. Whilst showing some interest in the development of the Commission of Mediation, Conciliation and Arbitration, in practice, the member states continue to express a preference for mediation and conciliation, usually under the auspices of African Heads of State and Government.

Mediation:- Article 20 of the OAU Protocol provides that

"....when a dispute between member states is referred to the Commission for mediation, the President shall, with the consent of the parties, appoint one or more members of the Commission to mediate on the dispute<sup>(61)</sup>." The mediator's

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(61) Protocol of the CMCA, OAU Charter and Rules of Procedures,  
Op. Cit, p.56

role is confined to reconciling the claims and views of the parties concerned. When the parties to the dispute accept the means of reconciliation proposed by the mediator, then the proposed formula will constitute the basis of a protocol of arrangement between the parties<sup>(62)</sup>. It should be noted that the context of the provision of Article 21 of the Protocol is quite vague; nevertheless, it would seem to imply that the parties to the dispute shall initially have to reach a mutual agreement, even when the mediators have been appointed, before the machinery of mediation is set in motion. The Protocol is patterned after customary international practice concerning the nature of mediation. The Protocol mentioned that the mediation is to consist of the direct conduct of negotiations between the parties to a certain dispute on the basis of proposals made by the mediator. It clearly appeared that the provisions did not, however, necessarily exclude the resort to good offices which consist of various kinds of efforts being conducted by a third party when a member or member state or any other organ of the OAU endeavours to bring about negotiations between the parties to a dispute in order to reach a mutually acceptable solution.

Conciliation:- The OAU Protocol provides that "....request for the settlement of a dispute by means of conciliation may be submitted to the Commission by means of petition addressed to the President by one or more of the parties to the dispute. The petition shall include a summary explanation of the grounds of the dispute<sup>(63)</sup>." The President of the Commission

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<sup>(62)</sup> Ibid, Article 21, p.56

<sup>(63)</sup> Ibid, Article 22(1)(3), pp.56-57

in agreement with the parties in the dispute, shall appoint three members from among the members of the Commission, while one each shall be appointed by the parties of the dispute.

However, no two members of the Board shall be nationals of the same state<sup>(64)</sup>. The Board of Conciliation is responsible for the clarification of the issues in dispute and to endeavour to bring about an agreement between the disputants upon mutually acceptable terms. In implementing such an assignment, the conciliators may hear any witness capable of giving relevant information on the dispute; moreover, they may undertake any investigation, fact-finding or enquiry. The essential duty of the Board is to adjust the interests of the conflicting parties justly and equitably, whenever that is possible, but at any rate, peacefully. The parties to a dispute shall be represented before the conciliators by agents who shall act as intermediaries between them and the Board. The agents may be assisted by counsel and independent experts and may also request the summoning of witnesses whose evidence may appear to the Board to be relevant<sup>(65)</sup>. On conclusion of its proceedings, the Board of Conciliators shall prepare a report stating either that an agreement has or has not been reached between the parties to a dispute. The report shall be sent to the President of the Commission and also to the parties to the dispute without delay.

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(64) Ibid p.57

(65) Ibid p.57

Arbitration:- Article 27 of the OAU Protocol provides that "....where it is agreed that arbitration should be resorted to the Arbitral Tribunal shall be established in the following manner:

- (a) each party shall designate one arbitrator from among the members of the Commission having legal qualifications;
- (b) the two arbitrators thus designated shall, by common agreement, designate from among the members of the Commission a third person who shall act as Chairman of the Tribunal;
- (c) where the two arbitrators fail to agree, within one month of their appointment in the choice of [ the Chairman of ] the Tribunal the Bureau shall designate the Chairman<sup>(66)</sup>."

Article 27 of the OAU Protocol further states under paragraphs (2) and (3) that "....the President may with the agreement of the parties, appoint to the Arbitral Tribunal two additional members who need not be members of the Commission but who shall have the same powers as the other members of the Tribunal. The arbitrators shall not be nationals of the parties or have their domicile in the territories of the parties or be employed in their service or have served as mediators or conciliators in the same dispute. They shall be of different nationalities<sup>(67)</sup>." It clearly

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(66) Ibid p.58

(67) Ibid p.58



appears from the provisions of the aforesaid article that the constitution of the tribunal is absolutely at the discretion of the parties. Even in the case of the Chairman having been designated by the Bureau, it can be implied that the disapproval of a party to give its consent would debar further proceedings. It is worthwhile noting that the Permanent Court of Arbitration introduced the independent appointment of neutral members to the arbitration tribunal in order to lessen the iron control of the parties over the course of arbitration and, furthermore, to limit their authority in the drafting of the compromise<sup>(68)</sup>. A more progressive development has been introduced by the UN International Law Commission model rules on arbitral procedures which give the tribunal a radical autonomy from the will of the parties to a dispute. By the way, these model rules were rejected by the Sixth Committee of the UN General Assembly in its thirteenth session. This could be imputed to the influence of many states which shall insist on the consent aspect of arbitration<sup>(69)</sup>. In conformity with the provisions of Article 27(a) of the OAU Protocol, syntax (it) stipulates that at least two members of the arbitration tribunal having legal qualifications. It would be better if all members of the tribunal had legal qualifications or were competent in international law. The aforesaid provisions are comparable to the provisions of the Hague Convention which provides that individuals designated as

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(68) Castel, J.G., International Law, Butterworths, Toronto, 1976 pp.1240-1241

(69) Okoye, Felix Chuks, Op. Cit, p.143

members of the Permanent Court of Arbitration shall be of recognised competence in international law<sup>(70)</sup>. In general, this practice in a number of arbitration tribunals, requires that their members have legal qualification.

However, it is worthwhile mentioning that at the 1899 Hague Conference which created the Permanent Court of Arbitration, the German delegation argued about the possibility of designating members to the Court who had competence in economics, law, military science and diplomacy. The practice of many arbitration tribunals in recent years proved the correctness of this point since some special and technical knowledge by the members of the arbitration tribunals is more important than a recognised competence in law. In some notable instances, members of arbitration tribunals had been designated with no legal qualifications but had satisfactorily discharged their functions<sup>(71)</sup>. In recent treaties, arbitral functions have been assigned to political organs such as the Council of the Arab League, and the Council of the Organisation of American States, which have also undertaken both fact-finding and conciliation<sup>(72)</sup>. In the practice of the Arab League, it was, however, only on one occasion that member states had recourse to arbitration. This occurred in May 1949, over a territorial dispute between Syria and Lebanon.

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(70) Bowett, D.W., Op. Cit, p.234

(71) Okoye, Felix Chuks, Op. Cit, p.144

(72) Cot, Jean-Pierre, International Conciliation, Europa Publications, London 1972, pp.254-255

Through the intervention of the Arab League, Syria and Lebanon agreed to entrust the Governments of Saudi Arabia and Egypt with the settlement of their dispute by arbitration<sup>(73)</sup>. Article 28 of the OAU Protocol provides that "....recourse to arbitration shall be regarded as submission in good faith to the award of the Arbitral Tribunal<sup>(74)</sup>." This Article is similar to Article 37 of the 1907 Hague Convention which stipulates that "....recourse to arbitration implies an engagement to submit in good faith to the award<sup>(75)</sup>." The OAU Protocol requires the parties to a certain dispute to conclude an arbitration compromise undertaking to accept the decision of the tribunal as legally binding and as defining the subject matter of the dispute and if they agreed to adjudicate ex aequo et bono<sup>(76)</sup>. In the absence of an agreement upon the applicable law, the tribunal shall settle the dispute according to treaties concluded between the parties, international law, the OAU Charter, the UN Charter and if the parties to the dispute agree ex aequo et bono<sup>(77)</sup>. It is clear from the above-mentioned provisions that the power of the tribunal is severely limited by the consent of the parties to a dispute. In the arbitration

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(73) Hassouna, Hussein, The League of Arab States and Regional Disputes, Oceana Publications, Inc. Dobbs Ferry, New York, 1975, p.368

(74) Protocol of the CMCA, OAU Charter and Rules of Procedures, Op. Cit, p.59

(75) Ellas, T.O., Op. Cit, p.325

(76) Protocol of the CMCA, OAU Charter and Rules of Procedures Article 29, Op. Cit, p.59

(77) Ibid, Article 30, p.59

compromise, the parties are free to select the applicable law, moreover, in consequence of failing to specify such law the tribunal has only a limited choice by which it is authorised to apply the general principles of international law.

However, the members of the arbitration tribunal must be of recognised competence in both municipal and international law. According to Article 38(2) of the Statute of the International Court of Justice which provides that

"....this provision shall not prejudice the power of the court to decide a case ex aequo et bono, if the parties agree thereto<sup>(78)</sup>." This provision is still lacking an authoritative interpretation in the jurisprudence of the International Court of Justice. In general, the provisions of the above-mentioned article are taken to mean that the Court shall go outside the bounds of international law and endeavour to solve the dispute on the basis of justice, equity and fair dealing. However, it would be better if the OAU Protocol had followed the example of the Bolivia-Peru Treaty of 1902 which laid down quite generally that a boundary dispute be determined by arbitration ex aequo et bono in which the arbitrators are authorized to decide according to their true knowledge and understanding, and in conformity with justice, equity and fairness<sup>(79)</sup>. An international tribunal which has failed to apply the law stipulated by the arbitration compromise or the applicable principles of international law, is obviously exceeding

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(78) Brownlie, Ian, Op. Cit, p.276

(79) Munkman, A.L.W., Adjudication and Adjustment, International Decision and the Settlement of Territorial and Boundary Disputes, BYBIL, Volume 46, 1972-73, pp.24-25

its jurisdiction and accordingly, its decision will be void. It clearly appears from the OAU Protocol that it does not authorize the arbitration tribunal to determine its own jurisdiction. This question would become quite an important issue in case of allegation by any party to a dispute of absence or excess jurisdiction as grounds for nullity. However, the Permanent Court of International Justice decided in the Greco-Turkish Agreement of 1928 that any judicial body that possesses jurisdictional power has the right in general principle, to determine the extent of its jurisdiction<sup>(80)</sup>. It should be noted that this assertion has often been challenged since the parties to a dispute provide for no rights whatsoever, except so far as may appear from the arbitration compromise. The modern practice is, however, to confer upon the judicial tribunals the power to determine the extent of their jurisdiction. The general principle is enshrined in the 1907 Convention establishing the Permanent Court of Arbitration. It has also been attributed by reference to the Hague Convention in some international instruments<sup>(81)</sup>. It is worthwhile mentioning that the OAU Protocol ignored a number of arbitral issues such as whether the decision of the tribunal is to be determined by a majority vote of the arbitrators or differently. As whether the decision of tribunals is legally binding and settling the dispute definitely

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(80) World Court Reports, edited by Hudson, Manky O., Advisory Opinion No.16, August 28th, 1928, Volume 4, 1927-32, Washington 1935, pp.321-338

(81) Okoye, Felix Chuks, Op. Cit, p.146

without appeal to any higher organs of the OAU. The matter of interpretation of the award and the mode of revision are also ignored. It clearly appears from the OAU Protocol that extreme limitations of authority are imposed on the Commission which lacks the competence to interpret the OAU Charter and its optional jurisdiction. The consequence of this situation is that a party to a dispute may easily frustrate the process of arbitration. In addition to these severe limitations, it has been proved in practice that the member states of the OAU were reluctant to avail themselves of the Commission's jurisdiction after it had been finally established. Thereupon, in November 1966 the President of the Commission suggested to the Assembly of Heads of State and Government that in the consequence of these circumstances, there was no necessity to maintain the Bureau of the Commission in full-time operation. Despite this proposal, the member states stressed the importance of the Commission and stated that no weakening tendencies should be permitted<sup>(82)</sup>. In spite of these commitments of support for the Commission, it is however, obvious that the OAU member states continued to prefer recourse to the pattern of flexible ad hoc processes of settling regional disputes. These processes were developed by the political organs of the OAU, such as the Assembly of Heads of State and Government or the Council of Ministers.

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(82) Polhemus, Higbie J., Op. Cit, pp.127-128

## CHAPTER II:

### THE OAU PRACTICE RELATING TO CERTAIN ISSUES OF INTERNATIONAL LAW

#### THE CONCEPT OF REGIONAL ARRANGEMENTS

At the early stage of planning the structure of a universal organisation for the post-war world, some leaders of the great powers laid a certain degree of emphasis on the concept of regionalism. Sir Winston Churchill posed the idea of the establishment of a number of regional organisations through which the great powers might exercise leadership in the maintenance of peace and security in their regions, while the new organisation should be given definite authority to deal with the basic issues of war and peace globally<sup>(1)</sup>.

At the deliberations of Dumbarton Oaks Summit in 1944, the leaders of the great powers recognised the valuable collateral role that regional organisation might play in the maintenance of international peace and security. Accordingly, the Dumbarton Oaks proposal envisaged regional arrangements on condition of compatibility with the purposes and principles of the UN Charter. The Conference anticipated the constructive role of regional arrangements in the settlement of regional disputes, either on the initiative of the states concerned, or by reference from the UN Security Council, in addition to the agreement that in certain circumstances, the Security Council might utilise regional arrangements for enforcing action on the understanding that this could be done only under the Security Council's authorisation<sup>(2)</sup>.

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(1) Wilcox, Francis O., Regionalism and the UN, JIO, Volume 19 1965, p.770

(2) Kelsen, Hans, The Law of the UN, Stevens & Sons Limited, London 1950, pp.319-324

At the 1945 UN Conference on international organisation at San Francisco, the issue of regional arrangements was highlighted by the endorsement of the right of veto which was given to the five super powers. In consequence of granting such privileges to the super powers, a number of delegations insisted that the veto would not be permitted to block regional actions undertaken by regional arrangements. The great powers, however, maintained that the UN would be totally weakened if regional arrangements were authorized to take enforcing action without going through the UN Security Council<sup>(3)</sup>. In order to reconcile these conflicting views, three fundamental amendments were introduced to regulate the relationship of the UN with regional arrangements. The first amendment was designed to encourage regional arrangements to endeavour to work out peaceful settlements of regional disputes before turning to the UN for assistance in this field. The second amendment mentioned that regional arrangements were given exclusive jurisdiction over regional disputes. The third amendment reserved the basic right of the UN Security Council to deal with any dispute, whether regional, inter-regional or global, so as to discharge its primary responsibility for the maintenance of international peace and security<sup>(4)</sup>. However, there were three groups of delegations who were determined to obtain special privileges for regional arrangements to which they were already parties. The first

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(3) Bowett, D.W., Op. Cit, pp.21-25

(4) Wilcox, Francis, Op. Cit, pp.791-792



group consisted of the Arab delegations who endeavoured to strengthen the role of the League of Arab States which had just been established before the Conference, to deal with regional disputes. At the same time, they endeavoured to define regional arrangements narrowly, with a view to excluding military alliances because they feared that such alliances might be used by non-Arab powers to maintain the Arabs in subjection<sup>(5)</sup>. To this end the Egyptian delegation at the San Francisco Conference proposed the following amendment to the draft of the UN Charter "...there shall be considered as regional arrangements, organisations of a permanent nature, grouping in a given geographical area, several countries which by reason of their proximity, community of interests or cultural, linguistic, historical or spiritual affinities make themselves jointly responsible for the peaceful settlement of any disputes which may arise between them and for the maintenance of peace and security in their region as well as for the safeguarding of their interests and the development of economic and cultural relations<sup>(6)</sup>." The Egyptian amendment was rejected by twenty-nine votes to five in Committee III/4 on the grounds that it was superfluous and also pointless<sup>(7)</sup>. In any event, the real unstated reason for the rejection was that certain delegations discerned the possibility of excluding military arrangements which had already been established, such as the Anglo-Soviet Pact of mutual assistance of 1942<sup>(8)</sup>.

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(5) Akehurst, Michael, Enforcement Action by Regional Agencies with Special Reference to the OAS, BYBIL, Volume 42, 1967, p.176

(6) Kelsen, Hans, Op. Cit, p.320

(7) Ibid, p.320

(8) Ibid, p.320

The second, and biggest group consisted of the Latin American delegations who, together with the United States of America, concluded in Mexico City the Pact of Chapultepec in 1945, shortly before the convocation of the UN Conference on international organisation at San Francisco, providing for the prevention of intervention by extra-regional powers<sup>(9)</sup>. It should be noted that the Latin American States had relatively little interest in extra-hemispheric affairs. Their main concern was to create inter-American institutions in order to induce the United States to subordinate itself to the decisions of the majority and to the rules of law. As small powers, the Latin American States were apprehensive of the great powers' privileges in the UN Security Council and their delegations were determined to delete the requirements that enforcement actions of regional arrangements should be subject to the Security Council's authorisation. They agreed that such privileges would enable an extra-regional great power to block regional enforcement action with a view to interfering in regional affairs<sup>(10)</sup>. A compromise was finally found with the insertion of Article 51 in the UN Charter which gives authority to individual states and regional groupings of states to act in collective self-defence without the UN Security Council's authorisation<sup>(11)</sup>. Thirdly, a certain European power had already concluded bilateral treaties for mutual assistance in case of aggression by former enemy states<sup>(12)</sup>.

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<sup>(9)</sup> Luisa, Levin, The OAS and the UN, Regionalism and the UN, Oceana Publications inc., New York, 1979, p.149

<sup>(10)</sup> Whiteman, Marjorie, Digest of International Law, Volume 12 p.491

<sup>(11)</sup> Kelsen, Hans, Op. Cit, p.328

<sup>(12)</sup> Akehurst, Michael, Op. Cit, pp.177-178

To meet this issue, the Conference inserted Article 53 into the UN Charter which provides that prior authorisation of the Security Council is waived with respect to measures taken against the resurgence of aggression by former enemy states<sup>(13)</sup>.

It should be noted that the most important amendment enshrined the recognition of right of individual and collective self-defence against armed aggression. This amendment, introduced by Article 51 provides for the right of individual and collective self-defence against armed attack until the Security Council has taken the appropriate measures to maintain international peace and security. This shall not, however, in any way, affect the authority and responsibility of the Security Council to take action as it deems necessary in order to restore international peace and security<sup>(14)</sup>. It should be noted that there are no other conditions laid down and that there is nothing in the UN Charter to prevent a non-member of the UN or an ex-enemy state from becoming party to a regional agency or arrangement<sup>(15)</sup>. According to Article 52(1) of the UN Charter, a regional arrangement or agency (i) must be concerned with matters relating to the maintenance of international peace and security, (ii) must be consistent with the purposes and principles of the UN Charter, (iii) must be in some way a regional arrangement<sup>(16)</sup>.

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<sup>(13)</sup> Kelsen, Hans, Op. Cit, p.321

<sup>(14)</sup> Greig, D.W., International Law, Butterworths, London 1976, p.765

<sup>(15)</sup> The difference between a regional agency and arrangement would appear to be that an agency possesses an institutional super-structure whereas an arrangement does not. Accordingly, an agency is a highly developed form of a regional arrangement and, in the present study, arrangement is used to include agency.

<sup>(16)</sup> Panhuys, H.F. van, et al., International Organisation and Integration, Nijhoff, Leyden, Netherlands 1968, p.36

This last requirement may be the only one which poses difficulties of interpretation. "Regional arrangement" is interpreted broadly - thus, the Anglo-Soviet Mutual Assistance Pact is considered within the framework of Chapter VIII of the UN Charter. But the interpretation cannot be wholly devoid of meaning. Thus, an arrangement between two states at opposite ends of the earth could hardly be regarded as a regional arrangement within the framework of Chapter VIII, though in itself it is not contrary to the UN Charter. It should be mentioned that there is nothing in the text of the UN Charter or in the practice of the UN that would justify restrictive definition which could have the effect of denying the establishment of regional arrangement if they do not comply with a whole string of implied conditions. Thus, such restrictive definition would exclude the mutual assistance pacts against former enemy states which are mentioned in Article 53 of the UN Charter, as an instance of regional arrangements<sup>(17)</sup>. A number of such arrangements had come into effect before the convocation of the San-Francisco Conference on international organisation and the states that were party to such arrangements represented at the Conference, did not allow the exclusion of these arrangements from the framework of Chapter VIII of the UN Charter. There is, therefore, an argument expounded by some jurists, that an arrangement which

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(17) Ibid, p.16

satisfies the requirements of regionalism must automatically be considered a regional arrangement within the meaning of Chapter VIII of the UN Charter<sup>(18)</sup>. Since the UN Charter does not establish a precise definition of regional arrangements, there is, therefore, some sense in this argument. Accordingly, any regional arrangement is governed by Chapter VIII of the UN Charter, whether the parties to the arrangement desire this consequence or not. In this connection, the Commonwealth of Nations is a clear instance of a regional arrangement which by any definition cannot be regarded as regional<sup>(19)</sup>. The Organisation of American States, on the other hand, is clearly a regional arrangement within the framework of Chapter VIII of the UN Charter. This is expressly stated in Article 2 of the OAS Charter which proclaims that the organisation, in order to put into practice the principles upon which it is established and to fulfil its regional obligations under the UN Charter, has the following purposes "....(a) to strengthen the peace and security of the continent; (b) to prevent possible causes of difficulties and to assure the pacific settlement of disputes that may arise among the member states; (c) to provide for common action on the part of these states in the event of aggression; (d) to seek the solution of political, judicial and economic problems that may arise among them; (e) and to promote by co-operative action their economic, social and cultural development<sup>(20)</sup>."

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(18) Akehurst, Michael, Op. Cit, p.177

(19) Haas, Erust B., The UN and Regionalism, JIR, Volume 3, 1966, p.797

(20) Levin, Aida Luisa, The Organisation of American States and the United Nations, Relations in the Peace and Security Field, Regionalism and the UN, edited by Andemicael Berhanykum, Oceana Publication inc., New York, 1979, pp.149-150

The OAS is closely geared to the peaceful settlement of regional disputes and to the enforcement machinery of the UN. It is explicitly stated that the OAS Charter is based on Article 51 of the UN Charter which provides for the right of individual or collective self-defence against armed attack. But, it is also tied specifically to Article 54 of the UN Charter which provides that the Security Council must be kept informed of activities undertaken by regional arrangements with respect to the maintenance of international peace and security<sup>(21)</sup>. Accordingly, when a regional arrangement acts in collective self-defence, its actions are governed by Article 51. Therefore, it is necessary to look not only at the nature of the organisation, but also at the nature of each of its functions. There is nothing to prevent a regional arrangement such as the OAU, the Organisation of American States and the League of Arab States whose main functions are governed by Articles 52-54 from acquiring subsidiary functions which are governed solely by Article 51, such as NATO and the Warsaw Pact, while the latter may acquire subsidiary functions which are governed solely by Articles 52-54. The distinction has important practical effects because, action under Article 51 does not require authorization by the Security Council and may be reported ex post facto, whereas enforcement actions under Article 53 do normally require such authorisation and are in theory to be reported in advance under Article 54<sup>(22)</sup>. The OAU

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(21) Greig, D.W., Op. Cit, pp.766-767

(22) Haas, Erust B., Op. Cit, pp.797-801

Charter provides that "...one of the purposes of the OAU is to promote international co-operation, having due regard to the Charter of the UN and the Universal Declaration of Human Rights<sup>(23)</sup>." It is obvious that the OAU Charter does not contain provisions similar to those of the OAS Charter, but its travaux préparatoires make it clear that the OAU was intended to be a regional arrangement within the framework of Chapter VIII of the UN Charter<sup>(24)</sup>. A number of the UN resolutions expressly consider the OAU a regional arrangement within the meaning of Chapter VIII of the UN Charter<sup>(25)</sup>. The Pact of the League of Arab States which was established before the creation of the UN also does not maintain any provision similar to Article 2 of the OAS Charter, but in a series of its own resolutions it does consider itself a regional arrangement within the framework of Chapter VIII of the UN Charter<sup>(26)</sup>. The UN General Assembly subsequently issued a permanent invitation to the League of Arab States to send an observer to attend its session<sup>(27)</sup>.

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(23) OAU Charter and Rules of Procedures, Article 2(e)  
Op. Cit, p.10

(24) Solemn Declaration on General Policy, Op. Cit, p.2

(25) Security Council Resolution No. S/609, December 30th 1964

(26) Memorandum on Co-operation and Liaison Between the UN and the League of Arab States, Hassouna Hussein,  
Op. Cit, pp.441-442

(27) When the UN General Assembly decided to extend to the League of Arab States a permanent invitation to send an observer to attend its session, Israeli representative to the UN argued that the League was not a regional arrangement because, inter alia Israel alleged that its activities were aggressive and therefore inconsistent with the purposes and principles of the UN as provided by Article 52 of the UN Charter. Nevertheless, the General Assembly issued the invitation without passing upon the status of the League.

Moreover, when the Security Council were debating the Lebanese crisis of 1958, the consensus in the Council confirmed that the League of Arab States was a regional arrangement within the framework of Chapter VIII of the UN Charter<sup>(28)</sup>. On the other hand, military arrangements such as NATO, the Warsaw Pact and the Southeast Asia Treaty Organisation have caused severe controversy in the past. The North Atlantic Treaty refers only to Article 51 of the UN Charter which provides that any measures that shall be taken against an armed attack shall immediately be reported to the UN Security Council. Such measures taken according to the said Treaty are to be terminated when the Security Council have taken the appropriate measures to restore international peace and security<sup>(29)</sup>. Consequently, no reference is being made to Article 52-54 of the UN Charter. Hence, the conclusion can be drawn that the signatories did not wish to consider NATO a regional arrangement in the strict sense of the term. The Southeast Asia Treaty Organisation, established in 1954 reiterates the right of individual and collective self-defence but it does neglect to mention any regional relationship<sup>(30)</sup> within the terms of Chapter VIII of the UN Charter<sup>(31)</sup>. The advantages of this attitude are obvious. The compulsory reliance of

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(28) Hassouna, Hussein, Op. Cit, pp.71-77

(29) Leech, Noyes et al., International Legal System, Foundation Press, New York 1973, p.878

(30) The significance of this change is obvious. The Cold War was at its peak at the conclusion of this pact in which parties to the new arrangement considered it desirable to avoid the limitations and restrictions contained in the provisions of Chapter VIII of the UN Charter.

(31) Wilcox, Francis, Op. Cit, pp.793-794



parties on the UN is reduced and they are able to act freely in an emergency without the possible delay and handicap imposed by the restrictions and limitations of Chapter VIII of the UN Charter, and the military arrangements such as SEATO could not become effective with the Security Council's authorisation. Moreover, the defence plans would have had to be disclosed in advance to the Security Council in conformity with Article 54 of the UN Charter. It should be mentioned that the OAU, the League of Arab States and the Organisation of American States are distinguished from the military arrangements by their roles as agents for settling regional disputes among their member states. The OAS can take collective measures under Article 5 of the Inter-American Treaty of Reciprocal Assistance in order to establish and maintain peace between two or more of its own member states or in case of external armed aggression against any of its members<sup>(32)</sup>. The League of Arab States also have the power under Article 6 of the 1950 Arab Collective Security Pact to determine measures to maintain peace between its own members and to repulse any external armed aggression against any of its members<sup>(33)</sup>. In contrast to the foregoing examples, the OAU can hardly be regarded as having elements of a defence arrangement. The OAU Charter only requires member states to co-ordinate and harmonize their general policies regarding defence and security matters<sup>(34)</sup>. It also provides for the establishment

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(32) Whiteman, Marjorie, DIL, Volume 5, 1963, p.1050

(33) Bakhashab, Omar A., Op. Cit, p.62

(34) OAU Charter and Rules of Procedures, Article 2(c), Op. Cit., p.10

of a Defence Commission, while its provisions have not been accompanied by a collective defence treaty such as the Inter-American Treaty of Reciprocal Assistance of the OAS or the 1950 Joint Defence and Economic Co-operation Treaty of the League of Arab States.

It is well known that Chapter VIII of the UN Charter contains three Articles. Article 52 deals with the peaceful settlement of international disputes; Article 53 deals with enforcement action, and Article 54 deals with the reporting of measures taken by regional arrangements to the Security Council<sup>(35)</sup>. Concerning the peaceful settlement of disputes, there is a shift in the balance between regional arrangements and the UN. This stems from the role of those arrangements which have been far less active in the peaceful settlement of regional disputes than the founders of the Charter anticipated. Moreover, regional arrangements have not eased the burden of the UN very much by serving as a court of first recourse for the peaceful settlement of regional disputes. It would appear that there are at least two basic reasons why regional arrangements have played only a limited role in the process of peaceful settlement. Firstly, the military arrangements were not established for the purpose of settling regional disputes between member states. The

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Panhuys, H.F. van et al., Op. Cit, p.36

precise function of the military arrangements is collective defence of the regions against external armed aggression. Secondly, most regional arrangements do not play significant roles in the peaceful settlement of regional disputes because of the various limitations of their membership<sup>(36)</sup>. Thus, most of the conflicting issues of the post-war era have not been settled at regional level, but have found their way into the UN forum. As far as the settlement of African regional disputes is concerned, the OAU could perform a valuable service for the UN in a continent which contains states made up of a conglomeration of nations with a number of difficult frontier and boundary disputes. The UN and the OAU share the objectives of peace and security, the promotion of human rights and fundamental freedoms and the economic and social development of Africa. OAU member states have been strongly inclined to seek settlement of regional disputes within an African framework and have accordingly stressed the need for the primacy of the OAU over the UN on such matters. The UN has encouraged the initial consideration of peaceful settlement by the OAU<sup>(37)</sup>. By settling such disputes effectively, the OAU might be able to maintain its autonomy, while at the same time contributing to the achievement of the objectives that it shares with the UN. To the extent to which OAU capability, authority, function, structure and personnel

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(36) The Republic of South Africa is not a member of the OAU, nor are Austria, Finland, Sweden and Switzerland members of any regional European arrangements. Other examples abound.

(37) Andemicael, Berhanykum, The OAU and the UN, Regionalism and the UN, Edited by the Writer, Oceana Publications inc., New York 1979, pp.233-236

are inadequate to effect regional settlement<sup>(38)</sup>, it would seem advisable that the OAU devise ways of remedying any remaining shortcomings by requesting an appropriate UN role. In the matter of enforcement action, there is not much difference between regional and non-regional arrangements. It is true that regional arrangements possess a certain advantage in case of enforcement action against ex-enemy states. Accordingly, Article 53 gives wider authority than Article 107 but despite these articles, it is unlikely that any state would rely upon the term "ex-enemy" nowadays<sup>(39)</sup>. In any event, regional arrangements may take enforcement action to give effect to the Security Council decisions or to their own decisions. Since the Security Council must, in all cases, give authorisation for action, the difference is not very great. It is worthwhile mentioning that Article 51 has always been invoked by the League of Arab States in its struggle against Zionism<sup>(40)</sup>, and the OAU in its struggles against colonialism and racial discrimination<sup>(41)</sup>. As far as the OAU's enforcement action is concerned, attention should be paid to the moral and material assistance extended to African liberation movements. This can hardly be regarded as enforcement action requiring the Security Council's

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(38) The Guardian, Thursday January 21st, 1982 p.5

(39) Panhuys, H.F. van et al., Op. Cit, p.36 and 47

(40) Bakhashab, Omar A., Op. Cit, p.95

(41) Dugard, C.J.R., The OAU and Colonialism: An Inquiry into the Plea of Self-Defence as a Justification for the Use of Force in the Eradication of Colonialism, AJIL, Volume 40, 1967, p.165

authorisation. Similarly, diplomatic and economic measures recommended by the OAU against the colonial and minority regimes in Southern Africa cannot be considered as enforcement actions requiring authorisation<sup>(42)</sup>. It would appear that these measures have never raised any serious controversy within the UN organs. In fact, the type of measures such as diplomatic and economic sanctions and assistance to liberation movements have been endorsed by the UN General Assembly in a number of resolutions which directly or indirectly support them<sup>(43)</sup>. Moreover, Security Council endorsement of these General Assembly resolutions can be regarded as constituting legitimisation of these activities<sup>(44)</sup>. Only in the case of the Rhodesian unilateral declaration of independence in November 1965, was there a real possibility of direct enforcement action by the OAU against the Smith regime, in conformity with Article 51 of the UN Charter.

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To quote the British representative at the UN's statement before the Security Council: "There is nothing in international law, in principle, to prevent any state if it so decides, from breaking off diplomatic relations, instituting a political interruption of economic relations with any other states. These steps which are the measures decided upon by the OAS with regard to the Dominican Republic are acts of policy perfectly within the competence of any sovereign state." (Greig, D.W., Op. Cit, p.768)

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The UN General Assembly requested the UN member states to give moral and material assistance to the Southern Rhodesian and Namibian liberation movements in their struggles for independence of their respective countries.

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The UN Security Council Resolution No. 216 November 12th, 1965, No. 217 December 16th, 1966, No. 231 April 9th, 1966, No. 232 December 1966 and Resolution No. S/253 May 29th, 1968, (Whiteman, Marjorie, DIL, Volume 12, p.403)

It would appear that the enforcement action was probably intended to be taken without authorisation by the Security Council. Despite the fact, there was no actual armed attack against any OAU member state justifying the invocation of the right of individual or collective self-defence against the illegal regime in Southern Rhodesia. The OAU argued that the rebellion by the illegal regime was considered as a threat to the security of neighbouring African states, especially Zambia, which had welcomed African refugees and liberation movements within its territory<sup>(45)</sup>. This claim implied that the existence of colonialism and minority regimes in Africa was considered an act of aggression against all OAU member states. Hence, the OAU claimed that it was entitled to recommend and co-ordinate enforcement action in defence of its members against aggression in conformity with Article 51 of the UN Charter. Thus, it seems that the OAU has adopted a broader interpretation of the inherent right of individual and collective self-defence referred to in Article 51. It would appear that such interpretation by the OAU stems from despair about the relative ineffectiveness of the UN in achieving the common objectives of the peoples of Southern Africa. Nevertheless, it seems that the problem of racial discrimination in South Africa is of particular concern to the UN. As an organisation devoted to the maintenance of international peace and security as well as to human progress, the UN

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(45) Andemicael, Benhanykum, The OAU and the UN, Africana Publishing Company, New York 1976, pp.149-150

has a special responsibility to prevent war in Southern Africa by assisting in bringing about peaceful changes in the area. Finally, an important aim of the OAU's extra-continental diplomacy is aimed on the one hand at preventing external intervention in African regional disputes, and on the other hand at securing effective external assistance, especially from the super powers with a view to eradicating colonial domination and racial discrimination in Africa. The only regional organisation which has been involved in a series of arguments about Article 53 is the OAS which interprets the Article in such a way as to minimise Security Council control in the cases of a number of crises in Central and Latin America<sup>(46)</sup>. Nevertheless, the OAS is the only regional arrangement which has conscientiously observed Article 54. The League of Arab States and the OAU have only submitted reports sporadically and there have been no reports at all by other regional bodies<sup>(47)</sup>.

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(46) Sharp controversies have arisen between the OAS and the UN in connection with several disputes. The first occurred in 1954 when the Government of Guatemala simultaneously requested both the OAS and the UN Security Council to take the appropriate measures to bring about an end to the attack launched against it by Nicaragua and Honduras. In submitting its case to the UN Security Council, the Guatemalan government, in effect, by-passed the OAS, arguing that it had a right under the UN Charter to appeal directly to the Security Council for assistance. The United States supported by certain Latin American states insisted that the OAS members were obliged to submit such dispute initially to the OAS which functions as a court of first appeal in regional disputes. After a prolonged procedural wrangle, the Security Council failed to adopt the agenda by a vote of four in favour, five opposed with two abstentions. In consequence of the failure of the Security Council to take a positive position, the dispute was turned over to the OAS for further consideration.

(47) Akehurst, Michael, Op. Cit., pp.183-184

As a result, compliance with Article 54 has become virtually optional in practice and it certainly provides no guide for distinguishing between regional and non-regional arrangements. In some cases, political and even military sanctions have been applied without the approval of the Security Council. The necessity for reporting enforcement measures to the Security Council appears to have been ignored. The consequences have been that the authority of the Security Council to co-ordinate or to control the enforcement actions of regional bodies have been sadly diluted. The economic boycott of Israel which was initiated by the League of Arab States in line with its policy of strangling Israel economically<sup>(48)</sup>, was never submitted to the UN Security Council for formal approval. As regards OAS activities, this matter initially came to a head during the conflict of 1960 between the Dominican Republic and Venezuela<sup>(49)</sup>. In this connection, the OAS decided to impose diplomatic and economic sanctions including suspension of trade in arms on the Dominican Republic. These measures were reported to the Security Council by the OAS but it did not apparently consider it necessary to seek the approval of the UN Security Council. Unlike the OAS and the League of Arab States, the OAU has not been involved in any jurisdictional squabbles with the UN in connection with collective measures. On the contrary, the African States have taken the lead in the UN in promoting and encouraging the use of collective action through the UN against South Africa.

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(48) As a case in point, the boycott was designed to achieve its purpose in two ways; by preventing trade between Israel and the Arab World and by blacklisting foreign companies and ships doing business with Israel.

(49) At the Meeting of Ministers of Foreign Affairs of the OAS in San Jose in 1960 the Dominican Republic was condemned for interfering in the domestic affairs of Venezuela and it was voted to impose diplomatic, economic and military sanctions against the Dominican Republic. (Greig, D.W., Op. Cit, p.768)



RELATION BETWEEN THE OAU AND THE UN

It has already been mentioned that the OAU has been recognised as a regional arrangement within the framework of Chapter VIII of the UN Charter. The UN Security Council gave recognition to an emerging relationship with the OAU in the context of Chapter VIII of the UN Charter by encouraging the OAU's role in the peaceful settlement of African regional disputes. The preamble to the OAU Charter declares that "....the Charter of the UN and the Universal Declaration of Human Rights," to the principles of which we reaffirm our adherence, provide a solid foundation for peaceful and positive co-operation among states<sup>(1)</sup>. The obvious intent of the founders of the OAU of closely affiliating their organisation to the UN was expressed in Article 3 of the OAU Charter which included provisions for the enhancement and promotion of international co-operation as expounded by the UN Charter and the Universal Declaration of Human Rights<sup>(2)</sup>. Moreover, Article 26 of the OAU Charter provides that "....this Charter shall, after ratification, be registered with the Secretariat of the UN through the Government of Ethiopia in conformity with Article 102 of the UN Charter<sup>(3)</sup>." Furthermore, since then all OAU member states are also members of the UN which means the OAU by reference to Article 103 subject to the provisions of the

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(1) OAU Charter and Rules of Procedures, Article 2(e)  
Op. Cit, p.13

(2) Ibid p.10

(3) Ibid p.16

UN Charter including Article 51, 52(4), 53 and 54. These articles are designed to ensure the paramount and ultimate responsibility of the UN Security Council for the maintenance of international peace and security<sup>(4)</sup>. This proposition seems to be amply confirmed by the UN attitude towards the OAU roles in both the Congo crisis of 1964 and the Rhodesian independence crisis of 1965<sup>(5)</sup>. In this respect the Security Council Resolution 199 of December 30th 1964, affirmed its confidence that "...the OAU should be able, in the context of Article 52 of the Charter of UN, to help find peaceful solutions to all the problems of disputes affecting peace and security in the continent of Africa<sup>(6)</sup>." Moreover, the Security Council expressly encouraged the OAU "...to pursue its efforts to help the Government of the Democratic Republic of the Congo to achieve national reconciliation<sup>(7)</sup>." Similarly, in the Rhodesian crisis of 1965, following the unilateral declaration of independence, the Security Council called in its Resolution 217 of November 1965 on the OAU "...to do all in its power to assist in the implementation of the present resolution in conformity with Chapter VIII of the Charter of the UN<sup>(8)</sup>." At any event, the process of co-operation between the UN

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(4) Panhuys, H.F. van et al., Op. Cit, p.35, 36 and 46

(5) Okoye, Felix Chuks, Op. Cit, p.158

(6) Hoskyns, Catherine, Case Studies in African Diplomacy, Tanzania, Litho, LTD, Arusha, 1969, p.61

(7) ILM, Volume 3, 1964, pp.201-202

(8) ILM, Volume 4, 1965, pp.167-168

and the OAU is based on the UN General Assembly resolution and its counterpart in the OAU Assembly of Heads of State and Governments. On October 11th, 1965 the UN General Assembly, at the request of the African states, adopted a resolution on co-operation between the UN and the OAU in conformity with the purposes and principles of the two Charters of the organisations. Accordingly, it requested the UN Secretary General to invite the OAU Secretary General to attend sessions of the UN General Assembly with observer status. It also requested the UN Secretary General to explore, in consultation with the appropriate organs of the OAU, the means of enhancing and promoting co-operation between the two organisations<sup>(9)</sup>. In response to this gesture, the OAU Assembly of Heads of State and Governments adopted a resolution at its second ordinary session held in Accra on October 25th, 1965, on relations with the UN. In this it expressed its appreciation of the UN General Assembly resolution on co-operation with the OAU and requested the OAU Secretary General to invite the UN Secretary General to attend sessions of the OAU Assembly of Heads of State and Government and the Council of Ministers, as well as those the OAU Specialised Commissions with observer status. It further requested its Secretary General to do his utmost to ensure that co-operation between the two organisations be as close as possible and cover all fields of interest to both organisations<sup>(10)</sup>.

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(9) UN General Assembly Resolution 2011(xx), October 11th, 1969

(10) OAU Charter and Rules of Procedures, Op. Cit, p.14

Despite the above-mentioned resolutions of both organisations, the relationship in the sensitive field of maintenance of international peace and security remains to be determined exclusively on the basis of the Charters and the practices of the two organisations. According to Article 19 of the OAU Charter, all member states pledge themselves to settle any disputes among themselves by peaceful means<sup>(11)</sup>. In this connection, attention should also be paid to Resolution (C) of the Addis Ababa Summit Conference of May 25th, 1963, establishing what the OAU called "Africa and the UN." This expressed the desire of the OAU to strengthen and support UN efforts for the maintenance of international peace and security among nations and for the promotion of economic and social development of all peoples<sup>(12)</sup>. As far as the peaceful settlement of African regional disputes is concerned, the OAU has clearly indicated its preference for settling them within its framework without expounding a rigid attitude of exclusive jurisdiction. This policy conforms with the relevant provisions of the UN Charter as already outlined in the previous section. The foundation of this policy was laid as early as 1963<sup>(13)</sup>. The first instance was that of the Algerian-Moroccan border dispute which erupted into major hostilities in October 1963. Morocco preferred bilateral negotiations in order to settle the dispute and consideration

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(11) Andemicael, Berhamykun, Op. Cit, pp.299-300

(12) Sanders, AJGM, Op. Cit, p.145

(13) Resolution (C) May 25th, 1963, Andemicael Berhanykum, Op. Cit, p.299

by the UN Security Council in case of failure, while Algeria sought consideration of the situation by the OAU. However, a number of the UN Security Council members, including some permanent members were able to persuade Morocco to try and seek the OAU consideration initially<sup>(14)</sup>. Three months later, the Council of Ministers held an emergency meeting at Dar-es-Salaam on February 12th, 1964 to consider the border disputes in the Horn of Africa. At this meeting it expressed its conviction that settlement of all African regional disputes should initially be sought within the OAU forums<sup>(15)</sup>. The OAU's initial authority was confirmed by the OAU Assembly resolution on border disputes among African states which was adopted at its first ordinary session in Cairo on July 21st, 1964. It recognised the imperative need to settle all African regional disputes by peaceful means within a strictly African framework. On November 24th, 1964, the Stanleyville operation took place, carried out by the USA and Belgium with the consent of the Congolese Government. The operation was launched to rescue hostages, mainly Europeans, held by Congolese rebels. On December 1st, 1964, the United States and Belgian delegations at the UN informed the UN Security Council of the completion of their operation. The OAU members' representatives<sup>(16)</sup> at the UN requested an emergency meeting of the Security Council

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(14) Fox, Hazel, Op. Cit, p.394

(15) Polhemus, Higbie J., Op. Cit, pp.245-250

(16) Algeria, Sudan, Ghana and the United Arab Republic (Egypt)

to consider the situation created by the Stanleyville operation which was regarded as an extra-regional intervention in African affairs, thereby constituting a threat to the peace and security of Africa. On December 9th, 1964, the Congolese representative at the UN also requested an emergency meeting of the Security Council to examine its complaint that interference in its domestic affairs by the acts of a certain number of African governments had occurred<sup>(17)</sup>. The Security Council held an emergency meeting in response to the request of those African states and the Congolese Government. The foreign intervention in the domestic affairs of the Congolese Government had been elaborately discussed but after a long and bitter debate the Council did not reach any conclusion over the extent of intervention. Thus, neither the US-Belgian rescue operation nor the allegation of interference imputed to the four African states were condemned<sup>(18)</sup>. Of more importance to the present study is that the Security Council dealing with this situation expressed its conviction in a resolution that the OAU should be able in conformity with Article 52 of the UN Charter, to help find a peaceful settlement to all African regional disputes which would affect the peace and security in the African continent. Accordingly, the Security Council encouraged the OAU to pursue its endeavours to assist the government of the Democratic Republic of Congo to achieve national reconciliation.

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(17) Sanders, AJGM, Op. Cit, p.146

(18) Ibid p.146

At the same time it requested the OAU, in conformity with Article 54 of the UN Charter, to keep the Security Council fully informed of any measures that might be implemented under the said resolution<sup>(19)</sup>. Consequently, the OAU position that African regional disputes should preferably be settled within its framework has thus been fairly generally translated into practice. Firstly, because of the willingness of the OAU member states to turn to the OAU institutions initially and not to insist on immediate access to the UN forums. Secondly, as a result of the fears of the OAU member states that they might draw the super powers competitively into African regional disputes.

It is notable that in the absence of a practice of direct representation of regional arrangements in the deliberations of the Security Council, it has become common for a non-permanent member in the Security Council to speak on behalf of the group of states in its own region<sup>(20)</sup>. This role has been played by the African members of the Security Council who have acted to represent the interests of the OAU. A further step has been taken by the OAU in order to strengthen the representation of its interests in the UN forums by despatching a number of African foreign ministers with a mandate to speak on its behalf<sup>(21)</sup>. Thus, the role of spokesman for the OAU has been recognised in practice. At the same time, African foreign ministers

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(19) ILM, Volume 3, 1964, pp.201-202

(20) Goodwin, Geoffrey L., The Commonwealth and the UN, JIO, Volume 19, 1965, p.681

(21) Polhemus, Higbie J., Op. Cit, pp.244-245

of the states concerned participate as representatives of their respective governments in the deliberation over the issues before the Security Council without the right of vote<sup>(22)</sup>. According to Article 54 of the UN Charter, regional institutions are obliged at all times, to report to the Security Council, activities conducted under their auspices concerning the maintenance of international peace and security<sup>(23)</sup>. In practice, the OAU does not often report its activities concerning African regional disputes to the Security Council but it does transmit its resolutions regarding apartheid and colonial issues. On the other hand it does not communicate the activities of its co-ordinating committee for the African liberation movements and its Defence Commission. The OAU attitude in this respect is that this duty is more clearly defined as a responsibility to take action in defence of humanity. Therefore, reliance is placed on a humanitarian doctrine which does not require to be reported to the Security Council in conformity with Article 54 of the UN Charter<sup>(24)</sup>. This doctrine constitutes a part of the customary international law and was known as early as the seventeenth century<sup>(25)</sup>. Consequently, intervention by a state or group of states in the domestic affairs of another state is legal insofar as the affected states are guilty of cruelties against their nationals in such a way as to deny their fundamental human rights<sup>(26)</sup>. Thus, in the opinion

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(22) Panhuys, A.F. van et al., Op. Cit, p.32

(23) Ibid p.36

(24) Kelsen, Hans, Op. Cit, pp.30-31

(25) O'Connell, D.P., International Law, Stevens & Sons, London, 1970, p.759

(26) Kelsen, Hans, Op. Cit, p.30



of African states, apartheid and colonialism are seen as flagrant violations of human rights and the principle of self-determination of peoples. African states believe that humanitarian intervention constitutes an exception not only to the prohibition of interference in the domestic affairs of states but also to the prohibition of the threat of use of force and to the provisions of Article 52 of the UN Charter which provides that regional enforcement action requires the Security Council's authorisation<sup>(27)</sup>. The OAU activities in this respect have never been criticised by the UN. In fact, the UN General Assembly has recognised such activities in a number of its resolutions adopted by overwhelming votes in which UN member states were requested to extend material assistance to national liberation movements in their struggles for independence<sup>(28)</sup>. In this connection, the Security Council also endorsed the authority of these resolutions in a number of its resolutions<sup>(29)</sup>. The OAU's co-operation with the UN organs other than the Security Council is based on parallel resolutions of the UN General Assembly<sup>(30)</sup> and the OAU Assembly of Heads of State and Government<sup>(31)</sup>. No formal agreement has been concluded on relationships between the UN as a whole and the OAU but the Secretaries General have mutually agreed in the

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(27) Sanders, AJGM, Op. Cit, p.136

(28) IML, Volume 4, 1965, pp.369-373

(29) Resolution 253 of 1968 and Resolution 277 of 1970

(30) Resolution 2011(xx), October 11th, 1965 (Appendix Andemicael, Berkanykum) p.300

(31) Resolution 33 II October 25th, 1965 (Appendix Andemicael, Berkanykum) Op. Cit, pp.299-300

spirit of the aforesaid resolutions, to exert their utmost endeavours to develop the relationship into one of positive and dynamic co-operation. It would appear that there have been no problems in the application of the procedures of reciprocal representations between the UN and the OAU. It has been the practice of the UN Secretary General to respond to the invitation of the OAU Secretary General by personally participating or arranging high-level representation at the sessions of the OAU Assembly. He has usually participated in a number of sessions and has delivered major addresses<sup>(32)</sup>. On the part of the OAU, there has been three types of representations at the meeting of the UN General Assembly and its subsidiary organs. Firstly, it has been the practice of the OAU Secretary General or his representatives to participate without voting in the deliberations of several sessional committees and special subsidiary organs of the UN General Assembly, particularly the Special Political Committee, the Fourth Committee, the Special Committee of Twenty-Four, the Special Committee on Apartheid and the Council for Namibia, in whose work the OAU is interested. Whenever any of these special organs conduct their meetings in an African capital, the OAU Secretary General participates

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The UN Secretary General, U-Thant, stated at the meeting of OAU Assembly of Heads of State and Government held in Kinshasa in 1967 that "...it is to be generally recognised that the OAU had not made the progress expected towards achieving its aims. Africa was beset by the twin dangers of nationalism and regionalism. Just about every one of the boundaries here is beset by border disputes, deep-rooted internal political strife and nagging problems of disease, poverty and mass illiteracy." (Fox, Hazel, Op. Cit, p.394)

in their deliberations and extended proposals. Secondly, a representation has been pursued by the African representatives at the UN whose chairman of the month acts as the spokesman for the group in various UN meetings. Thirdly, the attendance of an African head of state at the UN in order to deliver special messages to the UN General Assembly or the Security Council in his capacity as Chairman of the OAU Assembly of Heads of State and Government<sup>(33)</sup>. In addition to the aforesaid representations, there is the liaison between the Secretariats of the UN and the OAU which is facilitated by the existence of an OAU office in New York and by the fact that Addis Ababa is the location of the headquarters of the ECA, the principal UN office in Africa<sup>(34)</sup>. This makes it possible for consultation and exchange of information to be carried out on a day-to-day basis. It would appear that liaison concerning the exchange of documents seems not to have been implemented with satisfactory reciprocity. In this connection, the OAU Secretariat has had access to most of the UN documents whilst the UN Secretariat has various difficulties in acquiring OAU documents on a regular basis<sup>(35)</sup>. The major obstacle in this respect is that the records and documents of the OAU Assembly and the Council of Ministers, except the resolutions, are considered as confidential documents designed only for limited and restricted circulation.

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(33) Sanders, AJGM, Op. Cit, p.150

(34) Andemicael, Behanykum, Op. Cit, pp.161-162

(35) Ibid p.163

Although the OAU have not encountered any problem in this respect, the Rules of Procedures of the UN General Assembly, regional organisations, are not entitled to request direct inclusion of an item on the Assembly's agenda<sup>(36)</sup>. In the event of the OAU wishing to propose the inclusion of additional items, it utilises the African group at the UN as its channel and this ensures that items of interest to the OAU are, in any event, regularly placed on the provisional agenda prepared by the UN Secretary General. Consequently, items on the denuclearisation of Africa and co-operation between the UN and the OAU are included in the agenda of successive sessions of the UN General Assembly<sup>(37)</sup>. Concerning economic and social co-operation, the UN General Assembly resolution serves as the basis for relations between the UN Economic and Social Council (ECOSOC) and regional bodies<sup>(38)</sup>. Accordingly, the ECOSOC adopted a resolution on August 10th, 1951 whereby it invites to its sessions, with observer status, those representatives of regional bodies who are accorded similar privileges by the UN General Assembly. This resolution became applicable to the OAU in 1963. The OAU also maintain relations with most UN subsidiary bodies such as the office of the UN High Commissioner for Refugees (UNHCR), the UN Conference on Trade and Development (UNCTAD), the UN Development Organisation (UNIDO) and

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(36) Ibid p.162

(37) ILM, Volume 5, 1965, pp.174-175

(38) Resolution 2011(xx) October 11th, 1965

the Economic Commission for Africa (ECA). As far as the ECA is concerned, because it is the only body exclusively devoted for Africa, it is essential to mention its relations with the OAU briefly. The ECA was established by ECOSOC on April 29th, 1958 in response to recommendation of the UN General Assembly in conformity with Article 68 of the UN Charter<sup>(39)</sup>. The Commission is responsible to the UN ECOSOC and is financed from the regular UN budget. It functions through experts, conferences and seminars and provides technical assistance and training to OAU member states. It also collects and distributes statistical and analytical information in addition to arranging meetings between African states for the formulation of economic strategies or negotiation of inter-African economic treaties<sup>(40)</sup>. In spite of these facts, the ECA has been less successful in the promotion of a major scheme for the creation of major sub-regional economic communities in accordance with the major sub-regional division into which it has divided the continent. Its task is aggravated by the diversity of channels of co-operation in the regions and by economic nationalism. In addition to this problem, there exists considerable

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(39) Sanders, AJGM, Op. Cit, p.151

(40) An instance of such treaties was the one establishing the African Development Bank. The treaty was concluded on August 4th, 1963 at the Conference of Finance Ministers of the OAU member states on September 10th, 1964. The function of this bank is to contribute to the economic development and social progress of its members individually and jointly. The principal office of the bank is located in Abidjan.

duplication of functions and overlapping of tasks between the ECA and the OAU Specialised Commission for Economic and Social Affairs. In order to co-ordinate effective co-operation between the Commissions concerned, an agreement was concluded between the UN and the OAU on December 15th, 1965<sup>(41)</sup>. The agreement maintains the framework of mutual consultation between the ECA and the OAU Specialised Economic and Social Commission on all issues of common concern<sup>(42)</sup>. In addition to these relations with the UN and its subsidiary bodies, the OAU also concluded a number of agreements with the UN Specialised Agencies such as the International Labour Organisation (ILO) in 1965, the UN Educational, Scientific and Cultural Organisation (UNESCO) in 1965, the Food and Agricultural Organisation (FAO) in 1967, the International Atomic Energy Agency (IAEA) in 1967 and the World Health Organisation (WHO) in 1969. The agreements are similar in terms to the UN-OAU agreement in respect of co-operation in technical and economic fields between the UN and the OAU<sup>(43)</sup>.

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(41) Andemicael, Berhanykum, Appendix, Op. Cit, p.301

(42) Ibid pp.301-304

(43) Sanders, AJGM, Op. Cit, p.152

THE AFRICAN CAUCUS AT THE UN GENERAL ASSEMBLY

At the San Francisco Conference on international organisation in 1945, the only African states to participate and, therefore, to become members of the UN were Egypt, Ethiopia and Liberia<sup>(1)</sup>. Subsequently, an enormous increase in African membership has occurred in consequence of the dissolution of Anglo-French colonial domains. This process was initiated by the original Afro-Asian members of the UN and was fully supported through the UN General Assembly's debates and implemented through the pressure exerted by its various resolutions<sup>(2)</sup>. On the establishment of the UN, the Latin American states were considered the largest single group in the UN General Assembly. Consequently, they were able to play an important role in mediating between the five super powers, at the same time gaining for themselves valuable concessions in election to major UN posts<sup>(3)</sup>. At that period the African states had no such influence and, therefore, they joined the Asian states which shared their interests in economic development, human rights and the struggle against colonialism, in order to form a pressure group in the UN General Assembly. Thus, especially emerged after the First Conference of Non-aligned Nations in 1955 which took place at Bandung, Indonesia<sup>(4)</sup>. Subsequently,

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(1) Sohn, Louis B. et al., Cases on UN Law, Foundation Press, New York, 1967, p.55

(2) Al-Ayouty, Yassin, The UN and Decolonisation; The Role of Afro-Asia, Martinus Nijhoff, The Hague, 1971, p.XXIII

(3) Karafa-Smart, John, Africa and the UN, JIO, Volume 19, 1965, p.765

(4) Bakhashab, Omar, Op. Cit, p.92

the African-Asian delegations at the UN unofficially met regularly, whenever questions relating to geographical distribution arise at the UN organs, in order to vote as a unit<sup>(5)</sup>. This period did not last long, however, in consequence of the rapid increase of African membership in the UN which allowed them to express themselves as a separate caucus<sup>(6)</sup>. Thus, the delegations of African states began to meet at monthly intervals at the UN and followed the familiar UN practice of having a rotating Chairman. The purpose of the caucus is prior consultation and informal exchange of views in respect of matters of common interest in economic development, human rights and the struggle against colonialism. The caucus was given official status by a resolution adopted at the Addis Ababa Conference of 1963 establishing the OAU<sup>(7)</sup>. Accordingly, the African delegations to the UN were authorised to establish a Secretariat in New York to co-ordinate matters of common interest to OAU member states and to make contact with any other groups that shared its objectives. Under these circumstances, the

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(5) Hoskyns, Catherine, The African States and the UN, 1958-1964, JIO, Volume 40, 1969, p.468

(6) I use the term caucus in the sense of a group of member states having some degree of formal organisation whereby they hold regular meetings concerning matters of common interest, before the UN General Assembly. In distinction a voting bloc is more than a caucus, i.e. a group of states like a military alliance which are bound by its decision concerning general matters before the UN General Assembly.

(7) Resolution C, May 25th 1963 (Appendix II, Andemicael B., Op. Cit, p.299)



African caucus began to make its presence felt at UN forums. During the first fifteen years of the UN, the original African members had been represented on the UN Security Council within the M.E. and Commonwealth geographical distribution of the seats located to non-permanent members in conformity with the San Francisco "Gentleman's Agreement"<sup>(8)</sup>." After the rapid increase in their membership, the African states laid claim to more equitable representation in the UN organs and its specialised agencies<sup>(9)</sup>. Accordingly, amendments to Article 23, 27 and 61 of the UN Charter were made and endorsed by the UN General Assembly in its resolution of December 17th, 1963. By virtue of this resolution, the composition of the Security Council was increased to fifteen seats, ten of them allocated to non-permanent members in accordance with geographical distribution<sup>(10)</sup>. As to the composition of the ECOSOC and ICJ, development has been made in line with that of the Security Council<sup>(11)</sup>. The present geographical distribution of seats for non-permanent members of the Security Council is as follows: two to Latin America, two to Africa, three to Asia, one to Eastern Europe, one to Western Europe and one to others<sup>(12)</sup>. But this is not

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(8) Karafa-Smart, John, Op. Cit, pp.765-766

(9) The OAU Resolution C, May 25th, 1963 (Op. Cit, Andemicael B.)

(10) GA Resolution 1991A and B VII, December 17th, 1962

(11) ICJ Year Book 1980-81, The Hague 1981, p.7

(12) Bowett, D.W., Op. Cit, p.26

all that the African states want, for they also believe that there are certain provisions of the UN Charter which should be revised to provide for adequate equality at representation on the principal organs of the UN<sup>(13)</sup>. They argue that the UN Charter was written and adopted while most of the African states were still colonial territories. Nevertheless, they hold the UN Charter in the highest esteem because it embodies their hopes for a world in which all nations, large and small, rich and poor, powerful and weak will work together in peace and security to contribute to the development of the world's resources and to the economic, social and cultural betterment of all peoples and the preservation of freedom and human dignity. They are also aware that many African states owe their independence to UN pressure and are beholden to it for that<sup>(14)</sup>. In this sense, they regard the UN as the foster mother of all former dependencies which have now become its members and therefore are convinced that their needs have been met to some extent. It is obvious that without the UN it would have been difficult for new nations, especially when they were at the same time weak and impoverished, to break into the closely knit diplomatic circle of the older states. The

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(13) The OAU Council of Ministers' Resolution 486 (xxvii) paragraph (4) - "...Requests all member states of the OAU to work towards making amendments to the UN Charter in a bid to achieve the principle of equality among member states of the UN through the outright suppression of the right of veto." ACR, 1976-77, p.13

(14) Al-Ayouty, Yassin, Op. Cit, p.xx-xxi

UN provides a forum in which African representatives can express their views on world problems and seek support in matters of special interest to their countries. The privileges of using this forum derive solely from membership in the UN and do not depend on the size and power of the country. The UN also makes it possible for the African states to exert concerted pressure in terms of promises of reciprocal support until reasonable satisfaction is achieved. In this way success has been achieved in getting the UN General Assembly to pass resolutions on human rights, the speedy liquidation of colonialism, the peaceful settlement of international disputes and flagrant breaches of the principles of the UN Charter, as in the case of the resolutions against the policy of the South African government<sup>(15)</sup>.

It should be noted, however, that there has not always been unanimity among African states in deliberations of problems which affect the African states and in deliberations of problems which affect the African continent<sup>(16)</sup>. There were serious differences of opinion over the manner in which the peace-keeping forces of the UN in the Congo crisis were used. There were some who believed that the UN peace-keeping forces in the Congo should have been recruited exclusively from African sources. They argued that it was wrong and undesirable to bring armed forces from other continents, and there were those who disagreed with the manner in which the peace-keeping forces

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(15) GA Resolution 2054(xx), December 22nd, 1965

(16) Hoskyns, Catherine, Op. Cit, pp.64-65

were used. It was felt that the measures taken were sometimes principally directed against the nationalist movements and that, therefore, these measures exceeded the peace-keeping mission and took sides in the political struggle of the Congolese people. Finally, there were many who felt no longer able to justify the costs of the maintenance of the peace-keeping forces which had become an unjustifiable encumbrance upon their own development. In spite of these views, they did appreciate the UN presence in the Congo which had undoubtedly saved the African continent from other forms of extra-regional intervention<sup>(17)</sup>.

At the time of the increase in African membership, the solidarity and cordiality which had prevailed towards the end of World War II and had given birth to the UN, had already given way to the divisions of the so-called "Cold War." Under these circumstances, on the one side there were the Western states with the USA in the lead, allied within the North Atlantic Treaty Organisation (NATO)<sup>(18)</sup>. On the other side, there were the Eastern European Communist states with the Soviet Union in the lead, allied within the Warsaw Pact<sup>(19)</sup>. These opposing blocs faced each other in a divided world. Consequently, African states discerned that practically every question that appeared on the UN Assembly's agenda or on the agenda of any of its various

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(17) Karefa-Smart, John, Op. Cit, pp.767-768

(18) Haviland, Field, The United States and the UN, JIO, Volume 19, 1965, pp.645-646

(19) Mosely, Philip, The Soviet Union and the UN, JIO, Volume 19, 1965, pp.668-671

committees, was deliberated in terms of the prevailing East versus West alignments. The East and West vied with each other for the role of championing the caucus in economic and social questions, human rights and self-determination as well as peaceful settlement of international disputes<sup>(20)</sup>. The UN was far from united and the East and West constituted two separate powerful blocs competing to gain the votes of the new members. Under these circumstances, the African states followed the lead taken by India, to a position of non-alignment with respect to the two rival blocs<sup>(21)</sup>. It should be noted that the term "non-alignment" as used by African states only means a refusal to be committed in advance to giving support to one bloc or the other in the deliberation of international processes<sup>(22)</sup> and is, therefore, not intended to mean neutrality. The African delegations always decide in each individual case on which side to cast their votes or to whom to promise support in return for reciprocity. Such support is ad hoc and is only intended to be limited to the subject matter in hand. Therefore, it does not apply to other future controversies or disputes. Consequently, the position of non-alignment pursued, is only intended to safeguard freedom of action at all times. Moreover, it does avoid entrance into bilateral treaties or agreements by which the African states would bind

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(20) Karefa-Smart, John, Op. Cit, p.769

(21) Claude, Inis L., Implication and Questions for the Future, JIO, Volume 19, 1965, pp.840-843

(22) Dodge, Dorothy, African Voting Cohesion in the UN, African Report, Volume 12, 1967, p.58

themselves to one of the contending blocs. It is clearly obvious that the African states are generally not impressed by ideological considerations. They are interested in economic development and social welfare. To these urgent problems, they prefer to apply their resources and, in order to solve them, they are prepared to receive assistance from any source. Under these circumstances, they fear that to become involved in ideological disputes and to commit their support to any bloc, would restrict their freedom to accept assistance from both sides<sup>(23)</sup>. Under the present conditions of the rekindling of the "Cold War" the huge sums of money spent by the super powers on defence and armaments are a cause for concern to the African states. They regard the super powers' refusal to conclude a treaty on reduction of the various arms, as a constant threat to the freedom of all small nations<sup>(24)</sup>. Even more alarming is the recent extension of the "Cold War" to African regional disputes<sup>(25)</sup>. In addition to these facts, the African states have been distressed by Western refusal to support their demands in the Security Council for strong economic sanctions against South Africa. The failure to back up positive measures endorsed by a number of the UN General Assembly resolutions against apartheid policy, has led the African states to doubt the UN's ability to bring

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(23) Ibid p.60

(24) Karefa-Smart, John, Op. Cit, p.773

(25) Cervenka, Zolenek, The OAU in 1976, African Contemporary Record 1976-77, pp. A68-A69

about a peaceful settlement<sup>(26)</sup>. Despite these facts, African states have not lost confidence in the UN but they have become increasingly fearful of the permanent members' proposal of revising the system of one member, one vote. This proposal seems to be intended to curtail the growing importance of the smaller states by the introduction of some weighted voting system which would depend on the size of population, gross national income and other material factors and would be disadvantageous to African states. Acceptance of this kind of voting system would be a serious threat and an attempt to destroy the equality on which the UN Charter depends<sup>(27)</sup>. To conclude, the African states need the UN and it would appear that the UN also need them.

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(26) Legum, Colin, Southern Africa: The Year of Whirlwind, ACR, 1976-77, Rex Collings, London, 1977, pp. A28-A31

(27) Karefa-Smart, John, Op. Cit, p.773

ATTITUDE OF AFRICAN STATES TOWARD THE TRADITIONAL PRINCIPLES  
OF INTERNATIONAL LAW

It is well known that the process of authoritative decision-making in international law owed its genesis and growth to the interaction among the Western European states during the last four centuries. The world-wide community inherited international law as it stands today from the common source of Western European conscious activity and beliefs. For the sake of historical accuracy, however, it should be noted that the then European great powers at the Congress of Vienna in 1815 set up an exclusive club, "The Concert of Europe," through which they appointed themselves as guardians of the European Community and executive directors of its international affairs. These great powers also assumed the authority to admit new member states to this closed international club<sup>(1)</sup>. Under these circumstances, most of the African territories had been considered a legal vacuum which led to their characterization as terra nullius, just as America had been prior to European settlement<sup>(2)</sup>. In consequence of these developments, the European jurists of the nineteenth century asserted that international law was applicable only between Christian peoples of Europe and those of the civilized peoples of European origin. Accordingly, the

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(1) Stockton, Charles H., Outlines of International Law, the Scribner Press, New York, 1914, pp.44-46

(2) Anand, R.P., Attitude of the Asian-African States Toward Certain Problems of International Law, ICLQ, Volume 15, 1966, p.59



acts of colonialization came to be considered as valid and legal on the basis of the aforesaid argument, as did the establishment of colonial rule in Africa by actual physical control and the test of effectiveness. Under these circumstances, the existing African states did not play an active role in the development of international law during this most creative period of its history in the nineteenth and at the beginning of the present century. In the process of time, the Christian European family of nations were initially extended to include the peoples of North and South America, while Turkey was admitted in 1856 in consequence of the conclusion of the Crimcan War Treaty and the establishment of diplomatic relations with the European states<sup>(3)</sup>.

Consequently, international society had thus outgrown the common qualifications for participation in an international club which were based on a common civilization. Japan was admitted<sup>(4)</sup> after the wars with China and Russia in 1894 and 1904/5 respectively<sup>(5)</sup>. At the Paris Peace Conference, two African states participated, Ethiopia and Liberia. They were also the only African states that had membership in the League of Nations. The rest were still under colonial domination<sup>(6)</sup>. It should be noted that African

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(3) Stockton, Charles H., Op. Cit, pp.47-55

(4) Ibid pp.57-59

(5) The required criterion of civilization was based on the technical and industrial know-how and, of course, military power.

(6) South West Africa Case (2nd Phase) 1966, pp.17-18

participation at the San Francisco Conference of 1945 was increased, but African states have no effective voice. It was only after 1955, under pressure of world public opinion in support of the principle of self-determination, aided by the unusual conditions of the cold war, that a number of African countries acquired independence and became members of international society<sup>(7)</sup>. It is notable that during the last two decades, African states acquired an exceptional influence in the UN General Assembly and in international affairs at large<sup>(8)</sup>. Thereupon, the criterion of "civilized nation" has been abandoned, in spite of the fact that the term has still been used in Article 9 and 38(1)(c) of the statute of the International Court of Justice<sup>(9)</sup> and in Article 8 of the statute of the International Law Commission<sup>(10)</sup>. It does not, however, correspond to the aforesaid connotations. Under these circumstances, international society has established the criterion of the peace-loving nations and the notion of Christian and civilized nations became an element of the historical background of international law. It must be admitted that international law created by and for a few prosperous industrial nations with a common cultural

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(7) Sohn, Louis, Cases on United Nations Law, The Foundation Press inc., Brooklyn, New York, 1967, p.55

(8) Legum, Colin, The African Crisis, JFA, Volume 57, 1978-79, pp.646-650

(9) Brownlie, Ian, Op. Cit, p.269-376

(10) Panhuys, A.F. van et al., Op. Cit, p.134

background and strong liberal, individualistic features is hardly conceived as suitable by African states for the present heterogeneous world society. The majority of African states are small, weak and poor, and badly in need of technological and industrial know-how. Accordingly, African states want the protection of a system of international law which they would be able to mould in accordance with their interests. They based their arguments on the grounds that alterations in the sociological structure of the international community must be accompanied by alterations in international law. They argue that law is not a constant in society, but one of its functions. Therefore, international law ought to change with changes in power, views and interests in the international community in order to be effective. The conditions in which international law developed, the views which it contained and the interests which it protected, have all greatly changed. Consequently, African states seek to reshape and renovate some of the old concepts of international law according to changed circumstances. Having been, in their eyes, victims of an unequal position and passive contribution to the present system of international law, it is not surprising to find African states protesting against some of the old established principles. African states want to change the status quo in order to be able to share in the blessings of modern civilization on an equal footing. They are endeavouring to exert as much influence as possible in modifying as many of the principles of international law. In conjunction with Asian and Latin American states with whom they also share

certain aspects of a common background, they are attempting to reshape international law according to their own interests. In the first instance, these states demand annulment of the former international law of domination as expressed in the colonial system and abrogation of unequal treaties<sup>(11)</sup>. At the first conference of non-aligned nations at Bandung in 1955, the African-Asian states declared that colonialism in all its manifestations is an evil, and demanded a speedy termination of domination<sup>(12)</sup>. The African determination of fullest support of the principle of self-determination has been reiterated by African states time and again at every opportune moment. In 1960, African states in conjunction with some Asian states, introduced a declaration at the UN General Assembly which recognised that all peoples have an inalienable right to self-determination and demanded a speedy and unconditional end to colonialism<sup>(13)</sup>. It should be noted that African states have considered colonialism as a sort of permanent aggression and, therefore, believe that it is legal to throw off colonial rule by force, if other means fail, since it is more or less an act of self-defence<sup>(14)</sup>.

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(11) Jacobini, H.G., A Study of the Philosophy of International Law as seen in Works of Latin American Writers, Martinus Nijhoff, the Hague, 1954, pp.104-118

(12) Krishnan, Maya, Op. Cit, p.197

(13) Ibid p.198

(14) In the words of the Algerian delegate speaking in the 16th Committee of the UN General Assembly "The Charter itself contemplates the lawful use of force in certain circumstances. One of those circumstances was individual or collective action in the exercise of the right of self-defence. The Addis Ababa Charter had simply exercised the right by providing for collective action to assist national liberation."  
(Fox, Hazel, Op. Cit, pp.397-398)

Consequently, they argue that it is not prohibited to use violence in the struggle for liberation under Article 51 of the UN Charter<sup>(15)</sup> in which self-defence is an admitted exception to the general prohibition against the use of force. They further stated that the UN Charter does not contain provisions relating to rebellion against constituted authorities if such rebellion is in conformity with the legal right of self-determination. Accordingly, they considered aid given to the African liberation movements as lawful and consistent with the principles of the UN Charter.

African states also endeavour to rebel against some of the economic and political rights obtained by their former colonial powers during the period of colonial rule. They believe that these rights are inequitable because they had to accept them during a period of subjection. Consequently, they insisted that unjustified and inequitable political conditions must be eliminated through mutual negotiation, and inequitable treaties and the principles of international law must be modified in conformity with changed circumstances. As we have already mentioned, African states are not the first to demand the modification of these legal rights. Most of the developing countries of Asia and Latin America, and even some European states, have joined in demanding that international law should be responsive to the needs of the factual situations to which it is applied. The jurists of the developing states argue that states tend to disregard treaties which no longer serve their interests; and they have given several examples where the Western Powers disregarded the treaties when they felt that their interests

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(15) Brownlie, Ian, Op. Cit, p.16

were adversely affected by them. In 1932 the French Parliament refused to pay the war debt to the United States of America on the grounds that the determining circumstances had changed since the conclusion of the Peace Conference of Paris in 1919. And, in 1934 the British Government ceased to pay its regular instalment dues under the war treaty with the United States of America on the grounds that the treaty was unreasonable and inequitable, therefore, it no longer served the British interests<sup>(16)</sup>. Apart from thus endeavouring to remove old colonial rights and their lingering remnants, African states demand the general application of those principles of international law that formerly regulated the relationships between the "civilized nations." It is on this basis, they argue, that international law will be a positive law of peace and welfare which may promote their economies and assist them in raising their standard of living. Thus, it has been rightly pointed out that international law, in order to become a law which would protect the weaker states, especially economically against the richest ones, must be reshaped.

It would appear that none of the African states have denied the binding force of international law and that they accept large parts of it unquestioningly, pleading their case in conformity with it. It can also be claimed that the strong criticism voiced by quarters in the old countries concerning the disregard of the traditional principles of international law by African states is an

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(16) Anand, R.P., Op. Cit, p.68

indication of double standards rather than principle. Recent events clearly demonstrate that Western states are no less guilty of such disregard when it suits their perceived interests. In fact, their attitude towards the traditional principles was always determined by their perceptions of self-interest, thus affecting the development and the course of international law. Thus, for instance, at the two Geneva Conferences on the Law of the Sea in 1958 and 1960, no agreement was reached on the breadth of the territorial waters in consequence of the conflicting interests of the developing states and the maritime powers<sup>(17)</sup>. Another factor determining the attitude of the African states to the traditional principles of international law is that they impose a slow progress, inadequate for keeping international law up to date in an age of rapid changes in technology and relations between states. It also has an element of uncertainty which sometimes makes it very difficult to establish in a firm manner what has become a binding rule. In response to this argument some development has taken place within the UN and its subsidiary agencies to codify traditional international law. The crucial role played by the UN in the process of formulating and promulgating norms of international law is generally acceptable to the African

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(17) Keto, David B., Law and Offshore Oil Development, The North Sea Experience, Praeger Publishers, New York, 1978, p.64

states and seems adequate to meet their requirements. African states, therefore, look to other sources of law as a more effective means of achieving reforms and progressive development. This is especially true of the UN General Assembly resolutions dealing with hitherto unregulated subjects such as the deep sea bed, air space and outer space<sup>(18)</sup>. The attitude of African states to the Geneva Conventions on the Law of the Sea clearly provided a good illustration on the force of national interest which determined their approach<sup>(19)</sup>. It is worthwhile mentioning that most African states now in existence had attained their independence after the conclusion of the Geneva Convention on the Law of the Sea in 1958<sup>(20)</sup>. This fact in itself was reflected in the consequent claims of African states that the Geneva Conventions were drafted without their interests being consulted. In this connection, the ratification of the Geneva Convention on the High Seas by the landlocked African states<sup>(21)</sup> was clearly executed in pursuance of self-interest, since they have no maritime territories<sup>(22)</sup>. The other African states<sup>(23)</sup> which ratified the Geneva Convention on fishing in every case expressed their dependence on the fishing industry as an extremely important branch of their economy. Hence, the state concerned assumed a positive position towards this matter<sup>(24)</sup>. At any rate,

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(18) Panhuys, H.F. van et al., Op. Cit, p.153, 144, 293 and pp.189-192

(19) Janis, Mark, Sea Power and the Law of the Sea, D.C. Heath & Company, Toronto, 1976, pp.76-80

(20) Rembe, Nasila, Africa and the International Law of the Sea, Sijthoff & Noordhoff, Maryland, 1980, pp.7-13

(21) Malawi, Upper Volta, Uganda and the Central African Republic.

(22) Rembe, Nasila, Op. Cit, pp.74-76

(23) Nigeria, Senegal, Malagasy and Sierra Leone

(24) Fox, Hazel, The Settlement of Dispute by Peaceful Means and the Observance of International Law, African Attitude, JIR, Volume 3, 1966-71, p.402



the rest of the African states, therefore, have not yet adhered to the Geneva Conventions on the Law of the Sea. Accordingly, if their practice is examined, one may find that a certain number of them have in fact, deviated from the provisions enshrined in these Conventions. The majority of African states have unilaterally declared exclusive fishery zones extending beyond the twelve miles now generally accepted under customary international law<sup>(25)</sup>. Some of these states claimed over one hundred miles exclusive fishery zones but none of these states are able to enforce these limits effectively. Consequently, it is more likely that the declaration is probably an expression of disapproval against well-equipped foreign fleets that are fishing extensively off the West African coast. The attitude of African states in respect of the continental shelf is of immediate importance, but they maintain that it is worthwhile to pursue the effort of self-interest as an official position in respect of it. The Vienna Convention on Immunities and Privileges (1961) and the Law of Treaties (1968) were ratified by only a few African states, but in practice, most of them are largely in conformity with the rules enshrined in these instruments<sup>(26)</sup>. Thus, it appears that the attitude of African states is in general, favourably disposed towards treaties as a source of

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(25) Rembe, Nasila, Op. Cit, pp.90-97

(26) Panhuys, H.F. van et al., Op. Cit, p.156

international law. It has already been mentioned that their independent status enables African states to participate on an equal footing with the established states in the treaty-making process. These treaties have proved to be an effective means for codification and progressive development of international law. In spite of the fact that the process of negotiating and ratifying these treaties, as well as achieving universal consensus, is frequently very slow. On the matter of unanimity, the African states have tended to oppose the unanimity doctrine of the admissibility and maintain reservations on multilateral conventions<sup>(27)</sup>. In this connection, the African approach tends to show a preference for the Pan-American approach "...under which the reserving state becomes a party to the treaty with respect to the other parties that do not object to the reservation<sup>(28)</sup>". As far as treaties concluded before independence are concerned, the African states have tended towards a pragmatic approach. They refused to accept those treaties which represent burdens inherited from the colonial period which are inconsistent with the promotion of their aspirations and prevent the realization of national interests. The justification which has been given for the refusal is that a vital change of circumstances has occurred in the object of the treaty, or that the reason for specific contractual obligations has

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(27) O'Connell, D.P., State Succession in Municipal Law and International Law, University Press, Cambridge, 1967, pp.134-136

(28) Okoye, Felix Chuks, Op. Cit, p.191

disappeared upon independence, or the traditional rule of a clean slate in matters of state succession to treaties has been invoked<sup>(29)</sup>.

Regarding multilateral treaties on international rules established by their predecessors, the African states have generally accepted such treaties upon the principles of devolution<sup>(30)</sup>. The reason for this approach seems to be that the African states regard multilateral treaties as the primary means for the legal expression of the views of states on matters of international interest. Furthermore, they believe that the proportional contribution of multilateral treaties to the content of the international legal system is enormous. It would also open the door for the area of traditional international law to be reshaped to reflect the present reality on the global scene. It should be noted that multilateral treaties occupy an important peripheral status in the legal system of international law. It might be argued that multilateral treaties have transformed traditional international law beyond recognition. This could be illustrated by the wide range of multilateral treaties establishing organisations of international competence and concern, thus expanding the scope of international law. In spite of these facts, the reality, however, is that multilateral treaties are still playing a secondary role

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(29) Delupis, Ingrid, International Law and the Independent States, The University Press, Glasgow, 1974, pp.195-200

(30) Okoye, Felix Chuks, Op. Cit, p.191

to the contribution of the international legal system. It should be noted that the language of many treaties makes it difficult to determine the precise obligations they impose. In this connection, the need to achieve an acceptable formula between the advocating and opposing negotiators usually leads to a confusion of general terms which does not establish a precise legal application. For this reason, it has been argued that the provision of the UN Human Rights Declaration might be void because of uncertainty<sup>(31)</sup>.

African states have endeavoured since the attainment of their independence, to increase the living standards of their peoples through rapid industrialization and modernization of their agricultural systems. In doing so, they seek to acquire capital from external and internal sources. As far as the internal sources are concerned, African states have recourse to nationalization and expropriation of private property. Under these circumstances, foreign investments and large holdings have become vulnerable to nationalization and expropriation<sup>(32)</sup>. In this connection, international law provides rules governing states' responsibilities for the treatment of aliens, both as regards individuals and property, within their jurisdiction. Thus, in case of expropriation and nationalization, international rules require the payment of adequate compensation.

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(31)

Panhuys, H.F. van et al., . Op. Cit, p.247

(32) Expropriation means compulsory acquisition of private property by a certain government for public purposes in time of peace on payment of compensation.

As far as African states in general are concerned, they are very critical of these rules concerning the treatment of aliens and their property. They maintain that they have the right to expropriate, subject only to their liability under municipal law to make compensation. Moreover, they assert that the rules of international law and treaties which no longer correspond to current requirements cannot be invoked. This attitude was initially adopted by Latin American states which maintained that the alien is entitled only to equality of treatment with the national<sup>(33)</sup>. It is worthwhile mentioning that the previous colonial administration had granted extensive economic and political concessions to their nationals on a basis of inequality with the indigenous population of the colonies. Consequently, faced with such a situation, African states inevitably had recourse to measures of nationalization and expropriation of foreign property as an initial step towards an equitable redistribution of national resources. The first relevant case occurred in Africa with the nationalization by Egypt of the Universal Company of the Maritime Canal on July 26th, 1956<sup>(34)</sup>.

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(33) Leech, Noyes, E. et al., Cases and Materials on the International Legal System, The Foundation Press, New York, 1973, pp.586-587

(34) The Egyptian Government issued a presidential decree nationalizing the Company which was largely owned by the British and French citizens. The decree stated that holders would be compensated in conformity with the value of the share in the Paris Stock Exchange on July 25th, 1956, the day before the nationalization.

Such measures of expropriation are not usually accompanied by the payment of what in traditional terms would be considered adequate compensation<sup>(35)</sup>. African states argue that the rules of state responsibility should be rooted in the recognition of the inherent right of peoples to own and develop their own national resources which are enshrined in the UN General Assembly Resolution 626 of December 21st, 1952<sup>(36)</sup>. Accordingly, any foreign intervention to prevent such measures of expropriation and nationalization would be inconsistent with the principles of sovereign independence and equality of states. It should be noted that this approach of the African states is now formally included in the 1962 UN General Assembly Resolution on the Permanent Sovereignty over Natural Resources<sup>(37)</sup>. Paragraph I of said Resolution provides that "....the right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the state concerned<sup>(38)</sup>." It should be noted that the inalienable right of all states to their natural resources is qualified by Paragraph 8 which provides that "....foreign investment agreements freely entered into by or between sovereign states shall be observed

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(35) The Egyptian Government and the Suez Stockholders signed an agreement on July 13th, 1956 which provided for a payment by the Egyptian Government of 28,300,000/00 Egyptian pounds and also surrendered all external assets of the Company to the Stockholders.

(36) Panhuys, H.F. van et al., Op. Cit, p.293

(37) Ibid p.293

(38) Ibid p.294

in good faith in accordance with rules in force in the state taking such measures in the exercise of its sovereignty and in accordance with International Law," and Paragraph 4 which provides that "...Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognised as overriding purely individual or private interests both domestic and foreign. In such cases, the owner shall be paid appropriate compensation<sup>(39)</sup>." The above-mentioned resolution met the approach of African states that adequate compensation should be assessed by the standard which an African state deems appropriate for its own nationals and as determined in conformity with municipal law<sup>(40)</sup>. In this connection, the African states tend to look at appropriate compensation in terms of capital investment by a foreign enterprise and the economic revenue

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(39)

Ibid p.294

(40)

The African representatives who took part in the deliberation, voted for the resolution with the exception of Ghana which abstained from voting.

which that enterprise has already gained from its investment, the attitude of developed states is to see how many years the concession still has to run and to assess the annual expectation of profit. In consequence of this calculation, appropriate compensation should reflect the loss of expected future profit<sup>(41)</sup>. It is thus clear that African states which are very critical of international standards of adequate compensation do observe some obligation under international law to pay an appropriate compensation for expropriated foreign investments<sup>(42)</sup>. It is clearly understood that all African states are in need of foreign capital in order

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(41) For instance an enterprise had invested £800/00 million. The concession had already run for ten years and over that period the enterprise had made profits of £200/00 million over and above this investment. The African states would look at the past record and would maintain that the enterprise had already been amply compensated for its investment. The African states would not accept any argument that there were still another ten years to run before the termination of the concession and that the expected annual profit was calculated at the rate of £10/00 million, according to which the enterprise was entitled to a £100/00 million compensation.

(42) This African approach is illustrated by the stand of the Congolese Government in its action in 1967 against the Union Miniere du Hant Katanga. The Congolese Government ordered the transformation of assets and concession of Union Miniere to a new nationalized Congolese enterprise. After protracted negotiations between the Congolese Government and the Societe Generale des Minerais de Belgique, it was agreed that the latter would be responsible for mining and marketing operations for the new nationalized Congolese enterprise. Thereupon, the Congolese Government agreed to pay appropriate compensation as determined in conformity with its municipal law.



to carry out development programmes and that they therefore frequently declare their willingness to deal with foreign investments in conformity with international rules and standards. In spite of these facts, African states have exhibited a far greater restraint in the treatment of foreign investments than the Latin American states did, however, it is true that the African states are not willing to agree to the requirements of compensation as a widely accepted multilateral agreement. The UN Economic Commission for Africa in its report on the Investment Laws and Regulations, concluded that the subject was much more complicated because of the diverse systems of law in operation throughout the continent<sup>(43)</sup>. Anglophone countries are very ambiguous and have no unified law or policy relating to investments. The Francophone countries, on the other hand, are guided by reasonably coherent principle, law and policy related to investments. It is worthwhile mentioning that the situation in these African English-speaking states has now been improved by the introduction of municipal acts in these states through the lines of Tanzanian Foreign Investments Acts of 1963<sup>(44)</sup>. According to this Act, foreign investments which have been approved by the Tanzanian Government are legally guaranteed and in the event of nationalization, full and fair compensation shall be paid. Furthermore, warranties are given by

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(43) Fox, Hazel, Op. Cit, p.401

(44) Ibid p.401

these municipal acts to allow the reasonable repatriation of capital and profits. It should also be noted that most of the African states have concluded bilateral treaties with the capital exporting states, guaranteeing fair and equitable treatment to foreign investors<sup>(45)</sup>. In this connection, Switzerland has been first in negotiating bilateral treaties with African states whereby they agree to submit investment disputes to international procedures for peaceful settlement<sup>(46)</sup>.

Concerning the treatment of aliens residing within the territories of African states, they are also critical of the international rules relating to this subject. It must be pointed out that African states might not even be able to accord the protection of these international rules and standards to their own nationals. They cannot, therefore, accept responsibility for the effects of programmes of political, economic and social reforms which may apply to aliens resident in their territories. Consequently, African states are not willing to permit injury to aliens to be adjudicated by international tribunals. They argue that progress in these reforms would be adversely affected if each case of injury to aliens were taken to international tribunals. They believe that municipal courts should have exclusive competence in these matters. Under these circumstances, many aliens have been deported or expelled by African states involving substantial material losses for the affected aliens. The majority of African states,

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(45) Gooding, M.A.J., Investment Problems of Africa, ACR, 1968-1969, Africa Research Ltd., Exeter 1969, p.756 passim.

(46) ILM, Volume III No.6, November 1964, pp.1124-1127

however, are willing to grant equality of treatment to aliens. The gross abuse of the rights of aliens by African states is usually due to the sharp political sensitivity-and the arrogant behaviour of the aliens in question. The protection of the status of aliens in African states is in principle guaranteed by the Universal Declaration of Human Rights which is enshrined in the OAU Charter<sup>(47)</sup>.

The conclusion from what has been discussed above, must be that the African states increasingly follow national interest in their conduct in international affairs. There is no wholesale rejection of the established principles of international law on their part, but they do increasingly consult the rules of international law before formulating their national policy. This certainly indicates that they are committed by the letter of their constitutions to respect and to observe their obligations under international law. The principles of international law are taught in African states, and there is no noticeable tendency among students to regard international law as a product of European civilization. The practice of African states is not completely different from that of others and, in some instances, they have even gone further by adopting constitutional provisions stressing legality and respect for the UN Charter and the Universal Declaration of Human Rights. The OAU was established as a regional

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(47) OAU Charter and Rules of Procedure, Article II(e),  
Op. Cit., p.10

organisation within the framework of the UN Charter for the purpose of maintaining peace and security in the African continent. Accordingly, African states are great champions of a new international law based upon the principles of the UN Charter. They are supporters of a strong UN because it acts as a shield for them against the might of the super powers and assists them in the promotion of their interests.

THE AFRICAN ATTITUDE TOWARDS PEACEFUL SETTLEMENT OF  
INTERNATIONAL DISPUTES

It has already been mentioned that African states on attaining independence, are endeavouring to reject some of the traditional principles of international law and its peaceful procedures for the settlement of disputes. Despite this fact, African states are keen to develop an effective machinery for the peaceful solution of disputes. They regard the intractable boundary and border disputes among themselves, and other forms of international disputes, as threatening their political independence, and all striving for social and economic development. Therefore, for all of them, security, stability and settlement of disputes by peaceful means are in separately linked processes of social, economic and political development. Under these circumstances, and in recognition of this fundamental principle, African states have provided in Article 3(4) of the OAU Charter for the peaceful settlement of disputes by negotiation, mediation, conciliation or arbitration<sup>(1)</sup>. Once again, the OAU Protocol on mediation, conciliation and arbitration provides that in the case of arbitration, the arbitral tribunal shall decide the case in conformity with treaties concluded between the parties, the principles of international law in general, the OAU Charter, the UN Charter and, if the parties agree, ex aequo et bono<sup>(2)</sup>. It should also be

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(1) OAU Charter and Rules of Procedures, Op. Cit, pp.10-11

(2) Protocol of the CMCA, OAU Charter and Rules of Procedures, Op. Cit, p.59

mentioned that African states are interested in the establishment of an African Court of Justice, although it should be noted that in spite of the tendencies towards peaceful procedures, the attitude of African states towards judicial settlement is less certain. They have shown a marked preference to the settlement of regional disputes by means of mediation and conciliation. This technique is usually carried out under the aegis of an African head of state and outside the institutional machinery established under the OAU Protocol of Mediation, Conciliation and Arbitration.

African states, on the attainment of independence, have become members of the UN, by which they undertake to bring about peaceful settlement of international disputes in conformity with Article 33(1) of the UN Charter<sup>(3)</sup>. According to Article 93(1) of the UN Charter, all the UN member states are ipso facto parties to the Statute of the International Court of Justice<sup>(4)</sup>. It should be noted that African states<sup>(5)</sup> which participated in the San Francisco

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(3) Panhuys, H.F. van et al., Op. Cit, p.33

(4) Ibid p.44

(5) Liberia and Egypt

Subsequently the Ghanaian delegate at the UN stated that "....the granting of compulsory jurisdiction to the ICJ over all matter within the field of international law would enhance the prestige and obligatory nature of international law and could do more than anything else to make that law progressive." It was further stated that "....if it were possible to enforce international law against all nations in all cases, many of the present difficulties confronting the world would be obviated." (Krishana, Maya, Op. Cit, pp.231-232)

Conference of the UN were in favour of the compulsory jurisdiction of the Court. Despite this fact, for the time being, the attitude of African states towards the ICJ as a means for the judicial settlement of international disputes is apparently sceptical. Thus, it would seem to be an indirect manifestation of the rebellion of the African states against the present system of international law. Nevertheless, this is a clear indication that the African approach does not question the whole system. The general attitude of African states towards the ICJ does not basically differ from that of the other member states of the UN. Nevertheless, this is an insufficient ground on which to assess the attitude of any state towards the Court. There are a number of indications to assess a state's attitude towards the Court. One would be the degree to which a state has actually used the Court's procedures. In this connection, African states have actually brought cases of contention before the Court. In the case of Northern Cameroon, the Republic of Cameroon challenged the manner in which the UK had implemented its Trusteeship Agreement over the territory concerned<sup>(6)</sup>. Southern and Northern Cameroons were both administered under the Mandates System of the League of Nations and under the UN Trusteeship System. The Northern Cameroon was administered by the UK as part of the Colony and Protectorate of Nigeria

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(6)

Case Concerning the Northern Cameroon, January 11th, 1963, ICJ Report, p.17

until the latter's attainment of independence in 1960<sup>(7)</sup>. The UN General Assembly resolution called for the granting of independence to Northern Cameroon<sup>(8)</sup>. Accordingly, the UK conducted a plebiscite under the UN auspices. This resulted in a majority of the electorate choosing unification with Nigeria<sup>(9)</sup>. The Republic of Cameroon felt displeased with the consequences of the plebiscite in the North. Having failed to persuade the UN General Assembly that the plebiscite held in Northern Cameroon was incompatible with the principle of justice, the Republic sought to use the legal means of redress by taking the matter to the ICJ. Unfortunately there were no grounds for the aforesaid argument, since the Trusteeship Agreement had been validly terminated by the resolution of the UN General Assembly. Accordingly, the Court decided that no international treaty or agreement existed upon which it could pronounce its judgement<sup>(10)</sup>. Hence, the Court, by a majority of ten to five found that "....it cannot adjudicate upon the merits of the claim of the Federal Republic of the Cameroon<sup>(11)</sup>." Obviously African states could scarcely be expected to appreciate these niceties. They have, therefore, apparently drawn the conclusion that the

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( 7) Fox, Hazel, Op. Cit, p.392

( 8) Resolution No. 1608(xv), April 21st, 1961

( 9) Case Concerning the Northern Cameroon, January 16th, 1963, 1963 ICJ Report, p.22

(10) Ibid p.38

(11) Ibid p.38



European states are in possession of intangible procedural advantages which make it advisable for the African states to shun the ICJ. Once again, the Court's decision in the second phase of the South West Africa Case served to confirm the apparent validity of the African conclusion about the Court. The application of proceedings against South Africa was brought by Ethiopia and Liberia who satisfied the legal requirements of being original members of the League of Nations which had granted the Mandate over South West Africa (Namibia)<sup>(12)</sup>. Yet once again, the African states were defeated by legal technical points. The results of the South West Africa Case have created total disenchantment amongst the African states with the ICJ. It should be noted that the ICJ is considered by both the so-called radical African states, as well as by moderates, as the International Western Court of Justice. There is absolute conviction that the Court is determined to give legal protection to the colonial and imperial interests of South Africa. Consequently, African states have intensified their demands for reforms of the ICJ methods of appointing its judges, their geographical and legal background. As to the composition of the Court, a development had already occurred. Instead of the four Latin American judges who previously sat on the bench of the Court, there are now two Latin American, two African and three Asian judges<sup>(13)</sup>.

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(12) South West Africa Case (2nd Phase), 1966, ICJ Report, p.15

(13) Shihata, Ibrahim F., The Attitude of New States Toward the ICJ, JIO, Volume 19, 1965, p.220

Concerning acceptance of compulsory jurisdiction under Article 36(2)<sup>(14)</sup> of the Statute, a number of African states<sup>(15)</sup> have made declaration under the optional clause of the Statute accepting the compulsory jurisdiction of the ICJ<sup>(16)</sup>. Nevertheless, these states have registered substantial reservations to their declaration of unlimited duration. Thus, the declarations of Sudan, Liberia, Gambia, Malawi, Kenya and Botswana excluded disputes where the parties have agreed to resort to other means of peaceful settlement than the ICJ. The declarations of Kenya and Gambia have also excluded disputes between themselves and other members of the Commonwealth, as well as disputes which by international law fall exclusively within their domestic jurisdiction. Such matters shall be determined by the declaring state itself. Somalia's declaration excludes disputes with states that have not accepted the compulsory jurisdiction of the Court before a given period of one Calendar year prior to the submission of its application to the ICJ. It is thus only Nigeria and Uganda that have signed the declarations without any reservations<sup>(17)</sup>. The reservations of the other African states have in general, followed the pattern of those of other states, particularly the UK and France.

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(14) Panhuy, H.F. van et al., Op. Cit., p.612

(15) Gambia, Kenya, Liberia, Malawi, Nigeria, Somalia, Sudan, Uganda, Egypt and Botswana have made declarations under Article 36(2) of the Statute of the ICJ.

(16) Shihata, Ibrahim, Op. Cit., pp.208-210

(17) Ibid p.210

Thus, it is the practice of certain states to insert compromisory clauses into treaties to which they have become a party and there are a number of African states that are parties to bilateral treaties with compromisory clauses conferring compulsory jurisdiction upon the ICJ<sup>(18)</sup>. Nevertheless, the approach of the majority of African states in general, relating to multilateral treaties with compromisory clauses, is unfavourable at this stage of their development. Those African states which are party to multilateral treaties with compromisory clauses have acceded to such treaties. The reason for accepting the compulsory jurisdiction of the ICJ arose from their accession to these treaties. For instance, on March 27th, 1962, Upper Volta acceded to the Revised General Act for the Pacific Settlement of International Disputes<sup>(19)</sup>, without registering reservations concerning the compromisory clause. A number of African states have acceded, without reservation to the compromisory clause to the Convention on Privileges and Immunities of the UN<sup>(20)</sup>. Certain African states have ratified or acceded to the Convention on the Prevention and Punishment of the Crime of Genocide<sup>(21)</sup>. It should be noted that Article 9 of the aforesaid Convention confers upon the ICJ compulsory jurisdiction<sup>(22)</sup>. Most African states ratified or acceded to the said

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(18) Ibid pp.210-211

(19) Ibid p. 211

(20) Ibid p. 211

(21) Ibid p. 211

(22) Bloonfield, Louis M. & Fitzgerald F. Gerald, Crime Against Internationally Protected Persons: Prevention and Punishment, An Analysis of the UN Conventions, Praeger Publishers, London, 1975, p.161

Convention and made no reservation to Article 9 except Morocco and Algeria who inserted reservation on the aforesaid article<sup>(23)</sup>. A number of African states are signatories<sup>(24)</sup> to the Optional Protocol concerning the compulsory settlement of disputes of April 18th 1961, concerning Acquisition of Nationality. Also, three African states<sup>(26)</sup> have signed the Optional Protocol of Signature of April 29th, 1958 concerning the compulsory settlement of disputes arising out of the application of any convention on the Law of the Sea<sup>(27)</sup>. Moreover, a number of African states have accepted recourse to compulsory arbitration provided for in a number of multilateral treaties to which they acceded. The factual assessment of the attitude of African states towards the ICJ would, therefore, indicate there is a reluctance of these states towards the invocation of the peaceful procedures of the Court. Presumably, this reluctance is the product of the disappointment due to the handling of the South West Africa Case (second phase) in the course of which the ICJ dealt with superficial procedural matters, ignoring the substantial legal issues. The Court thus destroyed its reputation

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(23) Cameroon, Central African Republic, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Gabon, Ghana, Ivory Coast, Liberia and Upper Volta.

(24) Shihata, Ibrahim F., Op. Cit, p.211

(25) Okoye, Felix Chuks, Op. Cit, pp.206-207

(26) Ghana, Liberia and Madagascar

(27) Shihata, Ibrahim F., Op. Cit, p.212

as a progressive international organ of justice among nations. African states argue that the ICJ applies unquestioningly colonial aspects of certain parts of the traditional principles of international law. Therefore, African states shy away from the compulsory jurisdiction of the ICJ. They believe that the acceptance of compulsory jurisdiction might imply acceptance of the substantive rules of the traditional principles of international law. From this point, it would appear that a progressive development of the traditional principles of international law would require to reflect the present reality on a global scale of the new system of international relations. It is extremely difficult for the developing nations, no less than for the developed nations, to be enthusiastic about a judicial system of compulsory jurisdiction. In any event, the Africans distrust the traditional principles of international law and this distrust has been transported to the regional level. Because of this, they have not yet developed a regional judicial organ which is capable of settling regional disputes. Moreover, the judicial settlement is lengthy and costly and only wealthy and developed states can afford it<sup>(28)</sup>. Under these circumstances, African states endeavour to settle their regional disputes at the level of diplomatic negotiations in close line with their tastes and traditions. It should be noted that this

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(28) Ghali, Boutros, The League of Arab States and the OAU, The OAU after Ten Years: Comparative Perspectives, Edited by El-Ayouty, Yassin, Praeger Publishers, New York, 1975, p.52

practice by the OAU departs from the nature of procedures envisaged in the framework of the OAU Charter and the Protocol of Mediation, Conciliation and Arbitration<sup>(29)</sup>.

The OAU Charter specifies that all regional disputes between member states shall be brought before the OAU to be referred to the Commission of Mediation, Conciliation and Arbitration<sup>(30)</sup>. Unfortunately, the Commission's forum for the pacific settlement of regional disputes was abandoned upon its establishment. The African states avoid the more formal institutionalized mode of peaceful settlement, including procedures enshrined in the OAU Protocol of Mediation, Conciliation and Arbitration. They are in favour of ad hoc informal responses to individual conflicts by the Assembly of Heads of State and Government, and the Council of Ministers. Despite the fact that this method is often incompatible with the recognised international procedure of peaceful settlement. The OAU Assembly of Heads of State usually recommend recourse to mediation by an individual or a group of heads of state or to an ad hoc body established by it or the Council of Ministers rather than to the Commission of Mediation, Conciliation and Arbitration. The OAU has extended an important contribution to the African procedure of peaceful settlement by providing a forum of direct negotiations between states in disputes.

Thus, ad hoc technique has been used by the OAU which

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(29) OAU Charter and Rules of Procedures, Article 19, Op. Cit, p.15

(30) Protocol of the CMCA, Article 19, OAU Charter and Rules of Procedures, Op. Cit, p.56

could only be classified under conciliation rather than mediation, in the broad sense of urging the states in dispute to negotiate a peaceful settlement, and to recommend specific measures, such as a ceasefire or cessation of propaganda in order to reduce the level of hostilities. Nevertheless, the OAU has often had recourse to the process of mediation whereby a third party makes non-binding proposals for settlement to states in dispute<sup>(32)</sup>. Consequently, the conclusion which could be drawn from this analysis is that OAU was neither designated nor was it intended by its founders to become involved in inter-state conflicts. Accordingly, Article 3(2) of the OAU Charter enshrined the principle of non-interference in the domestic affairs of member states. This appears, on the face of it to bar intervention in domestic conflicts of

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(32) During the Second Congo Crisis of 1964, the Council of Ministers adopted a resolution on September 10th, 1964 appealing to the Government of the Democratic Republic of Congo to stop immediately the recruitment of mercenaries and to expel them as soon as possible, in order to facilitate an African settlement. The resolution also established an ad hoc commission consisting of Cameroon, Ethiopia, Ghana, Guinea, Nigeria, Somalia, Tunisia, United Arab Republic and Upper Volta under the Chairmanship of the Prime Minister of Kenya. The Commission was entrusted with finding an African solution to the Congo crisis as well as promoting national reconciliation.

member states by other members acting either individually or collectively, through the OAU. Nevertheless, the practice of the OAU is inconsistent with the aforesaid principle since the OAU is involved in a number of attempts of settling domestic conflicts<sup>(33)</sup>. In fact, within the OAU structure, member states participate in the various organs of collective action and equally share in the decision-making process. Thus, the Charter does bar any single African state or number of states from playing the role of leader by heavily emphasising the principle of absolute equality. However, if the leadership of a state or of certain states in a regional organisation is open to doubt, the member states that are in dispute could afford to reject the settlement and resort to the UN<sup>(34)</sup>. In this connection, the record of the Organisation of American States demonstrates that the leadership of the United States of America is totally unchallengeable. Therefore, the member states always settle their regional disputes within the system of the Organisation of American States and never reach the UN<sup>(35)</sup>.

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(33) For instance, in the case of the Tanganyikan army mutiny of 1964, an extraordinary session of the Council of Ministers was convened at the express invitation of the state concerned. Efforts by the OAU to assist the Congo (Kinshasa) in settling the problem of the mercenaries during the third Congo crisis of 1967-68 enjoyed the tacit consent and co-operation of the Congolese government. In the case of the second Congo crisis of 1964, Congolese consent to an OAU role was grudging and Congolese co-operation was sporadic. The African efforts to intervene in the Nigerian Civil War of 1967-70 through the medium of the OAU encountered stiff opposition from the Federal Government of Nigeria which argued that the dispute was strictly an internal affair.

(34) In October, 1963, fighting broke out on the Algerian-Moroccan border. As a result of an initiative of the OAU, a ceasefire was organised, a conciliatory committee was set up to investigate the problem. The Committee achieved little progress in the settlement of the frontier disputes. In 1966, the fighting was renewed after Algeria's nationalization of the iron mines in the disputed area. The Committee was reconvened in March 1967 but no settlement was achieved. Consequently, Morocco appealed to the UN against the armament policy of Algeria.

(35) Ghali, Boutros, Op. Cit, pp.52-53



## THE OAU'S EFFECTIVENESS AT REGIONAL COLLECTIVE DEFENCE

At the Addis Ababa Summit Conference of 1963, African leaders reached consensus regarding the awareness of various security concerns. They discerned the possibility of entrusting an inclusive African regional organisation with this important and urgent task. This stemmed from the consideration of potential security problems such as internal disruption, border disputes and allegations of subversive activities by neighbouring states<sup>(1)</sup>.

It also took into account the existence of threats of extra-regional aggression and the need for collective action, in order to counter such threats with a regional, collective, self-defence system<sup>(2)</sup>. This is related to the organisation's

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(1) According to information by the post-Nkrumah government of Ghana, the Nkrumah government had supported and trained political dissidents from other independent African states, where policies and ideologies of these states did not coincide with those of the Nkrumah regime. Ghana's implication in the 1963 Togo coup had directly led to the invocation of the fifth principle in the OAU Charter. This principle provides for "....unreserved condemnation in all its forms of political assassination as well as subversive activities on the part of a neighbouring state or any other state."

(2)

At the Addis Ababa Summit Conference of 1963, Nkrumah circulated a plan for the establishment of a central political organisation consisting of an upper house of two members per state and a lower house representing the African population, to formulate a common foreign policy, a continental plan for a joint defence system, economic and industrial development, a common currency, a monetary zone and a central bank of issue. This proposal was rejected.

role of collective response to external aggression or threats of aggression by third parties against any member state or in case of action being taken against the remaining colonial holdings<sup>(3)</sup>. Accordingly, Article 2 and 3 of the OAU Charter make it clear that the OAU is intended to assist member states, in both peaceful settlement of regional disputes between member states and the countering of an external act of aggression or threats of aggression against any of its member states<sup>(4)</sup>. It should be emphasized that one of the main purposes for which the African states established the OAU was to defend their sovereignty, territorial integrity and political independence. Consequently, the African leaders agreed that co-operation for defence and security was necessary. Despite that, the provisions concerning collective defence which are found within the framework of the OAU Charter are weak and ambiguous when compared with those of the League of Arab States and the Organisation of American States. Article 4 of the 1950 Arab Collective Security Pact provides that "....the contracting states agreed to co-operate in consolidating and co-ordinating their armed forces and participate, each in accordance with its resources and needs, in the preparation of their individual and collective means of defence and repulsion of armed aggression<sup>(5)</sup>."

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(3) A Committee of Liberation was set up with its headquarters at Dar-es-Salaam, supported by a voluntary fund. The fund was to supply the necessary practical and financial aid to the various African national liberation movements.

(4) OAU Charter and Rules of Procedure, Op. Cit, pp.10-11

(5) Bakhashab, Omar, Op. Cit, p.62

Article 5 of the Charter of the Organisation of American States provides that "....an act of aggression against one American State is an act of aggression against all other American States<sup>(6)</sup>." In addition, collective responses to external aggression or threat of aggression are detailed in the Inter-American Treaty of Reciprocal Assistance<sup>(7)</sup>. The OAU was not able to agree on a similar or equivalent treaty for its member states because of considerable differences in outlook regarding the question of defence and security displayed at the Addis Ababa Summit Conference of 1963. This was mainly the result of geopolitical currents running through the African continent at the time of the establishment of the OAU. All the African states were the residue of the colonial experience. The French-speaking African states desired to retain their close links and especially their defence security relations with their former colonial master. The Anglophones were mostly members of the Commonwealth of Nations, and therefore, motivated in an opposite direction to the Francophones in defence and security matters. The position of the Arab States in Africa was more confused for three reasons: Firstly, the Arab States are more sharply differentiated from each other. The Maghrib Arab States preferred not to align themselves too closely with Egypt, whilst being themselves divided by the different defence and security policies pursued by Morocco, Algeria, Tunisia and Libya<sup>(8)</sup>. Secondly, the collective security system

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<sup>(6)</sup>Whiteman, Marjorie, M., DIL, Volume 5, 1963, p.1050

<sup>(7)</sup>Ibid p.1052

<sup>(8)</sup>Mazrui, Ali A., Black Africa and the Arabs, JIA, Volume 53 1974-75, pp.727-730

of the Arab League has tended to impose different priorities from those of most African states. Thirdly, the colonial experience in Africa has created a dividing line between the Arab States of North Africa and the black African states which produced and maintained a psychological barrier. Whilst the independent African states are refusing to accept the Sahara as a political barrier, they are nevertheless, anxious not to become too closely involved in the Arab-Israeli conflict<sup>(9)</sup>. For this reason, the Arab African states were understandably upset by black Africa's refusal to identify themselves with their stand on external threats by third states. This tension within the OAU was partly resolved after the 1967 War<sup>(10)</sup> when the black African states moved slightly closer to the Egyptian position over the demand for the restoration of the occupied Arab territories<sup>(11)</sup>.

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( 9 ) For instance, at independence every single state in black Africa established diplomatic and economic relations with Israel. They sought, at first successfully, to avoid becoming entangled in the Middle East conflict particularly over the issue of Israel and the Palestinians.

(10) African Research Bulletin, Volume V, No.9, October 15th, 1967, pp.1171 et seq.

(11) At the OAU Assembly meeting in Algeria in September 1968, the heads of state voted on a resolution which was passed by 36 votes to nil with 2 abstentions, to demand "...the withdrawal of foreign troops from all Arab territories occupied since June 5th, 1967 in accordance with the resolution adopted by the UN Security Council on November 22nd, 1967." According to Conference sources, Lesotho and Swaziland were the two countries which abstained. The resolution appealed to OAU member states to ensure the strict application of the Security Council's resolution. In the preceding debate, the heads of state heard a statement on the ME situation by the then UAR Foreign Minister, Mr. Mahmoud Riad. Despite pleas from Mr. Riad and other Arab delegates, the meeting declined to agree to an outright condemnation of Israeli aggression. It should be noted that the Ivory Coast, Dahomey and other countries receiving substantial Israeli economic aid were the main instrument in blocking endorsement of the condemnation adopted at that meeting.

There was also considerably more expression of concern about the possibility of interference of one African state in the internal affairs of another, rather than with the threats of aggression by an extra-regional third party. The African leaders believed that external aggression or threat of aggression was unlikely as long as they maintained good relations with their former colonial masters and depended upon them for their defence and security. The more immediate concern to the OAU founders was the threats faced from other more powerful African states. This was exemplified by allegations of Ghana's involvement in the coup in Togo<sup>(12)</sup> and Morocco's claim to Mauritania<sup>(13)</sup>. Under these circumstances, the OAU Charter says very little about specialised institutions for collective security concerns. At the Summit Conference of 1963, the Ghanaian delegation proposed the establishment of a common defence system with an African High Command to ensure the stability and security of Africa<sup>(14)</sup>. On the other hand, the Ethiopian draft charter proposed the establishment of a more

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(12) The first crisis was the coup d'etat in Togo which occurred even before the OAU was established. The new regime in Togo was prevented from participating in the Addis Ababa Summit Conference of 1963, because of the opposition of a number of states. The Nkrumah regime extended facilities to freedom fighters from Nigeria, Togo, Niger, Cameroon, Senegal, the Ivory Coast, Upper Volta, Congo-Kinshasa and Burundi. These states, therefore, took the lead in raising the problems before the Summit Conference in Addis Ababa in 1963.

(13) Morocco considered Mauritania part of its Kingdom and opposed Mauritania's participation at the Addis Ababa Summit Conference of 1963.

(14) Okoye, Felix Chuks, Op. Cit, p.125

moderate defence board consisting of the Chiefs of Staff of member states. This board was to be only a consultative body, making recommendations to the Assembly of Heads of State and Government<sup>(15)</sup>. Yet even this aroused little support as some states mistrusted the intentions of others, in addition to being unwilling to share military information within the framework of a regional collective security defence. At last the only specialised defence institution that was set up was a Defence Commission<sup>(16)</sup>, one of five specialised commissions, accountable to the Council of Ministers<sup>(17)</sup>. The OAU Charter was deliberately leaving the door open for a detailed plan to be worked out at some future date. It is, however, notable that the Defence Commission was convened only twice during the first sixteen months following the establishment of the OAU<sup>(18)</sup> and these meetings demonstrated the difficulties of reaching any

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Mayers, David, An Analysis of OAU's Effectiveness at Regional Collective Defense, The OAU after Ten Years: Comparative Perspectives, Edited by El-Ayouty, Yassin, Praeger Publishers, New York, 1975, p.120

(16) OAU Charter and Rules of Procedures, Article 20(3), Op. Cit, p.15

(17)

These Commissions were located in member states on the basis of Africa's five regions. The Defence Commission was located in Accra, Ghana. The rules provide that the membership of each Commission consists of the appropriate ministers or plenipotentiaries designated by the governments of member states.

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Mayers, David, Op. Cit, p.120

concerted action even on the most marginal security issues. The first meeting of the Defence Commission was initially charged with the task of defining its competence and purposes. The proposal for the establishment of permanent machinery was at once rejected by the majority of the African defence ministers. The only item on the agenda agreed upon was that the competence of the Commission was confined to that of an organ of consultation. It was also charged with the preparation of plans and recommendations for the collective or self-defence of the member states when they faced external acts of aggression or threats of aggression<sup>(19)</sup>. The general African unwillingness to institutionalize a regional defence system for the continent seems to continue. In 1971, the Defence Commission's proposal to establish an entirely voluntary African defence organisation which would not have compromised national security<sup>(20)</sup> was worked out in

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(19)

Ibid p.120

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The main proposals provided for (1) the creation of a regional defence system comprising one or several units of national armed forces from states in the various regional sectors linked by bilateral or multilateral defence agreements. (2) The military commands of each of these defence systems would take the name of regions or sectors. The Executive Secretariat would be under a Chief of Staff, a deputy and representatives of the national armies of the states concerned. The office of military defence advisers within the OAU General Secretariat would not only co-ordinate all questions concerning the security of member states, but also be responsible for the gathering of military information and intelligence likely to interest the OAU Liberation Committee. This office would comprise a military adviser with the rank of Brigadier appointed for three years, a deputy with the rank of Colonel, appointed for two-and-a-half years and three officers with the rank of Major, appointed for two years. The latter would be appointed by the OAU Summit on recommendations from the Defence Commission Bureau. (3) The creation of a permanent Defence Committee which would meet every six months or when called into session by the Chairman of the Bureau. This permanent Committee would comprise Bureau members, the Military Adviser in the Secretariat, the OAU Secretary General and the Executive Secretary of the Liberation Committee.

some detail by the representatives of thirty-one African states. This too was rejected by the supreme organ of the OAU, the Assembly of Heads of State and Government<sup>(21)</sup>. The OAU and the League of Arab States, unlike most other regional security organisations, do not include any major powers among their member states. This may be the ideal model for the African states whose primary concern seems to be the avoidance of involvement of super powers in their regional security. For this reason, the OAU was not prepared in 1967 and 1973 to assist its member state (Egypt) against external aggression by a third state. The Israeli occupation of the Egyptian Sinai Peninsula, extra-regional intervention in Angola and the invasion of Guinea presented the OAU with three cases of external aggression<sup>(22)</sup>. In all of these instances, African reactions were limited and indecisive. In spite of the indecisiveness of the OAU, there was widespread concern about the invasion of Guinea and the extra-regional intervention in Angola. The Guinean Government received innumerable messages of support and solidarity from all OAU member states, in addition to the total participation of all OAU members at the emergency meeting of the Council of Ministers held in Lagos, Nigeria in October 1970, to debate the aggression against Guinea. Resolutions condemning Portugal and promising assistance to Guinea were unanimously adopted<sup>(23)</sup>. Similarly, African states

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(21) Cervenka, Zdenek, et al., The OAU in 1971, ACR, 1972-73, Annual Survey and Document, Rex Collings, London 1972, pp.A47-A55

(22) Mayer, David, Op. Cit, p.121

(23) ACR, 1970-71, Rex Collings, London 1971, pp.C56-C57



demonstrated more concern with the extra-regional intervention in Angola. The Assembly of Heads of State and Government held an emergency summit in Addis Ababa in January 1970. In addition to this extraordinary session, the Assembly requested its bureau to maintain a constant follow up on the situation in Angola. All resolutions condemning foreign involvement in the internal affairs of Angola were adopted unanimously<sup>(24)</sup>, but the Israeli occupation of the Sinai was received very differently from the two above-mentioned cases. The African concern for the victim (the original member) was one of indifference. It is worthwhile to mention that before the outbreak of the June 1967 War, a number of African states maintained friendly relations with Israel. In addition, these states maintained an official policy of silence and abstention in the UN organs, and also cast pro-Israel votes there<sup>(25)</sup>. For this reason, the Council of Ministers' meetings during the 1967 and 1973 Wars reflected the general unwillingness to commit the OAU to a clear-cut position on declaring for action on behalf of Egypt<sup>(26)</sup>. In consequence of the prevailing stance of the black African states, the Arab League threatened to impose upon them an oil embargo in case of constant refusal to identify themselves with the cause of an OAU member state<sup>(27)</sup>. Under these circumstances,

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(24) Ibid p.C5

(25) Legum, Colin, The OAU: Success or Failure, JIA, Volume 51, 1975, pp.208-211

(26) Mazuri, Ali A., Op. Cit, p.739

(27) Legum, Colin, Op. Cit, p.213

the Summit meeting of the Assembly of Heads of State took place at Addis Ababa in September 1968 and adopted a resolution on the ME conflict. This resulted in an unprecedented involvement by the OAU in the Arab-Israeli conflict<sup>(28)</sup>. As of that date, the OAU went beyond the realm of the previous passive attitude by declaring its condemnation of Israel's occupation of a part of the territory of a member state, namely Egypt. At the same time it sought to exert direct pressure aimed at the achievement of a durable and just peace in the Arab-Israeli conflict<sup>(29)</sup>. By condemning aggression, the OAU's attitude to extra-regional aggression against Egypt led, especially after the October War of 1973, to a dramatic change in African-Israeli relations. All the African states belonging to the OAU, with the exception of Botswana, Lesotho, Swaziland and Malawi, severed diplomatic relations with Israel<sup>(30)</sup>. Despite this attitude, developments in Africa in the past two decades made that continent the obvious arena of extra-regional intervention by foreign powers, particularly the two super powers. The ability of these super powers to respond rapidly anywhere in Africa, coupled with the material weakness of the African states, thus negate the proposition of effective collective security. They also lack the logistic capabilities to transport men and weapons to neighbours who may be in need.

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(28) Gitelson, Susan Aurelia, The OAU Missions and Middle East Conflict, JIO, Volume 27, 1973, p.413

(29) El-Ayouty, Yassin, The OAU and the Arab-Israeli Conflict: A Case of Mediation that Failed, The OAU after Ten Years: Comparative Perspective, Edited by the Writer, Praeger Publishers, New York, 1975, p.188

(30) Legum, Colin, Op. Cit, p.211

African railroads do not form a continuous network and air transport capacities are extremely limited. The two super powers can deliver the required military resources quickly to potential trouble spots. The advanced technology, in addition to the enormous resources available to the super powers, may completely outweigh the advantage of proximity. This was clearly evident in the USA's assistance to the Congo and the extensive Soviet aid to Ethiopia and Angola.

Consequently, the debates in OAU organs showed a clear and growing concern with extra-regional intervention in the continent<sup>(31)</sup>. In the Horn, OAU norms were clearly on the Ethiopian side in defending the territorial integrity of an African state. In Shaba the same norms dictated support for the government of Zaire<sup>(32)</sup>. At the Al-Khartoum Summit Conference in August 1978, the African leaders expressed their acute awareness of the increasing extra-regional intervention to which the African states were being subjected by international rivalries for influence<sup>(33)</sup>. They discerned that their relative weakness was an important contributory factor in the creation and maintenance of the present situation. Many African leaders acknowledged that responsibility for what

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(31) Ottaway, David, US Policy Eclipse, JIA, Volume 58, 1979-80, pp.650-658

(32) Young, Crawford, The Unending Crisis, JIA, Volume 57, 1978-79, p.169

(33) Trofimenko, Henry, The Third World and the US-Soviet Competition - A Soviet View, JIA, Volume 57, 1978-79, pp.1021-1040

had been occurring in the continent lay with the Africans themselves. This is particularly so, owing to their growing reliance on external defence systems for their own security<sup>(34)</sup>. African leaders are sharply divided over whether the external aggression or threats of aggression come from the West or the East. Recently, a growing tendency to take Soviet military involvement in the continent more seriously than in the past two decades, was discernible. It should be noted that African states seem to have divided into "moderates" and "radicals." The former are critical of Soviet extra-regional involvement, while the latter are critical of Western extra-regional involvement. The attitude of those in the pro-Soviet camp is that in every case where the Soviet Union was actively involved in the continent, it had been invited to assist legitimate African governments and bona fide liberation movements in fighting against imperialism, whilst every instance of Western intervention was in support of reactionary regimes and against the liberation movements. The views of the middle groups of largely non-committed nations is unreserved condemnation in all its forms of external intervention. This group saw the mercenary-led attacks in Benin and the Comero Islands and the extra-regional intervention by certain European powers in Central Africa, as extra-regional aggression and any idea of justification was unacceptable<sup>(35)</sup>.

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(34) Ottaway, David, Op. Cit, p.638

(35) Ibid p.658

From this analysis one could calculate that the existence of a regional organisation incapable of collective regional defence, increases the probability of extra-regional involvements by the global powers. In a number of instances mentioned above, the OAU did not prove an effective machinery for collective defence against extra-regional acts, or threats of aggression against its member states. For this reason, the OAU member states became increasingly dependent upon the super powers for their defence and security. The lack of mutual trust between the OAU member states has contributed to the extremely limited nature of collective defence arrangements. So far, it is very difficult to award any credit for contributions made by the OAU to assist members who have been victims of aggression. It seems that the OAU will also be unable to increase the security of its member states in case of any future aggression, or even in case of internal disruption<sup>(36)</sup>. In addition to the lack of military co-operation by African states, one also has to consider the general shortage of resources available by the majority of the smaller states. As stated earlier, the Francophone states have maintained security relations with their former colonial masters and regard such defence co-operation as the basis of their national security. These states believe

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(36)

The Guardian, Thursday January 21st, 1982, p.5

that the maintenance of such treaties with the former colonial power seem to be considerably better defence systems than the development of regional collective defence within the OAU system. In addition, the smaller African states are reluctant to join any regional collective defence pact within the OAU system, fearing that this might lead to a diminution of their total control over their national armed forces, and would eventually, involve the sharing of military secrets. The smaller African states also believe that they may be threatened by neighbouring states rather than by extra-regional aggression or threats of aggression. Thus, the lack of a strong community identification has increasingly jeopardized efforts at instituting a regional collective security system within the OAU structure. All these factors have militated against a successful institutionalisation of a regional collective security system by the OAU.

## THE CONCEPT OF SELF-DETERMINATION

The concept of self-determination is bound up with the history of the "doctrine of popular sovereignty" expounded by the "French Revolution" in the eighteenth century<sup>(1)</sup>. This arose from the democratic ideal of equality which constituted a threat to the legitimacy of the then established order<sup>(2)</sup>. The principle's corollary was that territorial transfers between sovereign states should not be implemented unless the people affected agreed to such arrangements. The principle encountered strong opposition from the then European powers which at the Congress of Vienna rejected the consent of the people as a basis for reshaping the map of Europe after the Napoleonic Wars<sup>(3)</sup>. But, the principle did appear subsequently in the course of national movements of unification in Italy and Germany in the nineteenth century in which plebiscites played a large role in settling territorial disputes<sup>(4)</sup>. This

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(1) The following quotation is extracted from the Declaration of the French Revolution of 1789: "In the name of the French people the National Assembly declares that it will give help and support to all peoples wanting to recover their freedom. Therefore, the Assembly considers the French authorities responsible for giving orders to grant all means of assistance to those peoples and to protect and compensate the citizens who might be injured during their fight for the cause of Liberty." (Delupis, Ingrid, International Law and the Independent State, The University Press, Glasgow 1974, p.6).

(2) Sureda, Rigo, A., The Evolution of the Right of Self-Determination: A Study of UN Practice, A.W. Sijthoff, Leiden 1973, p.17

(3) Ibid p.20

(4) Whiteman, Marjorie M., DIL, Volume 15, 1963, p.39

process was again halted by the European powers in consequence of territorial annexation carried out by force<sup>(5)</sup>. The effect of such actions was that self-determination did not again come to the fore until the First World War<sup>(6)</sup>. It is notable that the Great Wars had taken place between empires and the promise of self-determination became a factor of great strategic value. The Allied Nations were initially reluctant to appeal to this principle fearing the effect on the nationalities forming part of the then Russian Empire<sup>(7)</sup>. This obstacle, however, disappeared in consequence of the Russian Revolution whose leaders were enthusiastic exponents of the principle of self-determination in its early phases<sup>(8)</sup>. The most important element led to the deviant approach by the allies and the entrance of the USA into the War, on condition that the principle of self-determination would constitute the framework within which international relations would be conducted after the War<sup>(9)</sup>. Despite commitments to the principle of self-determination given by the allied nations, difficulties and limitations became apparent in the application of it to the nationalities of the Central Empires<sup>(10)</sup>. Therefore, at the Peace

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(5) Prussia annexed Hanover and Hesse in 1866, Schleswig in 1867 and Alsace-Lorraine in 1871 by force

(6) Ott, David H., Palestine in Perspective, Quartet Books, London, 1980, p.101

(7) Sureda, Rigo A., Op. Cit, p.20

(8) Ibid p.20

(9) Ott, David H., Op. Cit, p.101

(10) Ibid p.177



Conference of 1919, historical claims, economic needs and strategic arguments prevailed and the principle was not included in the Covenant of the League of Nations<sup>(11)</sup>. A compromise solution was devised, namely the "Mandates System" which committed member states to a policy of non-annexation and reflected the idea of an unspecified future date for self-determination. According to Article 22 of the League of Nations Covenant, the mandated territories were subjected to a process of international supervision by which the peoples of the concerned territories were to be guided towards self-government<sup>(12)</sup>. Thus, this process constituted a form of partial recognition of self-determination where full statehood was not achieved. The concept of self-determination has gained widespread acceptance and recognition since the establishment of the UN and the inclusion of this principle in its 1945 Constitutional Charter which provides a basis for friendly relations among nations. According to Article I of the UN Charter which deals with the purposes of the UN, paragraph (2) provides for the development of "...friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples and to take other appropriate measures to strengthen universal peace<sup>(13)</sup>." Moreover, Article 55 provides that

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(11) Windass, G.S., Power Politics and Ideals, The Principle of Self-Determination JIR, Volume 3 1966-71, pp.177-186

(12) Legal Consequences for States of the Continued Presence of South Africa in Namibia, (S.W.A.) Opinion 1970, ICJ, pp.28-32

(13) Panhuys, H.F. van et al., Op. Cit, p.25

"....with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the UN shall promote: (a) higher standards of living, full employment and conditions of economic and social progress and development; (b) solution of international economic, social, health and related problems and international cultural and educational co-operation and (c) universal respect for, and observance of, human rights and fundamental freedom for all without distinction as to race, sex, language or religion<sup>(14)</sup>." In addition to these two Articles, Chapters 11, 12 and 13 deal with the administration of non-self-governing territories which have been subjected to a process of UN Trusteeship by which the peoples of the concerned territories shall be guided towards the principle of self-determination<sup>(15)</sup>. Subsequently, the UN General Assembly entrusted ECOSOC in 1948 with the task of preparing recommendations on human rights including civil and political freedoms<sup>(16)</sup>. It was agreed that civil and political freedom and other aspects of human rights are inter-connected and inter-dependent and could therefore not be divided easily into different categories.

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(14) Ibid pp.36-37

(15) Higgins, Roselyn, The Development of International Law through the Political Organs of the UN, Oxford University Press, London, 1963, pp.91-106

(16) Schwelb, Egon, Some Aspects of the International Covenants on Human Rights of December 1966. Edited by Eide Asbjorn and Schon August, International Protection of Human Rights, Almquist & Wiksell, Stockholm, 1968, pp.104-105

They are all equally important as human rights cannot survive without civil and political rights. Accordingly, the Commission on Human Rights submitted two draft Covenants in 1954, one on civil and political rights and another on economic, social and cultural rights<sup>(17)</sup>. In both draft Covenants, the Commission had included a typical article on self-determination which reads as follows:

"(1)....all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. (2) The states, parties to the present Covenant including those having responsibility for the administration of non-self-governing and Trust territories, shall promote the realisation of the right of self-determination and shall respect that right in conformity with the provisions of the Charter of the UN. (3) All peoples may for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation based upon the principle of mutual benefit and international law. In no case may a people be deprived of its own means of subsistence<sup>(18)</sup>." It is clear that the above-mentioned paragraphs deal with different aspects of self-determination of states and citizens. It should be noted that the last paragraph which deals with self-determination over natural

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(17)

Ibid pp.106-114

(18)

Panhuys, H.F. van et al., Op. Cit, pp.252-253

resources was strongly opposed by the United States delegation on the grounds that this aspect of self-determination might endanger the American investments in different areas around the world<sup>(19)</sup>. Thus, self-determination enshrined in the Universal Declaration of Human Rights in paragraphs (1) and (2) provides not only for the attainment of political independence, liberation from foreign domination and constant freedom from foreign interference, but also provides that internal self-determination must be ensured. These provisions of the UN Charter and the Universal Declaration of Human Rights have been supplemented by a number of the UN General Assembly declarations on self-determination and other related matters. The first historical declaration in this respect which has had much impact on the evolution of self-determination, the Declaration on Granting Independence to Colonial Countries and Peoples was adopted by the Resolution 1514(xv) of 1960<sup>(20)</sup>. Subsequently, the General Assembly set up a special committee entrusted with the task of making recommendations and suggestions on the implementation of the 1960 Declaration. This had a great impact on the administering powers and led to the granting of self-determination to some dependent territories<sup>(21)</sup>. The

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Delupis, Ingrid, Op. Cit, p.12

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Panhuys, H.F. van et al., Op. Cit, pp.290-291

(21)

Franck M. Thomas, The Stealing of the Sahara, AJIL, Volume 70, 1976, pp.699-700

Committee has also assumed the task of receiving petitions and has in the meantime held hearings with petitioners from non-self-governing territories<sup>(22)</sup>. This practice constituted an important departure from the former role contemplated by the UN Charter. In the above-mentioned Declaration, the UN General Assembly has clearly expressed its conviction that, in circumstances involving colonial and alien domination and racist regimes, peoples have an inherent right to struggle with all necessary means at their disposal against colonial domination in the exercise of their right to self-determination. It should be noted that prior to 1960, the UN General Assembly satisfied itself with exhorting member states to use their influence with certain colonial powers to accede to the majority demands that self-determination be granted to peoples of dependent territories under their domination<sup>(23)</sup>. This approach could be identified in the 1960 Resolution

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(22)

Ibid pp.707-709

(23)

Under the auspices of the UN the people of British Togoland and the British Cameroon were allowed to exercise their right to self-determination by means of plebiscites. Subsequently, by virtue of the Evian Agreement of March 18th, 1962, the people of Algeria did the same in a referendum held on July 1st, 1962. In a number of African colonies, elections or other forms of popular consultation took place prior to their attainment of independence.

concerning African territories under Portuguese administration in which the Assembly called upon UN member states to use all their influence to induce the Portuguese Government to carry out the obligation incumbent upon it under Chapter XI of the UN Charter<sup>(24)</sup>. By 1965 the UN General Assembly, however, adopted a different attitude. In all resolutions subsequently passed, it called upon all UN member states to extend moral and material aid to the national liberation movements. The implication of such calls appear to authorise intervention by third states in the domestic jurisdiction of a colonial power by extending support, including military aid, to national liberation movements. This could imply that the employment of interventionary force in such situations did not violate the principles prohibiting the use of force and non-intervention within the domestic jurisdiction of the colonial power. The second declaration, which has greatly strengthened the acceptance of the principle of self-determination, is the UN Declaration on Principles of International Law concerning Friendly Relations and co-operation among states in accordance with the UN Charter which was adopted by Resolution 2625(xxv) on October 24th, 1970<sup>(25)</sup>. The 1970 Declaration dealt with both the external and internal aspects of self-determination and maintained the right to remain free from

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(24) Krishnan, Maya, African States Practice Relating to Certain Issues of International Law, IYBIA, Volume XIV, 1965, p.199

(25) Brownlie, Ian, Op. Cit, p.32

foreign domination and the right of the citizens to elect a government representing the whole people of a country. In addition, the UN takes a firm stance against secessionist self-determination which reads as follows:"...Nothing in the foregoing paragraphs shall be construed as authorising or encouraging any action which would dismember or impair totally or in part the territorial integrity or political unity of sovereign independent states, conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above....Every state shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other state or country<sup>(26)</sup>." In respect of external self-determination, the Declaration called upon all states to extend political and material support to the colonial peoples in their struggle for political independence and self-determination. Whilst in respect of internal self-determination, the Declaration only called upon states to abstain from actions of any kind which might influence the domestic decisions of other states. In this connection, this last aspect of self-determination is also enshrined in the principle of non-intervention in the domestic jurisdiction of other states and the prohibition of the use of force<sup>(27)</sup>. It is also covered implicitly in the

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(26) Ibid p.39

(27) Wright, Quincy, International Law and the UN, Asian Publishing House, London, 1960, pp.64-68

1955 Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty<sup>(28)</sup>. These Declarations are meant to have general applicability and deviation from them in a state's international conduct, must be justified under an exceptional recognised doctrine such as self-defence and humanitarian intervention, or circumstances involving colonial and alien domination and racist regimes, against which the colonial peoples have an inherent right to struggle, with all necessary means at their disposal and receive political and material support from any state<sup>(29)</sup>. This last special self-defence has clearly been recognised in a considerable number of UN resolutions which bestow legitimacy on the struggle of the colonial peoples seeking self-determination. Nevertheless, it is worthwhile mentioning that the principle of self-determination still lacks general acceptance and agreement on the nature and content of the concept which constitutes a part of customary international law<sup>(30)</sup>. Due to these circumstances,

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(28) Panhuys, H.F. van et al., Op. Cit, pp.188-189

(29) The African delegation sought to bring the policy of Apartheid, pursued by the South African Government, within the purview of the right of self-determination. The African delegations at the UN agreed that South Africa is a colonial state and that the tide of colonial liberation could not be stopped at the borders of South Africa. Similarly, they demanded rule by the non-white majority in Rhodesia (Zimbabwe) on the basis of the peoples' right to self-determination. Consequently, the African stand on self-determination is mainly aimed at the termination of Western colonial domination and the minority regimes in South Africa and Rhodesia (Zimbabwe).

(30) Lyall, F.A., A Working Paper, Extended to the Conference of the Scottish Group of International Lawyers Glasgow 1978, pp.3-4



self-determination has been considered a concept of political rather than legal character. Moreover, it has been claimed that Article 1(2) of the UN Charter refers to the relationship between states and therefore, self-determination of peoples really refers to a right of state<sup>(31)</sup>. Furthermore, since self-determination, enshrined in the UN General Assembly's resolutions which constitutes declaration, is it not legally binding on its own merits? Nevertheless, the UN General Assembly's resolutions reflect the attitude of a majority of states on international matters. Thereupon, the weight of the General Assembly's resolutions are paramount as they reflect the conduct of an overwhelming majority of states. In such cases, a resolution does not contribute to international law-making which the Assembly is not competent to do. Therefore, it is the states themselves who are the legislators of the underlying rule. In any event, it is evident in the UN practice, which has undeniably changed over the past thirty years, that the right of self-determination is being regarded as a true legal principle. Confirmation of this conclusion is to be found in the ICJ's advisory opinion expounded in the case of Western Sahara. This stated that a norm of international law has emerged which applies the concept of self-determination as a legal principle and not as a political one to colonial territories<sup>(32)</sup>.

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(31) Delupis, Ingrid, Op. Cit, p.14

(32) Western Sahara Advisory Opinion of October 16th, 1975, ICJ Report, p.32

THE OAU'S REACTION TO AFRICAN SECESSIONIST SELF-DETERMINATION

It has already been mentioned that the UN has taken an unequivocal stand against the continuance of colonial domination and has constantly supported the struggles of colonial peoples for self-determination. On the other hand, there has never been an equivalent endorsement of the right to secede by the UN. In principle, any proposal for the international recognition of secession as a legitimate exercise to self-determination in certain circumstances, will obviously encounter fierce objection from sovereign states<sup>(1)</sup>. As a matter of fact, when an entity has received recognition as an independent state by other states of the world community, it is inconceivable to allow a part of its population and territory to secede from it<sup>(2)</sup>. The immediate consequence of secession will

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(1) Recognition of the principle of the right of secession found expression for the first time in one of the resolutions of the First All-African Peoples Conference which took place at Accra in 1958. It denounced the artificial frontiers drawn by imperialist powers to divide the people of Africa, particularly those which cut across ethnic groups at an early date. The resolution also called upon the independent African states to support a permanent solution to this problem based upon the wishes of the people. It also found expression in the joint communique issued by President Nkrumah of Ghana and Osman of Somalia in 1961 which stressed the imperative need to call upon the principle of self-determination as a means of removing the artificial colonial frontiers which were drawn without respect to ethnic, cultural or economic links. The invocation of the principle of secessionist self-determination was in fact intended as the justification of Ghana's claim to Togo and parts of the Ivory Coast and Somalia's claim to French-Somaliland and parts of Ethiopia and Kenya. Subsequently, President Nkrumah of Ghana who had expounded the proposal of "United States of Africa" seemed to have abandoned his previous stand on the right of ethnic groups to secessionist self-determination.

(2) Buchheit, Lee C., Secession, The Legitimacy of Self-Determination, New Haven, 1978, p.27

diminish the unified states' wealth, resources and power, thereby lowering its stamina, defensive capability and potential international influence. In addition to this, the establishment of a new state may place an enemy on the new constricted borders. The other possibility is that the seceding province might establish an alliance with a traditionally antagonistic neighbouring state in order to safeguard its security<sup>(3)</sup>. Moreover, secessionist self-determination could result in a multiplicity of small squabbling states, particularly in regions where tribal or clannish divisions are still prevalent<sup>(4)</sup>. In fact, many such smaller units might lack a viable economic basis, a strong political structure and adequate military defence. Once the right to secessionist self-determination is admitted, there can be no end to this process which could conceivably be carried on until each clan within a society constitutes an entity entitled to self-determination. Such entities would not be able to fulfil their international duties and obligations<sup>(5)</sup> for reasons mentioned above. In any

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(3) As in the case of the secession of Bangladesh which led to the establishment of an alliance with India in order to safeguard its security from Pakistani endeavours to regain sovereignty on Bengal territory (previously East Pakistan). It is notable that India and Pakistan are traditionally antagonistic neighbours.

(4) Krishnan, Maya, Op. Cit, pp.207-208

(5) Karefa-Smart, John, Op. Cit, p.773

event, secessionist self-determination has usually been pursued in consequence of an awareness of the wealth of the province vis-à-vis the remaining state in the belief that it could do much better on its own than by sharing its resources with the larger unified state<sup>(6)</sup>. The secession of Katanga from the Congo and of Biafra from Nigeria are evidence of the temptation for a wealthy province to abandon the less fortunate provinces<sup>(7)</sup>. The reaction of the UN and the OAU to the situation in the Congo and in Biafra was an obvious lack of sympathy for such secessionist self-determination which is thoroughly in conflict with the principle of the territorial integrity of established states envisaged in the Charters of both organisations<sup>(8)</sup>. It should be noted that as a

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(6) Buchheit, Lee C., Op. Cit, p.87

(7) Ibid p.89

(8) U-Thant, the then UN Secretary General, at a press conference in Accra and Dakar on 9th January 1970 stated that "....self-determination of the people does not imply self-determination of a section of a population of a particular member state. What is evident for the consideration of the UN is the simple basic principle of the Charter. When a state applies to be a member of the UN and when the UN accepts that member, then the implication is that the rest of the membership of the UN recognise the territorial integrity, independence and sovereignty of this particular state. You will recall that the UN spent over \$500 million in the Congo primarily to prevent the secession of Katanga from the Congo. So far as the question of secession of a particular member state is concerned, the UN's attitude is unequivocal. As an international organisation the UN has never accepted and does not accept and I do not believe it will ever accept the principle of secession of a part of its member states." (Quoted from Buchheit, Lee C., Op. Cit, pp.87-88).

consequence of the UN involvement in the Congo crisis in order to maintain the Congo's territorial integrity, the General Assembly set up a special committee in 1963 to study the principle of secessionist self-determination<sup>(9)</sup>. Accordingly, the UN member states were invited to submit a written statement to the UN Secretary General on views and suggestions they might have, regarding the principle of secessionist self-determination<sup>(10)</sup>. The committee was also given the task of discussing and debating the content of the principles of equal rights and self-determination with frequent reference to secessionist self-determination. In the event, some member states, particularly the Communist bloc, favoured explicit recognition of a right to secession, while the majority of states did not recognise secession as a legitimate aspect of self-determination. The consensus among the majority was that the scope of self-determination should be limited to cases of colonialism and peaceful secession, agreed upon without an automatic resort to military measures<sup>(11)</sup>. In this

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(9) Ibid p.89

(10) British statements devoted the whole of its argument on self-determination and did not choose to remark on the other principles to be included in the declaration. The statement re-affirmed the UK's often repeated belief that self-determination is a political principle and not a legal one. The French statement argued that it was at least doubtful whether the right of secession existed as part of the *lex lata*.

(11) Delupis, Ingrid, Op. Cit, pp.15-16

connection, there were historical precedents of states accepting secession of parts of territory<sup>(12)</sup>. This, however, occurred in cases where the process of unification had been accomplished by a previous voluntary union or federation of territories having some degree of autonomy<sup>(13)</sup>. It should be noted that it is a popular practice in such constitutional arrangements to include provisions concerning secessionist self-determination which have usually been surrounded by heavy limitations<sup>(14)</sup>. Strong opposition to secessionist self-determination has come from recently independent states that emerged from the process of colonial self-determination with borders determined by a colonial power in the past century. These borders were bequeathed to the independent state at the end of the colonial period<sup>(15)</sup>. In this respect, secessionist self-determination could result in a disastrous reassertion

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(12) Senegal seceded from the Mali federation in 1960. The justification presented by the Government of Senegal was that the legality of its action was based on the argument that the federation was composed of sovereign states. Consequently, each sovereign retains an implied right to secede from any kind of association it enters, at its will. In 1961 Syria seceded from the UAR. Egypt agreed to accept the result amicably.

(13) Whiteman, Marjorie, Digest of International Law, Volume 5, 1963, p.39

(14) Buchheit, Lee C., Op. Cit, p.99

(15) Krishnan, Maya, Op. Cit, pp.208-209

of ancient tribal, linguistic or religious divisions. There have been fears of this kind of assertion erupting in different areas around the world and particularly in the African continent. It is obvious that firm opposition to such a principle has been reflected in both internal African state structure and in African policies advocated before international forums<sup>(16)</sup>. The OAU Charter expresses the determination of the signatories to safeguard and consolidate the hard-won independence as well as the sovereignty and territorial integrity of African states<sup>(17)</sup>. In addition, each OAU member state declares its adherence, in Article 3 of the OAU Charter, to the principle of respect for the sovereignty and territorial integrity of each state<sup>(18)</sup>. These commitments have been reiterated in subsequent OAU resolutions which have proclaimed that the borders of African states on the day of their independence, constitute a tangible reality and member states were pledged to respect these frontiers<sup>(19)</sup>. The emphasis on respect for territorial integrity became quite clear in the 1964 Resolution concerning the Biafran secessionist movement in which all OAU member states

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(16) Brownlie, Ian, Basic Documents on African Affairs, The Clarendon Press, Oxford 1971, p.360

(17) OAU Charter and Rules of Procedures, Op. Cit, p.9

(18) Ibid pp.10-11

(19) Brownlie, Ian, Op. Cit, p.360

bluntly condemned such movement as "Balkanisation"<sup>(20)</sup> in the African continent<sup>(21)</sup>. Simultaneously, they asserted that self-determination is the right of the majority within an accepted political unit. Consequently, there can be no such thing as self-determination for the indigenous minorities living within the political unit of OAU member states<sup>(22)</sup>. It would seem that the right of self-determination does not mean the freedom of every self-distinguishing ethno-cultural group to secede from an established African state. The OAU attitude towards secessionist self-determination is inherently incompatible with the goal of "African Unity." The break-away attempts in the African continent were denounced in part for this reason. Despite the firm stance against secessionist self-determination, it is simultaneously declared that such matters are within the domestic jurisdiction of member states and thus, interference from outside is precluded<sup>(23)</sup>. Thus, the non-interference in matters within the domestic jurisdiction of OAU member states has been regarded as excluding any active mediative role

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Balkanisation when used in this context, is not limited to the process of the disintegration of an independent state into smaller autonomous entities. It includes any constitutional or political scheme such as federation or local self-government which in any way impairs the political authority of the central government.

(21) Brownlie, Ian, Op. Cit, p.364

(22) Ibid p.364

(23) Ibid p.364



for the organisation in connection with the secessionist movements. Accordingly, Article 3(2) of the OAU Charter provides that "....the member states in pursuit of the purposes stated in Article 2 solemnly affirm and declare their adherence to the following principle,.... non-interference in the internal affairs of states<sup>(24)</sup>."

It appears that while this provision imposes an obligation upon OAU member states, this obligation does not apply to the OAU itself or to any body acting on its behalf. As a matter of clarification, the UN Charter makes a distinction between obligations imposed upon member states and those imposed on the UN itself. According to Article 2(7) of the UN Charter "....nothing contained in the present Charter shall authorise the UN to intervene in matters which are essentially within the domestic jurisdiction of any state<sup>(25)</sup>." Accordingly, the OAU provisions of non-interference in matters within the domestic jurisdiction is less restrictive than the UN provisions. Nevertheless, the UN has usually asserted jurisdiction over extremely wide areas, including that of human rights<sup>(26)</sup>. In spite of the broad role given to the OAU in this respect, the latter lacking the will to act, has chosen to interpret Article 3(2) of its

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(24) OAU Charter and Rules of Procedures, Op. Cit, pp.10-11

(25) Panhuys, H.F. van et al., Op. Cit, p.26

(26) Akinyami, Bolji, The OAU and the Concept of Non-Interference in Internal Affairs of Member States, BYBIL, Volume 46, 1972-73, pp.396-398

Charter restrictively in favour of an inactive role. The non-interference provision construed in absolute terms excludes any active mediative role in secessionist conflicts. The OAU is severely handicapped in its mediative role by interpreting the non-interference provision of its Charter in absolute terms which prevent her from dealing with threats to peace and security arising from secessionist movements in the African continent. In contrast, the provisions of the UN Charter maintain that non-interference in matters which are essentially within domestic jurisdiction are not operative in situations that might constitute a threat to international peace or a breach of international security. Consequently, the UN has been able to take up issues such as the apartheid policies of South Africa and to act in the Congo crisis, as well as in other situations which would probably be regarded as falling exclusively within the domestic jurisdiction of UN member states<sup>(27)</sup>. The OAU regards a war of secession as a matter falling within the domestic jurisdiction of its member states and has adopted a passive attitude inconsistent with the provisions of its Charter<sup>(28)</sup>.

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(27) Emerson Report, Self-Determination, AJIL, Volume 65, 1971, pp.466-467

(28) The OAU Resolution on the Nigerian civil war adopted in September 1967 states "...Recognising that situation as an internal affair, the solution of which is primarily the responsibility of Nigerians themselves..." (Brownlie, Ian, Op. Cit, p.363). See also OAU Charter Article II para.1, sub-para.e and Article III para.3.

Admittedly, internal situations which constitute a threat to peace and security of the region have generally been considered as exceptional to the principle of non-intervention by relevant international regional organisations. The idea had taken root that matters of prima facie domestic jurisdiction may be of international concern in certain circumstances. The concept of international concern broadened thus would include a breach or threat to international peace and security. Accordingly, the OAU may be well advised to adopt this concept of international concern as a cornerstone of its policy towards African regional peace and security in order to prevent extra-regional intervention in future African conflicts. As a matter of fact, a war within a state, resulting from a power struggle between two or more factions in order to control the machinery of government, is the classic form of civil war<sup>(29)</sup> but intervention by third parties to an

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The first crisis was the coup d'etat in Togo which occurred before the establishment of the OAU. However, at the inaugural conference of the OAU, the new regime in Togo was prevented from attending the conference because of the opposition of a number of member states. When a coup d'etat occurred in Ghana in 1966, the next OAU Summit witnessed an attempt to deny participatory legitimacy to the new regime. When this failed, a number of member states refused to take part in the proceedings. The situation was different after the coup in Uganda. The new regime and the previous one sent delegations to the 1971 sixteenth session of the OAU Council of Ministers held in Addis Ababa. A number of delegations supported the delegation representing the deposed regime while other delegations supported the delegation of the new regime. Neither was seated and the conference broke up without debating any item on the agenda. The conclusion which could be drawn from this seems to be that no definite interference could be seen that involved the OAU and that these changes fell exclusively within the domestic jurisdiction of member states.

extent that might upset the balance between the internal protagonist factions takes the conflict out of purely domestic jurisdiction. The situation ceases to be an internal matter<sup>(30)</sup>. The war of secession usually involves two governments in de facto control of substantial parts of their national territory and population in which the battle lines are geographically demarcated. Therefore, the OAU would not be able to settle African regional disputes if it considers conflicts that pose a substantial danger of extra-regional intervention as internal matters falling within the domestic jurisdiction of its member states. The Biafran secession was not an internal matter because Biafra's secessionist self-determination was inspired by outsiders<sup>(31)</sup>. Nevertheless, it was considered an internal matter by the Nigerian government and the OAU accepted this interpretation. Yet it was not an internal matter because it ceased to be within the domestic jurisdiction when extra-regional intervention became involved in the fuelling of the conflict<sup>(32)</sup>. It would thus appear that domestic conflict ceases to be an internal matter when third parties are involved to such an extent as to upset the equilibrium between the internal protagonist factions and determine the outcome<sup>(33)</sup>. By pursuing a policy of non-interference

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<sup>(30)</sup> Komann, Onyeonoro, Secession and the Right of Self-Determination on OAU Dilemma, JMAS, Volume 12, 1974, p.372

<sup>(31)</sup> Ibid p.372

<sup>(32)</sup> Gurr, Robert, The Relevance of Theories, Internal Violence for the Control of Intervention, Edited by Moore, Nortan John, Law and Civil War in the Modern World, The University Press, London 1974, pp.72-78

<sup>(33)</sup> Young, Oran R., Systemic Business of Intervention, Edited by Moore, Nortan John, Law on Civil War in Modern World, The University Press, London 1974, pp.116-117

in such issues, the OAU is in effect, facilitating the outcome of African regional disputes being determined by the will of extra-regional powers. In this respect, it is desirable to draw attention to Article 2(3) of the OAU Charter through which the organisation pledges, affirmatively and actively, to defend the sovereignty, territorial integrity and political independence of its member states<sup>(34)</sup>. Legally, the OAU at the behest of its member states is under an obligation to intervene to suppress an internal secessionist movement. Moreover, this obligation of the OAU is reinforced in the Cairo Resolution of 1964 which adopted the principle of territorial status quo. This legally obliges its participation in any settlement of African regional disputes whose terms might involve the break-up of a member state. Unfortunately, the role assumed by the OAU in such issues produced only verbal condemnation of secessionist self-determination and the despatching of a consultative mission of Heads of State and Government to the head of the victim state assuring him of the OAU's stand on the territorial integrity, unity and peace and security of his country<sup>(35)</sup>. The OAU's commitment to the absolute

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(34) OAU Charter and Rules of Procedures, Op. Cit, p.10

(35) The OAU Resolution on the Nigerian civil war adopted on September 14th, 1967. Quoting "...Resolves to send a consultative mission of 6 Heads of State (Cameroon, Congo-Kinshasa, Ethiopia, Ghana, Liberia and Niger) to the Head of the Federal Government in Nigeria to assure him of the Assembly's desire for the territorial unity and peace of Nigeria...."

(Brownlie, Ian, Op. Cit, p.364)

preservation of the principle of territorial status quo would make sense only if it were combined with serious endeavours to prevent the conflict from threatening the peace and security of the continent. In any event, the problem of secessionist self-determination could be substantially solved by adequate safeguards providing for the human rights and security of minorities in African states<sup>(36)</sup>. The OAU needs to develop institutional machinery to which both member states and individuals would have access, somewhat along the lines of the "European Human Rights Commission." Such machinery does not need to have enforcement powers but must have investigative powers and the right to publicise its findings in case its recommendations are not accepted. At the same time, OAU member states must contain constitutional provisions that provide for equal protection by the law and equal opportunities for all citizens, without regard to their ethnic, religious, regional or linguistic backgrounds. In addition, the OAU should have the task of determining and communicating to its member states those critical situations in which minority groups face severe denial of human rights. Finally, the OAU should also establish an African Court of Justice along the lines of the "European Court of Justice."

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In the Aland Islands dispute, the League of Nations established a Commission to make recommendation to the Council of the League of Nations, that the people of the Islands did not have the right to secede from Finland on grounds of self-determination. In spite of the fact, a referendum showed a near unanimous desire on the part of the islanders to associate with Sweden. The islanders are all of Swedish origin and Swedish is their mother tongue. Nevertheless, the Commission recommended that the islanders should remain under Finnish sovereignty but that their Swedish tradition and language should be safeguarded by certain guarantees for the human rights, security of minorities and limited autonomy.

## THE CONCEPT OF AFRICAN BOUNDARIES

African borders are unique in their artificial character but they do not greatly differ from international borders elsewhere on the globe, in the sense that they are designed to divide landscapes that are otherwise often indistinguishable. In this respect, there is probably no great difference between international borders in the African continent and international borders on other continents. Therefore, the description of African borders as artificial in the sense that they were drawn with total disregard to local conditions, is not accurate, despite the fact consideration and attention given to local circumstances were insufficient. A considerable number of African colonial borders took shape gradually and by stages and endeavours were made by colonial demarcation commissions to take certain local features into account, and to introduce change and amendments over the years<sup>(1)</sup>. The delimitation was sometimes influenced by requirements of the respective colonial powers such as their concern with administrative convenience, communications and access to certain areas or trade routes<sup>(2)</sup>.

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(1) For instance, the separation of some 5000 square kilometres from Tanganyika and their incorporation into Ruanda in 1923. The original delimitation of borders between Tanganyika and Ruanda was drawn in 1919. The separation did take place in such a way as to facilitate the construction of a railway linking Rhodesia (Zimbabwe) and Uganda through British-held territories.

(2) The original border between Tanganyika and Ruanda was drawn in 1919. Subsequently, the Cape-to-Cairo scheme required the partitioning of the Kingdom of Ruanda between Great Britain and Belgium. The population protested strongly. As a result, the issue was placed before the League of Nations Permanent Mandates Commission whose Chairman reported to the Council of the League that the new border was hardly justifiable from the point of view of the well-being, political order, stability and economic development of the concerned region.

On other occasions and to some minor extent, the local African chiefs played a part in the partition of the continent. They indirectly influenced the pattern of partition and the shape of existing borders through alliances and treaties<sup>(3)</sup> concluded with the European powers<sup>(4)</sup>. The fact is that the African chiefs often signed treaties they did not understand. Nevertheless, some of them did refuse to conclude treaties, or signed them only after pressures or persuasion. However, it cannot be assumed that the meaning of the obligation was generally beyond the comprehension of African chiefs. On the other hand, there were occasions where African chiefs, in conflicts with their rival African neighbours, considered such treaties and alliances useful and serving their interests. At the same time, the European powers too often used such treaties

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(3) Thus, the agreement of 1890 between Britain and France delimited their respective spheres on the Niger. The agreement provided that the British sphere would include all that fairly belonged to the Kingdom of Sokoto with which the Royal Niger Company claimed a treaty. Another instance is the border between Zambia and Angola. It was defined by an Anglo-Portuguese treaty in 1891 which provided that the border would follow the Western boundary of the Borotse Kingdom with whom Great Britain had a treaty. When the two states disagreed about the westward extent of that Kingdom's territories, the matter was submitted to the arbitration of the King of Italy. The arbitrator's award was based upon an assessment of the territorial extent of the effective jurisdiction of the Borotse ruler.

(4) Touval, Saadia, The Boundary Politics of Independent Africa, Harvard University Press, Massachusetts, 1972, p.5



to support and confirm their territorial claims in negotiations with rival European powers. Under these circumstances, in colonial Africa, the ultimate decision on the allocation of territories and the delimitation of borders, was always taken and implemented by European powers<sup>(5)</sup>. Thus, the image of the "passive" Africa has been superseded by the "naive" African who often participated indirectly in the allocation of territories and the making of boundaries. Hence African boundaries are mostly those of the colonial period in which the internal administration and constitutional arrangements of the former colonial powers have been of decisive influence<sup>(6)</sup>. Subsequently, the European powers concluded a series of bilateral treaties aimed at delimiting their respective possessions<sup>(7)</sup>. It should be noted that a high proportion of African independence movements have accepted the sub-divisions of the colonial administrations. This principle of continuity has been regarded as one of the principles of state succession in international law<sup>(8)</sup>. As a matter of fact, African states

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(5) Brownlie, Ian, African Boundaries, Hurst & Company, London 1979

(6) Zartman, William, The Politics of Boundaries in North and West Africa, JMAS, Volume 3, 1965, p.155

(7) For instance, a treaty was concluded in 1890 between Great Britain and France delimiting their respective spheres on the Niger. A treaty was also concluded in 1891 between Great Britain and Portugal delimiting their respective spheres of control. Another treaty was concluded in 1923 between Great Britain and Belgium for the adjustment of borders in order to incorporate Ruanda into Belgian-held territory.

(8) Whiteman, Marjorie, Digest of International Law, Volume 2, 1963, pp.754-765

have, since the achievement of independence, maintained the principle of the continuity of colonial boundaries. They thus subscribe at the same time to a compound of two principles. Firstly, the principle of pan-Africanism which grew up in the first half of this century as part of anti-colonialism's ideology and a reaction to various economic and social reforms in the African continent<sup>(9)</sup>. The strongest version of this outlook was expounded vigorously by Nkrumah, who demanded as the immediate objective, the political union of the whole African continent<sup>(10)</sup>. A considerable number of African states, especially the Francophonic regimes, favoured gradual political integration but they stressed the need for solidarity and functional co-operation aiming at unity of action in international affairs. This was one of the reasons for the establishment of the OAU in 1963 which it was hoped, would provide the basis for the co-ordination of the policies of the independent states of Africa in the world of diplomacy at large, and particularly in the face of the continued apartheid policies of South Africa<sup>(11)</sup>. The problem of borders received no explicit reference in the OAU Charter adopted at the 1963 Addis Ababa Conference, nor in any of the Conference resolutions. Probably, opinion

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(9) The All-African People's Conference took place in Accra in 1958 and called for a general adjustment of borders, particularly those which cut across ethnic groups and divided people of the same stock.

(10) Okoye, Felix Chuks, Op. Cit, p.125

(11) A Short History of the OAU, Op. Cit, pp.11-12

on this matter was too sharply divided. The emphasis was upon the equality, sovereignty and territorial integrity of member states, which is clearly set forth and included in the OAU Charter<sup>(12)</sup>. The preamble to the OAU Charter affirms that the determination to safeguard and consolidate the independence, as well as to defend the sovereignty, territorial integrity and political independence, is among the purposes of the OAU. This is defined in Article 2 and among the principles in Article 3 which provides that the sovereignty and territorial integrity of each state be respected<sup>(13)</sup>. Secondly, as a corollary of the acceptance of the above-mentioned principles, the African states postponed political integration as an immediate objective. Accordingly, they maintained the status quo and accepted them *faute de mieux*<sup>(14)</sup>.

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(12)

OAU Charter and Rules of Procedures, Op. Cit, p.9-11

(13)

Ibid pp.9-11

(14)

Brownlie, Ian, Op. Cit, p.9

In consequence of this phenomenon, the key development was the 1964 Resolution adopted at the first OAU Summit Conference which took place in Cairo in July 1964<sup>(15)</sup>.

In the course of this Summit, the OAU was called under urgent and dramatic circumstances to intervene in the Algerian-Moroccan border disputes and in the Somali-Ethiopian and Kenyan border disputes. Both conflicts were scheduled for further consideration at the Cairo first Summit Conference<sup>(16)</sup>. In addition, a new border dispute between Ghana and Upper Volta was placed on the agenda of the Summit Conference. At the same time, a fourth border dispute between Dahomey and Niger was not referred to the OAU. Nevertheless, it did contribute to the feeling that border disputes had come to plague inter-state relations in the African continent<sup>(17)</sup>. Under these circumstances,

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(15) "...the Assembly of Heads of State and Government meeting in its first ordinary session in Cairo, UAR, from 17th to 21st July 1964. Concerned that border problems constitute a grave and permanent factor of dissension. Conscious of the existence of extra-African manoeuvres aimed at dividing African states. Considering further that the borders of African states on the day of their independence constitute a tangible reality. Recalling the establishment in the course of the second ordinary session of the Council of the Committee of Eleven charged with studying further measures for strengthening African unity. Recognising the imperative necessity of settling by peaceful means and within a strictly African framework, all disputes between African states. Recalling further that all member states have pledged under Article VI of the Charter of the OAU scrupulously to respect all principles laid down in paragraph (3) of Article III of the Charter of the OAU. (1) Solemnly reaffirms the strict respect by all member states of the organisation for the principle laid down in paragraph (3) of Article III of the Charter of the OAU. (2) Solemnly declares that all member states pledge themselves to respect the borders existing on their achievement of national independence...."

(16) Wild, Patricia Berko, The OAU and the Algerian-Moroccan Border Conflict, JIO, Volume 20, 1966, p.25

(17) Touval, Saadia, Op. Cit, pp.85-86

a considerable number of African states maintained that the prevailing events would seriously impede pan-African solidarity. Consequently, an initiative was taken to have the OAU affirm explicitly and more strongly, the principle already enshrined in its Charter concerning the preservation of the territorial status quo<sup>(18)</sup>. When the Assembly of Heads of State and Government convened, it had on its agenda the item proposed by the Tanzanian Government which called for the debate on "Ways and Means" which was meant to avoid border disputes among the OAU member states<sup>(19)</sup>. The preamble to the resultant resolution declares that "...border problems constitute a grave and permanent factor of dissension<sup>(20)</sup>." The African states were extremely concerned that African regional disputes, particularly border and boundary conflicts, were fuelled by outsiders and could lead to a constant eruption of such disputes. Therefore, the African leaders in the first session of the OAU Assembly at Cairo in 1964, adopted the so-called Cairo Resolution which stated that "...the borders of African states on the day of their independence constitute a tangible reality....<sup>(21)</sup>." Despite its legal force, the Resolution has suffered from several weaknesses. One was that Somalia, a state most

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(18) Brownlie, Ian, Op. Cit, p.10

(19) Touval, Saadia, Op. Cit, p.86

(20) Brownlie, Ian, Op. Cit, p.360

(21) Ibid p.361

directly concerned, simultaneously declared that it did not feel bound by the resolution in consequence of her non-participation in the Cairo Summit Conference of 1964<sup>(22)</sup>. Other weaknesses were inherent in the text of this resolution. By virtue of the resolution, member states pledged themselves to respect borders existing on their achievement of national independence. Under these terms, Ethiopia and Morocco could presumably claim territories that had been their own at their independence, prior to the colonial partition at the end of the nineteenth century. This has been the essence of previous Moroccan claims to Mauritania and presently to Western Sahara<sup>(23)</sup>. There were also no provisions in the resolution that might assist in settling border conflicts arising from different interpretations of treaties defining borders<sup>(24)</sup>. Added to this, was the weakness of the absence of any provisions in the resolution concerning the questions of secession and self-determination<sup>(25)</sup>. The meagre support given

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(22) The Somali position declared on the eve of the Conference was reflected in a message despatched from the then Somali President Osman to the late Egyptian President Nasser, who was host to the Summit. Osman stated that he was prevented by a government crisis from participating in the Cairo Summit. He requested Nasser to ensure that legitimate Somali interest not be adversely affected by the introduction of the Cairo resolution on African borders. He also declared that the Somali Republic would not regard itself bound by this resolution.

(23) Shaw, Malcolm, The Western Sahara Case, BYBIL, Volume 49, 1978, pp.120-121

(24) ACR, 1968-69, Africa Research Ltd., Exeter 1969, pp.623-625

(25) Komann, Onyenoro S., Secession and the Right of Self-Determination: An OAU Dilemma, JMAS, Volume 12, 1974, p.359

by certain African states to secessionist movements in Southern Sudan, Biafra and Congo is evidence of the commitment of the majority of African states to the preservation of existing borders<sup>(26)</sup>. Thus, when issues concerning borders arose in the debates of OAU forums, the latter adhered rigidly to the principle of status quo and inapplicability of self-determination in these cases. The attitude behind this firm stance is clear enough. If colonial alignments were discarded, alternative alignments would have to be agreed upon and such a process of redefinition would create confusion, and could become a threat to the peace and security of the African continent. Even if the principle on such revision was to be agreed upon, there would be considerable difficulties in applying the principle to ethnic and tribal complexities of African societies. It is also notable that the resolution as such probably has no binding effects as far as international law is concerned. Nevertheless, the status quo may coincide with the hitherto, generally acceptable argument that frontiers do not lapse when decolonisation takes place<sup>(27)</sup>. In this event, the resolution based upon a rule of regional customary international law is binding on those African states which have unilaterally declared their acceptance of the principle of

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(26)

Ibid p.355

(27)

El-Ayouty, Yassin, Op. Cit, pp.53-63

the status quo as at the time of independence. However, Morocco and Somalia did not accept the Cairo Resolution of 1964 taking the position that the resolution only applied to future border disputes in the African continent. This argument may be justifiable in that the upholding of the principle of status quo means also that border disputes existing at the time of decolonialisation are part of the status quo which is acceptable for better or worse. It is worthwhile mentioning that the Latin American states adopted the principle of "uti possidetis" which is essentially similar to the principle of status quo adopted by African states<sup>(28)</sup>. By the principle of "uti possidetis" the Latin American states succeeding the Spanish Empire were presumed to possess the parcels of territory represented by the former administrative divisions of that empire. In this respect, the principle of continuity has been applied in border conflicts between Asian states<sup>(29)</sup>. The experience of Latin American and Asian states abundantly confirms both the good sense of the principle and its inevitable consequence. It is, however, clear that the Cairo Resolution is in line with the principle of self-determination which is generally considered a legal principle that stems from the principles of the UN Charter<sup>(30)</sup>. It is clearly

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(28) Munkman, A.L.W., Adjudication and Adjustment, International Judicial Decision and the Settlement of Territorial and Boundary Disputes, BYBIL, Volume 46, 1972-73 pp.27-46

(29) Whiteman, Marjorie, Digest of International Law, Volume 2, 1963, pp.1086-1088

(30) Panhuys, H.F. van et al., Op. Cit, pp. 26-27



understood that only a minority of African border conflicts have an ethnic or irredentist basis. There have been two types of border disputes in the first category - those between Somalia and her neighbouring states, and two in the second category, between Morocco and her neighbours. The Somali border conflicts with her neighbouring states essentially involve the question of ethnic nationalism. The Somali claims to portions of Ethiopia and Kenya are based on the right of a nation-state to encompass all Somali - inhabited territories. The claim is supported by legal arguments based upon securing an opportunity to exercise the right to self-determination of the people concerned<sup>(31)</sup>. In contrast, Morocco based her claims to Mauritania and presently to the Western Sahara, upon historical rights. She argued that the territories concerned were once part of the Kingdom of Morocco which were detached from it as a consequence of the colonial partition<sup>(32)</sup>. Both states sought initially to gain their aims by peaceful endeavours, but having failed to obtain satisfactory remedies, they had recourse to the military option. Morocco fought a brief war with Algeria in 1963 over the possession of certain frontier regions, hoping that military pressure could induce Algeria to enter into previously promised negotiations<sup>(33)</sup>. She has also

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Touval, Saadia, Africa's Frontier, Reactions to a Colonial Legacy, JIA, Volume 42, 1966, p.645

(32) Shaw, Malcolm, Op. Cit, pp.118-121

(33) Hassouna, Hussein, Op. Cit, pp.212-213

been conducting a war since 1976 in the Western Sahara and is suffering grave economic hardships as a result of this policy of irredentism<sup>(34)</sup>.

Somali and Ethiopian forces clashed in a series of wars which broke out as a result of escalation of guerrilla incidents in the Horn of Africa.

Certainly both Morocco and Somalia remain committed to their objectives and have pursued the military option rather than turning to the means of peaceful settlement by direct negotiation or of political mediation by an African state or a group of African states. Third party mediation may take the form of actually proposing compromise solutions and this process is generally regarded as conciliation<sup>(35)</sup>. The role of mediation or conciliation may be carried out by the OAU Assembly of Heads of State and Government<sup>(36)</sup>. Disputes which have a technical shape and a legal character may be submitted by the

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Bakhashab, Omar, Op. Cit, p.88

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Fox, Hazel, International Disputes, Europa Publication, London, 1972, (Report of a Study Group of the David Davies Memorial Institute of International Studies, Europa Publication, London, 1972, p.95)

(36)

Lusaka Manifesto on Southern Africa, Published by the Division of Press and Information, OAU General Secretariat, Addis Ababa, 1976, p.9

parties or the OAU Assembly of Heads of State and Government to the OAU Commission of Mediation, Conciliation and Arbitration. It may set up an African ad hoc Court of Arbitration which must be given jurisdiction by means of a special agreement for the particular purpose of settling the issues in dispute in conformity with the principles of international law<sup>(37)</sup>. Boundary conflicts are in most cases disputes, either about legal rights as such, or about the application of principles or the provisions of legal instruments. Therefore, the introduction of claims based on historical factors and/or ethnic affinities, are not susceptible to settlement according to recognised principles. They can only be dealt with by means of compromise or by the imposition of regional sanctions upon the state concerned which refuses to comply with the regional decision of the majority. Political procedures for the adjustment of territories may include the use of plebiscites under the auspices of the OAU<sup>(38)</sup>.

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Weissberg, Guenter, Maps as Evidence in International Boundary Dispute: A Reappraisal, AJIL, Volume 57, 1963, pp.781-803

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For instance, in 1959, the UN General Assembly recommended separate plebiscites in the Northern and Southern sections of the Trust-Territory of the Cameroons, both under British administration. The plebiscites were held in 1961. The Northern section favoured joining the Federation of Nigeria and the Southern section voted in favour of joining the Cameroon Republic.

CHAPTER III:

APPLICATION OF THE OAU SYSTEM FOR REGIONAL DISPUTES

SECTION A: BORDER AND BOUNDARY DISPUTES INVOLVING  
OAU MEMBER STATES

THE ALGERIAN-MOROCCAN BORDER DISPUTE 1963

HISTORICAL ORIGINS AND LEGAL CONSIDERATION OF THE BOUNDARY  
CONFLICT

The OAU, which was established in May 1963, was confronted by its first African regional dispute almost immediately. The border dispute which led to a military confrontation between Algeria and Morocco was inherited from the era of French colonial administration<sup>(1)</sup>. Prior to the French colonisation of Algeria in 1830, no fixed boundaries existed between the different territories in North Africa, all of which constituted a part of the Muslim state (Dar-el-Islam), an entity which had been established in the seventh century<sup>(2)</sup>. As far as the concept of international boundaries is concerned, the Islamic concept regarding confines of territory is irrelevant to the areas controlled and inhabited by Muslim communities (Dar-el-Islam)<sup>(3)</sup>. Thus, the original

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(1) Ryner, Anthony S., Morocco's International Boundaries, A Factual Background, JMAS, Volume 1, 1963, p.315

(2) Asad, Muhammad, The Principles of State and Government in Islam, University of California Press, Los Angeles, 1961, pp.69-80

(3) Hamidallah, Muhammad, Muslim Conduct of State, Sh. Muhammad Ashraf, Lahore, Pakistan, 1963, pp.83-89

Muslim states recognised no fixed international boundaries between their communities of Muslim Believers<sup>(4)</sup>. Against this historical background, French-ruled Algeria had been in continuous boundary dispute with the sovereign Moroccan state at that time<sup>(5)</sup>. This led France to the conclusion that delimitations of the border with Morocco were necessary. Consequently, France concluded a boundary treaty with Morocco at Tangier in 1845 which stated ambiguously that the boundary of the Turkish provincial administration be maintained as it had been when Algeria was a province within the Ottoman Empire<sup>(6)</sup>. Despite the Tangier treaty

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(4) Islam believes in the universality of the divine call with which the Prophet was commissioned. With the downfall of the Ummaiyads, Spain became independent of the East. Later, during the decadence of the Abbasid Empire, its provincial governors became hereditary and virtually independent. They could wage war, make peace or conclude treaties without reference to the Caliph and administer all their internal, as well as external affairs at their own will. They exercised full independence with the exception that there were no international boundaries between these states and that they recited the name of the Caliph of Baghdad in the Friday sermons in cathedral mosques.

(5) Morocco was at that time a recognised sovereign independent state. In 1912, France and Morocco concluded a treaty which established a French protectorate over Morocco. Nevertheless, the treaty did not clarify the administrative boundaries of the protectorate. Subsequently, the French government established an administrative frontier by ministerial decree in 1912, known as the "Varnier Line" between Teniet-el-Sassi and the town of Figuig. The course of the "Varnier Line" had also been changed several times. For instance, its 1912 version left most of the Hammada du Guir in Algeria. While its 1914 version pushed the border up to the eastern rim of Hammada, when the French government decreased the limits of the Cercle du Colomb-Bechar. By 1950, most of the French maps showed the "Varnier Line" back in the west though not in the original course. (Wild, Patricia Berko, Op. Cit, pp.19-20)

(6) Reyner, Anthony S., Op. Cit, p.316

of 1845, the boundary conflict continued, which again led the French to conclude that a more definite delimitation was necessary<sup>(7)</sup>. Thus, France and Morocco concluded the treaty of Lalla-Marnin which defined, in great detail, approximately 100 miles of boundary from the Mediterranean Coast to the peak of Teniet-el-Sassi in the Atlas mountains. As far as delimitation is concerned, the boundary follows specified natural watercourses and connects fixed geographical features. In the case of the desert south and south-west of Teniet-el-Sassi, the treaty delimited the French-Algerian-Moroccan sovereignties by reference to specific tribes inhabiting the Sahara region. Therefore, the border treaty of 1846 established in fact, a frontier zone instead of a fixed boundary line. The treaty was supplemented by a list of tribes under French-Algerian or Moroccan jurisdiction as well as a detailed geographical description of the Sahara region which was fairly densely inhabited by farmers, and sparsely populated by sheep-raising nomads. The French authority subsequently extended the Algerian jurisdiction southward into the Sahara region which was inhabited by tribes from Morocco<sup>(9)</sup>. Consequently, difficulties arose from the unresolved border which were further complicated by the inconsistency of shifting the location of the administrative boundary line. Eventually, the French government concluded

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(7) Touval, Saadia, The Boundary Politics of Independent Africa, Harvard University Press, Massachusetts, 1972, pp.180-181

(8) Brownlie, Ian, African Boundaries, A Legal and Diplomatic Encyclopaedia, C. Hurst & Company, London, 1979, p.58

(9) Hassouna, Hussein, The League of Arab States and Regional Disputes, Ocean Publications Inc., New York, 1975, pp.211-212

that a more clearly defined frontier become once more necessary. Thereupon, a protocol was signed in Paris in 1901 which extended the border between Algeria and Morocco from Teniet-el-Sassi to the Hammada du Guir<sup>(10)</sup>, which was reinforced by the establishment of military and customs posts along the limited area of territory controlled by French-Algeria and Morocco. This delimitation was also conducted with reference to tribal considerations rather than reference to geographical features. Owing to difficulties in maintaining Saharan outposts, the French government concluded the 1902 agreement with Morocco. This abrogated the provisions of the 1901 protocol which provided for guard and customs posts south of Teniet-el-Sassi, except at Figuig in Morocco<sup>(11)</sup>, in addition, the return of the old frontier and also established areas of joint authority along the border, which resulted in an extension of Algeria<sup>(12)</sup>. Accordingly, the border problem remained the same as under the 1845 treaty, reflecting the French belief in the nineteenth century, that the Sahara region south and south-west of Teniet-el-Sassi was uninhabited and that therefore, no border was necessary<sup>(13)</sup>.

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(10) Brownlie, Ian, Op. Cit, p.59

(11) In 1938 a French military administrator in Morocco, General Trinquet, proposed a new boundary which would have placed much of the Sahara region within Morocco. The proposed plan was rejected by the French government. The "Trinquet Line" became subsequently the basis of Moroccan territorial claims against Algeria.

(12) The Moroccan thesis was that the nineteenth century Sherifian Empire was dismembered by colonial conquest. In 1900 the French annexed parts to Algeria and French West Africa. Spain acted similarly.

(13) When Morocco achieved independence in 1956, its border with the French-ruled Algeria remained only partially defined as it had been since 1845. The boundary dispute was further complicated by the discovery of large amounts of oil and mineral resources in the Sahara. Whilst large quantities of oil and mineral resources have been discovered in the Algerian sector of the Sahara, concessions granted by the Moroccan government to oil companies have not yet led to the discovery of oil in its sector.

Thus, when Morocco achieved independence in 1956, it had claimed repeatedly that no clearly defined frontier had been agreed upon with French-ruled Algeria in many areas<sup>(14)</sup>. Furthermore, the unresolved boundary issue had also been complicated by the inconsistency of French official maps which often failed to define whether certain localities were in Algeria or in Morocco<sup>(15)</sup>. Thus, when Morocco regained her independence, a joint frontier commission was set up with a mandate to solve the dispute over the undefined border areas<sup>(16)</sup>. Owing to the establishment of the Algerian Provisional Government in 1958, Morocco however, withdrew from the joint frontier commission, taking the view that this government was the legitimate authority to deal with the question of Algerian borders<sup>(17)</sup> and decided to await the independence of Algeria<sup>(18)</sup> before a conclusive delimitation of the common border, which had clearly become necessary, after the discovery of large quantities of oil and mineral resources in the Sahara.

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(14) Zartman, William, The Politics of Boundary in North West Africa, JMAS, Volume 3, 1965, p.163

(15) Wild, Patricia Berko, The OAU and the Algerian-Moroccan Border Conflict, International Organisation, Volume 20, 1966, pp.19-20

(16) Touval, Saadia, Op. Cit, p.181

(17) These negotiations were gradually abandoned. On the one hand, the French refused to offer concessions; on the other hand, Morocco came under Algerian criticism for co-operating with the French in order to partition Algeria.

(18) Touval, Saadia, Op. Cit, pp.181-182



In July 1961, the Moroccan and Algerian Provisional Government concluded a secret agreement which provided that the territorial problems created by the unilateral delimitation imposed by the French government, would be settled through mutual negotiations between the governments of Morocco and independent Algeria<sup>(19)</sup>. The proposed negotiations over the frontier, however, never took place, owing to the involvement of political as well as economic considerations which complicated the border disputes. Subsequently, the agreement was immediately shelved when Morocco advocated an irredentist policy which claimed a historical frontier which included the Western Sahara as well as the Senegal river<sup>(20)</sup>. This policy was based on the thesis that the Sherifian Kingdom had been dismembered by colonial conquest since 1900<sup>(21)</sup>. France had occupied the core as a protectorate while Spain acted similarly<sup>(22)</sup>.

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(19) Andemicael, Berhanykum, The OAU and the UN, Africana Publishing Company, New York, 1976, p.50

(20) Only a few months after Moroccan independence was gained, a new and striking declaration of nationalism was formulated which was published in July 1956 on the front page of the Istaglal Party Daily "Al-Alam." This declaration supplemented by a map of Greater Morocco, commented on the economic importance of mineral resources in the Sahara. This irredentist policy had been advocated since 1948 by Allal-al-Fassi, who lived in exile in Cairo from 1948 until Moroccan independence. He argued that for reasons of geography, history and international law, the natural frontier of Moroccan Sahara should end where Mauritania meets Senegal. During 1957, the other Moroccan political parties also accepted territorial expansion as their aim but irredentism remained more or less unofficial, until Spain rejected Morocco's request for the immediate return of Ifran and Tatwan.

(21) Zartman, William, Op. Cit, p.163

(22) Ryner, Anthony S., Op. Cit, pp.313-314

It also alleged that despite these facts, the Moroccan people continued to consider themselves subjects of Morocco and members of the Muslim community which was headed by the Sultan of Morocco. Thus, the question of uncertain territorial frontiers became excessively important in Moroccan policy. While Moroccan political parties had been advocating the irredentist policy, nevertheless this policy remained more or less unofficial until, under pressure, the King officially adopted it<sup>(23)</sup>. This naturally affected Morocco's relations with Algeria, particularly because of the uncertain boundary between both countries. Under these circumstances, Morocco announced in February 1958 a territorial claim to Mauritania and protested against French exploitation of the Sahara<sup>(24)</sup>. In addition

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(23) It should be noted that the official adoption of irredentist policy may be explained by reference to domestic political problems. The national solidarity that had existed during the struggle for independence had gradually been replaced by a factional struggle among political parties and by violence that erupted throughout the country. It could, therefore, be assumed that the purpose for the official adoption was to blur political differences and to stimulate patriotic feeling. This irredentist posture mutually constituted a menace to the whole of North Africa and consequently to the isolation of Morocco.

(24) The French government established in 1957 the common organisation of the Sahara Region (OCSR) in order to promote just exploitation of the economic resources of the Sahara. The OCSR originally included Mauritania, the Sahara region of Algeria, Mali, Niger and Chad. The OCSR's statute was revised in 1959 and 1960, following the achievement of independence of the territories of French West and Equatorial Africa. In 1962, Algeria achieved independence by the Evian Agreement which abolished the OCSR and replaced it by a joint Franco-Algerian Sahara Organisation. This Organisation was charged with the exploitation of oil and mineral resources of the Algerian Sahara, with equal financial support from France and Algeria.

to the irredentist policy, the frontier issue was complicated by ideological differences. Thus, while a revolutionary socialist regime came into power in Algeria upon achieving independence in 1962, a traditional monarchy existed in Morocco. Consequently, differences were based upon the adoption of a policy of economic liberation by Algeria whilst most of the former colonial lands in Morocco were still owned by foreigners. Nevertheless, many Moroccans were tempted by the Algerian approach, while profound sympathy linked the left-wing opposition in Morocco to the Algerian regime. Eventually, economic considerations such as the discovery of a large amount of oil and mineral resources in the disputed areas of the Sahara, contributed to the aggravation of the boundary issue<sup>(25)</sup>. This background eventually led to the outbreak of hostilities following Algeria's accession to independence in July 1962<sup>(26)</sup>. The boundary crisis developed over a number of border areas, as well as over military and customs posts which were claimed by each state to be within its jurisdiction. Under these circumstances, Moroccans were expelled from the Algerian side while Algerians faced the same fate in Morocco. Algerian troops occupied the town of Ghija in Moroccan territory, whilst Moroccan troops were massed along the frontiers. The Moroccan troops attempted to occupy Tindorf but withdrew when they discerned that Algerian troops were firmly in control of the town<sup>(27)</sup>. Algeria claimed that

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(25) African Contemporary Record 1968-69, pp.86-87 .

(26) Okoye, Felix Chuks, International Law and the New African States, Sweet & Maxwell, London, 1971, p.147

(27) Wild, Patricia Berko, Op. Cit, p.23

these parts of the Algerian territory had been forcibly occupied by Moroccan troops immediately after the departure of the French contingents. At the same time, Morocco claimed that these areas were Moroccan and their inhabitants had on various occasions expressed their allegiance to the Moroccan Monarch<sup>(28)</sup>. Soon after the outbreak of hostilities, the foreign ministers of the two countries held a meeting on October 5th, 1963 at Oujda in Morocco, where they discussed the fighting on their borders<sup>(29)</sup>. They agreed that mutual understanding had been achieved and that relations between the two countries would be normalised. Subsequently, relations improved between the two countries following a visit by the Moroccan Monarch to Algeria in March 1963<sup>(30)</sup>. The leaders of the two countries agreed, in principle, that the Moroccan troops would be withdrawn from the border and that a joint border commission would be established, due to meet at Tlemcen, Algeria, to examine the border dispute. Unfortunately, during the 1963 summer, a series of incidents occurred in the disputed territory<sup>(31)</sup>. Simultaneously, each country alleged that a number of its nationals living

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(28) It should be noted that it was reported during the referendum on Algerian independence held in July 1962, that inhabitants of Tindorf had marked their ballot "Yes" for Algerian Independence, but maintained that they were Moroccans. Accordingly, Moroccan troops endeavoured to occupy Tindorf several days after the referendum, but withdrew when they noticed that Algerian troops were firmly in control of the region.

(29) Wild, Patricia Berko, Op. Cit, p.24

(30) Hassouna, Hussein, Op. Cit, p.213

(31) Ibid p.214

on the other side of the frontier had unjustifiably been expelled. In addition to charges of incursions into their respective territories, as well as allegations of massing troops along the border, were made by both governments. Furthermore, Algeria alleged that Morocco was encouraging an Algerian dissident movement in the disputed areas<sup>(32)</sup>. Under these circumstances, skirmishes threatened to escalate into a full scale war, particularly because of advances by Moroccan troops who occupied the two disputed border posts of Hassi-Beida and Tinjoub. These two posts were situated in areas of strategic importance located within the Algerian sector of the former French administrative frontier as shown on the French maps issued in 1948<sup>(33)</sup>. Negotiations for a ceasefire and withdrawal of forces were held at Marrakesh on October 15th, 1963, but proved to be a complete failure, unable to reach a mutually acceptable solution<sup>(34)</sup>. Subsequently, fighting recurred intermittently and the Algerian forces failed to regain control of Hassi-Beida and Tinjoub. As a consequence, they attacked Figuig in Moroccan territory and occupied it<sup>(35)</sup>. On the other hand, the Moroccans on their second front in Southern Algeria drove towards Tinjouchy and Tindorf<sup>(36)</sup>. Against this background of open warfare

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(32) Wild, Patricia Berko, Op. Cit, p.25

(33) Ibid p.24

(34) Hassouna, Hussein, Op. Cit, p.214

(35) Ibid p.214

(36) Ibid p.214

between Algeria and Morocco and the inability of the two countries to conclude a ceasefire agreement, a number of attempts at mediation by third parties were made. Offers began pouring into Algeria and Rabat. It should be mentioned that both Algeria and Morocco discerned that they could not hope to benefit from a protracted war<sup>(37)</sup>. Therefore it became obvious to both that it was necessary to achieve gains from the efforts of peaceful settlement. Algeria intended to secure the withdrawal of Moroccan troops from the positions they occupied, and at the same time to gain recognition of the boundary held by France, prior to its independence in 1962, as the legitimate border with the Kingdom of Morocco. Moroccan intentions, on the other hand, were to secure Algeria's entrance into the promised negotiations concerning Moroccan territorial claims.

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Morocco had much greater difficulties securing support for its territorial claims against Algeria, than for its Mauritania claims. When the war erupted, Algeria could again draw on the wide international sympathy which it had won during the struggle for independence.

ATTEMPTS AT MEDIATION BY THE LEAGUE OF ARAB STATES

Following the failure of ceasefire negotiations between Algeria and Morocco in mid-October 1963, efforts at mediation of the conflict were simultaneously undertaken by the OAU and the League of Arab States. The League endeavoured to bring about a peaceful settlement to the conflict between two of its member states. It reminded the states involved in the conflict of the provisions enshrined in the Pact concerning the peaceful settlement of disputes between member states. It called upon them to settle their dispute within the League's machinery<sup>(38)</sup>. The League's Council held an emergency meeting

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(38) The most notable among the efforts at mediation by the League of Arab States and the OAU, were those undertaken by President Habib Bourguiba of Tunisia and by President Gamal Abdul-Nasser of the UAR. Prior to the failure of ceasefire negotiations between Algeria and Morocco, President Bourguiba addressed the disputants, urging them to agree to a ceasefire. He issued a second appeal on October 21st 1963. Nevertheless, his attempts to convoke a meeting of North African foreign ministers in Tunisia failed. It is possible that President Bourguiba's mediation efforts were doomed to failure at the outset by the fact that relations between Algeria and Tunisia had been strained since December 1962. President Bourguiba had accused the Algerian government of harbouring the Tunisian of a plot against his life. As far as President Nasser's initiative is concerned, he extended an initiative to the government of Algeria, Morocco, Tunisia and Libya for a North African Summit Conference in order to discuss the Algerian-Moroccan border conflict. At the same time, President Nasser deplored the aggression committed against Algeria. The obvious bias of President Nasser in favour of Algeria was given a concrete expression by Egyptian military assistance. This clearly excluded mediation of the dispute by the UAR.

upon the Secretary General's personal initiative in which all member states participated, including the two parties to the dispute. The Moroccan delegate expressed satisfaction with the Council's meeting which enabled the League to consider the dangerous situation along the Algerian-Moroccan border. The Algerian delegate questioned the procedure by which the Council's meeting had been summoned. According to the provisions of the League's Pact, the Council had to be convened at the request of the parties to the dispute or of another member state<sup>(39)</sup>. Notwithstanding, the Algerian delegate welcomed the spirit in which the Council had been convened. As far as the League's initiative was concerned, the Council raised the question as to whether it, the Council, could act as an organ of mediation or as one of arbitration between the parties in dispute. The consensus among the member states was that the Council, at this stage, was merely carrying out a mediatory role in attempting to bring hostilities to an end. The Arab League mission was also to provide a platform for the examination of the dispute and offer possibilities to the concerned parties to clarify their positions<sup>(40)</sup>. After a series of deliberations, the League's Council adopted a draft resolution calling upon the member states in dispute to withdraw their armed forces to the positions they had occupied prior to the outbreak of hostilities without prejudice to the border issue<sup>(41)</sup>.

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(39) The Arab League Pact, Published by the Information Division of the League General Secretariat, Cairo 1972, p.14

(40) Okoye, Felix Chuks, Op. Cit, p.147

(41) Hassouna, Hussein, Op. Cit, p.216



It also established a Mediation Commission, consisting of representatives of Iraq, Lebanon, Libya, Tunisia<sup>(42)</sup> and the League's Secretary General, with a mandate to bring about a mutually acceptable solution to the Algerian-Moroccan border dispute. Furthermore, the resolution called upon the two member states in dispute to halt urgently all press and radio campaigns against each other and to extend all necessary facilities in order to enable the commission to carry out its task in an appropriate way<sup>(43)</sup>. The League's mission initially visited Algeria on October 22nd, 1963 where it had a series of official meetings with Algerian authorities, at which the mission had stressed the necessity to settle the dispute by peaceful means within the League's framework. The Algerian government on their part expressed appreciation for the steps taken by the League Council. Furthermore, they declared their readiness, immediately to implement the League Council's resolution on condition that the Moroccan government would be prepared to do likewise<sup>(44)</sup>. Subsequently, the mission visited Morocco on October 23rd, 1963 where it also held a number of official meetings with

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(42) Ibid p.215

(43) Ibid p.217

(44) Ibid pp.217-218

the Moroccan authorities and was later received by the King in Marrakesh. The Moroccan authorities had apparently some misgivings about the League's attitude which was said to be sympathetic towards Algeria<sup>(45)</sup>. However, consensus was eventually reached with the approval of the two member states in dispute and a draft agreement was prepared by the League's mission which embodied the following points:-

- (1) A ceasefire would come into effect on October 26th 1963 at zero hour.
- (2) The Algerian and Moroccan troops were to withdraw to the positions they occupied prior to the outbreak of hostilities, without prejudice to the agreed negotiations concerning the border problem.
- (3) Direct negotiation between the member states in dispute would take place as soon as possible in order to discuss the border conflict with the League offering of forum, as well as whatever necessary assistance. The Arab League invited the two member states in dispute to respond positively to an invitation to attend the meeting of Heads of North African states scheduled to take place at Tripoli, Libya in the near future.
- (4) An immediate halt of all radio and press campaigns in order to facilitate the League's endeavours at mediation<sup>(46)</sup>.

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(45) The ground for the Moroccan misgivings was due to the fact that the League Council had proceeded with the examination of the dispute prior to the arrival of the official Moroccan delegation. Despite the fact that the League was well aware that the Moroccan delegation, headed by the Minister of Justice, was en route to Cairo to join in the Council's deliberations.

(46) Hassouna, Hussein, Op. Cit, pp.216-217

Surprisingly, however, while the League mission was still engaged in urging the authorities of the two member states to approve the provisions of the draft treaty, it was announced that the heads of state of Morocco and Algeria had agreed to a Summit Conference in Bamako on October 26th 1963, which had been proposed by the OAU through the good offices of the Emperor of Ethiopia and the President of Mali. Consequently, the League mission decided that its efforts had come to a complete standstill. Therefore, the League mission informed the authorities of the two member states that it regarded holding such a meeting at Bamako as inconsistent with the aims of the League's mediation, and expressed hope for an immediate success of the Summit meeting in bringing about a mutually acceptable solution to the border conflict<sup>(47)</sup>.

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African Contemporary Record, 1968-69, p.90

## THE OAU'S ROLE IN ACHIEVING A PEACEFUL SETTLEMENT

It has already been mentioned that efforts at mediation of the conflict by the League of Arab States were met with misgivings by Morocco. This doomed the League initiative to failure from the onset as most of the League's member states were perceived by Morocco to be sympathetic to Algeria. In this atmosphere, the personal initiative of the Ethiopian Emperor, Haile Salassie and of the Malian President, Modiba Keita, were successful<sup>(48)</sup>. It should be noted that the provisional Secretariat of the OAU had been entrusted to the Ethiopian government. The Emperor's personal initiative was, therefore, strengthened, since he continued his efforts both in his personal capacity and also on behalf of the OAU. The Bamako Summit meeting marked a turning point in the evolution of the OAU's role in achieving an African peaceful settlement to the Algerian-Moroccan border dispute. Prior to the Bamako Summit meeting, a fundamental legal issue had arisen as to whether the dispute should be submitted to the UN or to the OAU. On the one hand, Morocco had claimed its right to submit the dispute to the UN<sup>(49)</sup>, since it had reservations about the provisions of the OAU Charter concerning the maintenance of the imposed colonial boundaries in Africa<sup>(50)</sup>.

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(48) Hassouna, Hussein, Op. Cit, p.218

(49) Okoye, Felix Chuks, Op. Cit, p.148

(50) Morocco did not participate in the Ministerial and Summit Conference which established the OAU, objecting to Mauritanian participation which was claimed by Morocco. It did not sign the OAU Charter until September 1963, and then recorded reservations on the question of boundaries.

Moreover, Morocco's absence at the founding conference of the OAU in Addis Ababa resulted in her diplomatic isolation in Africa<sup>(51)</sup>. However, the Moroccan reluctance to seek an African settlement of the dispute had made the Algerian position very strong. The OAU Charter provides that member states undertake to settle all disputes among themselves by peaceful means within the OAU machinery<sup>(52)</sup>. Morocco also recorded reservations concerning the 1964 Cairo resolution of the OAU Assembly of Heads of State, which adopted the principle that the territorial status quo on the day of independence constituted a tangible reality<sup>(53)</sup>. Therefore, the Moroccan position was not likely to gain support at the OAU forum. The strength of Algeria's case was also based on the principle of *uti possidetis*, coupled with the general sympathy gained through the war for national liberation so recently conducted<sup>(54)</sup>. The African members of the OAU also recognised the utter incompatibility of Moroccan irredentism with the principles of the OAU Charter. On the other hand, Algeria had from the onset, agreed that it was within the competence of the OAU to deal with the dispute. It would appear that Morocco had not found sufficient support among the permanent members of the UN Security Council<sup>(55)</sup>.

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(51) Wolfers, Michael, Politics in the OAU, Methuen & Co. Ltd., London, 1976, pp.3-4

(52) OAU Charter and Rules of Procedures, Article III(2), pp.10-11

(53) Brownlie, Ian, Op. Cit, pp.360-361

(54) Wolfers, Michael, Op. Cit, p.4

(55) Bowett, D.A., The UN and Peaceful Settlement, Report of a Study Group of the David Davis Memorial Institute of International Studies, Europa Publications, London, 1970, pp.180-182

against Algeria's assertion that the appropriate machinery of the OAU had not yet been exhausted<sup>(56)</sup>. Here it should be noted, that the dispute was endowed with a dual regional and international character, insofar as the parties to it were both members of the two organisations. Hence, it might be argued that the non-intervention of the UN stemmed from the fact that the dispute was between parties to regional arrangements. Therefore, the UN Security Council in conformity with Chapter VIII of the UN Charter, had to encourage the peaceful settlement of the dispute through existing regional arrangements<sup>(57)</sup>. This fact in itself and Moroccan satisfaction with the African mediatory team, had influenced her to accept the OAU's jurisdiction. The conservative inclination of the Ethiopian Emperor probably encouraged Morocco to do so. It was notable that relations between Morocco and Mali had cooled considerably since the withdrawal of Mali from the common front against Mauritania. Nevertheless, Mali's past association with Morocco apparently encouraged her to assume that its argument against the existing Sahara

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This practice had been used in the Guatemalan complaint of 1954 against the United States in which the USA argued that the UN Security Council had no jurisdiction to discuss the Guatemalan complaint until Guatemala had exhausted the corresponding machinery of the OAS. The USA succeeded to the extent that the motion to put the Guatemalan complaint on the agenda of the UN Security Council failed to receive the necessary seven affirmative votes.

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Bowett, D.W., Op. Cit., p.189-192

boundaries imposed by France would meet with sympathy<sup>(58)</sup>. Against this background, the leaders of Algeria and Morocco accepted, on October 26th 1963, an invitation from the Malian President to hold a Summit meeting at Bamako with the Ethiopian Emperor. The Bamako Summit meeting was held on October 29th and 30th, 1963 and at its conclusion the four heads of state signed an agreement providing for the following points:-

(1) An immediate end of hostilities, to come into force on November 2nd, 1963 at zero hour;

(2) the establishment of a ceasefire commission consisting of Algerian, Ethiopian, Malian and Moroccan military officers, which would define a demilitarised zone, as well as supervise security and military neutrality in the aforesaid zone;

(3) an immediate extraordinary meeting of the OAU Council of Ministers to be held at Addis Ababa in order to set up an ad hoc commission with a mandate to examine the border dispute, as well as to bring about a mutually acceptable solution;

(4) all press and radio campaigns to cease on November 1st, 1963. Strict observation of the principles of non-interference in each other's internal affairs and of peaceful settlement of all African disputes within an African framework as envisaged by the OAU Charter<sup>(59)</sup>.

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(58) Algeria could find reason to feel satisfied with the mediating team. The Malian President had recently proclaimed support for the principle of status quo in addition to Malian withdrawal from the Moroccan common front against Mauritania, as well as terminating its dispute with the latter state. Mali was also seeking Algerian co-operation in its efforts to control the nomadic dissidents, whilst the Ethiopian position was of strong opposition to the redrawing of African borders.

(59) Berhanykum, Andemicael, Op. Cit, p.51

It should be noted that in spite of the contribution of the Bamako Summit to the maintenance of peace, hostilities between Algeria and Morocco continued sporadically, even after the signing of the agreement. Unfortunately, each side accusing the other of violation, thus Moroccan authorities announced an Algerian attack on Figuig and declared that its troops would not be withdrawn from Hassi-Beida and Tinjoub. The Algerian authorities simultaneously announced that the Moroccan troops had attacked Beni-Oueif on Algerian territory. At the same time, Algeria reiterated its position that its troops would engage Moroccan troops in battle only in case of legitimate self-defence. Accordingly, Algerian troops had approached Figuig in consequence of Moroccan incursions near Tindouf<sup>(60)</sup>. In addition to these skirmishes, it would appear that there was a mutual misunderstanding among the two states in dispute, as to the provisions of the Bamako agreement. Algerian authorities assumed that the Moroccans would evacuate Hassi-Beida, as well as Tinjoub, while Moroccan authorities asserted that these frontier posts were Moroccan and Moroccan troops would not be withdrawn from Moroccan territory. Under these circumstances, any success of the Bamako ceasefire commission in establishing a demilitarised zone, was a highly difficult task, thus, conditions contributed towards resumption of

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Hassouna, Hussein, Op. Cit, p.220



hostilities in the disputed areas. Thus, Morocco again pressed for a UN hearing. It notified the UN Secretary General of the most recent hostilities but it did not officially request a meeting of the UN Security Council<sup>(61)</sup>, after discouragement of such a course by some permanent members, who urged Morocco to abide by the Bamako agreement<sup>(62)</sup>, and hoped that the conflict would be settled by peaceful means within the OAU's context. An extraordinary meeting of the OAU Council was held in Addis Ababa on November 15th, 1963. This meeting had been convoked after two-thirds of the member states had accepted the Bamako proposal<sup>(64)</sup>.

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(61) Mayer, David, The OAU Conflict Management, JIO, Volume 20, 1966, p.354

(62) The request of the UN Security Council's permanent members to Morocco to abide by the Bamako agreement was made to prevent an East-West confrontation over the Algerian-Moroccan conflict. The East-West attitudes to the Algerian-Moroccan dispute were unlike the Moroccan-Mauritanian conflict. In the latter, the Eastern bloc powers supported the Moroccan thesis, while the West recognised Mauritania's sovereignty. But in the Algerian-Moroccan conflict, both the United States and the Soviet Union formally adhered to neutrality and refrained from taking positions on the merits of this dispute. The West was irritated by Algeria's flirtation with the East, but anxious not to strain relations any further. On the other hand, the East accepted the official Algerian thesis that the war was a Western attempt to dismember Algerian territorial integrity.

(63) The meeting was addressed by the Ethiopian Emperor who welcomed the fact that an African dispute was about to be settled through the OAU machinery. The Emperor also stated that the African Heads of State and Government had agreed to the peaceful settlement of border disputes within the OAU machinery when they had ratified the OAU Charter.

(64) Lyon, Peter, Regional Organisation and Frontier Disputes, The International Regulation of Frontier Disputes, Edited by Evan Luard, Thames & Hudson, London, 1970, pp.131-132

The legal basis of the Council meeting was Article XII(2) of the OAU Charter which provides that "...the Council of Ministers shall meet in an extraordinary session upon the request of a member state and the approval of two-thirds of all member states<sup>(65)</sup>." On the eve of the meeting, the Moroccan delegation apparently feared that the outcome would be incompatible with Moroccan interests<sup>(66)</sup>. The Council of Ministers quickly dissipated any fear that it might deal unfairly with Morocco when it decided to adopt the Bamako agreement as the basis of its deliberation. The Council invited the Algerian and Moroccan delegates to present their respective cases. Initially, Morocco stated that it had well-founded territorial claims based upon a number of treaties, including the 1961 agreement with the then Provisional Algerian Government, in addition to the claim that the boundaries in the disputed areas were not merely ill-defined but were, in fact, non-existent. Algeria, on the other hand, based its territorial claim on the principle of the status quo. This principle was enshrined in the OAU Charter, as well as, the principle of territorial integrity and all OAU member states had pledged themselves to observe it scrupulously. Moreover, the boundary near Tindouf, object of Moroccan claims, was clearly defined. Only the combat areas near

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(65) OAU Charter and Rules of Procedures, Article XII(2), Op. Cit, p.13

(66) The Moroccan Foreign Minister, en route to the meeting, stated that the Moroccan Government accepted the OAU forum in order to avert war with Algeria. He also expressed the hope that the Moroccan case would meet with reasonable understanding, in spite of the anti-Moroccan bias of most African states.

Hassi-Beida and Tinjoub lay along an undefined frontier. The Algerian delegate stressed the imperative necessity to settle the aforesaid undefined frontier by peaceful means within a strictly OAU framework<sup>(67)</sup>. It should be noted that most other member states refrained from deliberating substances of the issue involved in the border dispute. Eventually, the Council adopted a resolution on November 18th, 1963, in which it reaffirmed the determination of the OAU member states always to seek pacific settlement to their differences, within OAU institutions<sup>(68)</sup>. In this respect, the Council confined itself to the task assigned to it by the Bemako agreement<sup>(69)</sup>. It had established an ad hoc commission<sup>(70)</sup> with a mandate to bring about a mutually acceptable solution to the border conflict. The Council designated Ethiopia, the Ivory Coast, Mali, Nigeria, Senegal, Sudan and Tanganyika to serve on the ad hoc commission. As far

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(67) Touval, Saadia, Op. Cit, pp.257-259

(68) Lyon, Peter, Op. Cit, p.32

(69) The Moroccan delegation considered the Council's acceptance of the Bemako agreement as a victory for Morocco. In addition, the establishment of an ad hoc commission for the purpose of settling the border dispute meant support for the Moroccan thesis that no boundary existed in the disputed areas. Moreover, the Moroccans discerned that their fears with respect to OAU intervention had been unfounded. Therefore, they were greatly reassured as to the possibility of achieving a mutually acceptable solution to the conflict.

(70) The commission of Mediation, Conciliation and Arbitration foreseen in Article XIX of the OAU Charter, had not yet been established at that time. Therefore, the Council decided to set up the ad hoc commission foreseen in the provision of the Bemako agreement to function as the projected commission.

as the terms of reference were concerned, it was agreed that the mandate of the ad hoc commission should conform to the provisions of the Bemako agreement. Consequently, the OAU ad hoc commission and the ceasefire commission had parallel functions. Concerning this, the commission of Mediation, Conciliation and Arbitration, foreseen in Article XIX of the OAU Charter, had not yet been established and it had been agreed that the ad hoc commission was to function as the projected commission of Mediation, Conciliation and Arbitration as it was proposed to function in future<sup>(71)</sup>. According to the Bemako agreement, the OAU Council of Ministers was requested to set up a Mediation commission in order to work out a peaceful settlement to the Algerian-Moroccan border dispute. In the meantime, the Bemako ceasefire Commission would continue to fulfil a peace-keeping function<sup>(72)</sup>. It should be noted that the peace-keeping function of the Bemako ceasefire commission was undermined by the persistence of sporadic hostilities along the Algerian-Moroccan frontiers. In spite of this fact, the commission succeeded in maintaining a ceasefire, but had not been able to establish a demilitarised zone. Thus, Algerian troops remained entrenched in the vicinity of Figuig, whilst the Moroccans persisted in their objection to evacuate Hassi-Beida and Tinjoub. It appeared, therefore,

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(71) Wild, Patricia Berko, Op. Cit, p.32

(72) Ibid Op. Cit, p.31

that the task of establishing a demilitarised zone would have to be taken up by the OAU ad hoc commission, since the latter was responsible to effect a mutually acceptable solution to the conflict. The OAU ad hoc commission, however, rejected the idea at its first meeting on December 2nd, 1963, held in Abidjan, Ivory Coast<sup>(73)</sup>. It decided that its first duties were to determine the basic causes of the border dispute and to submit a concrete proposal to the parties in dispute for its definitive settlement. The commission met for a second time on January 23rd, 1964 at Bemako where it accepted documents presented by the two member states in dispute and also presided over an exchange of documents between the disputants<sup>(74)</sup>. By early February, 1964, there had been a slight improvement in relations between the concerned states. Accordingly, diplomatic relations were resumed, but the exchange of ambassadors had been postponed at the behest of Algeria<sup>(75)</sup>. The ceasefire commission had been successful in achieving a ceasefire, as well as in establishing a demilitarised zone. This relative success of the ceasefire commission gave the OAU considerable credit as a regional organisation

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(73) The meeting was addressed by the President of the Ivory Coast, who advised the OAU ad hoc commission to accord priority to the task of maintaining peace and security along the Algerian-Moroccan frontiers.

(74) Algeria had made the resumption of diplomatic relations dependent upon the evacuation of Moroccan troops from Hassi-Beida and Tinjoub, in addition to a Moroccan warrant of proper treatment for Algerian citizens residing in Morocco. Algerian troops were not to be withdrawn from the vicinity of Figuig until the above conditions were satisfied.

(75) Wild, Patricia Berko, Op. Cit, pp.32-33

capable of maintaining peace and security in the continent. With the task of establishing a demilitarised zone accomplished, the ceasefire commission was dissolved in April 1964 by mutual agreement of the states concerned<sup>(76)</sup>. It did not continue to supervise observance of the demilitarised zone as originally envisaged in the Bemako agreement. Presumably, this dissolution was made possible by the progress of direct negotiations between the Algerian-Moroccan leaders at Cairo in 1964 at the Arab League Summit Conference<sup>(77)</sup>. Subsequently, the Algerian and Moroccan governments simultaneously announced that they had signed an agreement on February 20th, 1964 which provided for the termination of the dispute as well as for resumption of diplomatic relations<sup>(78)</sup>. Moreover, they agreed that Algerian troops were to be withdrawn from Figuig while the Moroccans would withdraw to the positions which they occupied before October 1st, 1963. Furthermore, the strategic highlands near Figuig would be demilitarised and a no-man's-land would be established along the border. Nevertheless, its exact delimitation was not made public. The fate of the Tindouf region was to be settled by the OAU ad hoc commission. As far as the OAU efforts at

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(76) Hassouna, Hussein, Op. Cit, pp.222-223

(77) The border conflict was not officially discussed at the Arab League Summit Conference. The meeting only provided the opportunity for a series of private negotiations on the issue between Algerian and Moroccan leaders.

(78) Hassouna, Hussein, Op. Cit, p.222

mediation were concerned, conclusion of the February 20th, 1964 agreement had been facilitated by the Bemako cease-fire commission, as well as by the OAU ad hoc commission. The Algerian-Moroccan authorities expressed satisfaction with the OAU efforts at mediation and revealed that the agreement had been signed in the presence of the Bemako ceasefire commission<sup>(79)</sup>. Under these circumstances, the OAU ad hoc commission set up a joint committee at ambassadorial level which was due to meet on May 29th, 1964<sup>(80)</sup>. On the eve of the committee's scheduled meeting at Bemako, it was announced that the two member states in dispute had agreed upon the following points:-

"...(1) free passage of persons and property between the two countries would be resumed;

(2) as of June 8th, nationals of the two countries, who had been expelled from either country during the hostilities of Autumn 1963, would return to their previous domiciles;

(3) the victims of the events of Autumn 1963 would be compensated;

(4) the property of victims would be returned;

(5) all necessary assistance would be granted to the victims so that they might resume their normal activities and

(6) all restrictions placed by the governments of either country on the liberty of nationals of the other country would be lifted...<sup>(81)</sup>"

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<sup>(79)</sup> Ibid pp.222-223

<sup>(80)</sup> Wild, Patricia Berko, Op. Cit, p.33

<sup>(81)</sup> Ibid Op. Cit, p.33

The OAU committee continued its regular meetings. It met in Algeria on October 20th, 1964, thereafter in Rabat. After these meetings the committee announced that it was awaiting the final observations of the disputants, before submitting its final recommendation to the states concerned, as well as to the OAU ad hoc commission. Under these circumstances, it seemed that progress on the settlement of the border dispute would best be achieved through bilateral negotiations between Algeria and Morocco. Accordingly, the OAU ad hoc commission decided to adjourn its efforts at mediation for an indefinite time. The Algerian and Moroccan leaders had privately agreed at the sixth session of the OAU Assembly of Heads of State and Government in September 1968, not to appear as disputants before the Assembly<sup>(82)</sup>. Consequently, the Algerian President paid an official visit to Morocco on January 11th, 1969 where a treaty of solidarity and co-operation was signed<sup>(83)</sup>. It provided for the establishment of a number of joint commissions of experts that would meet regularly in order to implement the provisions of the treaty. The two leaders met again at Tlemcen, Algeria on May 27th, 1970 where they agreed to settle the remaining outstanding points of the border dispute between their countries<sup>(84)</sup>.

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(82) Africa Contemporary Record 1968-69, pp.618-625

(83) Ibid Op. Cit, p.69

(84) Africa Contemporary Record 1969-70, pp. B7-B8



Moreover, they decided to establish a joint commission with a mandate to demarcate the border over the disputed areas from Figuig to Tindouf. They also created an Algerian-Moroccan organisation in order to study the possibility of joint exploitation of mineral resources in the Tindouf area<sup>(85)</sup>. Two years later, at the tenth session of the OAU Assembly of Heads of State and Government which took place in Rabat, Morocco, the Algerian-Moroccan leaders concluded two agreements on the border dispute and its related issues<sup>(86)</sup>. According to the first agreement, the Tindouf area would remain part of Algeria, thereby the frontier line would follow the de facto border inherited from the French colonial administration. The second agreement dealt with the joint exploitation of mineral resources in the Tindouf area, despite the fact that the area had hitherto been exploited only by Algeria.

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(85) Ibid Op. Cit, p. B7

(86) Hassouna, Hussein, Op. Cit, p.228

ASSESSMENT OF THE OAU EFFORTS AT MEDIATION IN THE  
FIRST ISSUE

It would appear that this border dispute represented the OAU first issue between two member states. The dispute also gave rise to a protracted and complex series of attempts at mediation by various quarters, in an attempt to bring about a cessation of hostilities, as well as a mutually acceptable solution to the border dispute. The procedures resorted to included direct negotiations between the two states in dispute, as well as offers of mediation from a number of Arab and African heads of state. In addition to this, there were efforts at mediation by the League of Arab states, since the disputants belonged to both regional organisations. As a matter of fact, it might be argued that the non-intervention of the UN stemmed from the fact that the dispute was between parties to regional arrangements. In such a situation, the UN should initially, encourage the peaceful settlement of the dispute through regional arrangements, in conformity with Article 52(3) of the UN Charter, which provides that "...the Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies, either on the initiative of the states concerned or by reference from the Security Council<sup>(87)</sup>." At the same time, the continuation of

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(87) Goodrich, Leland M. et al., Charter of the UN, Commentary and Documents, Columbia University Press, New York, 1969, pp.686-687

armed conflict over a period of time constitutes a breach of international peace and security in the terms of Chapter VIII of the UN Charter<sup>(88)</sup>. Nevertheless, the competence conferred upon the UN Security Council under the Charter would have been determined by the provisions of Chapter VII rather than of Chapter VIII<sup>(89)</sup>. The non-intervention of the UN could be explained by the desire to exclude any extra-regional powers which might result in involvement in the "cold war." The absence of a big power confrontation in the dispute resulted in keeping the UN out of the scene.

As far as consideration of the dispute was concerned, the parties to the dispute preferred a settlement within the framework of the OAU rather than the League. A comparison of the provisions of the League's draft agreement and the Bameko agreement might lead to the conclusion that these differences would have accounted for the rejection of the League draft agreement. These differences arose from the fundamental difference, of which the Bameko agreement was the consequence, of direct negotiation between the leaders of the two states in dispute. The League draft agreement had formulated prior to the holding of a meeting. Accordingly, the two states opted for an OAU settlement rather than that of the League and this probably stemmed from their preference for the procedure and not from preference for the provisions

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(88) Ibid pp.334-353

(89) Bowett, D.W., Op. Cit, pp.189-192

Moreover, the identity of the mediators seemed to have been an important factor, favouring a settlement of the dispute through the OAU. In this respect, the settlement of African border disputes was of particular concern to Ethiopia with parts of its territory the object of territorial claims by Somalia. Therefore, Ethiopia had a special interest in taking the initiative to mediate in the dispute, especially after the OAU headquarters being located in the Ethiopian capital and the Ethiopian government had been entrusted to run the Provisional Secretariat. Moreover, states have a higher respect for the personal integrity of a head of state than for an organ of international organisation, on the grounds that representatives to such institutions, would tend to reflect the policies of their various states. Furthermore, the territorial disputes between the OAU member states received such attention from the African heads of state at the founding Addis Ababa Summit Conference of 1963. Consequently, explicit reference to the border conflicts was placed in the OAU Charter<sup>(90)</sup>. In this respect, a pledge has been given by each member state to respect the sovereignty and territorial integrity of the other members<sup>(91)</sup>. Accordingly, the OAU accepted the principle of *uti possidetis* in the Assembly's resolution of 1964, which stated that "....the borders of African states on the day of their independence constitute a tangible reality<sup>(92)</sup>."

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(90) OAU Charter and Rules of Procedures, Article II(c)  
Op. Cit., p.10

(91) OAU Charter and Rules of Procedures, Article III(3)  
Op. Cit., p.11

(92) Brownlie, Ian, Op. Cit., pp.360-361

As far as the mediating role was concerned, it would be difficult to subscribe to the view that the OAU was successful in handling the dispute. Nevertheless, to the OAU should go the credit of contributing to the achievement of an agreement between the states in dispute and the settling of their differences within the OAU framework. Moreover, by declaring its support for the Bameko agreement, the OAU conferred its authority on the observance of the terms of such an agreement. Accordingly, the OAU brought the Bameko ceasefire commission under its aegis which eventually succeeded in bringing about a ceasefire, as well as, to define a demilitarised zone. It should also be noted that the OAU Council of Ministers had dealt with the dispute rather than the OAU Assembly of Heads of State and Government. This development may indicate the conclusion that the OAU Assembly functions as a deliberative organ, whilst the OAU Council may have assumed the task of an executive one, with the authority to take action in case of a breach of peace and security in Africa. This conclusion should not be emphasised, however, since the OAU Council consisted of ministers appointed by the heads of state and the subsequent approval by the latter of the Council's decisions<sup>(93)</sup>. Moreover, the procedure of convening an extraordinary

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(93) OAU Charter and Rules of Procedures, Article XII  
Op. Cit, p.13

session of the OAU Council in the Algerian-Moroccan border dispute indicated another development which was not foreseen in the OAU Charter. According to Article XII(2) of the OAU Charter which provides that "...the Council of Ministers shall meet at least twice a year. When requested by any member state and approved by two-thirds of all member states, it shall meet in extraordinary session<sup>(94)</sup>." In this connection, the extraordinary session of November 1963 was convened only after the two member states in the dispute had signed their consent in the Bameko agreement for such a session. It was notable that Algeria had requested such an extraordinary meeting, but her request had apparently been ignored. Moreover, the required consent of two-thirds of all OAU member states may prove to be a hindrance to the OAU's role in effecting peaceful settlements to African regional disputes. It should also be noted that the Algerian-Moroccan border dispute was eventually settled by the process of direct negotiations between the states concerned, as well as, assistance and encouragement of the OAU. Consequently, the OAU adopted the aforesaid procedure that substantive issues in any African regional dispute be resolved through bilateral negotiations rather than settling them itself. Nevertheless, it may be assumed that the OAU should be an instrument for the encouragement of such bilateral negotiation as well as for providing the forum where an agreement of mutually acceptable solutions be concluded between the member states in dispute.

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(94) OAU Charter and Rules of Procedures, Article XII(2)  
Op. Cit, p.13

THE SOMALI-ETHIOPIAN BORDER CONFLICT:

HISTORICAL ORIGINS AND LEGAL CONSIDERATION OF THE CONFLICT

The borders of the Horn of Africa were in a condition of flux when the European powers commenced their colonisation during the nineteenth century. Ethiopia was the only existing state in the area at that time<sup>(1)</sup>. The French, the Italian and the British established stations along the African coast of the Red Sea and the Gulf of Aden, to administer their colonies or protectorates in the region<sup>(2)</sup>. Between 1862 and 1885, France was active around the Gulf of Tojura. It concluded a number of agreements with the Sultans of Afar and Issa who agreed to alienate their territories to the French government. In 1897 and 1898, France also concluded two treaties, the first with the British and the second with the Ethiopians, defining the boundaries of her acquired territory<sup>(3)</sup>. Between 1887 and 1896, Italy established protectorates over a large sector of the African coast on the Indian Ocean in a series of agreements concluded with the Sultans of Somali tribes<sup>(4)</sup>. In the meantime, Italy endeavoured to bring Ethiopia into subjection<sup>(5)</sup>, but Ethiopian efforts to

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(1) Mariam Mesfin Wolde, The Background of the Ethiop-Somali Boundary Dispute, JMAS, Volume 2, 1964, p.196

(2) Ibid p.196

(3) Brownlie, Ian, African Boundaries, A Legal and Diplomatic Encyclopaedia, C. Hurst & Company, London, 1979, p.753 & 769

(4) Ibid Op. Cit, pp.828-829

(5) In 1889 Italy and Ethiopia signed the Wachate Treaty. Under it, Italy claimed Ethiopia as her protectorate, but the treaty was abrogated by the Anglo-Italian Treaty of 1891 which defined their respective spheres and influence in East Africa.

maintain independence were successful. The outcome was the need for frontier agreements which were concluded in 1908 and defined the boundary between Ethiopia and Italian Somaliland<sup>(6)</sup>. Nevertheless, the provisions of the treaty proved impossible to apply, since the two parties had adopted significantly different views of interpretation<sup>(7)</sup>. Between 1884 and 1886, Great Britain concluded a number of agreements with the Sultans of Somali tribes along the African coast of the Red Sea and the Gulf of Aden<sup>(8)</sup>. The first group of agreements signed in 1884 and 1885 provided for inter alia that the Sultans should permit free access to British ships to the Somali coast<sup>(9)</sup>. These agreements also contained a covenant by the Sultans of Somali tribes on behalf of themselves and their successors that no portion of their territories should be ceded or otherwise alienated to any foreign power, except the British government. The consequences of these agreements were that a formal British protectorate was eventually established in these territories. Nevertheless, the precise extent of the protectorate was left uncertain

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(6) Brownlie, Ian, Op. Cit, p.827

(7) Mariam, Mesfin Wolde, Op. Cit, pp.197-198

(8) Brownlie, Ian, Op. Cit, p.827

(9) They also provided for assistance to be extended to British ships in case of wrecking on the shores of their territories and also to allow the appointment of British agents within their domains.



in consequence of the failure to produce written records of the territories mentioned in the agreements which the Somali tribes customarily inhabited, and which the Sultans claimed to control<sup>(10)</sup>. Therefore, while the legality of these agreements was never questioned, the scope of their jurisdiction was in doubt from the outset. It was notable that the territories of the protected Somali tribes adjoined Ethiopian territory and the grazing lands lay in close proximity to areas over which the Ethiopian authority claimed jurisdiction<sup>(11)</sup>. In particular, a large section of the Haud area and a portion later called the Reserved area<sup>(12)</sup>, which was inhabited by Somali tribes, but claimed by Ethiopia as an integral part of its territory<sup>(13)</sup>. Despite the fact, the Ethiopian government no doubt took advantage of unsettled status in the Horn and the adverse consequence of the Anglo-Egyptian operation of 1897 in the Sudan, and made excessive territorial claims against the territories of the Somali tribes<sup>(14)</sup>. The outcome of these territorial claims was a treaty concluded in 1897 defining the frontier between Ethiopia and the British Somaliland<sup>(15)</sup>. In this respect, the Sultans of the

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(10) Brown, Latham D.J., The Ethiopian-Somaliland Frontier Dispute, ICLQ, Volume 5, 1956, pp.246-248

(11) Mariam, Mesfin Wolde, Op. Cit, pp.198-208

(12) The term Reserved Area came into use after the liberation of Ethiopia from the Italians in 1941, which thereafter, received a formal sanction in the Anglo-Ethiopian treaty of 1944.

(13) Mariam, Nesfin Wolde, Op. Cit, p.217

(14) Brown, Latham D.J., Op. Cit, p.249

(15) Brownlie, Ian, Op. Cit, p.827

Somali tribes were neither represented or consulted, despite the provisions which provided for the transfer of territories in which their tribes habitually moved, in order to graze their herds. It would appear that before the frontier had been delimited by the Exchange of Notes, the British government realised that certain of the Somali tribes would be brought under Ethiopian jurisdiction by reason of the territorial adjustment<sup>(16)</sup>. It would also appear that this would be contradictory to the British undertaking in the 1884 and 1885 agreements with the Sultans of the Somali tribes, which provided that no section of their territories were to be ceded or alienated to any foreign power, except to the British government<sup>(17)</sup>. The two principal territories concerned were the Haud and the Reserved Area, which were the main grazing lands of the Somali tribes. The territory of the Reserved Area lies largely outside the Ogaden, but in deep close to the Ethiopian frontier and adjacent to the boundary of French Somaliland. The Haud territory lies partly in the British Somaliland and partly in the Ogaden<sup>(18)</sup>. Thus, these territories were passed into Ethiopian jurisdiction in conformity with the Anglo-Ethiopian treaty of 1897<sup>(19)</sup>. It should be mentioned here, that the British undertakings in the 1897 treaty were contradictory to their undertakings in the previous agreements with the Sultans of the

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(16) Ibid pp.843-851

(17) Brown, Latham D.J., Op. Cit, p.246

(18) Ibid pp.252-253

(19) Brownlie, Ian, Op. Cit, p.827

Somali tribes. Notwithstanding, the legal conclusion was that the 1897 treaty was an international instrument, whereas the 1884 and 1885 agreements were not, because the 1897 treaty had been concluded between two sovereign states and was, therefore, regarded as binding by virtue of its supreme status in international law. Moreover, the 1884 and 1885 agreements with the Sultans of the Somali tribes neither prescribed any definite territorial arrangements nor intended to define the tribal territories. In contrast, the Anglo-Ethiopian treaty of 1897 was explicitly concluded to delimit the frontier between Ethiopia and the British protectorate. It might be argued that the protected Somali Sultans had previously covenanted not to alienate their territories to any foreign powers, except to the British government. Hence, it was not within the competence of the British government to transfer these Somali territories to Ethiopian jurisdiction. In this respect, the creation of the Italian protectorate over Ethiopia in 1935 did something to clarify the position of these detached territories of the Somali tribes. Italy separated the Ogaden region from the Ethiopian territory and incorporated it into its Somaliland<sup>(20)</sup>. It would seem to suggest that Italy acted initially as the de facto and subsequently as the de jure successor to Ethiopia. However, when Ethiopia was liberated on January 31st, 1942

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Mariam, Mesfin Wolde, Op. Cit, pp.197-198

by the British, a military pact was signed which provided that the Ogaden territory incorporated into the former Italian Somaliland should, during the currency of this accord, remain under British military administration<sup>(21)</sup>. Nevertheless, the military pact neither questioned the Ethiopian sovereign right over the Ogaden territory, nor did it modify the recognition which Great Britain had previously accorded to Ethiopia in 1897. Thus, the military pact of 1942 was a temporary arrangement. It was superseded by a treaty concluded in December 1944 by which Ethiopia agreed, for the duration of the treaty, that the Ogaden should be placed under British military administration<sup>(22)</sup>. Thereupon, this treaty extended the British military administration in Ethiopian territory to the whole of the Ogaden<sup>(23)</sup>. Despite the British military administration, the treaty recognised that the sovereignty of the entire designated territory remained vested in Ethiopia<sup>(24)</sup>. Hence, the British military administration was thus a temporary arrangement. Consequently, Ethiopia approached Great Britain in conformity with the provisions of the 1944 treaty, for the redemption of the Ogaden to its own jurisdiction. In the course of negotiations between Great Britain and Ethiopia

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(21) Hoskyns, Catherine, Case Studies in African Diplomacy 2, The Ethiopian-Somali-Kenya Dispute 1960-67, Oxford University Press, Dar-el-Salaam, Tanzania, 1969, p.9

(22) Brown, David J.L., Recent Development in the Ethiopian-Somaliland Frontier Dispute, ICLQ, Volume 10, 1961, pp.167-172

(23) The Ogaden was the main traditional grazing land of the Somali tribes which was transferred to Ethiopian jurisdiction by the Anglo-Ethiopian treaty of 1897.

(24) The 1944 treaty was made without prejudice to Ethiopian sovereignty over the territory, and the British military administration could, in fact, be terminated by either party at three months' notice.

the British endeavoured to effect changes in the conditions laid down by the 1897 treaty<sup>(25)</sup>. They proposed the possible exchange to Ethiopia, by which Great Britain would grant Ethiopia direct access to the Red Sea while allowing the British administration to remain permanently in charge of the Ogaden. This proposal was rejected by Ethiopia<sup>(26)</sup>. Subsequently, attempts were made by Great Britain to lease the Ogaden, or alternatively, to extend the status quo, but these endeavours were also unsuccessful. Under these circumstances, Ethiopia informed Great Britain that it wished to resume the full exercise of her sovereignty in the Ogaden region. Accordingly, the negotiations resulted in the conclusion of the 1954 treaty<sup>(27)</sup> in London, which

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(25) Mr. Ernest Bevin, the then British Foreign Secretary, proposed that the Ethiopian territories of the Ogaden should be lumped together as a UN Trusteeship territory under British administration. This proposal was initially rejected by Ethiopia and, subsequently, by both the United States and the Soviet Union at the Paris Conference.

(26) The contemplated federation between Ethiopia and Eritrea proposed at the UN by some permanent members, added the coast of Eritrea to Ethiopian territory. Therefore, the point of the British possible exchange, so far as the Ethiopians were concerned, lost its significance.

(27) The conclusion of this agreement had given rise to widespread feeling among the Somalis who despatched a delegation to meet the British Secretary of State for the Colonies, in order to deliver a protest against the Anglo-Ethiopian treaty of 1954. The delegation also requested a postponement of the implementation of the treaty. Nevertheless, the British Secretary informed the delegation that his government had to honour her international obligations under international law, therefore, compliance with the request would be in contradiction with our international commitments.

provided for the termination of British military administration in the territories designated as the Haud and Reserved Areas in the Ethiopian Ogaden region<sup>(28)</sup>. The 1954 treaty also reaffirmed the position created by the 1897 treaty regarding the grazing rights with a number of minor additions<sup>(29)</sup>. Hence, the Ethiopian sovereignty over the Haud and Reserved Areas established by the legal regime of the Anglo-Ethiopian treaty of 1897, had been formally recognised once more. Despite the fact, those territories were used predominantly by a number of British-protected tribes from Somaliland. However, the guarantee of the grazing rights envisaged in the 1897 treaty had been secured once more by the 1954 treaty. Notwithstanding, circumstances might arise which could lead to the complete loss of these pastures. During the Second World War, Great Britain maintained a military administration in the Italian Somaliland and Italy renounced its title under the terms of the Italian Peace Treaty of 1947<sup>(30)</sup>. Subsequently, the Allies agreed to place the former Italian Somaliland under the UN Trusteeship, leading to eventual independence. In this connection, Italy made a request to the UN to return to Somalia as an administering power, under the supervision

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(28)

Brownlie, Ian, Op. Cit, p.843

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For instance, the precise manner of exercising the rights of migration, grazing and watering which had been regulated for the benefit of the Somali tribes.

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Hoskyns, Catherine, Op. Cit, pp.9-10

of the UN Trusteeship so that the proper development would not be interrupted. This proposal received strong support from the permanent members of the UN Security Council, particularly from the United States and the Soviet Union<sup>(31)</sup>. To this effect, the UN General Assembly adopted a resolution endorsing the Italian request and also laid down the general principles for settling the frontier problem between Somalia, under the Italian administration, and Ethiopia<sup>(32)</sup>. The initial step in this direction was to engage in direct negotiation between the two states in dispute. This step should be followed by mediation and arbitration in case bilateral negotiations failed. Nevertheless, the two parties had adopted significantly different views of interpretation, thereby Somalia inherited the boundary problem from Italy and Great Britain when it became independent on July 1st, 1960, including in its new borders, the former Italian Trust Territory and British Somaliland<sup>(33)</sup>. This unification also stimulated the ethnic and territorial designs by a pan-Somali policy which were suddenly equipped with an instrument potentially capable of bringing them to fruition. To Somalia, therefore, the dispute with Ethiopia is more than a question of title to

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(31) Brownlie, Ian, Op. Cit, p.827 and p.889

(32) Mariam, Mesfin Wolde, Op. Cit, pp.208-216

(33) Lewis, I.M., Pan-Africanism and Pan-Somalism, JMFS, Volume I No. 1-4, 1963, pp.151-152

some grazing lands. It is an issue involving the unification of all Somali peoples under one flag and within one territorial unit<sup>(34)</sup>. Under these circumstances, the emergence of Somalia in 1960 was a signal for territorial dispute which became more inflamed. It would appear that neither Somalia nor Ethiopia had been entirely satisfied with the treaty arrangements of 1897 and 1954<sup>(35)</sup>. On the one hand, to the Ethiopians, the Somali tribes had often represented a disorder in their territory during the annual visit to the grazing lands<sup>(36)</sup>. On the other hand, to the Somalis, the 1897 treaty had surrendered to Ethiopia, territory which long before the creation of the British protectorate in Somaliland, was inhabited by Somali tribes. Moreover, neither of these treaties were concluded with the Sultans of the Somali tribes - they were not even consulted<sup>(37)</sup>. Thus, the Ethiopian government had announced that as from the day of Somalia's independence, it would regard the provisions of the Anglo-Ethiopian treaty of 1954 relating to the grazing rights of Somali tribes, as invalid<sup>(38)</sup>. It would seem that Somalia could not

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(34) The five-pointed stars on the Somali flag represent the Northern and Southern regions of the present Republic of Somalia, as well as the unredeemed Northern province of Kenya, the Ogaden province of Ethiopia and Djibouti (the former French Somaliland is now an independent sovereign state). These three entities are largely Somali in population.

(35) Lewis, I.M., Op Cit, pp.152-154

(36) Mariam, Mesfin Wolde, Op. Cit, pp.211-213

(37) Brown, David J.L., Op. Cit, pp.171-172

(38) Ibid Op. Cit, p.169



succeed to rights effecting the Ethiopian territory which under the Anglo-Ethiopian treaty of 1954, had been obtained by Great Britain as sovereign over the former British Somaliland. It would also appear from the Ethiopian announcement that the 1897 frontier delimitation was capable of surviving a succession of states in former British Somaliland. Nevertheless, the grazing rights were not capable of surviving the establishment of a successor state without a fresh arrangement between the successor state and Ethiopia. Accordingly, the position assumed by Ethiopia was that it would prepare to respect the grazing rights, provided that Somalia should likewise respect the 1897 frontier delimitation. The Somali position had been from the onset that it would not accept the 1897 boundary, which allocated to Ethiopia, territory that had for years been used by the Somali tribes<sup>(39)</sup>. Therefore, the dispute with Ethiopia was not a question of title to some grazing rights, it was an issue which involved title to large tracts of territory which had been recognised by the Anglo-Ethiopian treaty of 1897, as Ethiopian<sup>(40)</sup>. It should be noted that in the event of a succession of states, not all rights and duties of the predecessor pass

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(39)

O'Connell, O.P., State Succession in Municipal Law and International Law, The University Press, Cambridge, 1967, p.283

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It has already been mentioned that during the period when Ethiopia was an Italian protectorate, the Italian government adjusted the boundary between Ethiopia and Italian Somaliland. Thus, territory formerly within the Ethiopian sovereignty but predominantly inhabited by Somalis, was added to the former Italian Somaliland. Presumably, Somalia would today like to see a similar adjustment of the border with Ethiopia.

to the successor<sup>(41)</sup>. Consequently, rights and obligations which derive their effect from international treaties between the predecessor and a third state, do not survive the succession. The exception to this norm is to be found where such rights and obligations possess description of a real nature or quality<sup>(42)</sup>. Thus, real rights and obligations are usually concerned with title to, or the use of, territory such as the delimitation of frontiers or rights of transit<sup>(43)</sup>. Accordingly, they have territorial quality which endows them with a degree of permanence greater than those than those attached to rights and obligations in rem<sup>(44)</sup>. In this connection, rights in rem attach to objects which bind all legal persons in relation to those objects, but they do not possess the quality of permanence<sup>(45)</sup>. Consequently, where the inhabitants of one territory are permitted to exercise certain rights, in another territory this would be judged on whether they are rights in rem, or have been a real nature or quality. In this respect, if rights are rights in rem, then they will remain in being in spite of a change in the identity of sovereignty over the territory, but fresh arrangements are required. Hence,

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(41) O'Connell, D.P., Op. Cit, pp.12-15

(42) Ibid pp.16-17

(43) Whiteman, Marjorie, Digest of International Law, Volume 2, 1963, pp.936-938

(44) Okoye, Felix Chuks, Op. Cit, pp.95-100

(45) Ibid p.98

if the grazing rights established by the Anglo-Ethiopian treaty of 1897 were to rank as rights in rem, they would remain binding to the Ethiopian government despite the change of sovereignty in former British Somaliland, but fresh arrangements between Somalia and Ethiopia were required. It would also appear that if the frontier delimitation has established rights of a real nature or quality, then Somalia would not be entitled to disregard the frontier delimitation. Nevertheless, if any one of either Somalia or Ethiopia wishes to put an end to the grazing rights or to the frontier delimitation, they were able to do so, whatever the nature of the rights and obligations, but had to be done by mutual consent. It would appear that it was the intention of the contracting parties to the 1897 treaty to establish a permanent settlement in relation to the frontier delimitation. This intention could be in the fact that the 1897 treaty was a boundary treaty. Moreover, the frontier delimitation and the grazing rights concern lands and the use of title to the land. The grazing rights allow the Somali tribes to cross the Ethiopian border in order to enter the grazing lands and make use of its resources. Therefore, the grazing rights were necessary consequences of the boundary settlements. This practice actually had been conducted upon the occurrence of a state of succession in Ethiopia after the Italian annexation in 1936<sup>(46)</sup>. In this

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(46) Brownlie, Ian, Op. Cit, p.327

respect, neither Great Britain nor Italy questioned the legality of the general frontier delimitation set forth by the Anglo-Ethiopian treaty of 1897, but regarding the grazing rights, the British government felt that it would be necessary to negotiate a new treaty with the Italian government. Consequently, a treaty was concluded, granting grazing rights to Somali tribes, substantially similar to those formerly enjoyed under the Anglo-Ethiopian treaty of 1897<sup>(47)</sup>. Ultimately, when the Ethiopian government resumed control of its sovereignty, the British government found it expedient to have the grazing rights reaffirmed in the Anglo-Ethiopian treaty of 1954<sup>(48)</sup>. Despite the British military administration that followed upon the liberation of Ethiopia from the Italians, Great Britain made no attempt to deny Ethiopian title to the territory recognised as Ethiopian by the 1897 treaty<sup>(49)</sup>. Accordingly, the 1954 treaty which provided for the redemption of Ethiopian administration, confirmed that the territory in which the grazing rights were to be exercised by the Somali tribes, had been Ethiopian<sup>(50)</sup>. Therefore, when the succession of states took place in relation to Ethiopian territory, Great Britain, Italy and Ethiopia maintained that the legal supposition that the boundary delimitation of the Anglo-Ethiopian treaty of 1897 was intended to be

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(47)

Ibid Op. Cit., p.889

(48)

Castagno, A.A.; The Somali-Kenya Controversy: Implications for the Future, JMAS, Volume 2, 1964, pp.169-170

(49)

Brownlie, Ian, Op. Cit. p.888

(50)

Ibid Op. Cit., p.889

binding in perpetuity while the grazing rights envisaged in the same treaty were intended to be rights of a less enduring nature. Therefore, it would seem that the frontier delimitation differs in nature and quality from the grazing rights. It would also appear that Somalia is legally bound to accept this frontier arrangement, but is not necessarily entitled to insist on the observation of the provisions relating to the grazing rights, unless fresh arrangements are made with Ethiopia. At the same time, Ethiopia is not legally bound in relation to Somalia by the provisions of the 1897 and 1954 treaties relating to grazing rights. Nevertheless, Ethiopia is not completely at liberty to ignore an undertaking given to the predecessor state. In any event, since independence Somalia has refused to accept the 1897 frontier delimitation between Ethiopia and the former British Somaliland. Against this historical background, Somalia had conducted a diplomatic and military campaign for revision of the de facto frontier with Ethiopia<sup>(51)</sup>. The purpose of these campaigns was to unify the Somali people within a single sovereign state. Eventually, when these campaigns failed, the attitude changed to the argument that the people concerned had the right to self-determination consistent with the aims of the UN and the OAU<sup>(52)</sup>. The Ethiopian attitude to Somali irredentist aspirations was apparent

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(51) Castagno, A.A., Somalia Goes Military, African Report, Volume 15, No.2, February 1970, p.26

(52) Hoskyns, Catherine, Op. Cit, p.24

in that Ethiopia was prepared to negotiate for peaceful settlement to the border conflict so far as it is a boundary issue, but strongly objected to the idea of self-determination. It would appear that Ethiopia would not entertain any proposition which would cause her to surrender a considerable section of her territory. In fact, Ethiopia is a very complex country with numerous religions and linguistic groups, to which the idea of self-determination would threaten to dismember not only Ethiopia, but other African states which have religious and linguistic minorities<sup>(53)</sup>. Furthermore, Ethiopia has economic and strategic considerations. The prospect of oil and mineral resources in the Ogaden is obviously important. Strategically, secession of the Ogaden region would remove Ethiopia further away from the Red Sea and the Indian Ocean. At the same time, this would bring Somalia dangerously close to the Ethiopian highlands<sup>(54)</sup>. Therefore, Somali irredentist aspirations are not simply a territorial claim but a severe challenge to the principle of status quo recognised by the OAU Charter<sup>(55)</sup>. It would seem that Ethiopia is willing to settle the border conflict on the basis of existing international treaties concluded between her on the one hand, and Great Britain and Italy on the other<sup>(56)</sup>. It has already been mentioned that

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(53) African Research Bulletin, Volume 14, No.9, 1977, pp.4556-4557

(54) Mariam, Mesfin Wolde, Op. Cit, p.217

(55) Cervenka, Zdenek, The Unfinished Quest for Unity, Friedmann, London, 1977, pp.64-74

(56) Mariam, Mesfin Wolde, Op. Cit, p.217

Somalia from the outset, utterly refused to accept colonial frontier arrangements on the grounds that such arrangements had surrendered considerable Somali territories to Ethiopia and Kenya. Under these circumstances, Ethiopia strengthened its military presence in the disputed areas following Somalia's emergence as a united, independent state on July 1st, 1960<sup>(57)</sup>. Unfortunately, the end of 1960 was marked by a series of incidents. The most serious one occurred south of the de facto frontier<sup>(58)</sup>. These incidents occurred in consequence of the Ethiopian refusal to allow the Somali tribes from the Republic to cross the border in order to make use of the grazing rights<sup>(59)</sup>. This led to tribal skirmishes in the area, which were suppressed by Ethiopian ground and air forces. This and other similar incidents led Somalia to protest strongly to the Ethiopian government and the situation was also brought to the UN for consideration<sup>(60)</sup>.

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The Republic of Somalia has a very awkward shape, roughly that of a reversed L. The Ogaden region of Ethiopia forms a wedge between the former British and Italian Somalilands. This shape makes communication between the northern and southern regions of the Republic a very difficult and expensive task.

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Touval, Saadia, The Boundary Politics of Independent Africa, Harvard University Press, Massachusetts, 1972, p.216

(59)

Andemicael, Berhanykum, Op. Cit, p.53

(60)

Touval, Saadia, Op. Cit, pp.216-217

THE SOMALI-KENYAN BORDER CONFLICT:

HISTORICAL ORIGINS AND LEGAL CONSIDERATION OF THE CONFLICT

The boundary between Somalia and Kenya is some 424 miles long<sup>(61)</sup>. Between 1884 and 1897, Great Britain secured control over Somaliland and the East African protectorates which included the Somali-inhabited areas of Jubaland and the Northern Frontier District of Kenya<sup>(62)</sup>. The original delimitation between Italian Somaliland and the British East African Protectorate (Kenya) was based upon the Anglo-Italian treaty of 1891 which allocated the sphere of influence to each power<sup>(63)</sup>. However, Great Britain and France had undertaken, in principle, that in the event of their colonial territories being increased in Africa at the expense of Germany, Italy in return might claim some equitable compensation<sup>(64)</sup>. The outcome of this undertaking was the cession by Great Britain of Jubaland, a part of Kenyan territory, to Italy in 1925 by virtue of the Anglo-Italian treaty of 1924<sup>(65)</sup>. Nevertheless, Italy developed an expansionist strategy

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(61) The area consists of a vast low plateau sloping from a height of 2,000 feet east of Lake Rudolph towards Lamu on the Indian Ocean. The region is semi-desert, except for the Marsakit mountain.

(62) The main reason why Great Britain extended her control over Jubaland and the Northern Frontier District, was her intention to provide a buffer between Italian Somaliland and Ethiopia on one side, and her East African railway and the white settlers in the highlands, on the other side.

(63) Brownlie, Ian, Op. Cit, p.889

(64) Ibid p.889

(65) Ibid p.889



after occupying Ethiopia in 1935 to absorb the Northern Frontier District into its Great Somalia scheme, but was defeated in 1941, and Italian Somaliland was administered by Great Britain until 1950<sup>(66)</sup>. Subsequently, it was relinquished to an Italian trusteeship administration under UN supervision<sup>(67)</sup>. Consequently, when the succession of states took over, both Great Britain and Italy maintained the legal supposition that the boundary delimitation of the Anglo-Italian treaties of 1891 and 1924 were intended to be binding in perpetuity. During the Italian trusteeship, a Somali nationalist wave had swept the Horn of Africa which was directed by the Somali Youth League, established at Mogadishu in 1943. The SYL established branches in the NFD of Kenya, the Ethiopian region of the Ogaden and British and French Somaliland<sup>(68)</sup>. The cardinal aim of the SYL was to unify all Somali people within a single, sovereign, independent Somali state. Under these circumstances, the secessionist tendencies of the Somali people in the NFD were intensified after the unification of British and Italian Somaliland on July 1st, 1960<sup>(69)</sup>. The British colonial officials acknowledged the separate identity of the Somali people in the NFD of Kenya which is largely based upon religious, linguistic

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(66) Castagno, A.A., Op. Cit, p.169

(67) Hoskyns, Catherine, Op. Cit, p.9

(68) Castagno, A.A., Op. Cit, p.173

(69) Ibid pp.181-182

and cultural considerations. Moreover, they recognised the uniqueness of the Somalis by establishing administrative laws and techniques, different from those applied in the Southern Provinces of Kenya. In 1962, the NFD was proclaimed a closed district in which local commissioners were given exceptionally great powers<sup>(70)</sup>. Subsequently, the NFD was defined as a special district in which movements of persons entering or leaving were restricted. The Somalis in the NFD could not enter other Kenyan provinces without special approval and, holders of visas to Kenya were not entitled to visit the NFD without special permission<sup>(71)</sup>. The modern progressive techniques applied elsewhere in Kenyan provinces were not developed in the NFD, where a gap in economic and educational development existed. Under these circumstances, the Somalis in the NFD approached the Somali government to pass a motion of support for self-determination of the people of the NFD of Kenya. It was not until the 1962 London Constitutional Conference on Kenyan independence that the Somali secessionist movement in the NFD received official recognition from the Somali government<sup>(72)</sup>. The secessionist tendencies of the NFD were intensified shortly after Kenyan authorities lifted the ban on the NFD political parties. Immediately, two Somali parties were organised,

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(70) Lewis, I.M., Op. Cit, pp.155-158

(71) Castagno, A.A., Op. Cit, p.171

(72) Hoskyns, Catherine, Op. Cit, pp.7-12

the Northern Province People's Progressive Party and the Northern Province Democratic Party<sup>(73)</sup>. Both adopted an irredentist stance and demanded secession from Kenya and unification with the Republic of Somalia. The two parties, in a joint statement, requested the British government to conduct a referendum in the NFD under UN supervision, to decide the destiny of the Somalis in the NFD of Kenya<sup>(74)</sup>. This request was brought before the Lancaster Constitutional Conference for Kenya's independence in 1962. The NFD Somali delegation repeated their request to the British government for a UN-sponsored plebiscite and unity with Somalia<sup>(75)</sup>. The Somali government, through her embassy in London, also requested from the British government that the NFD issue be settled before Kenya's accession to independence<sup>(76)</sup>. The Kenyan delegation categorically rejected the idea and the Ethiopian government endeavoured to persuade the British government that acquiescence to the Somali request would lead to the balkanisation of Africa<sup>(77)</sup>. Under these circumstances, the British government decided that it would appoint an independent commission to ascertain public opinion in the NFD regarding its future. The commission commenced its investigation in the NFD in October 1962. The findings of the commission confirmed that the vast majority of the Somalis in the NFD desired secession from Kenya and unification with Somalia<sup>(78)</sup>. Despite this, the commission submitted

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(73) Castagno, A.A., Op. Cit, p.175.

(74) Hoskyns, Catherine, Op. Cit, p.24

(75) Lewis, I.M., Op. Cit, p.156

(76) Castagno, A.A., Op. Cit, p.182

(77) Schwab, Peter, Cold War on the Horn of Africa, JAA, Volume 77, 1978, p.10

(78) Lewis, I.M., Op. Cit, p.159

a proposal to the British government for an administrative division of the NFD. It proposed that the Somalis of Garissa be organised in a newly-established seventh region, while the Somalis of Isido be placed in the eastern region<sup>(79)</sup>. Subsequently, the constitutional arrangement for Kenya, announced in March 1963 by the British government, provided for the creation of a new seventh region, embracing the predominantly Somali area of the NFD<sup>(80)</sup>. This arrangement was interpreted as precluding the possibility of subsequent Somali secession. Therefore, this was received with anger and resentment by the Somalis of the NFD and in Somalia. Indeed, the extent of popular feeling in Somalia forced the Somali government to break off diplomatic relations with Great Britain, and the Somalis in the NFD refused to co-operate with the Kenyan authority<sup>(81)</sup>. This compromise was viewed by the Somalis as a further injury in the long-standing tradition of British disregard for Somali interests which commenced with the unfortunate Anglo-Ethiopian treaty of 1897. In response to the circumstances, Somali nationalist movements began activities aimed at secession of the NFD from Kenya and reintegration of the region into the Republic of Somalia. Consequently, riots and violence had swept the NFD since 1963, which threatened Kenya's territorial integrity<sup>(82)</sup>. The situation deteriorated rapidly after the announcement of Soviet military assistance to Somalia. In response to the Somalian armed build-up, Kenya and Ethiopia concluded a mutual defence pact in 1963 to counter the Somali military threat<sup>(83)</sup>.

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<sup>(79)</sup> Castagno, A.A., Op. Cit, p.178 <sup>(80)</sup> Ibid Op. Cit, p.179

<sup>(81)</sup> Ibid Op. Cit, p.180 <sup>(82)</sup> Andemicael, Berhanykum, Op.Cit,p.53

<sup>(83)</sup> Castagno, A.A., Op. Cit, p.181

THE FRENCH SOMALILAND (DJIBOUTI):

The third dispute that arose from Somali irredentist aspirations, was over French Somaliland. It is situated between Ethiopia and Somalia and the ethnic composition of Djibouti lends itself to interference by the country's warring neighbours. The inhabitants are 35% Ethiopian, ethnically Afars, and 55% Issa with ethnic ties with Somalia<sup>(84)</sup>. Ethiopia and Somalia had always laid claim to the former French Somaliland. Ethiopia declared at the height of the anti-colonialist upsurge in the former French colony in 1966, that Djibouti was an integral part of Ethiopia. However, Ethiopia informed the French government that it preferred a continued French presence in the disputed territory rather than see the strategic enclave on the Red Sea and the Gulf of Aden fall into Somali hands<sup>(85)</sup>. On the other hand, the Somali claim to French Somaliland was based on ethnic grounds in order to forward Somali aspirations of Greater Somalia<sup>(86)</sup>. Under these circumstances, Ethiopian and Somalian territorial claims to French Somaliland led to a bitter row between them in international and regional organisations. The clashes commenced at the founding conference of the OAU in 1963 when the Somali delegation demanded the right to self-determination for ethnic Somalis in Ethiopia, Kenya and French Somaliland<sup>(87)</sup>. As far as French Somaliland

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(84) New Africa, No.167, August 1981, p.31

(85) Touval, Saadia, Op. Cit, p.226

(86) Hoskyns, Catherine, Op. Cit, p.9

(87) Touval, Saadia, Op. Cit, p.227

was concerned, the OAU Liberation Committee placed the question of French Somaliland on its agenda as an issue of decolonisation<sup>(88)</sup>. The OAU Liberation Committee was set up by the OAU Summit Conference, in order to co-ordinate aid to liberation movements in colonial territories in Africa<sup>(89)</sup>. However, no action was taken by the OAU Committee on the question of French Somaliland until 1965, when a sub-committee was appointed to prepare a report on the situation in the territory concerned. The sub-committee visited Somalia and Ethiopia, but was refused permission to enter French Somaliland. The liberation movements from French Somaliland who were interviewed by the sub-committee in Somalia, claimed that their aspiration was unification with Somalia, while those in Ethiopia desired union with Ethiopia<sup>(90)</sup>. The OAU Liberation Committee, avoiding involvement in the Somali-Ethiopian competition over the territory, maintained that the future political status of Djibouti should be decided by its people<sup>(91)</sup>. The UN Committee on Colonisation treated the issue on the same lines as the OAU Liberation Committee<sup>(92)</sup>. It should be noted that the Ethiopia-Somali competition over French Somaliland was greatly intensified in the wake of the riots in 1966, during the visit of the French President to the territory<sup>(93)</sup>. Consequently, France pledged to

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(88) Krishnan, Maya, Op. Cit, pp.212-213

(89) Ibid Op. Cit, p.213

(90) Africa Contemporary Record 1968-69, pp.621-622

(91) Ibid p.622

(92) Cervenka, Zdenek, Op. Cit, pp.49-50

(93) Touval, Saadia, Op. Cit, p.227

hold a referendum to decide the future of the territory. In response to the existing circumstances, and on Somalia's initiative, the question of French Somaliland was placed on the agenda of the OAU Assembly of Heads of State which took place in Addis Ababa in November 1966<sup>(94)</sup>. The OAU Assembly was deeply concerned about the conflicting attitudes adopted by Somalia and Ethiopia. Somalia, supported by the African radical states, pressed for an unequivocal endorsement of Djibouti's independence, regardless of the consequences. They also supported a proposal for a plebiscite under UN and OAU supervision. The other view at the OAU Assembly reflected the deep concern that the withdrawal of France might result in a serious confrontation between Somalia and Ethiopia<sup>(95)</sup>. The compromise resolution that was finally adopted, stated that the OAU approved France's decision to grant the people of Djibouti self-determination by means of referendum and assured the people concerned, of OAU solidarity designed to bring about independence<sup>(96)</sup>. Somalia, in failing to obtain OAU support, turned to the UN for a hearing. The UN General Assembly passed a resolution on December 21st, 1966, and African states divided on this issue, which called for a referendum under its supervision<sup>(97)</sup>. As expected,

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(94) Ibid pp.228-229

(95) New Africa, Issue No.167, August 1981, p.31

(96) Africa Contemporary Record, 1976-77, p. C146

(97) Africa Contemporary Record, 1968-69, p.266

France ignored the call for international supervision and the scheduled referendum was held, which resulted in the approval of continued association with France<sup>(98)</sup>. The Somali-Ethiopian competition over the territory continued until the 12th Summit of the OAU Assembly of Heads of State, which took place at Kampala, Uganda in July 1975, at which Ethiopia and Somalia, mutually ended their pretension to the French Somaliland<sup>(99)</sup>. Accordingly, the OAU Assembly adopted a resolution drafted by the Liberation Committee, in which Ethiopia and Somalia solemnly undertook to recognise, respect and honour the sovereignty and territorial integrity of Djibouti after its accession to independence<sup>(100)</sup>. Consequently, the last French colony in Africa gained its independence on June 26th, 1977<sup>(101)</sup> and concluded a series of treaties with France, including a military defence pact in order to safeguard its sovereignty and territorial integrity against any contemplated aggression by either Ethiopia or Somalia<sup>(102)</sup>. It was admitted on June 7th, 1977 as the forty-ninth member state of the OAU and on June 22nd, 1977 it was also admitted as the twenty-second member state of the League of Arab States<sup>(103)</sup>.

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( 98) Ibid p.265

( 99) Africa Contemporary Record, 1976-77, p. B429

(100) Ibid p. C145

(101) African Research Bulletin, Volume 14, July 15th, 1977 p.4458

(102) Ibid pp.4458-4459

(103) New Africa, Issue No.167, August 1981, p.31



THE OAU EFFORTS AT MEDIATION:

The Somali-Kenyan dispute, as well as the Somali-Ethiopian conflict over the Ogaden have always been thrust upon the stage of Pan-African conferences since Somalia's accession to independence. Somalia's search for political support encountered discouragement since most African states officially, endorsed the status quo. The issue of Somalia's irredentist aspiration, was initially raised at the first Afro-Asian Solidarity Conference in Cairo in 1957<sup>(104)</sup>. Somalia gained some support at that Conference with the argument that all forms of colonialism over Somali-inhabited territories, which by implication included Ethiopia and Kenya, be eradicated<sup>(105)</sup>. Nevertheless, the most significant support for Somalia's claim came

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Egypt extended support to Somalia by military assistance which was subsequently replaced by the Soviet Union. Nevertheless, the Egyptian sympathy with Somalia's territorial aspiration was not officially endorsed and was therefore, unsatisfactory and disappointing for Somalia. Nevertheless, Egyptian sympathy was reciprocated by Somalia's identification with the Arab cause. In this respect, Somalia successfully managed to secure an invitation to join the League of Arab States in February 1974. The purposes of Somalia's moves, were that the Arab League was good conduit for OPEC aid and a new alliance in its eventual confrontation with Ethiopia and Kenya. It should be mentioned that OPEC aid has helped to reduce the economic problems which faced Somalia, but the Arab League was more concerned with its general relations with Africa than with the war aims of one of its members. Accordingly, the Arab League has remained reticent on the issue of Somali irredentist aspiration.

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Touval, Saadia, Op. Cit, pp.134-135

at the second All-African People's Conference, held in Tunisia in 1960, which endorsed the Somali struggle for unity<sup>(106)</sup>. Soon after this conference, African states divided into moderate and radical groups. Somalia initially associated itself with the moderates and participated in the Monrovia group conference in 1961<sup>(107)</sup>. However, Somalia did not obtain any satisfactory gains at the conference. Therefore, soon after the first Monrovia Conference, Somalia joined the Casablanca group, where it had been reasonable to expect Moroccan co-operation in attacking colonialist-imposed boundaries<sup>(108)</sup>. Somali general opinion was also stated at the OAU founding conference in Addis Ababa in May, 1963<sup>(109)</sup>. Nevertheless, the conference from the outset,

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(106) Ibid p.137

(107) Ibid p.138

(108) The marked change in Somalia's orientation occurred after the official visit paid by the Somali President to Ghana in October 1961. At the conclusion of the visit, the final communique expressed the imperative need to remove the existing frontiers, artificially imposed by the colonial powers, without respect to ethnic, cultural or economic ties. It should be mentioned here that Ghana's position at that time would be explained as an expression of her strong commitment to radical Pan-Africanism and to the reshaping of the map of the African continent. It was also Ghana's irredentist claims, with respect to Togoland and the Ivory Coast, which had influenced the then Ghanaian position.

(109) Tandon, Yashpal, The OAU as an Instrument and Forum of Protest, edited by Rotberg and Mazrui, Protest and Power in Black Africa, University Press, Oxford, 1970, pp.1161-1163

stripped Somalia of all African support, thus making it obvious that there were no chances of attaining Somali objectives through the OAU, which had adopted the colonial status quo in African boundary arrangements. Consequently, Somalia has hitherto been reluctant to submit disputes to the OAU. Under these circumstances, events in the NFD of Kenya had been overshadowed by serious clashes between Ethiopia and Somalia and the UN was requested to intervene<sup>(110)</sup>. When Kenya became independent in December 1963, hostilities broke out between Somali-speaking groups in Kenya, and Kenyan troops. Similar clashes between Somali-speaking groups in Ethiopia and the Ethiopian troops also occurred in the Ogaden<sup>(111)</sup>. This could be considered as a repercussion of the hostilities in the NFD of Kenya, but the skirmishes in the Ogaden led to intensive armed conflict between Somalia and Ethiopia. It should be noted that as in the Algerian-Moroccan border dispute, the first question to arise was that concerning jurisdiction over the dispute. It was obvious that the OAU commitment to the principle of status quo made Somalia fear that it might be very unsympathetic. Therefore, Somalia preferred the UN to deal with the issue, rather than the OAU. On February 9th, 1964, Somalia requested an urgent meeting of the UN Security

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Meyers, David B., Op. Cit, p.115

(111)

Andemicael, Berhanykum, Op. Cit, p.54

Council, but the Somali request was not favourably received by the permanent members of the Security Council in response to African argument that the dispute should be first referred to the OAU as a regional arrangement which should have primary jurisdiction over African regional disputes<sup>(112)</sup>. Accordingly, the UN Secretary General persuaded Somalia to accept the possibility of peaceful settlement through the OAU machinery. Meanwhile, Ethiopia and subsequently Somalia, requested the OAU Council of Ministers to consider the matter at its extraordinary session, scheduled to meet in February 1964 at Dar-el-Salaam, Tanzania<sup>(113)</sup>. At the same time, Kenya also requested the Council to place the border dispute between her and Somalia on the agenda of that session<sup>(114)</sup>. Somalia, however, had only agreed to submit the issues for limited consideration by the OAU and it did not entirely abandon its original intention to place the dispute before the UN Security Council<sup>(115)</sup>. It would appear that Somalia did not wish to raise the wide issues of its territorial aspiration before the OAU, fearing that such a debate might turn to its disadvantage. Therefore, Somalia requested the OAU Council to limit the deliberation to the more immediate question of the disengagement of regular armed forces. Somalia was concerned that Ethiopia might react to Shifta activities in the

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(112) Meyers, David B., Op. Cit, pp.116-117

(113) Touval, Saadia, Op. Cit, p.217

(114) Ibid p.218

(115) Thus, it had notified the UN Secretary General that it was the desire of the Somali government to suspend the UN Security Council's consideration of the matter while the issue was under OAU consideration.

Ogaden by launching reprisals across the Somali territory. Consequently, it concentrated on requesting the creation of a demilitarised zone along the border and the posting of neutral observers in the disputed areas<sup>(116)</sup>. The Somali intention was to obtain from such measures, an implicit international recognition that the Somali-inhabited regions of Ethiopia and Kenya were actually disputed territories to which the international community might have to turn its attention. Accordingly, these objectives were more likely to be achieved through placing the issue before the UN Security Council than by submitting them to the OAU. On the other hand, Ethiopia and Kenya insisted that the substantive issues be discussed, because they expected that Somalia would find itself completely isolated. Despite the animated discussion between the parties to the disputes, the Council adopted a more modest role than its previous one in regard to the Algerian-Moroccan conflict<sup>(117)</sup>. It appeared that peaceful settlement to the dispute was going to be a lengthy and complicated process. Therefore, no machinery was set up to mediate the two disputes. The Council called upon the parties to the dispute, to order an immediate ceasefire and to refrain from hostile actions, as well as to enter into direct negotiations in order to settle their differences peacefully<sup>(118)</sup>. It also called upon other

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(116) Andemicael, Berhanykum, Op. Cit, pp.55-56

(117) Wild, Patricia Berko, Op. Cit, p.27

(118) Andemicael, Berhanykum, Op. Cit, p.54

member states having official representations in the three countries, to assist in the implementation of the ceasefire<sup>(119)</sup>. Subsequently, a ceasefire was negotiated but hostilities resumed shortly afterwards. As a result, the OAU Council decided to place the issues on the agenda of its second ordinary session, scheduled to meet in Lagos. The Council appealed to the parties in the dispute to implement its previous resolutions and requested them to report on their negotiations to the OAU Assembly of Heads of State. It also decided to keep the disputes on the agenda of all subsequent sessions of the OAU Council, until mutually acceptable solutions would be achieved<sup>(120)</sup>. It would appear that the role of the OAU Council in these disputes had three aspects. Firstly, the application of pressure on the disputants to end hostilities and to start direct negotiations. The other two aspects were, the discouragement to debate the merits of the disputes at the OAU meetings and finally, the avoidance of direct involvement in the restoration of peace and the settlement of disputes<sup>(121)</sup>. The OAU role restricted to introduce

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(119)

Meyers, David B., The OAU: Conflict Management by a Regional Organisation, unpublished Ph.D. Dissertation, University of California, Los Angeles, 1973, p.117

(120)

Andemicael, Berhanykum, Op. Cit, pp.54-55

(121)

These tendencies can be illustrated by the attitude of the OAU member states at the second ordinary session of the OAU Council. They were reluctant to support either Ethiopia's request for OAU pressure on Somalia to renounce its irredentist claims against Ethiopia and Kenya and accept existing boundaries, nor Somalia's request for direct OAU peace-making efforts, such as sending observers to supervise the ceasefire.

regional rules which govern border disputes, thus emerged. During the first ordinary session of the OAU Assembly of Heads of State, reference was made to Article III(3) of the OAU Charter "....respect for sovereignty and territorial integrity of member states" as a principle which Somalia, Kenya and Ethiopia had to take into account in their direct negotiations<sup>(122)</sup>. In a resolution approved by the OAU Assembly, African leaders expressed the view that borders of the African states on the day of their independence constituted a tangible reality<sup>(123)</sup>. Somalia joined by Morocco, sought a major change of boundaries, accorded reservations on the resolution and even declared that they would not be bound by its provisions<sup>(124)</sup>. It became quite obvious for Somalia that it would not receive any support for its irredentist claims within the OAU. Therefore, it subsequently concentrated on diplomatic activities concerning its border disputes. Accordingly, Somalia requested the Sudan to offer its good offices in the spirit of the provisions of the OAU resolutions concerning its disputes with Ethiopia and Kenya<sup>(125)</sup>. The Sudanese President was able to bring about an agreement for a ceasefire and for the demilitarisation of the disputed areas, the establishment of a joint commission to supervise the withdrawal of forces and the cessation of hostile activities<sup>(126)</sup>. Ethiopia and Somalia thus agreed to

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(122) Brownlie, Ian, Op. Cit, pp.362-363

(123) Ibid p.362

(124) Wild, Patricia Berko, Op. Cit, pp.27-30

(125) Somalia's search for support was more or less successful in Africa. Somalia succeeded in establishing close relations with Sudan despite the fact that the Sudanese government did not come out openly in support of Somali irredentist aspirations.

(126) Africa Contemporary Record 1968-69, p.623

resume negotiations before the second summit meeting of the OAU Assembly of Heads of State. The same approach was followed by the Tanzanian President in assisting to initiate negotiations between Kenya and Somalia at Arusha, Tanzania<sup>(127)</sup>. These mediatory initiatives did not begin during the actual sessions of the OAU organs, but the indirect role of the OAU in this respect was not a new one. Whilst contact between Somalia and its neighbours was maintained, the OAU forum also contributed to the peace-making process. It was at the fourth ordinary session of the OAU Assembly of Heads of State, that the OAU had its full impact on the leaders of member states in dispute<sup>(128)</sup>. This was made possible by the installation in Somalia of a new government which had a different stance on the Somali irredentist aspirations. It was planned to attain self-determination for the Somali peoples in the disputed territories by peaceful means<sup>(129)</sup>.

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(127)

Tanzania was another African state that attracted Somalia's diplomatic effort. The cultivation of good relations with Tanzania was important to Somalia for two reasons. Firstly, Somalia intended, through some extension of influence, to modify the adamant Kenyan opposition to Somali claims. Secondly, Tanzania had played an active diplomatic role in resolving African regional disputes elsewhere.

(128)

Africa Contemporary Record 1968-69, p.623

(129)

The new government wished to end the conflict on the borders in order to spread a large percent of the national budget on development, rather than on defence. The border conflicts affected the economic development which had been worsened by the closing of the Suez Canal. These difficulties made it necessary for Somalia's government to reduce its military budget. In the meantime, the USA (the major supporter and arms supplier to Ethiopia), was also reconsidering foreign commitments, and put pressure on the Ethiopian government to pursue a peaceful settlement.



This approach would need efforts to normalise relations between the neighbouring countries. The first major landmark in the development of detente was an agreement between Kenya and Somalia, arranged through the personal initiative of the Zambian President during the summit of the OAU Assembly in Kinshasa in September 1967<sup>(130)</sup>. The agreement expressed the desire of the two states to respect each other's sovereignty and territorial integrity and undertake to settle their differences by peaceful means, within the OAU framework<sup>(131)</sup>. Finally, they agreed to meet again in the following month in Lusaka. At the same time, the Ethiopian and Somali leaders met at the OAU summit and agreed to initiate joint ministerial negotiations, with a view to bringing about a mutually acceptable solution to their differences<sup>(132)</sup>. The Somali-Kenyan meeting agreed upon in Kinshasa, took place in Arusha on October 25th, 1967. The two governments reaffirmed their adherence to the Kinshasa agreement and established a working committee which was to meet periodically to review the implementation of the agreement, as well as to propose ways and means of bringing about a mutually acceptable solution to the substantive issues of the conflict<sup>(133)</sup>. Subsequently, a series of successful joint ministerial meetings between Somalia and Ethiopia took place in Addis Ababa, which contributed to the conclusion of a number of

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(130) Africa Contemporary Record 1968-69, p.199

(131) Ibid pp.623-624

(132) Ibid pp.197-199

(133) Ibid pp.623-624

agreements. They reaffirmed the Khartoum agreement and agreed to reactivate the Somali-Ethiopia joint military commission, created by the Khartoum agreement, as well as to convene periodic meetings in order to bring about a mutually acceptable solution to their differences<sup>(134)</sup>. This created an atmosphere conducive to serious negotiations of the substantive issues of the border conflict. Since 1968, hostilities on the Somali-Ethiopian-Kenyan borders had been extremely limited and, in general, detente had been maintained. In October 1969, a military government came to power in Somalia<sup>(135)</sup>. The prevailing basic differences on the major issues accentuated by the reported discovery of large quantities of oil and mineral resources on the Ethiopian side in the Ogaden desert and posed a formidable obstacle to the peace-making process<sup>(136)</sup>. Consequently, the detente between Somalia, Kenya and Ethiopia gave way to a further armed confrontation during 1973. Kenya strongly condemned Somalia's aggression

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Lailin, David D., The War in the Ogaden, Implication for Siyaad's Role in Somalia History, JMAS, Volume 17, 1979, pp.95-99

(135)

Russian aid in the early years to Somalia, had been expanded after the military government came to power in 1969. In return, the new government allowed the Soviet Union to control a major military base in Berbara, as well as access to the point of Kismayo on the Indian Ocean. In July 1974, the two governments concluded a treaty of friendship and co-operation. The purpose of such an alliance was seen by the Somali government as the only way to equip her army so that it could successfully support the Western Somali Liberation Front in the Ogaden.

(136)

Schwab, Peter, Op. Cit, p.10

against Ethiopia and rejected Somalia's territorial claims, and called on all African states to do the same.

Accordingly, the 1973 Summit Conference of the OAU Assembly of Heads of State was marked by Somalia's charge of Ethiopian military buildup in the disputed areas. Upon the Somali request, the tenth session of the OAU Assembly of Heads of State had considered the conflict and set up an eight-member ad hoc committee to offer good offices<sup>(137)</sup>. Nevertheless, the committee's work had been hindered by considerable differences over its terms of reference.

In 1974, the political situation within Ethiopia changed dramatically. The Emperor, who had ruled since 1930, was overthrown and a provisional military administrative committee took over direction of the country<sup>(138)</sup>. The new Ethiopian junta continued the policies of the former regime regarding Somalia's territorial aspirations. As early as 1975, war clouds gathered over the Ogaden desert when the Somali government began to give attention to the Organisation of the Western Somali Liberation Front. As a result, the Soviet Union started to reassess its military

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African Research Bulletin, Volume 14, 1977, p.4525

(138)

It would appear that the Somali government did not seize the moment when the Emperor was deposed in Ethiopia. In early 1975, the Somali government was put under increasing pressure by some military officers in the Supreme Revolutionary Council to march on the Ogaden. They were supported by many political and influential Somalis. At that time, the Somali President was Chairman of the OAU and obviously thought that this was not the right moment to invade Ethiopia. Therefore, he attempted to negotiate with the new regime in Ethiopia for the return of the Ogaden, but his initiative was doomed to fail.

commitments to Somalia and with the emergence of the radical regime in Ethiopia, the Soviet Union proceeded to seek links with the Junta. In early 1975, the Ethiopian Junta requested arms from the United States, but the American administration refused the full request<sup>(139)</sup>. The Soviet Union, striving to expand its influence, reacted positively and rapidly to the Ethiopian request for military aid and concluded a military agreement in 1976<sup>(140)</sup>. In response to the existing circumstances, the USA promised weapons to Somalia, were it to evict the Soviet Union entirely from Somalia. In November 1977, the Somali government announced that all Russian advisors had been expelled from Somalia<sup>(141)</sup>. Earlier in 1977, there had been a series of more or less skirmishes. However, in July 1977, the Western Somali Liberation Front, heavily supported by Somali troops and weapons, stormed the Ogaden. Tension between Ethiopia and Somalia worsened in September 1977 when the Ethiopian government announced that it was breaking off diplomatic relations with Somalia<sup>(142)</sup> in response to Somalia's violation of the principles of the UN and OAU Charters, by continuing aggression against Ethiopian sovereignty and territorial integrity. The Ethiopians also took the dispute before the OAU, but Somalia walked out of the OAU Summit in Libreville, Gabon in August 1977<sup>(143)</sup>. Subsequently, Somalia broke off

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(139) Schwab, Peter, Op. Cit, pp.10-18

(140) Ibid p.17

(141) Lailin, David D., Op. Cit, p.100

(142) African Research Bulletin, Volume 14, 1977, p.4556

(143) Ibid p.4557

relations with Ethiopia and accused the OAU of showing no interest in the border conflicts between Somalia and its neighbours. The Somali accusation made in Libreville, Gabon, where the OAU good offices committee meeting stated that the OAU must adopt a new stand and tackle regional disputes affecting the continent of Africa<sup>(144)</sup>. In the event, the OAU's attempts to mediate between Somalia and its neighbours ended in failure when Somalia delivered a final snub to the OAU committee of good offices by boycotting its closing session<sup>(145)</sup>. By September 1977, advancing Somali forces had fought the biggest battle, since the war in the Horn of Africa began in July 1977, and by October 1977, the Western Liberation Front, supported by Somali troops, had captured the entire province of the Ogaden. It was, however, evident that the states on the Horn of Africa had been pushed into the centre of the cold war. The internationalisation of

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(144) Ibid p.4557

(145) Somalia's boycott was made in response to unfavourable attitudes to her conditions by the OAU Committee of Good Offices to examine in depth the problem of the Ogaden, and to invite the Western Somali Liberation Front to participate in its deliberation. Ethiopia opposed both conditions. The Committee finally reported on August 9th, 1977 that the Committee had affirmed that, in conformity with the OAU Charter, member states were bound to respect the borders existing at independence, and adhere to the cardinal principle upholding as inviolable, the sovereignty and territorial integrity of member states. It also appealed to the parties in dispute to cease all acts of hostility in accordance with the aims and purposes of the OAU Charter. The Committee also announced that it would contact the leaders of the states concerned with a view to affecting a cessation of hostilities and creating an atmosphere conducive to the peaceful settlement of the conflicts.

the border conflicts between Somalia and its neighbouring states and the extra-regional intervention, had transformed the region into a potentially serious flashpoint. The OAU, in January 1978 warned foreign powers against seeking to extend their sphere of influence in Africa and called upon them to stop meddling in African regional disputes. As regards the present conflict in the Horn of Africa, any extra-regional involvement would allow the situation to assume an international character, thereby complicating the OAU efforts at mediation<sup>(146)</sup>. In response to the OAU's appeal, representatives of the USA, Britain, France and West Germany, met in Washington on January 21st 1978 to discuss the situation in the Horn of Africa. They issued a statement declaring that no lasting solution to the conflict in the Horn of Africa could be found by force of arms, and reaffirmed their full support for the efforts of the OAU at mediation<sup>(147)</sup>. In this connection, Somalia announced on March 9th, 1978 that it would prepare to withdraw its troops from Ethiopia's territory. In return, Somalia demanded the withdrawal of all foreign forces from the Horn of Africa and the recognition by Ethiopia and Kenya of the right of self-determination of the Somali peoples in the Ogaden and NFD. It also called for a negotiated settlement of the conflicts through the OAU machinery<sup>(148)</sup>. By March 1978

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(146)

Report of the Meeting of the Ethiopia-Somalia Good Offices Committee held in Libreville, Gabon, August 5th, 1977

(147)

African Research Bulletin, Volume 15, 1978, p.4702

(148)

Ibid pp.4773-4774

all Somali regular forces had been withdrawn from Ethiopian territory<sup>(149)</sup>. Accordingly, Somalia called upon the super powers to fulfil their promise of seeking to bring about a just and lasting solution to the conflict, which could be found only by granting the Somali peoples in the Ogaden and NFD, their rights to self-determination. This was a reference to Somali fears of an invasion from Ethiopia when the latter stated that Somalia's withdrawal of regular troops from the Ogaden did not constitute a ceasefire. The fact was that the Somali withdrawal from the Ogaden, left her with a shattered army and refugee problems. In the meantime, the conflict had brought Ethiopia and Kenya closer to each other, in addition to their mutual defence pact which had been in existence for several years. This was due to their mutual suspicion of Somalia's irredentist aspirations pursued since its independence. The Ethiopian leader paid an official visit to Kenya in 1980 in order to co-ordinate their responses to Somalia's territorial claims against both countries<sup>(150)</sup>. The Ethiopian and Kenyan governments on the conclusion of the visit, gave the Somali government the following peace conditions:-

"....(1) Somalia must renounce publicly and unconditionally all claims to the territories of Ethiopia-Kenya and Djibouti, and declare null and void all instruments asserting such claims;

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(149) Lailin, David D., Op. Cit, p.110

(150) African Research Bulletin, Volume 17, 1981, p.5886

(2) Somalia must openly and solemnly declare its acceptance of the principles and decisions of the UN and UN governing inter-state relations, including the principle of the inviolability of state frontiers and non-interference in the internal affairs of other countries;

(3) Somalia must, in particular, withdraw its reservation to the decisions on state frontiers made by the first OAU summit conference held in Cairo in 1964;

(4) Somalia must solemnly declare that it will scrupulously respect international agreements, as well as the principle of non-use of forces in the settlement of international disputes;

(5) Somalia must pay prompt and adequate reparation for the war damage she inflicted on Ethiopia.... (151).

The two countries also hailed the efforts of the OAU Committee of Good Offices at mediation and maintained that non-acceptance by Somalia of these peace conditions would mean the perpetuation of the existing conflicts in the border areas. In this atmosphere, the activities of the Somali liberation movements seeking independence for the ethnic Somalis in the Ethiopian Ogaden and Kenya's NFD, continued causing deep concern in Ethiopia and Kenya. These guerilla organisations pursued political objectives

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(151) Ibid pp.5886-5887



to attain the right to self-determination and to establish the free state of Western Somalia. They passed a resolution in February 1981 at their congress in Mogadishu affirming that the Front was the only legal representative of Western Somalia and any initiative on the Ogaden taken without its consent, was illegal<sup>(152)</sup>. Despite these activities of the guerilla movements in the Ogaden, it would appear that there is a direct move under way to reconcile Ethiopia and Somalia. At the same time, relations between Somalia and Kenya continued to improve, in consequence of efforts at rapprochement that were initiated by the conclusion of an accord. The agreement reached on August 26th, 1981 after the summit of the OAU Assembly of Heads of State in Nairobi in June 1981, ended several years of mutual hostilities<sup>(153)</sup>.

The above reveals the limitations of the OAU and its restricted scope of action. The dismal picture of the OAU is nothing new to African eyes. A trend was set during the Algerian-Moroccan border dispute which became a tradition, with mediation being left to the personal initiative of individual African leaders, to attempt to settle African regional disputes. Therefore, the appeal to the UN by the OAU member states would depend upon the effectiveness of personal efforts of the individual African leaders. Despite the OAU acceptance of the principle of *uti possiditus* as regards boundaries

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(152) African Research Bulletin, Volume 18, 1981, pp.8039-6040

(153) Ibid p.6166

existing at the time of independence, major crises over territorial questions have occurred in Africa. Existing border disputes have continued in Africa in consequence of the limited capability of the OAU. This fact in itself added to the determination of African states to pursue their objectives and claims by non-peaceful means, and by allowing external involvement in African regional disputes leading to internationalisation of these disputes. The principle of *uti possidetis* adopted at the first OAU summit conference in Cairo in 1964, intended to freeze the existing territorial status quo, but it has only smothered the existing boundary disputes rather than settling them. The fact was that African states with major territorial claims have emphatically indicated that they would not feel bound by it. This fact would prevent the need for negotiations of those frontiers which remain undefined or were not clearly defined during the colonial era. At the same time, OAU involvement in African regional disputes remained basically deliberative rather than one of direct mediation and conciliation. Moreover, the OAU avoided the allocation of responsibility to any side in African regional disputes, even where it was invited to do so by the parties to a dispute. This was developed from a belief that African solidarity may be threatened by an active involvement of the OAU in regional disputes. Therefore, it has pursued a modest role in order to avoid arousing the resentment

to any of its member states. The OAU has tended, after its experience in the Algerian-Moroccan border dispute, to encourage bilateral negotiation of substantive issues and to rely more heavily upon the role of selected African statesmen in emergency situations. The personal initiative of individual African leaders has appeared to compensate the limitation of the OAU role, attributable to the OAU Commission of Mediation, Conciliation and Arbitration. A cardinal fact was that the OAU Secretary General had no role entrusted to him to play by the OAU Charter, above the administrative functions.

GHANA'S BORDER DISPUTES WITH CERTAIN NEIGHBOURS:

HISTORICAL ORIGINS AND LEGAL CONSIDERATION OF THE CONFLICTS

The Ghana-Togo border dispute was more complex than the situation in Northwest Africa. It originated in the ethnic nationalism of the Ewe who had been divided after World War I between British and French jurisdiction<sup>(1)</sup>. The partition caused most of the unrest of the boundaries in West Africa<sup>(2)</sup>. Nonetheless, the dispute had been identified as an outcome of both Ghanaian and Togolese irredentist aspirations. The border conflict had been revived after several years of calm. Actually, demands for the re-negotiation of the boundaries had been made openly since 1963, but political agitation had provoked an escalation of the dispute to the point of armed confrontation<sup>(3)</sup>. The Ewe number about 2.5 million, with roughly half on each side of the present Ghanaian-Togolese border<sup>(4)</sup>. The Ewe was initially divided by

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(1)

Brown, David, Borderline Politics in Ghana: The National Liberation Movement of Western Togoland, JMAS, Volume 18, 1980, p.575

(2)

All boundaries in Africa were of colonial creation. They were drawn as a result of the Berlin Conference of 1884, which presented the legal argument that European powers could claim the African territories by effective occupation.

(3)

The harbouring of political refugees seeking a base from which to continue a struggle already lost in their own country, and accusations by the party leaders in Ghana and Togo that these refugee organisations were actively sponsored by the Accra or Lome governments. In January 1963, the assassination of Syluonas Olympio, the Togolese President, added a further tragic element to the border conflict.

(4)

Zartman, William, The Politics of Boundaries in North and West Africa, JMAS, Volume 3, 1965, p.165

a colonial boundary in 1884 which split the tribe between British Gold Coast and German Togoland<sup>(5)</sup>. Subsequently, after World War I , the German colonies in Africa were handed over to the victors under the League of Nations Mandates<sup>(6)</sup>. Consequently, the Ewes were further divided by a new boundary adjustment which appeared between British and French Mandated territories. The Western part of German Togoland came under British jurisdiction and was administered as part of the Gold Coast, while the Eastern section became French controlled and was administered as the French colony of Togo<sup>(7)</sup>. At all events, the Ewes had objected in various ways, initially to the Anglo-German and subsequently to the Anglo-French partitions. Nonetheless, these objections were not in origin, assertions of ethnic unity, but rather, attempts to resolve the social and economic grievances which had developed as a consequence of the imposition of the boundaries<sup>(8)</sup>. Trade had also

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(5) O'Connell, D.P., State Succession in Municipal Law and International Law, The University Press, Cambridge, p.75

(6) Whiteman, Marjorie M., Digest of International Law, Volume I, 1963, pp.598-601

(7) O'Connell, D.P., Op. Cit, p.159

(8)

Trade and travel had been severely disrupted between 1904 and 1914 in consequence of the boundary closure between the British and German colonies. Subsequently, the trade was restricted by the temporary boundary closure which occurred between 1940 and 1943, during the 1960-65 period and again, spasmodically since late 1971.

been restricted by customs duties and more drastically so by the border restrictions or closures. Therefore, it was these uncertainties and unpredictabilities which gave rise to most discontent. Thus, for all the Ewe people, the hardships were social, as well as economic, repeatedly threatened by closures or restrictions at the border posts. Moreover, the border conflict had been exacerbated by the partitioning of the Ewes into two separate cultural and linguistic groups, predominantly Anglophone and Franco-phone in character. Furthermore, the border dispute had developed major disparities in welfare between the Ewes on each side of the border<sup>(9)</sup>. During the colonial era, it was initially the Ewes on the German and subsequently the French sides of the border who felt unfairly excluded from the prosperous and liberal environment in the Gold Coast<sup>(10)</sup>. In contrast, in the post-colonial period, the situation had been reversed, with the Ghanaian Ewes comparing their own situation of political subordination and economic decline, with the prosperity and influence of the Togolese Ewes<sup>(11)</sup>.

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( 9 ) The political agitations over the border were the re-emergence of socio-economic disparities between the Ghanaian and Togolese Ewe communities. After the prosperity and growth of the 1950's, the Ghanaian economy had encountered various problems which began to produce, initially, stagnation and subsequently, a reduction in living standards. In contrast, after a phase of initial stagnation, Togo subsequently entered, during the seventh decade, a period of rapid growth. Therefore, by the early 1970's there was a marked contrast in the fortunes of the Ewes on each side of the border. Those in Ghana became increasingly aggrieved and disillusioned with their treatment by Ghana's government, while those in Togo became increasingly optimistic about their prospects.

(10) Brown, David, Op. Cit, p.579

(11) Ibid pp.579-580

Under these circumstances, appeals for ethnic solidarity were made by groups of educated Ewes after their partition in 1919<sup>(12)</sup>. The major problem of the frontiers was how to unite the southern Ewe community, and has thus been open to conflicting solutions. This would involve the removal of the de facto territorial position reached in 1919 when German Togoland was partitioned to form two Mandated territories. The bringing together of all the Ewes in an enlarged former British colony in the form of a greater Ghana or the reunification of some of the Ewes in a restored former German Togoland. The initial solution meant the disappearance of Togo as a separate state, the latter being a detachment from Ghana of some of its Ewe-speaking community. However, the specific formula for the pursuit of Ewe unity varied, but the most straightforward was the establishment of an autonomous Ewe entity<sup>(13)</sup>. This formula tended to give way to the demand that all Ewes should be brought, with the Gold Coast, under British jurisdiction. Nonetheless, this formula of uniting all the Ewes within the Gold Coast, began to fade and was substituted by the formula of terminating the Anglo-French boundary by reuniting the two sections of the old German colony<sup>(14)</sup>. It would appear that this formula would solve the immediate border problems and might be an initial

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(12) Austin, Dennis, The Uncertain Frontier: Ghana-Togo, JMAS, Volume I, 1963, p.139

(13) Ibid p.140

(14) Krishnan, Maya, Op. Cit, p.201

step towards the establishment of a Gold Coast-Togo union which would bring all Ewes together. Despite the fact, the boundary itself has remained unchanged and the legal arguments put forward by Ghana -that the frontier should be shifted east has been met by similar demands from Togo, that the boundary should be extended westwards, into Ghana<sup>(15)</sup>. By 1946, the union of Togo established a national movement of Ewes in French Togo in order to end French rule and to terminate the disruptive border by creating, either an Ewe state or the integration of all Eweland within the Gold Coast. At the same time, the Togoland union established in the British sector, sought to reunify the two Togolands while attempting to maintain existing links with the Gold Coast. Amongst the Ewes of the Gold Coast colony, the all-Ewe Conference established a national movement for the unification of all Eweland into the Gold Coast<sup>(16)</sup>. Unfortunately, when popular concern over the border issue came to a focal point through electoral participation, the colonial powers had effectively limited the immediate option concerning the Ewe unification. The option put forward was between the unification of the two Togolands and their separation from the Gold Coast, or the integration of British Togoland alone into the Gold Coast<sup>(17)</sup>. Thus, the formula of

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(15) Touval, Saadia, Op. Cit, p.36

(16) Brown, David, Op. Cit, p.581

(17) Ibid p.582



ethnic unity was not one of the immediate options. Under these circumstances, it was not surprising that each group had made different choices<sup>(18)</sup>. The Gold Coast Ewes opted for the integration of British Togoland with the Gold Coast, since this was the only solution to keep at least half of the Ewe population within Ghana. However, a large majority of the Ewe in both British and French Togolands voted for Togoland unification since this was the only option which might remove the partitioning boundary to which they objected<sup>(19)</sup>. In any event, the development of this issue in this way, brought the Ewe of French Togoland into direct

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(18)

When the UN held the plebiscite in the British territory in order to choose whether or not they wished to be part of an independent Ghana, the result was as follows:-

- (1) The Northern Ewe-speaking community for the union was 49:119; against the union was 12:707.
- (2) The Southern Ewe-speaking community, for the union was 43:970; against the union was 54:785.
- (3) Total for the union was 93:095,  
against the union was 67:492

After a period of indecision, the UN General Assembly decided to take the vote as a whole. A majority was thus considered for integration and the territory of British Togoland became an integral part of Ghana in March 1957.

(Austin, Dennis, Op. Cit, p.142)

(19)

Austin, Dennis, Op. Cit, pp.142-143

confrontation with the colonial administration<sup>(20)</sup>. Under these circumstances, the Ewes of British Togoland were put in the position of having to choose between their links with the Gold Coast or with French Togoland. The effect was the majority of the population voted in the crucial decolonisation referendum of 1956 in favour of integration with Ghana and independence<sup>(21)</sup>. Therefore, the colonial power held to maintain the status quo and Ghana came into being in 1957 with a border which divided tribal lines for 170 of its 498 miles<sup>(22)</sup>. Subsequently, the border agitation entered a new phase in which governmental irredentist aspirations provided the main pressure for border change<sup>(23)</sup>. Simultaneously, Ghana maintained that the frontier should be shifted east in which Togo would become a region of Ghana, while Togo demanded that the boundary should be extended westwards into the former British Togoland. Under these circumstances, the activists of the British Togoland union attempted an armed riot at the time of Ghanaian independence and integration celebration in 1957<sup>(24)</sup>, in protest against the continuous separation of the Togolands, therefore

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(20) Brown, David, Op. Cit, p.582

(21) Blaustein, Albert P. et al., Independence Documents of the World, Oceana Publications Inc., New York, 1977, pp.245-246

(22) Zartman, William, Op. Cit, p.165

(23) Nkrumah had a territorial ambition in order to establish Greater Ghana by integrating French Togo, Upper Volta, Dahomey and the Ivory Coast by which a powerful and active West African Federation would gain influence and leadership in Africa.

(24) Brown, David, Op. Cit, p.582

Ghana continued to campaign for a merger, in which French Togo would become an integral part of Ghana<sup>(25)</sup>. This irredentist aspiration reflected Nkrumah's intention to win the support of Ghanaian Ewes by promoting the pan-Ewe cause. Although, it provoked Togolese hostility which in turn led Ghana to seal off the border from 1960 to 1963<sup>(26)</sup>. By 1960, French rule in Togo had ended and Nkrumah's initial hope of a Ghana-Togo merger was abandoned. The 1958 election in the French Togo brought to power a government headed by an Ewe leader whose ambition had paralleled that of Ewe unification<sup>(27)</sup>. In this respect, the shift was from Ewe communal agitation to state irredentist aspirations in which the Togolese government called, after independence, for the transfer of the former British Togoland<sup>(28)</sup>. Notwithstanding, the Togolese

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(25) Nkrumah's irredentist aspiration derived from uncertainty over the future of the French Togo. It was not completely removed until Olympio dominated the scene in the 1958 election in French Togo. Subsequently, within two years, French Togo became an independent state under an Ewe-dominated government. The Ewe dream of a homeland became a reality. In response to this situation, Nkrumah began to control the political life in Ghana through a single party under his Chairmanship. In Togo, an election was held on a single party list in 1961 and Olympio became President of the Republic. Thus, two single parties faced each other across the border under the control of a President who dominated the political life of the country.

(26) Touval, Saadia, Op. Cit, p.36

(27) Austin, Dennis, Op. Cit, p.143

(28) Ghana and Togo continued to press claims for the uniting of the Eweland. At the same time, each government accused the other of harbouring and supporting saboteurs who slipped across the border. The effect of this quarrel gave an advantage to the groups of political refugees on each side of the border, to carry out subversive activities, which led to the disruption of free movement of goods and labours.

irredentist aspiration came to an end in 1963 with the military coup d'etat, but friction with Ghana continued and this led the new Togo regime to close the border between 1963 and 1965<sup>(29)</sup>. By 1960 then, the Ewes in both Ghana and Togo could see no way of resolving the problem of partition. Under these circumstances, their response was to concentrate on pressure-group policies within their respective countries in order to gain as many socio-economic benefits as possible out of the two governments<sup>(30)</sup>. Nonetheless, the border unrest imposed hardship on the traditional way of life in the two Ewe segments on each side of the border.

Ghana also entertained irredentist aspirations against the Ivory Coast. It would appear that Ghana's irredentist aspiration could be attributed to a combination of factors. One of them was the pan-African ideology espoused by Nkrumah which provided justification for altering the colonial boundaries in order to reunite tribes separated by colonialism<sup>(31)</sup>. The second factor was the political

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The new regime of Togo had no commitment to the idea of Ewe nationalism. The major friction was the cross-border smuggling which had proliferated since 1965. Cocoa and coffee were smuggled into Togo where they brought higher returns to Ghanaian farmers. This smuggling flourished from 1965 until the early 1970's, but since then it has been threatened by the economic nationalism of successive regimes in Ghana. In 1971 the Ghanaian government began to tighten its border control as part of a shift in economic policy towards import restriction in order to put an end to the smuggling.

(30) Alinyem, Bolaji, A., The OAU and the Concept of Non-Interference in Internal Affairs by Member States, BYBIL, Volume 46, 1971-1973, p.394

(31) The intensity of Nkrumah's commitment to the pan-African ideology swiftly responded to the Sanwi secessionist movement in that, the best means open to them was to join Ghana. He justified his claim to the Sanwi region on the grounds that it would be a step towards the abolition of the colonial legacy and eventually towards the greater unity of Africa.

antagonism between Nkrumah and Houphonet-Boigny, President of the Ivory Coast<sup>(32)</sup>. Finally, the availability of the Sanwi secessionist movement in the Ivory Coast offered itself to exploitation by Nkrumah who was tribally related to the Agni people of Sanwi. The existence of the Sanwi movement had caused trouble to the Ivory Coast government. The movement had pursued an opposition of a tribal character by protests against the predominant position of the Baoule, President Houphonet-Boigny's tribe. The origins of this opposition could be traced in the colonial administrative history of the region and in the social and economic competition between the Sanwi and the Baoule. The King of Sanwi, who was the first local chief to sign an agreement with the French colonial administration in 1843, had been accorded preferential treatment by the French government<sup>(33)</sup>. In this respect, France continued to recognise the King of Sanwi, even after termination of the traditional authority of local chiefs. However, during World War I, French colonial administration imposed levies on manpower, which led to Sanwi's protests and migration to the Gold Coast<sup>(34)</sup>. They argued that French colonial administration had violated the 1843 agreement by imposing the levies on manpower. Consequently, the French authorities abolished the preferential treatment granted to the Kingdom of Sanwi<sup>(35)</sup>.

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(32) The Sanwi tribe stayed outside the mainstream of political life in the Ivory Coast since the beginning of Houphonet-Boigny's nationalist movement took power in the election of 1957. They supported opposition candidates or had a high rate of abstention. Subsequently, they conducted subversive activities in which many of them were arrested. A number of them fled to Ghana and joined a freedom fighters front in which Ghana committed to support their cause.

(33) Touval, Saadia, Op. Cit. p.38

(34) Zartman, William, Op. Cit., p.167

(35) Touval, Saadia, Op. Cit., p.38

As a result, the political, social and economic primacy spread to other tribes, notably the Baoule<sup>(36)</sup>. Subsequently, when political organisations began to form after World War II, the Sanwi refused to join the Baoule-dominated Ivory Coast Democratic Party. Instead, they supported the rival Progressive Party<sup>(37)</sup>. When the Democratic Party became standard-bearer of the Ivory Coast independence movement, the Sanwi felt alienated and turned to secession<sup>(38)</sup>. Under these circumstances, the border dispute between Ghana and the Ivory Coast over the Sanwi was a tribal matter exacerbated by Ghana's interference. Nonetheless, Ghana openly claimed the Sanwi region in the name of tribal unity. This border dispute had neither turned into a major conflict nor had it been solved.

Finally, Ghana-Upper Volta dispute occurred over the interpretation of documents and maps defining the border<sup>(39)</sup>.

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(36) The first to acquire European education, the Sanwi tribe lost their political position through the abrogation by the French of the 1843 agreement. This measure led the Sanwi to concentrate their attempts on regaining their previous position and the re-establishment of their entity, but these efforts led them to stay outside the mainstream of the political life in the Ivory Coast.

(37) Trouval, Saadia, Op. Cit, pp.38-39 .

(38) The Sanwi case demonstrated the complex case of secessionism. They also justified separation on the grounds of ethnic differences when it associated with economic, social and political issues of conflict.

(39) Upper Volta illustrated the diverse consideration that might prompt boundary dispute. The territory was initially constituted in 1919 and subsequently, abolished in 1932 and its administrative divisions were absorbed by the French neighbouring territories of Mali, Niger and the Ivory Coast. In 1942, it was reconstituted as a separate colony and the region previously annexed by each of the neighbouring colonies were separated from them and reincorporated into Upper Volta.

The issue was a strip of land constituting some 50 miles of the 350 mile border between the two states<sup>(40)</sup>. Nonetheless, the deep cause was to be found in the mutual antagonism between the two governments. It should be noted that in the period between 1961 and 1964, relations between Ghana and Upper Volta had developed considerably. The two states concluded a series of economic co-operation and set up a customs union<sup>(41)</sup>. Unfortunately, difficulties arose in their attempts at mutual co-operation which led to the closure of the border between the two states as a security measure. Upper Volta reacted by scaling down its economic co-operation with Ghana and endeavouring to improve relations with its other neighbouring states<sup>(42)</sup>. As a result, relations between Upper Volta and Ghana quickly deteriorated. In this atmosphere, the two governments developed genuine differences over the interpretation of the nineteenth century Anglo-French border treaties and maps<sup>(43)</sup>. Therefore, it was the consequences of worsening relations which gave the dispute an important dimension and made the settlement difficult. The dispute was also aggravated when Ghana used the conflict to demonstrate to Upper Volta its capacity to cause trouble, while Upper Volta used the dispute to embarrass Ghana by branding the country as "expansionist." Subsequently, Ghana commenced building a road and school in the disputed territory which was claimed by Upper Volta as

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(40) Touval, Saadia, Op. Cit, p.41

(41) Meyers, David B., Op. Cit, p.119

(42) Polhemus, Higbie James, Op. Cit, pp.184-185

(43) Zartman, William, Op. Cit, p.167

an integral part of its territory. Under these circumstances, a joint border commission from the two states met in order to find a mutually acceptable solution, but its attempts were unsuccessful. Subsequently, Ghana built a police post in the disputed area and raised its flag on this post<sup>(44)</sup>. At this stage, Upper Volta decided to take the border dispute to the OAU<sup>(45)</sup>.

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Meyers, David B., Op. Cit, p.120

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The border disputes between Ghana and its neighbours were scheduled for consideration at the first summit conference of the OAU Assembly of Heads of State. In addition to the Algerian-Moroccan border dispute and the Somali-Ethiopian-Kenyan border disputes. Although not referred to the OAU, a third dispute between Dahomey and Niger, which contributed to the feeling that border disputes had come to plague inter-state relations in Africa.



EMPLOYMENT OF THE OAU AUTHORITY:

Ghana's border conflicts with its three neighbouring states, were the consequence of Nkrumah's concept of pan-Africanism through which he was intending to establish a state of Greater Ghana over which he would assume leadership, thus significantly increasing his influence in Africa. Accordingly, the call for the removal of colonial boundaries in Africa was an important theme in Nkrumah's pan-Africanism. The invocation of this doctrine was, in fact, intended for the justification of Ghana's territorial aspiration against Togo, Ivory Coast and Upper Volta<sup>(46)</sup>. Nevertheless, this doctrine did not find favourable grounds with the majority of African states which came out strongly in favour of the principle of sovereignty and territorial integrity. Many African states discerned that Nkrumah's doctrine harboured irredentist ambition for expansion in order to swallow up Togo, Ivory Coast and Upper Volta. Under these circumstances, the maintenance of the status quo began to be associated with the preservation of the state as a political unit<sup>(47)</sup>.

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(46) This doctrine found vent for the first time in one of the resolutions of the first all-African People's Conference which took place at Accra, Ghana in December 1958. It denounced the artificial frontiers drawn by imperialist powers to divide the people of Africa, particularly those which cut across ethnic groups. Subsequently, the continued expression of this doctrine also found a place in the joint communique issued by President Osman of Somalia and Nkrumah, in October 1961 at Accra, which stressed the imperative need to remove the artificial colonial frontiers which were drawn up without any respect for ethnic, cultural or economic ties.

(47) Cervenka, Zdenek, The Unfinished Quest for Unity, Friedmann, London, 1977, p.70

This led the majority of African states defining themselves by means of colonial boundaries. As a result, the principle of preserving the status quo was recognised in the OAU resolution on border disputes among African states, which was adopted at the first ordinary summit of the OAU Assembly of Heads of State which took place at Cairo in 1964<sup>(48)</sup>. The resolution declared that all OAU member states pledge themselves to respect the border existing on the day of accession to national independence<sup>(49)</sup>. Accordingly, the OAU member states agreed to maintain the boundaries as they had been carved out by the Berlin Conference of 1884<sup>(50)</sup>. However, several reasons are behind this attitude.

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Unfortunately, the resolution suffered from several weaknesses. Firstly, it was not applicable to the existing disputes. Secondly, it was intended as a guide for the future and should not prejudice any settlement already in progress. Thirdly, there was nothing in the resolution that might help to resolve border disputes arising from different interpretations of documents as was the case in Ghana-Upper Volta. Therefore, this was in contradiction to the member states' pledge to respect the sovereignty and territorial integrity.

(49)

Brownlie, Ian, Op. Cit, pp.360-361

(50) Most African boundaries were merely administrative divisions within British, French, Spanish and Portuguese African territories. They were drawn with no greater awareness of human or physical geography. Thus, the boundaries are geometrically straight lines. Such borders obviously correspond to no natural human or physical feature. The pre-colonial boundary concept was also one of frontier marches, not of border lines. The classical African entities were composed of one or more centres of power with control and allegiance conceived in terms of people rather than land. The entity was where the tribe lived and maintained control and they could move long distances and keep the entity intact, as long as they preserved a cohesive society and independent political control. This boundary concept is similar to the Muslim boundary concept in North Africa by which the (Umma) or community of believers that determined the geographic scope of the state and not the territorial limit of the state, otherwise its effective control that determined the allegiance of the community of believers.

Firstly, most OAU member states had not yet achieved internal stability and cohesion, and any concession to demands of boundary revision could only be a further step of disruption. Secondly, if the right to secede was granted to any region, no matter how well justified its claim to self-determination might appear in international law, the likely outcome to this would be the stimulation of further secessionist demands in other regions which would result in disintegration of the OAU member states. Thirdly, the tribal equilibrium which the political structure of present African states depend upon, would be upset by any further changes of the frontiers which divide tribes between African states. Accordingly, the annexation of a tribe would increase the size of a tribe inside a state, which might then lead to internal conflict. Finally, the regrouping of African states according to tribal or ethnic affinities would lead to the proliferation of small units and the balkanisation of the African continent into entities that could not possibly be viable economically. Under the impact of these reasons which struck many African leaders as seriously impeding the movement for pan-African solidarity. Consequently, an initiative was taken to have the OAU affirm explicitly and more strongly, the principle already embodied in the OAU Charter concerning the preservation of the territorial status quo.<sup>(51)</sup> When the OAU Assembly of Heads of State

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(51) OAU Charter and Rules of Procedures, Article III (3),  
pp.10-11

scheduled its first ordinary summit in Cairo in 1964, the border disputes between Ghana and its neighbouring states were added to the agenda of the meeting<sup>(52)</sup>. Despite the fact, the Cairo summit of the OAU Assembly were highly concerned in general with African territorial disputes<sup>(53)</sup>. Therefore, these conflicts aroused little discussion or interest which gave most of the delegations the feeling that the OAU action would be premature as bilateral settlement still seemed possible. Accordingly, the OAU Assembly recommended the states in dispute to hold direct negotiations with a view to finding mutually acceptable solutions to their border conflicts<sup>(54)</sup>. It would also appear that the OAU Assembly did not recommend any kind of resort to third party proceeding. In any event, despite the urging of the resolution of the OAU Assembly to the states in dispute to hold direct negotiations, the states concerned did not appear to have met together to discuss the disputed territories. Unfortunately, relations between Ghana and Togo, Ivory Coast and Upper Volta worsened during the first half of 1965, with renewed allegations that Ghana pursued an expansionist aspiration<sup>(55)</sup>. Under these circumstances, the border disputes

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(52) Cervenka, Zdenek, Op. Cit, p.69

(53) The OAU member states inherited disputes over boundaries or parts of territories. These disputes placed on the agenda of the first summit of the OAU Assembly were Somali-Ethiopian-Kenyan border conflicts. Algerian-Moroccan border dispute; Moroccan claim against Mauritania; Tunisian claim to parts of Algerian Sahara; dispute between Niger and Dahomey over the island of Letta; border dispute between Malawi and Zambia; Malawi and Tanzania; Ghana and Togo; Ivory Coast and Upper Volta and the Chad and Libyan border dispute.

(54) Polhemus, Higbie James, Op. Cit, pp.186-187

(55) Meyers, David B., Op. Cit, pp.120-121

remained unsolved until the first half of 1965 as the date set for the second ordinary summit of the OAU Assembly in Accra, Ghana. In this connection, Togo, Ivory Coast and Upper Volta took advantage of this opportunity, by raising a series of grievances against Ghana, and threatened to boycott the second summit of the OAU Assembly scheduled to meet in Accra, Ghana<sup>(56)</sup>. It was important to Ghana that the Accra summit of the OAU Assembly be a successful one and she had invested considerable financial and political capital in the scheduled summit. However, only at this time did the OAU show interest in these border disputes between Ghana and its neighbours. In this respect, at the fifth extraordinary session of the OAU Council of Ministers which took place in Lagos, Nigeria in June 1965, in order to discuss the venue of the second ordinary summit of the OAU Assembly, the states in dispute again presented their complaints against Ghana<sup>(57)</sup>. The major theme in their legal arguments was Ghana's irredentist aspiration and its unwillingness to pursue peaceful settlements to the border conflicts. The OAU Council of Ministers did

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(56) Polhemus, Higbie James, Op. Cit, p.186

(57) Ibid pp.187-188

not respond specifically to the border disputes, but in a blanket resolution on the venue of the Accra summit of the OAU Assembly, appealed to the states in dispute to make every effort fraternally, to settle their border conflicts by means of bilateral negotiations<sup>(58)</sup>.

Notwithstanding, the border dispute between Ghana and its neighbours remained unresolved until after the overthrow of Nkrumah. So long as Nkrumah remained in power, the neighbouring states of Ghana were unable to agree on peaceful settlements of the border conflicts. At any event, after the Ghanaian coup of 1966, the new military regime sought to improve Ghana's relations with its neighbouring states and to resolve outstanding border disputes.

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Krishnan, Maya, Op. Cit, p.203

WESTERN SAHARA CONFLICT:

HISTORICAL ORIGINS AND LEGAL CONSIDERATION OF THE CONFLICT

The Spanish presence in Africa dated originally from the building of the fort of Santa Cruz de Mar Pequena on the southern coast of Morocco in 1476. Nonetheless, the outpost was subsequently abandoned owing to Moroccan pressure in 1524<sup>(1)</sup>. A Spanish presence in the Western Sahara, prior to the nineteenth century, was of a limited nature but the entire region was officially annexed in 1884<sup>(2)</sup>. In January 1885, Spain established a protectorate over the North-West coast of Africa. Despite this fact, the Franco-Spanish Treaty of 1900 was usually regarded as the basis for the Spanish claim over Western Sahara<sup>(3)</sup> which defined the sphere of each power<sup>(4)</sup>. Subsequently,

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(1)

Reyner, Anthony S., Morocco's International Boundaries, JMAS, Volume 1, 1963, p.38

(2)

Marks, Thomas A., Background to Conflict, JAA, Volume 75, No. 298, January 1976, pp. 1-7

(3)

The annual rainfall in the Western Sahara is usually four inches and natural vegetation is limited to desert shrubs and grasses in the dried-up river beds. The population is 75,425 according to an official Spanish census of 1970, and consists largely of Moslem nomads. The capital of El-Aaiun contains about 24,048 people and the second city is Villa Cisneros.

(4)

Brownlie, Ian, Op. Cit, p.149

a second Franco-Spanish Treaty in 1912 defined the boundary between French and Spanish jurisdiction to the south of Morocco<sup>(5)</sup>. The Western Sahara is situated along the Atlantic coast of Northwest Africa and has a tiny population, the majority of whom are nomadic desert dwellers. In addition to them, a number of urban populations have been living in neighbouring countries, especially Morocco, Mauritania and Algeria for either political or economic reasons<sup>(6)</sup>. In this respect, both Morocco and Mauritania have taken the attitude that the Sahrawis are their citizens, no border barriers have existed, even in the colonial era, to record their movements. Moreover, ethnic and social links between the people in Western Sahara and those nearby in Algeria, Mauritania and Morocco, make it difficult to identify who is, and who is not a Sahrawi<sup>(7)</sup>. This fact took on an important legal implication when the issue of a plebiscite on self-determination came up for discussion at the UN, and subsequently at the OAU forum. In virtually every African state there are tribes with close historic and social ties across territorial boundaries. The problem is every bit as acute as (and not dissimilar to) that of the Somalis in the Ethiopian Ogaden and the Northern

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(5) Ibid p.149

(6) The last estimate of the number of those exiles has ranged from the Spanish figure of 10,000 to a high of about 50,000 claimed by the Saharan Liberation Movements and neighbouring countries.

(7) One of the exiled leaders of the Polisario is Ahmad Bala Miske, the former Mauritanian ambassador to the UN and United States.



Frontier District of Kenya. It is worthwhile mentioning here that the contemporary principle of self-determination is based on two considerations. Initially, there is the assumption which is widely observed that states or colonies with established boundaries and fixed populations should have their own independent sovereign state. Secondly, any other approach would lead to endless conflicts as modern states found themselves under pressure to join a general regression to a status quo ante of uncertain validity. It is for these considerations that the OAU has insisted that each African colony in the final stage of decolonisation, must exercise its right of self-determination within the confines of established boundaries and fixed populations<sup>(8)</sup>. Despite the fact, in some cases this principle seems to perpetuate certain historic injustices or cultural and social hardships, but it has been obvious that other alternatives are worse. Therefore, any attempt to redraw the map of Africa on the basis of historical or ethnic claims could only lead to chaos, war and the unravelling of a continents' state system. Hardships could be dealt with through federations and confederalational co-operation arrangements between OAU member states. It was at the insistence of African states, in conjunction with the third world, that the UN Declaration on the Granting of Independence to Colonial Countries and Peoples, came into existence in 1960<sup>(9)</sup>. The Declaration proclaims

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(8) Brownlie, Ian, Op. Cit, pp.360-361

(9) Whiteman, Marjorie, Digest of International Law, Volume 5, 1962, p.78

that all peoples have the right to self-determination. Notwithstanding, it has been ascertained that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a country is incompatible with the purposes and principles of the UN Charter<sup>(10)</sup>. In this respect, the OAU has recognised the principle by which territories must exercise their rights to independence with established colonial boundaries and fixed populations<sup>(11)</sup>. On the other hand, if a colonial territory in Africa wishes to unite with another African country, it should have the right, but it must be manifested in the process of decolonisation. Consequently, it must be the free choice of the majority in that particular colony to be absorbed or dismembered. As early as 1954, it became virtually standard practice to encourage colonial populations, at the time just before decolonisation, to participate in genuine acts of free choice. These acts might also determine which party or movements would assume the reins of power. Consequently, the UN General Assembly decided that in agreement with the administering power, a UN mission should visit the non-self-governing territory before the population is called upon to decide on its destiny<sup>(12)</sup>. Accordingly,

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(10) Ibid p.80

(11) Brownlie, Ian, Op. Cit, pp.360-361

(12) Whiteman, Marjorie, Digest of International Law, Volume 13, 1963, p.680 and p.687

the UN supervised plebiscites in the British Togoland Trust Territory in 1956, in French Togoland in 1958 and in the British administered Northern Cameroon Trust in 1959 and 1961<sup>(13)</sup>. With the establishment in 1961 of the UN Special Committee on the situation regarding the implementation of the 1960 declaration on the granting of independence to colonial countries and peoples, the UN had a clear legal interest in demanding the decolonisation of the Trust Territories<sup>(14)</sup>. Therefore, the Special Committee has ascertained the UN presence in the final stages of decolonisation in non-self-governing territories, particularly in those situations where the people are being asked to decide on a controversial formula of decolonisation, by which they have the choice of independence or integration with other sovereign states<sup>(15)</sup>. Thus, the Special Committee

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(13) The territory of Cameroon was a German colony. The latter renounced its right over the Cameroon under the Treaty of Versailles. It was placed under the Mandates System of the League of Nations. The territory was divided into two Mandates - one administered by France and the other by Great Britain. The latter divided its mandated territory into the Northern Cameroon, which was administered as part of the Northern Provinces of Nigeria, and the southern Cameroon was administered as a separate province of Nigeria. The Mandated Territories of the Cameroon were placed under the UN Trusteeship System by a trusteeship agreement approved by the UN General Assembly on December 13th, 1946. The French administered Trust Territory of the Cameroon became the Republic of Cameroon on its accession to independence on January 1st, 1960. In a plebiscite held under the UN auspices on February 11th, 1961, the southern Cameroon voted to achieve independence by joining the Republic of Cameroon. In a plebiscite held in the northern Cameroon on February 11th, 1961, the people were asked whether they wished to achieve independence by joining the Republic of Cameroon or the Federal Republic of Nigeria. The people voted in favour of joining the Federation of Nigeria. On April 21st, 1961, the UN General Assembly terminated the Trusteeship Agreement of December 13th, 1946.

(14) Whiteman, Marjorie, Op. Cit, p.703

(15) Ibid p.712 and p.73

recommended the holding of a plebiscite in the British Northern Cameroons in 1961 with UN participation, prior to decolonisation, and Great Britain implemented the recommendation<sup>(16)</sup>. It is this principle which was so dramatically broken in the issue of the Western Sahara, where a plebiscite for self-determination had not been ensured by the UN at the final stage of decolonisation. It was not only a break with a well-established principle but also with the consistent demand of UN resolutions, adopted specifically for the Sahara in more than a decade<sup>(17)</sup>. The question of the former Spanish Sahara has been elaborately discussed at the UN Special Committee since September 1963 and in subsequent General Assembly plenary sessions. The first resolution proposed by the Special Committee and passed by the UN General Assembly on October 16th, 1964 called upon Spain to implement the Sahara's right to self-determination<sup>(18)</sup>. The Spanish position during that period was that the Sahara was made an integral part of Spain, equal in status to the metropolitan provinces, by virtue of ministerial decree of April 21st, 1961<sup>(19)</sup>. However, the Moroccan position was revealed at a meeting of the UN Special Committee

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(16) Krishnan, Maya, Op. Cit, pp.201-210

(17) Resolutions, 2072 December 16th, 1965; 2229(XXXI) December 20th, 1966; 2354(XXII) December 20th, 1967; 2428(XXIII) December 18th, 1968; 2354(XXIII) December 16th, 1969; 2711(XXV) December 16th, 1970; 2983(XXVIX) December 14th, 1972; 3162(XXVIII) December 14th, 1973.

(18) Franck, Thomas M., The Stealing of the Sahara, AJIL, Volume 70, 1976, p.702

(19) Thomas, A., Op. Cit, p.7

held in Addis Ababa in August 1966 where she took the initiative in proposing that Western Sahara should, as soon as possible, be granted its independence<sup>(20)</sup>. Yet, the Mauritania position was that the Western Sahara, while historically an integral part of its territory, should be completely independent<sup>(21)</sup>. The UN General Assembly Resolution 2229(XXI) of December 20th, 1966 reaffirmed Resolution 1514(XV) concerning the right of the Western Saharan people to self-determination<sup>(22)</sup>. It called upon Spain to determine, at the earliest possible date, in conformity with the wishes of the Western Saharan people and in consultation with Mauritania and Morocco and other interested countries, the procedures for the holding of a plebiscite under UN supervision with a view to enabling the Sahrawis to exercise freely, their right to self-determination. It also requested the UN Secretary General to appoint and despatch to the Sahara, a special UN mission for the purposes of recommending practical procedures for the implementation of the relevant UN General Assembly resolutions, and the extent of UN participation and supervision of the proposed referendum.

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(20)

Franck, Thomas M., Op. Cit, p.702

(21)

Ibid p.702

(22)

Brownlie, Ian, Op. Cit, p.365

Indeed all six resolutions adopted by the UN General Assembly between 1967 and 1973 echo the prescription of the 1966 resolution<sup>(23)</sup>. Despite such a repeated display of public unanimity among all the states concerned, namely Mauritania, Morocco and Spain, the clear prescription of the resolutions were not followed. Unfortunately, during the critical years of 1974 and 1975, the acceleration of efforts were made by the states concerned to arrange their preferred outcomes behind a facade of support for self-determination. In this connection, Spain maintained an argument that the physical features of the country and nomadic nature of its population, could not help to accelerate the country's preparation for self-determination<sup>(24)</sup>. Morocco and Mauritania endeavoured to exploit time to instal their pro-traditional Sahrawis in the Sahara's national assembly (Yema'a) with a view to ensuring their victory in an eventual referendum<sup>(25)</sup>. At the same time, both

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(23) On December 18th, 1968 the UN General Assembly passed Resolution 2428(XXIII) reaffirming the right of the Saharan people to self-determination, and established a total differentiation between Ifni and Western Sahara by making reference in the preamble to the different natures of the jurisdictional statutes of these two territories and the processes of decolonisation. In this respect, Spain handed over sovereignty of Ifni to Morocco on December 16th, 1969. The UN Resolution 2592(XXIV) of December 1969 and 2711(XXV) of December 1970, again reiterated the right of the Saharan people to self-determination. Yet another UN Resolution 2983(XXVIX) of December 14th, 1972 was passed using repeatedly the terms self-determination and independence, followed by Resolution 3162(XXVIII) of December 14th, 1973 expressing identical sentiments.

(24) African Contemporary Record, 1976-77, p. B141

(25) Marks, Thomas A., Op. Cit, p.9

countries, as concerned parties, exercised their right, as defined by the UN General Assembly resolutions, and requested Spain to consult them on the legal and political development in the Sahara<sup>(26)</sup>. It was a way of preventing rather than accelerating the evolution of self-government. At all events, in public the three states concerned, shared an adherence to self-determination while in private shared an abiding mistrust of genuinely free, popular decision-making. During this period, Algeria began to emerge more clearly as an interested country but maintained that it had no territorial claims. It had only demanded to be consulted in any settlement, insisting that its interests were based on obvious political, economic, strategic and social considerations and on the need for regional stability<sup>(27)</sup>. Undoubtedly, the cardinal factor in this position was the increasing evidence that the Western Sahara contained considerable riches of mineral resources<sup>(28)</sup>. As far as the

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<sup>(26)</sup> Franck, Thomas M., Op. Cit., p.702

<sup>(27)</sup> The Western Sahara was divided by Spain into three distinct regions, each having a different form of economic and social life: (a) The north with a nucleus of mountains, and tribes leading a settled life. (b) Further south, partial nomads, a group of tribes who own houses and engage in agriculture, but migrate south at certain times of the year.

<sup>(28)</sup> The vast mineral resources had made Spanish efforts worthwhile for at Bu Craa, approximately 100 kilometres inland from the capital El-Aaiun are phosphate reserves estimated at 1.6 thousand million tons, with a purity of 31%, one of the highest levels in the world. Plans were underway to prospect for aluminium, copper, zinc, titanium, vanadium, lead, manganese, kaolin, bentonite and halogen salts. Iron has already been found in sufficient quantities to justify feasibility studies. Moreover, there are expectations of finding considerable quantities of oil and natural gas in the Western Sahara's offshore continental shelf. In the view of the Spanish authorities, the phosphate industry could furnish the present Sahrawi population of the territory, a per capita revenue equal to that of some developed countries in Europe. In this respect, Morocco revealed its views i.e. to see injustice in restricting such disparately vast mineral resources to a tiny population and privately said that one Kuwait in the Arab World is enough.

evolution of self-government was concerned, the Spanish government transferred to the Sahara National Assembly (Yema'a) a degree of internal legislative powers, while maintaining the external affairs. Moreover, Spain pledged that the Sahrawis could vote to determine the destiny of their country when they freely requested her to do so<sup>(29)</sup>. Subsequently, in July 1974, Spain informed the states concerned, Morocco and Mauritania and the interested state, Algeria, about a new constitutional law for the Western Sahara which substantially increased the powers of the Sahara's National Assembly (Yema'a). At the same time, it stated that it would hold a plebiscite for self-determination under the UN supervision during the first half of 1975. It also announced that this proposed plan should be preceded by a series of consultations with the concerned and interested states, in order to arrange the practical procedure for implementing a referendum<sup>(30)</sup>. Unfortunately, Spanish attempts to win Moroccan and Mauritanian co-operation proved unsuccessful. The Spanish foreign minister met his Moroccan counterpart in Rabat in March and in Madrid in April 1975 where the Moroccan foreign minister pointed out that his country would allow a referendum only if the Sahrawis were limited to an option between integration with Morocco or remaining a Spanish colony<sup>(31)</sup>. Thus, it excluded the free choice of independence. In the meantime, the Spanish minister also met his Mauritanian counterpart in

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(29) Marks, Thomas A., Op. Cit, p.9

(30) Franck, Thomas M., Op. Cit, p.702

(31) Ibid p.705



Nonakchott in April 1975 without securing any commitment of co-operation. On the other hand, when the foreign ministers of the concerned and interested states met in Nonakchott on May 10th, and in Agadir on July 24th, 1975 they publicly reaffirmed their adherence to the principle of self-determination for Western Sahara<sup>(32)</sup>. They also issued a joint statement declaring that self-determination should be implemented in conformity with relevant UN resolutions. This, however, was the last Moroccan adherence to the principle of self-determination for Western Sahara. Subsequently, Morocco asserted its historical territorial claim to the Sahara and threatened general mobilization if necessary, to regain the territory. When Spain eventually acceded to the UN General Assembly's call for a self-determination plebiscite, Morocco suddenly improvised an entirely new strategy. In this respect, Morocco requested that the UN General Assembly should refer the Western Sahara question to the ICJ to examine the validity of Morocco's historical title in such a way as to make the issue dispositive<sup>(33)</sup>. Initially, the Mauritanian position faithfully respected the freely expressed choice of the Saharan population and did not join in the request for putting the issue before the ICJ. However, at a bilateral summit meeting in Rabat in October 1975 between the Moroccan and Mauritanian leaders, the latter agreed to the Moroccan proposed plan of going to the ICJ. It would

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(32) Ibid p.705

(33) Ibid p.705

appear that the two leaders also engineered a partition plan of the Sahara regardless of the outcome of the ICJ's advisory opinion<sup>(34)</sup>. On the other hand, Algeria reluctantly endorsed the Moroccan-Mauritanian plan to go to the ICJ, having been persuaded to do so in the name of African solidarity. In the UN General Assembly, state after state agreed to submit the issue to the ICJ provided that this was not to be interpreted as a departure from the principle of self-determination<sup>(35)</sup>. Spain was more suspicious of Moroccan motivation. In an attempt at compromise, it agreed to support the Moroccan request, but only if the ICJ would also consider the legal effects of the provisions of the UN Charter and the UN General Assembly resolutions regarding the Sahara's issue. Morocco, however, rejected the Spanish proposal<sup>(36)</sup>. At all events, the UN General Assembly's fourth committee voted on December 11th, 1975 in a resolution requesting an advisory opinion of the ICJ on the Western Sahara case<sup>(37)</sup>. Subsequently, the UN General Assembly endorsed the fourth committee's decision on December 13th, 1975 by passing Resolution 3292(XXIX) which contained the following mandates:-

- (1) the postponement of the plebiscite
- (2) the dispatch of a UN visiting mission to the Sahara
- (3) the request to the ICJ for an advisory opinion<sup>(38)</sup>

In respect of the second mandate, the Special Committee's Chairman appointed representatives from Cuba, Iran and

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(34) Ibid p.706

(35) Horton, K.C., The Western Sahara Case, ICLQ, Volume 28 1979, pp.299-304

(36) Ibid pp.299-304

(37) Ibid p.297

(38) International Legal Material, Volume 14, 1975, p.1503

Ivory Coast to constitute the UN mission under the presidency of the Ivory Coast's permanent representative to the UN. The mission was entrusted with responsibility for obtaining information on the situation prevailing in the Western Sahara, including information on political, economic, social, cultural and educational conditions, as well as identifying the wishes of the Sahrawis people<sup>(39)</sup>. To this effect the mission visited the concerned and interested states and travelled extensively in the Sahara in order to fulfil its mandate. It became evident to the mission that there was an overwhelming and unequivocal consensus among the Sahrawis within the territory, in favour of independence and against integration with any neighbouring country. That impression was based on public manifestation which was identified by an extremely large number of interviews with various groups and individuals representing different shades of opinion. All these interviews were in private in the absence of any representative of the Spanish authorities<sup>(40)</sup>. Nonetheless, outside the territory, opinions among the Sahrawis refugee movements were more mixed, reflecting the respective positions of the Algerian, Mauritanian and Moroccan hosts<sup>(41)</sup>. The mission submitted its recommendation to the UN General Assembly and concluded that steps should be taken to enable the Saharan population to determine their own future in complete freedom<sup>(42)</sup>.

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(39) Ibid pp.1505-1507

(40) Ibid p.1508

(41) Ibid pp. 1506-1507

(42) It is worthwhile mentioning that the Iranian member and the Ivory Coast Chairman were both under considerable pressure from their respective governments to report findings more favourable to the Moroccan cause. Nonetheless, the visiting mission was unanimous in calling for self-determination plebiscite and for eventual independence.

THE ADVISORY OPINION OF THE ICJ:

The proposal for an advisory opinion from the ICJ was presented by Morocco at the September 3rd, 1974 meeting of the UN General Assembly<sup>(43)</sup>. The question to be entertained was whether the territory of Western Sahara had at the time of colonisation been terra nullius, or under Moroccan sovereignty<sup>(44)</sup>. The motivation of Morocco was obviously, it would seem, to obtain a statement that if the territory were not terra nullius, then the court's decision would follow that it was under Moroccan sovereignty. Thus, it would strengthen Moroccan territorial claims for reintegration of Western Sahara. In fact, there were extensive discussions in the UN fourth committee to revise the question in order to include the serious point regarding the application of the principle of self-determination, but Morocco rejected the idea<sup>(45)</sup>. In any event, on December 13th, 1974 the UN General Assembly adopted Resolution 3292 which denoted that the legal controversy had arisen over the status of Western Sahara at the time of Spanish colonisation. Consequently, also mentioned was the desire to refer the matter to the ICJ for an advisory opinion on some legal aspects of the issue, without prejudice to the application of the principle of self-determination<sup>(46)</sup>.

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(43) African Research Bulletin, Volume 12 No.10, November 15th, 1975, p.3806

(44) Ibid p.3807

(45) African Research Bulletin, Volume 12, No.11, December 15th, 1975, p.3836

(46) International Legal Material, Volume 15, 1975, p.1355

Accordingly, the UN General Assembly requested the ICJ to respond to the following questions:-

(i ) "...Was Western Sahara (Rio de Oro and Sakiet El-Haman) at the time of colonisation by Spain a territory belonging to no-one (terra nullius)?

(ii ) If the answer to the first question is in the negative,

(iii) What were the legal ties between this territory and the Kingdom of Morocco and the Mauritanian entity?... (47)»

Morocco and Mauritania each submitted a request to the ICJ for the appointment of an ad hoc judge<sup>(48)</sup> since a Spanish judge had been on the ICJ's bench<sup>(49)</sup>. In appointing a Moroccan ad hoc judge, the ICJ itself had declared that there appeared to be a legal dispute between Morocco on the one hand, and Spain on the other, regarding the territory of Western Sahara. With respect to Mauritania, the court ruled out the appearance of any legal dispute between Mauritania and Spain over the territory of Western Sahara<sup>(50)</sup>. The Court's order concerning the appointment of a Moroccan ad hoc judge was opposed by

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(47) Western Sahara Advisory Opinion of October 16th, 1975, ICJ Report, p.14

(48) The ICJ's competence to authorise the appointment of an ad hoc judge is based on Article 31 and 68 of the Statute and Article 89 of the Rules of the Court. The ICJ ruled by an order of May 22nd, 1975 that by virtue of Article 31 and 68 of the Statute and Article 89 of the Court Rule, Morocco was entitled to appoint an ad hoc judge.

(49) Western Sahara Advisory Opinion of October 16th, 1975, ICJ Report, p.6

(50) Ibid p.8

two judges who denied the existence of a bilateral legal dispute. They stated that the object of the request was to obtain from the ICJ an advisory opinion which the UN General Assembly deemed of assistance to it, for the proper exercise of its functions regarding the decolonisation of Western Sahara. Moreover, they mentioned that Morocco did not dispute the present sovereignty of Spain over the territory of Western Sahara. Furthermore, both Morocco and Spain accepted the applicable resolutions of the UN General Assembly for the decolonisation of Western Sahara<sup>(51)</sup>. Under these circumstances, the court considered the question involved, in the context of proceeding in the direction of decolonisation of Western Sahara in conformity with the UN General Assembly Resolution 1514 of 1960<sup>(52)</sup>. In any event, since the request referred to the time of colonisation by Spain, the court decided that it was necessary to adopt the period commencing 1884, the year of the proclamation of the Spanish protectorate over Western Sahara<sup>(53)</sup>. Consequently, the court would face examining historical assertions within a very long period. Therefore, it was important that sufficient material should be provided for it to reach a valid conclusion. In this respect, Spain, Morocco and Mauritania furnished extensive documentary evidence. In addition, the opinions of Algeria and Zaire were heard before the court, as well as a file extended by the UN General Assembly<sup>(54)</sup>. The interpretation of the material

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(51) Ibid pp.17-18

(52) Ibid p.19

(53) Ibid p.38

(54) Ibid p.17

as well as the conflicting views of the history, was a very complicated matter. Nevertheless, the court reached a conclusion regarding the existence of legal ties with the territory of Western Sahara but not ties of territorial sovereignty<sup>(55)</sup>.

As far as the concept of terra nullius was concerned, the ICJ denoted the principle of the acquisition of territory by occupation, but this referred to the peaceful acquisition of sovereignty over territory by cession or succession<sup>(56)</sup>. It was essential to mention that territory be terra nullius belonging to no-one. In this connection, it is clear that certain types of territory are without doubt terra nullius, such as uninhabited areas, abandoned territories and areas inhabited by relatively few people, totally lacking any kind of social or political organisations<sup>(57)</sup>. In contrast, there has been considerable ambiguity in cases of territory inhabited by recognisable entities. Under these circumstances, various views have been presented. The survey of history from antiquity to modern times could be traced in three major epochs in the evolution of the concept of terra nullius, as follows:-

(1) Roman antiquity presented the theory that if any territory was not Roman, then it was terra nullius.

(2) The epoch of the European great discoveries of the sixteenth and seventeenth centuries presented the theory that any territory not belonging to a Christian sovereign state was terra nullius.

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(55) Ibid pp.47-48

(56) Ibid pp. 38-40

(57) Glahu, Gerhard van, Law Among Nations, Macmillan Publishing Co. Inc., New York, 1976, p.273

(3) The epoch of the European civilised nations during the nineteenth century presented the theory that any territory which did not belong to the civilised states was terra nullius<sup>(58)</sup>.

The first theory presented the view that peoples possessed sovereign right, thus precluding the occupation of their territory by means of conquest under the Law of Nations. This theory was put forward by the founders of the Law of Nations. The essence of this theory was that the acquisition of sovereignty over the territories of such people, depended on the concept of conquest and not occupation. Consequently, the theory centred around the principle of war and the legality of hostilities against non-Romans<sup>(59)</sup>. The second theory dealt with the relationship between a people and their territory under international law, bearing in mind that such people could exercise sovereign rights in certain circumstances. The concept of this theory was that if the occupying state was in need of more territory, then it could satisfy this need by occupation. Despite the facts, the territory had to be part of the territory of tribes which could be deemed to be in excess of the requirements of their people. This conclusion could be attributed to the divine obligations imposed on human beings to cultivate the earth. Thus, this meant that tribes could not take for themselves more territory than they had need of<sup>(60)</sup>. The third one

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(58) Report of the ICJ, Op. Cit, p.86

(59) Briggs, Herbert, The Law of Nations, Appleton, Century-Crofts Inc., New York, 1952, pp.251-252

(60) Ibid pp.273-276



espoused by the Family of Nations throughout the nineteenth century when Africa was being divided among the competing European major powers at the Berlin Conference of 1884. This theory presented the view that the organised tribes or peoples of non-European territories had no sovereign rights. Consequently, the inhabitants of such territories were factually, but not legally in occupation of the territories which could, therefore, be regarded as terra nullius, and acquired under international law<sup>(61)</sup>. This marked the exclusive concept of state in international law to the European civilised nations which could occupy a territory which was not at the time subject to the sovereignty of these states. Consequently, nations which existed under tribal organisation were not regarded as states for this purpose. The historical survey demonstrated how international law had its roots in Roman antiquity and in the fifteenth and sixteenth centuries, while in the nineteenth century, saw the method of adjusting relationships between the colonising powers. Despite the fact, the practice of the Family of Nations of the period prevailed, that Africa was not regarded as terra nullius. This could be explained in the then European argument that occupation was available as a mode of acquiring legal title to territory. In this respect, legal title was acquired on Africa primarily by means of agreements of cession with tribal leaders. Therefore, the Berlin Conference of 1884 established the method of peaceful

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(61) Smith, Herbert Auther, Great Britain and the Law of Nations, P.S. King & Son Ltd., London 1935, pp.1-20

acquisition of African territories by occupation. In fact, the ICJ made this concept obvious. It declared that the principle of the acquisition of territory by occupation meant the peaceful acquisition of sovereignty over territory by cession or succession<sup>(62)</sup>. This did not mean to signify that sovereignty was actually acquired by means of an occupation of a terra nullius in the legal sense. Thus, this led to the conclusion that Western Sahara was not terra nullius at the time of the Spanish colonisation. In this respect, Spain had declared before the UN General Assembly that it had never regarded the territory as terra nullius<sup>(63)</sup>. While the issue was not discussed in the Spanish submission in the oral pleadings, Spain in fact denied that either Morocco or the Mauritanian entity possessed sovereign rights over the territory of Western Sahara at the time of its colonisation<sup>(64)</sup>. Morocco declared that the territory was not terra nullius since Morocco was at that time a recognised state, and its presence in the territory was thus in the nature of a sovereign state<sup>(65)</sup>. Subsequently, this argument was carefully modified to take account of the Mauritanian claim in the light of the partition agreement reached between the two states. In this respect, Mauritania maintained that the territory was not terra nullius since the ICJ arrived at the conclusion that tribes at that time

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(62) Report of ICJ, Op. Cit, p.39

(63) African Research Bulletin, Volume 12, No.5, June 15th 1975, p.3638

(64) Report of ICJ, Op. Cit, p.46

(65) Ibid pp.44-45

had legal personality. Thus, it did not regard their territories as terra nullius and therefore the southern part of Western Sahara linked with the Mauritanian entity<sup>(66)</sup>. In contrast to these arguments, the Algerian which in fact led to the conclusion that under the international law of the period, the territory of Western Sahara was indeed terra nullius<sup>(67)</sup>. However, Algeria was unhappy at this conclusion which would appear to have required a positive response to the first question and thus no consideration for the second. Accordingly, it suggested that the application of the modern norms of international law might provide a satisfactory answer to the problem of Western Sahara<sup>(68)</sup>. Under these circumstances, a number of judges pointed out that the question as to whether the Western Sahara was terra nullius at the time of Spanish colonisation was not legal but purely academic and served no useful purpose<sup>(69)</sup>. This resulted from the fact that none of the states interested in the territory's status disputed the present sovereignty of Spain. This approach was adopted by the court because the essence of the case centred around the territorial claims put forward by Morocco and Mauritania and any discussion of the terra nullius question would be superfluous. Moreover, the court pointed out that neither Spain's original title

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(66) Ibid pp.46-47

(67) Ibid p. 86

(68) African Research Bulletin, Volume 13, No.1, February 15th, 1976, p.3910

(69) Ibid p. 30

was in question, nor Morocco and Mauritania in fact contended that the territory of Western Sahara was at the relevant time, terra nullius<sup>(70)</sup>. However, the question was of some legal relevance, so long as it had served as an introduction to the important question dealing with Moroccan and Mauritanian claims of historical ties with the territory. Therefore, the court ignored any reference to the process of colonisation and declared that Western Sahara was not terra nullius<sup>(71)</sup>. It was inhabited by people who, though nomadic, were socially and politically organised in tribes and under chiefs competent to represent them<sup>(72)</sup>. Moreover, Spain had regarded its acquisition of

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(70) Ibid p.31

(71) Ibid pp.38-40

(72) The court's answer to the first question reflected the multi-cultural composition of the court, whether they were civilised or uncivilised by European standards. It is no longer the criterion for determining whether a territory inhabited by native peoples is terra nullius. This constitutes a radical departure from the doctrine widely propounded by eminent Western jurists. The Zairian jurist dismissed the materialistic concept of terra nullius which led to the dismemberment of Africa. He substituted a spiritual concept, the ancestral ties between the territory and the man who was born of it, remained attached to it, and must one day return to it to be united with his ancestors. He argued that this link should be the basis of ownership to sovereignty.

Western Sahara as achieved by virtue of a series of agreements with independent tribes of the area. In fact, the Spanish decree of December 26th, 1884 regarded by the court as the starting date of the time of colonisation, proclaimed the creation of a Spanish protectorate based on local agreement. Despite the fact, the court declared that the protection agreement did not constitute a recognition of right of sovereignty of both the ruler and the people concerned over their own land<sup>(73)</sup>. Unfortunately, this conclusion led to confusion and opened the door to the possibility that the territory in question was being considered terra nullius. Nonetheless, it would appear that the court meant that the agreement of protection did not upgrade the ruler or Western Sahara to the status, of a recognised member of the community of nations. This certainty made by acceptance of the contracting parties as representing an organised tribe or people by the relevant European power, and thus negating the possibility of a terra nullius.

As far as legal ties were concerned, the court declared that while some legal ties did exist, they did not constitute legal ties of territorial sovereignty<sup>(74)</sup>. Therefore, they were not of such a nature that could affect the application of the principle of self-determination to the territory. The court did pay attention to the rights extended by the UN General Assembly Resolution 3292 to

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(73) Report of ICJ, Op. Cit, pp.55-57

(74) Ibid pp.35-48

Morocco and Mauritania but the court concluded that these rights might only affect the policy to be followed in the decolonisation of Western Sahara<sup>(75)</sup>. On the one hand, Morocco argued that it had possessed sovereignty over the territory by virtue of immemorial possession found on the public display of sovereignty, uninterrupted and uncontested for centuries. The Moroccan argument based upon personal allegiance and Islamic significance, is the crucial factor in Moroccan political systems. These internal aspects should, however, be understood in the light of the special nature of the Islamic concept of state which did not accept borders with the then Muslim community (Dar-el-Islam)<sup>(76)</sup>. Therefore, Moroccan territorial sovereignty extended as far as religious authority of the Sultan. When European colonisation commenced, Morocco was divided into the territory which was fully under the control of the Sultan and those territories which detached, where the inhabitants did not possess a great deal of power and were, in fact, under submission. Nevertheless, the latter territories were still part of Morocco since the inhabitants acknowledged the spiritual authority of the Sultan, and this was not denied by Spain<sup>(77)</sup>. Thus, these religious ties maintained political allegiance which were evidenced by documents dealing with the appointment of caids. Moreover, the allegiance of the Sahrawis, maintained by the imposition

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<sup>(75)</sup> Ibid pp.59-60

<sup>(76)</sup> Ibid p. 44

<sup>(77)</sup> Ibid pp.45-46

of Koranic taxes and customs levies, as well as the paying of spiritual homage on the accession of every Sultan. The Sahrawis' local leaders represented the Sultan in Western Sahara and therefore they were the agents in control of this territory<sup>(78)</sup>. Finally, Morocco pleaded the geographical contiguity to Western Sahara and desert character of the territory and invoked the Permanent Court's decision in the legal Status of Eastern Greenland Case in order to support its claim<sup>(79)</sup>. Mauritania was in a different position since it had not existed as a sovereign state during the colonisation of Western Sahara. Therefore, it had to base its territorial claim on a modified form of recognised European state requirements for the acquisition of title to the territory. Mauritania made reference to the Shinguitti entity in order to substantiate its territorial claim, which was centred around the reunification of its people. It was emphasised that it was a distinct cultural entity inhabiting a certain territory, possessing its own language, social structure and way of life, but did not constitute a sovereign state at that time. Nonetheless, it was a league such as those which existed in ancient Greece, which was enforced by a unified Saharan law<sup>(80)</sup>. This could be attributed to inter alia with the use of water-holes, grazing areas and agricultural lands, as well as the collection of rules relating to war between tribes and methods for the peaceful settlement of tribal disputes<sup>(81)</sup>.

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<sup>(78)</sup> Ibid pp.45-46

<sup>(79)</sup> Ibid p. 34

<sup>(80)</sup> Ibid pp.57-58

<sup>(81)</sup> Ibid p. 59

The identical social, political, legal and economic structure of the various tribes was evident from the fifteenth century. This was not denied by the European powers by which Spain and France entered into an agreement in 1954 to maintain the free circulation of tribes, which was essential for nomadic life<sup>(82)</sup>. Such a community developed a system of law well-fitted to their way of life, by which it constituted an actual nation. Therefore, international law could no longer ignore their existence. Under these circumstances, the Shinguitti entity during the period in question, constituted such a nation. This meant that the Shinguitti entity could be regarded as an independent nation despite its political reality justified in terms of the facts of Saharan nomadic life. Moreover, the Saharan people organised separately in confederations of tribes and emirates jointly exercised sovereignty over the territory of the Shinguitti entity<sup>(83)</sup>. Consequently, the inhabitants of Western Sahara shared the sovereignty in this Shinguitti entity and, therefore, had legal ties with Mauritania. At the same time, Mauritania accepted the reality and legality of a Moroccan presence during the relevant period, in the north. While Morocco conceded that the Shinguitti entity had legal ties with

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(82) Ibid pp.59-60

(83) The precedent case in determining whether a group constituted a legal entity was declared in the Reparation for Injuries Case.. The decision established that such an entity be in such a position that it possesses in regard to its members rights by which it is entitled to request them to respect and be an entity capable of availing itself of obligation incumbent upon its members.



the Saharan tribes in the south. On the other hand, Spain denied both the Moroccan and Mauritanian allegations, holding that Morocco had never exercised state functions over the territory of Western Sahara. At the same time, the Shinguitti entity was purely an area of common culture with no legal implication. Therefore, both Morocco and Mauritania had no legal ties with the territory in question<sup>(84)</sup>. Moreover, the number of treaties concluded by Morocco with regard to the territory which could demonstrate international recognition of the Moroccan claim, revealed that Morocco did not, during the crucial period exercise any state functions over the territory of Western Sahara<sup>(85)</sup>. The absence of Moroccan protests regarding the Spanish presence in Western Sahara was of legal significance in determining the unfounded Moroccan claim. In addition to these facts, the agreement concluded between Spain and the leaders of Saharan tribes in 1886 evidenced the Western Sahara independence from external powers<sup>(86)</sup>. In respect to the Algerian approach to the question of legal ties, the latter based its arguments on the principle of self-determination. It argued that such legal ties could only prevail if they existed by the acquiescence of the Saharan population<sup>(87)</sup>. In response to these conflicting arguments, the court concluded that even after making allowances for the specific structure of the Moroccan state, the evidence before it did not establish any legal ties of territorial sovereignty<sup>(88)</sup>. In this respect,

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<sup>(84)</sup> Report of ICJ, Op. Cit, p.61

<sup>(85)</sup> Ibid pp.53-58

<sup>(86)</sup> Ibid pp.61-62

<sup>(87)</sup> Ibid pp.99-100

<sup>(88)</sup> Ibid p. 67

Morocco did not display effective and exclusive state activity in the territory of Western Sahara. Concerning the various international treaties concluded by Morocco which claimed to indicate international recognition, the court considered these treaties as being of limited value. It was not their purpose either to recognise an existing sovereignty over Western Sahara or to deny its existence. At the best, they were merely providing an indication of international recognition at the relevant time of colonisation of the territory and influence of the Moroccan Sultan over some nomads in Western Sahara<sup>(89)</sup>. The evidence proved that legal ties of allegiance did exist at the relevant period between the Sultan and some of the nomadic peoples of the territory, but this did not amount to any legal ties of territorial sovereignty. The court declared that common religious ties of course existed in many parts of the world without signifying legal ties of sovereignty or subordination to a ruler<sup>(90)</sup>. On the other hand, political ties to a ruler had frequently formed a major element in the composition of a sovereign state. Despite the fact, Morocco later misinterpreted and misused this part of the court's opinions. With respect to reference of geographical contiguity of Morocco with Western Sahara, the court rejected the analogy with the legal status of Eastern Greenland, since the territory had been inhabited separately by socially and politically organised nomadic tribes<sup>(91)</sup>. As far as the Shinguitti entity was concerned,

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<sup>(89)</sup> Ibid p. 56

<sup>(90)</sup> Ibid pp.43-48

<sup>(91)</sup> Ibid pp.42-43

since Mauritania had accepted that no sovereign state was in existence at the relevant time, therefore no legal ties of state sovereignty were involved. As a matter of fact, the court declared that the Shinguitti entity did not constitute an entity such as could have exercised sovereignty in Western Sahara. The court, however, said this did not mean that other legal ties did not exist, but that they were not those of state sovereignty<sup>(92)</sup>. The court felt that the conjunction of legal ties extended to Mauritania and Morocco in Resolution 3292, allowing the possibility of some special legal ties which were enforced by the special nature of the Saharan region<sup>(93)</sup>. They proceeded from the facts of nomadism which could be recognised as sharing legal rights respecting the land over which they have customarily migrated. In this respect, international law should be sufficiently flexible to take account of the development of tribal rights based upon customs. Unfortunately, this conclusion might lead to confusion and open the door to the possibility of Mauritanian territorial claims. This approach of the court appeared only to imply the right of self-determination which realised explicitly the existence of some legal ties between Western Sahara and Morocco and Mauritania. Despite the fact, the court concluded that the existence of such legal ties did not constitute of such nature as

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(92) Ibid pp.60-61

(93) Ibid pp.67-68

to affect the application of Resolution 1514 and particularly the principle of self-determination to the Saharan people<sup>(94)</sup>. It should be noted that all the parties in this case were in favour of UN General Assembly resolutions proclaiming the right of self-determination for the Sahara people<sup>(95)</sup>. The problem was that the parties had different views on the application of self-determination within the context of decolonisation. Morocco maintained that the fundamental rule was that decolonisation by which self-determination be accomplished by territorial integration with Morocco<sup>(96)</sup>. It would appear that Morocco accepted the right of self-determination with respect to non-governing territories only in case of no state having been in existence in the area, and recognised by the international community in the nineteenth century. Consequently, the right to self-determination did not apply to existing independent states at the relevant period so as to dismember the territorial integrity of such states. This concept of self-determination in Moroccan terms could give way to reunification of the arbitrary territorial dismemberment. Morocco, however, stated that the ICJ's opinion meant one thing, the so-called Western Sahara was part of the Kingdom of Morocco<sup>(97)</sup>. Sovereignty was exercised by the Moroccan monarch and the population of this territory considered themselves, and were considered, to be Moroccan.

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(94) Ibid p. 68

(95) Franck, Thomas M., Op. Cit, p.702

(96) Shaw, Malcolm, The Western Sahara Case, BYBIL, Volume 49, 1978, pp.120-121

(97) Franck, Thomas M., Op. Cit, p.711

This interpretation posed a fatal threat to the stability of the African continent and to the vast majority of African states which are state-nations in which diverse ethnic, religious, linguistic and cultural groups have to be reconciled within the framework of one state. The necessity of maintaining colonial frontiers is clearly accepted by the overwhelming majority of African states which could only be understood in terms of the necessity of establishing stability and legitimacy. This established a general freezing of territorial entities as at the eve of decolonisation and consequent disregard for ethnic and historical aspiration. Consequently, the principle of self-determination exists in practice to safeguard the colonial delimitation. Therefore, self-determination must be reserved solely within the colonial territorial context. While all the OAU member states accepted this approach, Morocco and Somalia did not. For many years, Morocco pursued an expansionist aspiration to the territory of Mauritania and to parts of Algeria. In recent years, however, Morocco has increasingly concentrated its attention upon the territory of Western Sahara. A number of factors, however, have combined to make the Sahara case unusual. The special status accorded to Morocco and Mauritania in Resolution 2229 is highly unusual in decolonisation practice<sup>(98)</sup>. This could

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(98) The special status accorded to Morocco and Mauritania by the UN resolutions is highly unusual in decolonisation practice. However, no such special status was accorded to Somalia and Ethiopia, with respect to the former French Somaliland (Djibouti).

be explained by considering the territory of Western Sahara partly at least, as a colonial enclave to which different rules of decolonisation might apply. This could be attributed to the site of Western Sahara which totally surrounded on its landward side by Morocco and Mauritania, as being implicitly recognised as a colonial enclave. The consequence of designating a territory as a colonial enclave is in effect to restrict the exercise of self-determination<sup>(99)</sup>. This means that self-determination is the reintegration of the colonial enclave with the sovereign state of the surrounding territory. The ICJ did not consider the question, but the court felt that general geo-political considerations in the region impelled the UN General Assembly to extend special legal rights to Morocco and Mauritania<sup>(100)</sup>. Spain mentioned that these special considerations given to Morocco and Mauritania were only as a matter of concern by the UN General Assembly for the stability and security of the region. This could not be interpreted as a means of the existence of territorial right to Western Sahara<sup>(101)</sup>. It should be noted that the day after the ICJ published its advisory opinion, Morocco declared that there would be a massive march of 350,000 unarmed civilians from Morocco into the Western Sahara to assert recognition of Morocco's right to territorial integrity and national unity<sup>(102)</sup>. In response

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(99) Africa Contemporary Record, 1976-77, p. B151

(100) Report of ICJ, Op. Cit, pp.67-68

(101) Ibid p. 68

(102) Africa Contemporary Record, 1976-77, p. B141

to the Moroccan march into Western Sahara, Spain notified the UN that Moroccan action would threaten international peace and security and invoked Article 35 of the UN Charter to bring about the situation to the UN Security Council's attention<sup>(103)</sup>. Subsequently, Costa Rica submitted a terse draft resolution to the UN Security Council demanding that Morocco must desist immediately from the proposed march into Western Sahara. At all events, the permanent members were not ready to take the unqualified action proposed by Costa Rica, instead the Council requested the UN Secretary General to engage in immediate consultations with the parties concerned<sup>(104)</sup>. It also requested the Secretary General to report to it as soon as possible on the consequence of the consultations, in order to enable it to adopt the appropriate measures to deal with the present situation. This resolution also reaffirmed Resolution 1514 (XV) and all other relevant General Assembly resolutions on Western Sahara. It also appealed to the parties concerned to exercise restraint in order to enable the good offices of the UN Secretary General to find a satisfactory result<sup>(105)</sup>. This attitude adopted by the UN Security Council represented some sort of victory for Morocco, which envisaged a further delay in the preparation for the plebiscite for eventual independence. The UN Secretary General acting on the Security Council mandate paid respective visits to Morocco,

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(103) Franck, Thomas M., Op. Cit, p.712

(104) Ibid p. 712

(105) Ibid p.712

Mauritania, Algeria and Spain to discuss the Western Sahara's situation with the authorities of these states<sup>(106)</sup>. This was followed by further field visits by the Secretary General's personal representative who held discussions with the authorities of the concerned and interested states. These negotiations gave an expression that all the parties would be ready to recognise the UN role as an essential element in the search for a peaceful settlement<sup>(107)</sup>. As far as Spain was concerned, it was ready to co-operate with the UN to find an appropriate solution, even if this might include a UN temporary administration until such time as the wishes of the Western Sahara people be ascertained<sup>(108)</sup>. On November 1st, 1975 Spain again requested an emergency meeting of the UN Security Council in the wake of the "Moroccan Green March" announced by the Moroccan government. Spain, this time stated that it would take the necessary steps to defend the Western Sahara with military force if called for<sup>(109)</sup>. The Security Council, however, adopted a stronger resolution than the preceding one. It reiterated the call to all parties concerned and interested to avoid any unilateral action which might further escalate the tension in the region. It also requested the UN Secretary General to intensify his consultative efforts with the parties concerned and interested, in order to bring about an

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(106) Ibid p. 713

(107) Ibid p. 714

(108) Ibid p. 715

(109) Africa Contemporary Record, 1976-77, p. B142



acceptable solution to the situation in Western Sahara<sup>(110)</sup>. Subsequently, the Security Council met again after Morocco's march had crossed the international frontier of Western Sahara. Unfortunately, the Council did not reach an agreement to order Morocco to call off the march. Instead, the Council President was entrusted to address an urgent request to the Moroccan government to put an end to the declared march into Western Sahara<sup>(111)</sup>. Subsequently, the Council adopted a 'toothless' resolution that deplored the march and called on Morocco to withdraw immediately from the territory of Western Sahara. It also called on Morocco to resume negotiations under the auspices of the UN Secretary General<sup>(112)</sup>. Nonetheless, the march continued and Morocco ignored all UN efforts<sup>(113)</sup>. Under these circumstances, the UN Secretary General's personal representative visited Spain, Morocco, Mauritania and Algeria between November 3rd and 6th, 1975<sup>(114)</sup>. He proposed interim administration of the UN was rejected

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(110) International Legal Materials, Volume 14, 1975, p.1503

(111) Ibid p. 1504

(112) Ibid p. 1503

(113) When the Moroccan march commenced, the elected president of Western Sahara National Assembly (Yema'a) Mr. Khatri Ould Jounaini fled to Agadir, Morocco, and paid a ritual homage to King Hassan of Morocco.

(114) It appeared to the personal representative that something had been going on which had stiffened the position of the Moroccan authorities and softened that of Spain.

outright by the Moroccan authorities stating that a trilateral agreement could provide an appropriate solution if the UN were prepared to agree to it<sup>(115)</sup>. The leaders of the parties concerned, namely Spain, Morocco and Mauritania had agreed to abandon the principle of self-determination and to divide the Sahara. On November 11th, 1975, tripartite negotiations commenced in Madrid at which Spain agreed to a decolonisation formula that allowed Western Sahara to be partitioned in the way previously agreed between Morocco and Mauritania<sup>(116)</sup>. Consequently, the proposed plebiscite under the UN supervision would be buried. In return for this offer, Spain would retain a 35% interest in Fosbucraa, the 700 million dollar Saharan phosphate industry. In addition to this, Morocco agreed to offer concessions regarding fishing rights off the Western Sahara and Moroccan coasts which were of particular importance to the Spanish fishing industry<sup>(117)</sup>. Finally,

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(115) By the end of October 1975, the Spanish Secretary General of the Falangist movement was authorised to open negotiations with Morocco. Algeria heard of these negotiations and sent its representative to Madrid to make efforts to persuade Spain to cancel the proposed decolonisation formula. The tripartite negotiations were adjourned by Prince Juan Carlos, who at that moment was assuming power from the dying General Franco. In these efforts Algeria had some leverage, since Spain is heavily dependent on Algerian supplies of natural gas. The Prince, who became acting head of Spain, visited Western Sahara and pledged to lead Spanish forces to defend the territory concerned.

(116) Africa Contemporary Record, 1976-77, pp. B141-142

(117) Franck, Thomas M., Op. Cit, p.715

Spain agreed that it would immediately establish an interim regime in Western Sahara with Morocco and Mauritania<sup>(118)</sup>. By mid-November 1975, hostilities were underway in the Sahara with both Moroccan and Mauritanian forces engaged by well-trained forces of Polisario. Throughout December 1975, the Moroccan and Mauritanian forces pushed the Polisario forces out of the principal towns and villages of Western Sahara<sup>(119)</sup>. Under these circumstances, the UN General Assembly adopted two conflicting resolutions. The first, Resolution 3458(a) called on Spain to arrange a free and genuine plebiscite of self-determination under UN Supervision. The second, 3458(b) denoted the tripartite agreement and called on the UN Secretary General to appoint an envoy to consult with the three states concerned for a UN interim administration. It also called for the Sahrawis' inalienable right to self-determination<sup>(120)</sup>. Nonetheless, it recognised

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(118)

On November 6th, 1975 the Moroccan Prime Minister visited Madrid where he resumed negotiations with the Spanish ultras. The result of these negotiations, a draft agreement, was reached. The draft agreement provided that the "Moroccan Green March" should go on as planned, but there would be only a token occupation. The march would stop as soon as the Spanish forces arrived at the Sahara, allowing both governments to save face.

(119)

Africa Contemporary Record, 1976-77, p. B142

(120)

International Legal Materials, Volume 14, 1975, p.1503

the fait accompli which imposed unrealistic circumstances. Unfortunately, the opportunity to hold Spain accountable to the UN for not arranging the stipulated plebiscite on self-determination as expressed by the UN resolution, was vitiated by Resolution 3458(b) which recognised the fait accompli status created in Western Sahara<sup>(121)</sup>.

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(121)

Among the 40 African states voting on Resolution 3458(b), 12 African states joined Morocco and Mauritania, while 21 were opposed, and 7 abstained. Thus, OAU members were Zambia, Lesotho, Kenya, Botswana, Swaziland, Malawi and Ghana, who voted for self-determination and against any legitimization of the Madrid agreement.

THE OAU EFFORTS AT MEDIATION:

The Moroccan and Mauritanian occupation was soon contested by the Polisario Front which, relying on classic hit-and-run guerrilla tactics, kept the two states off balance. Meanwhile, the overwhelming majority of the Saharan population fled the conflict to settle in refugee camps in Algeria's Tindouf area. From these refugee camps came the main recruits for the Polisario Front which led effective insurgent forces. The Front, backed by Algeria, opposed the Madrid agreement.

Thus, an Algerian resolution was adopted by the OAU Liberation Committee at its 27th Session held in Dar-es-Salaam on May 31st, 1976<sup>(122)</sup>, which called for urgent support to Western Saharan nationalist movement and was put before the OAU Council of Ministers, despite Moroccan and Mauritanian protests. They argued that the Algerian resolution had violated the OAU procedures and was thus invalid<sup>(123)</sup>. In protest against the adoption of a pro-Saharan resolution by the OAU Council of Ministers, Morocco boycotted the 13th ordinary session of the OAU Assembly of Heads of State which took place in Port Louis, Mauritius on July 2nd, 1976<sup>(124)</sup>. In this connection, Morocco had

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(122) African Research Bulletin, Volume 13, No.6,  
July 1976, pp.4046-4047

(123) African Research Bulletin, Volume 13, No.7,  
August 15th, 1975, pp.4078-4081

(124) Ibid p. 4078

suffered a string of diplomatic reversals with the mounting expenses of the war. The military pace had been quickening with the guerrillas stepping up their hit-and-run raids in both Moroccan and Mauritanian sectors of Western Sahara. On January 28th, 1979, the Polisario chalked up its greatest military success against Morocco since the war started in December 1975<sup>(125)</sup>. The Polisario Front managed for the first time to break its way into a Moroccan city apparently inflicting heavy casualties on Moroccan troops. There could be no doubt that the Moroccan government was shaken by the Polisario success. The most dramatic consequence of the Saharan war was the withdrawal of Mauritania from the southern third of Western Sahara. The growing success of the Polisario guerrillas in Mauritania, including their capability of virtually paralysing its economic sector, led to the downfall of Ould Daddah regime in 1978<sup>(126)</sup>. The new government signed an agreement in Algeria on August 5th, 1979 ending the four years war over the Western Sahara with the Polisario Front<sup>(127)</sup>. The agreement contained references to modalities for the withdrawal of Mauritanian troops, as well as the renunciation of all territorial claims to Western Sahara. Shortly thereafter, Morocco announced that it would take

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(125) African Research Bulletin, Volume 16, No.1, February 15th, 1979, pp.5140-5141

(126) Lewis, William H., Western Sahara Compromise or Conflict, JCH, Volume 81, 1982, pp.410-412

(127) African Research Bulletin, Volume 16, No.8, September 1979, p.5379

all necessary steps to redeem the Southern part of the Western Sahara which was ceded to Mauritania. Subsequently, Mauritanian forces pulled out on August 15th, 1979 and Moroccan troops moved into the Mauritanian-administered territory which already had contingent forces there<sup>(128)</sup>. As a result, Mauritania protested to the UN and the OAU over the Moroccan annexation of its former administered territory of Western Sahara which constituted an act of aggression against its provisional administration<sup>(129)</sup>. Subsequently, a string of humiliating reverses on the battlefield had occurred, in which hundreds of Moroccan troops lost their lives. This was coupled with successive setbacks for Morocco in the UN and the OAU forums. Consequently, Morocco's international isolation had increased markedly with the Polisario victories at the 1979 OAU Summit Conference held in Monrovia, Liberia<sup>(130)</sup>. The OAU Assembly of Heads of State had voted in favour of a self-determination plebiscite in Western Sahara. The OAU Assembly also welcomed the Mauritanian-Polisario peace agreement and deplored the Moroccan annexation of the southern part of Western Sahara, previously administered by Mauritania. It decided to set up a special committee to implement its resolution which expressed the right of Western Saharan people to self-determination and independence<sup>(131)</sup>.

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(128) Ibid p. 5380

(129) Ibid p.5380

(130) African Research Bulletin, Volume 16, No.11, December 15th, 1979, p.5477

(131) Ibid p.5478

Under the existing circumstances, the UN Decolonisation Commission adopted a similar resolution on November 2nd, 1979 which reaffirmed the right of Western Saharan people to self-determination<sup>(132)</sup>. It also recognised for the first time at UN level, the Polisario Front as the legitimate representative of the Sahrawis people<sup>(133)</sup>. The resolution declared support for the peace agreement between Mauritania and the Polisario Front and strongly deplored the occupation of Western Sahara by Morocco. It called upon Morocco to put an end to the occupation of the territory and to participate in the OAU attempts at mediation, to find a just and lasting settlement to the conflict of Western Sahara<sup>(134)</sup>.

Subsequently, an equally strongly-worded resolution in support of the Sahrawi cause was passed by the UN General Assembly on November 21st, 1979<sup>(135)</sup>. After the formation of a self-proclaimed Sahrawis Democratic Arab Republic by the Polisario Front, 26 OAU member states requested the 1980 OAU Summit Conference, held in Freetown, Sierra Leone, to extend recognition to the SADR<sup>(136)</sup>. As a result, Morocco felt

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(132) Ibid p.5479

(133) The resolution submitted by 40 countries and 82 voted for it, 32 of them African states including Mauritania, while 7 abstained and 8 did not vote. Morocco, Gabon and Zaire voted against.

(134) African Research Bulletin, Volume 16, No.11, December 15th, 1979, p.5481

(135) Ibid p.5481

(136) At the Summit Conference, a draft resolution was submitted by the 26 members which contained OAU recognition of the SADR and support for its admission as a full member state under Article 28, which requires a simple majority. Nonetheless, the resolution was shelved when Morocco threatened an official withdrawal if the OAU Assembly endorsed this resolution. Consequently, the issue of the SADR's admission was shelved. Morocco argued that the OAU Charter would be violated because Article 28 should be invoked since the SADR was not a sovereign independent state.



constrained to threaten an official withdrawal if the OAU Assembly endorsed the SADR for full membership<sup>(137)</sup>. This diplomatic victory for the Polisario Front was a disaster for Morocco. It was the impact of the war that raised serious doubts about the prospect for Moroccan military victory. The Moroccan troops were apparently addicted to a strategy of static defence, leaving options for a war of manoeuvre to the Polisario guerrillas. Despite increasing infusion of Moroccan troops, the latter appeared to lack a coherent military strategy to deal with the Polisario. Moroccan troops were seeking the earliest possible settlement by a direct attack on Polisario bases in Algerian territory. However, the risk of such action could have resulted in a humiliating defeat for Morocco and the end of the Sherifian monarchy<sup>(138)</sup>. The OAU Assembly, after an animated debate, adopted a resolution urging all the parties in dispute to observe an immediate ceasefire, requested the UN to provide a peace-keeping force and to assist in the conducting of a fair and free plebiscite. It also decided to set up an Implementation Committee to work out modalities for the proposed referendum<sup>(139)</sup>. Subsequently, the Committee held a meeting in Freetown, Sierra Leone on September 9th, 1980 in order to carry out the OAU's decision

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(137) New Africa, August 1981, p.23

(138) Lewis, William H., Op. Cit, pp.411-412

(139) African Research Bulletin, Volume 17, October 15th, 1980, p.5794

taken at the July Summit Conference of 1980. It suggested that the OAU Assembly decision be implemented before December 1980<sup>(140)</sup>. The Committee also drew up a peace plan which contained the following points:-

- (1) "...A fair and general referendum in Western Sahara;
- (2) A ceasefire by December 1980;
- (3) The parties are asked to have their forces in their bases and barracks during the ceasefire;
- (4) UN peace-keeping troops are to be entrusted with ensuring the effectiveness of the ceasefire;
- (5) The OAU with assistance from the UN is to organise a referendum;
- (6) The Secretary General of the OAU is to inform the parties involved of the decision taken ...<sup>(141)</sup>.

So far, the Moroccan position did not change, but the meeting had one important achievement to its credit, it brought together all the parties involved in the conflict, namely, Morocco, Mauritania, Algeria, the Polisario Front and ten pro-Moroccan Sahrawi groups, who also attended the meeting. The groups called by the OAU Committee of "Wise Men" were appointed by the OAU in order to bring about an acceptable solution to the conflict of Western Sahara<sup>(142)</sup>.

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(140) Ibid p. 5794

(141) Ibid p. 7594

(142) Ibid p. 7594

At all events, Morocco remained intransigent on the two major recommendations of a ceasefire and referendum. It argued that such recommendations had to be adopted by a two-thirds majority of the OAU Assembly and not by the OAU Implementation Committee. Consequently, the "Wise Men" Committee and the Implementation Committee had been powerless to get the warring parties to respect the December 1980 deadline for a ceasefire. Thereupon, the two Committees handed over the Western Saharan file to a six-member ad hoc Committee which had been established at the OAU Summit Conference of 1978 in Khartoum, Sudan<sup>(143)</sup>. Morocco, who was now very much on the defensive, pledged to co-operate with the OAU ad hoc Committee whose previous attempts at mediation in Monrovia in December 1979 had been undermined by Morocco's refusal to take part. The OAU ad hoc Committee once again agreed on a programme for a ceasefire and referendum in Western Sahara, but the fighting continued between Morocco and the Algerian-backed Polisario<sup>(144)</sup>. The credit for the initial breakthrough must be given to the OAU ad hoc Committee<sup>(145)</sup> which persuaded Morocco to withdraw its opposition to a plebiscite among the inhabitants of Western Sahara<sup>(146)</sup>. This

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(143) African Research Bulletin, Volume 17, No.11, December 15th, 1980, p.5869

(144) New Africa, August 1981, p.23

(145) The OAU ad hoc Committee chaired by President Moi of Kenya, who was also the current OAU Chairman, included the Presidents of Nigeria, Tanzania, Sudan and Guinea, with ministers representing the Presidents of Sierra Leone and Mali.

(146) King Hassan II on his departure for Nairobi on June 24th, 1981 said that Morocco would not renounce a single grain of sand of Moroccan Sahara. Subsequently, at a press conference on July 2nd, 1981 after his return from Nairobi, King Hassan II said the referendum would be an act of confirmation of the Moroccan citizens of the Sahara.

remarkable breakthrough occurred after the OAU ad hoc Committee held separate consultations with the main parties involved in the Sahara conflict who participated at the OAU Summit Conference which took place in Nairobi, Kenya in June 1981<sup>(147)</sup>. The plebiscite would provide the Western Saharan people with a choice between independence or unification with Morocco. It also proposed a ceasefire and an international peace-keeping force. Nonetheless, Morocco had insisted that the referendum must be restricted to the 75,000 people listed in the 1974 census, held under Spanish administration. The Polisario Front argued that many of the people listed in 1974 were now housed in refugee camps in Algeria<sup>(148)</sup>. The OAU ad hoc Committee proposed a compromise that the people listed in the Spanish census should participate, plus those who registered as refugees from the Sahara with the UN High Commission for Refugees<sup>(149)</sup>. So far,

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(147) African Research Bulletin, Volume 17, No.11, December 15th, 1980, p.5874

(148) African Research Bulletin, Volume 18, No. 8, September 15th, 1981, p. 6131

(149) The decision left the door open as to who would be allowed to vote and what body would be set up to determine the eligibility of voters. The difficulties would be immense because the Sahrawis were traditionally nomadic. Moreover, some of the Sahrawis settled in Algerian refugee camps would not probably be allowed to vote in the Tindouf refugee camps. They could go to vote in Morocco if they wanted, but the latter announced that if they were against Morocco, there was no need of troublemakers. It was difficult to imagine even how a ceasefire would be arranged by the OAU Committee, since Morocco had still refused to engage in direct negotiation with the Polisario Front. Without a ceasefire, there could be no UN peace-keeping force and no referendum.

Morocco and the Polisario Front agreed to study the OAU ad hoc Committee proposal and submit their detailed views on them, but there was still a wide gap between the Moroccan and the Front views. Nonetheless, neither side had rejected the OAU Committee's proposal but they continued fighting. Hopes for peace in Western Sahara suffered a serious setback with the shooting down of two Moroccan aircraft by the Polisario Front. It was a triumph for the guerrillas and a disaster for Morocco. This, coupled with the recent diplomatic victory for the Polisario when the latter's self-proclaimed Sahrawi Democratic Arab Republic was given full membership of the OAU. The OAU Council of Ministers decided at its regular session on February 22nd, 1982 in Addis Ababa to admit the Polisario Front's SADR as the OAU's 51st member state<sup>(150)</sup>.

Consequently, Morocco stormed out of the Council's meeting in protest at the SADR's admission. At all events, Morocco would find it difficult to have the admission revoked, at least without making new and substantial concessions to the Polisario Front. Accordingly, Morocco could not expect to be able to call for an extraordinary summit on this issue<sup>(151)</sup>. The pro-Polisario member states argued that the fait accompli resulted from Morocco's failure to follow up its referendum pledge in good faith. These states proposed the admission under

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African Research Bulletin, Volume 19, No.2,  
March 15th, 1982, p.6353

(151)

Only one-third of African states joined Morocco's walk-out at Addis Ababa. Few of Morocco's allies would not likely wish to jeopardise the future of the OAU, or their own relations with the OAU. On the other hand, 26 OAU member states officially recognised the SADR.

Article 28 of the OAU Charter which requires a simple majority for membership, but Morocco contested this decision on the grounds that the SADR was not a genuine sovereign state<sup>(152)</sup>. Consequently, a decision on this issue requires a two-thirds majority under Article 27 of the OAU Charter<sup>(153)</sup>. Under these circumstances, the opening of the 39th session of the OAU Council was postponed on July 27th, 1982 because a quorum of a two-thirds majority was not secured. The postponement was caused by the dispute over the presence of the Polisario delegation. The Council met in order to prepare for the annual OAU Summit Conference scheduled to take place in Tripoli, Libya on August 5th, 1982, but the business was vitiated by the boycott of a number of member states<sup>(154)</sup>.

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(152)

Guardian, March 29th, 1982

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At all events, the SADR was admitted to the Council of Ministers meeting in Addis Ababa. Moroccan delegation boycotted the opening session of the Council, while King Hassan despatched an immediate message of protest to the Kenyan President, who was the current Chairman of the OAU. Subsequently, the Heads of State from West African countries (Gambia, Guinea-Bissau, Senegal and Guinea) called, on April 1st 1982, for an urgent summit of the OAU, to avoid a rupture or a weakening of the organisation. The leaders adopted this position after examining the situation facing the OAU since the date when the SADR was admitted to the OAU.

(154)

International Herald Tribune, Friday August 6th, 1982

Consequently, the 19th annual Summit Conference of the OAU Assembly failed to open on August 5th, 1982 despite the presence of 17 African heads of state. For the first time since the OAU was founded in 1963, the annual Summit was unable to secure the two-thirds quorum required under the OAU Charter. Nineteen of the 50 member states boycotted the Summit in protest against the admission of the Western Saharan Liberation Front, as a full member<sup>(155)</sup>. The African leaders who attended the Summit held an unofficial private meeting to discuss how to resolve the deadlock. Delegation sources revealed that some leaders urged a postponement of the Summit, while the others preferred to go ahead regardless of the lack of a quorum<sup>(156)</sup>. A quorum is 34 delegates, not necessarily heads of state, but to ensure the unquestioned legality of the Summit, a controversial delegation from the Polisario Front could not be counted as part of the quorum. The Saharan impasse might result in the break-up of the

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(155) Guardian, April 1st, 1982

(156) African Research Bulletin, Volume 19, No.7,  
August 15th, 1982, p.6544

OAU which would lead to very grave consequences. The real problem was that the OAU position on the Sahara issue, was fundamentally confused<sup>(157)</sup>. The SADR was voted into membership without the Front actually holding sovereignty over the territory of Western Sahara. It would seem that there was no prospect of an early compromise and the break-up of the OAU

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No framer of the OAU Charter in 1963 could have foreseen how Article 27 and 28 could have been used in contradiction of each other in this way. The radical African states led by Algeria, Angola, Seychelles, Mozambique, Madagascar, Guinea-Bissau and Zimbabwe claimed that a simple majority of the OAU Assembly of Heads of State is enough to admit a new member. On the other side, Morocco is supported by the conservative Francophone states such as Senegal, Ivory Coast, Tunisia, and conservative Anglophone countries like Nigeria, Sudan and Sierra Leone. They cited a different Article of the OAU Charter which requires a two-thirds majority for the question of deciding the SADR as being a sovereign independent state.



over this issue would leave wounds that could not be healed quickly. The survival of the OAU itself should surely be the overriding aim of its members<sup>(158)</sup>. Despite its failure to move towards a pan-African approach, the OAU has, nevertheless, a record of some achievement. The frontiers inherited from the colonial era have been a serious irritant for emerging pan-Africanism. Numerous crises have erupted, and the OAU through its machinery has been able to intervene quickly to propose a peaceful settlement. Despite widely varying regimes and ideologies, African states through the OAU continued to speak to each other. The OAU, in concentrating on an international political role and the settlement of regional disputes, has clearly neglected other areas of policy such as health, transport, defence, famine relief, where a strong pan-Africanism is still badly needed. At all events, the OAU must be saved because of its record of maintaining peace and security. Without it, Africa would lose its last hope of resisting extra-regional interference by outside powers.

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The African Heads of State had tried to side-step the deadlock by organising a ceasefire and referendum in the Western Sahara. But the referendum and ceasefire were no longer feasible now than when they were planned in the June 1981 OAU Summit Conference in Nairobi, Kenya. The technical admission of the Polisario at Addis Ababa made that formula impossible unless the Heads of State now reversed the unilateral admission decision taken by the OAU Secretary General.

CONTINUED IN II